



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE: 2018-06-12 10:05 - School Board Operational Meeting

AGENDA ITEM: ITEMS

CATEGORY: EE. OFFICE OF STRATEGY & OPERATIONS

DEPARTMENT: Procurement & Warehousing Services

Special Order Request
 Yes No

Time

Open Agenda
 Yes No

ITEM No.:
 EE-42.

TITLE:
 Recommendation of \$500,000 or Greater - 58-125E - LEAPS Social Emotional Learning Software

REQUESTED ACTION:
 Approve the recommendation to award the above contract. Contract Term: September 1, 2018 Through October 31, 2021, 3 Years, 2 Months; User Department: Exceptional Student Learning Services; Award Amount ~~\$649,300~~ \$618,416; Awarded Vendor(s): The Life Excelerator, Inc.; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:
 Leaps is a research-based, internet delivered comprehensive social, emotional and behavioral development program that has been utilized District-wide for the past five (5) years.
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

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 ~~\$649,300~~ \$618,416. The funding source will come from the Individuals with Disabilities Education Act Grant and General Funds. The financial 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 (4) Memo to Revise

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

SOURCE OF ADDITIONAL INFORMATION:	
Name: Antoine Hickman / Jennifer Bigos	Phone: 754-321-3465
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
 6/8/2018, 11:44:34 AM

Electronic Signature
 Form #4189 Revised 08/04/2017
 RWR/ MLW/MCC/AH/JB:hdc

Approved In Open Board Meeting On:
 By:

JUN 12 2018
Nora Rupert
 School Board Chair

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

ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

June 8, 2018

TO: School Board Members

FROM: Maurice L. Woods *MLW*
Chief Strategy & Operations Officer

VIA: Robert W. Runcie *RWR*
Superintendent of Schools

Jeffrey A. Mozummi

SUBJECT: **REVISION TO EE-42, RECOMMENDATION OF \$500,000 OR GREATER
– 58-125E – LEAPS SOCIAL EMOTIONAL LEARNING SOFTWARE,
FOR THE JUNE 12, 2018, SCHOOL BOARD OPERATIONAL MEETING**

Attached is a revision to EE-42, Recommendation of \$500,000 or Greater – 58-125E – LEAPS Social Emotional Learning Software, for the June 12, 2018, School Board Operational Meeting.

Exhibits:

- Revised Agenda Request Form
- Revised Executive Summary
- Added Exhibit A to the Agreement

RWR/MLW/MCC:bm
Attachment

cc: Senior Leadership Team

**Recommendation to Approve Agreement
58-125E – LEAPS Social Emotional Learning Software**

This request is to approve the agreement for three (3) years and two (2) months, starting September 1, 2018 through October 31, 2021, with a renewal option for two (2) additional one (1) year periods. The budget is from Individuals with Disabilities Education Act (IDEA) grant and General Funds.

Leaps is a research-based, internet delivered comprehensive social, emotional and behavioral development program. Leaps is replete with lessons and lesson plans, a multi-modal assessment platform, a scalable and individualized reporting system, a multi-variable individual and aggregate fidelity and progress monitoring system, robust onsite, telephonic, and web-based training and support. Leaps is an excellent and easy to use tool to address the need for and requirement of providing multi-tier systems of support and response to intervention for behavior.

The need for interventions and resources to address the social, emotional, and behavioral needs of students and the positive impact of District-wide implementation over the past five (5) years as well as targeted implementation in previous years, support continuing our District-wide Leaps license. The Exceptional Student Learning Support (ESLS) department has implemented Leaps as a targeted intervention resource for meeting the Local Education Agency (LEA) indicator related to suspensions/expulsions District-wide and for reducing the use of restraints and seclusions over many years.

The School Board of Broward County, Florida (SBBC), is meeting LEA indicator number four (4) regarding suspension/expulsion risk ratios of students with disabilities compared to students without disabilities. Not meeting this indicator would result in a significant financial impact to the District. The District's data trend shows a significant decrease in the use of restraints and use of seclusion over time. Use of seclusion is now prohibited in the District and more effective resources such as Leaps are used instead to teach coping strategies and appropriate behavior.

While Leaps has been targeted by the ESLS department to address specific areas of need, the District-wide implementation has led to additional positive impact. The Promise program uses Leaps as an integral part of the program for all students. Leaps is an intervention outlined in the Discipline Matrix which is a part of the School Board approved policy 5.8, Code Of Student Conduct.

Because lessons are correlated to the character traits, schools are using Leaps proactively to teach positive behaviors, appropriate social skills, and emotional modulation. Lessons are also correlated to the Common Core State Standards, so they often support the similar Florida standard being taught rather than being an additional concept.

The team at Leaps has been especially responsive to situations specifically impacting Broward. This school year they have developed and provided the District with Hurricane and Crisis Response kits to assist the District throughout this school year.

Financial Impact

The total spending authority requested is ~~\$619,300~~ \$618,416, which represents the cost of District-wide licenses. Pricing remains the same as the current Agreement.

The existing agreement 56-049EE, started on January 21, 2016 through August 31, 2018, with a total spending authority of \$581,031. The new contract appears to cost more because the term is being extended to fall in line with when the grant funding is available.

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58-125E – LEAPS Social Emotional Learning Software
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2016-2018			
Time	Number of Months Calculated	Monthly Cost	Total Annual Cost
Year 1	12	\$ 18,987.92	\$ 227,855.00
Year 2	12	\$ 14,732.33	\$ 176,788.00
Year 3	12	\$ 14,732.33	\$ 176,788.00
Grand total			\$ 581,431.00

Year one (1) of the new Agreement is two (2) months longer than the original Agreement, as demonstrated below:

2018-2021			
Time	Number of Months Calculated	Monthly Cost	Total Annual Cost
Year 1	14	\$ 18,974.29	\$ 265,640.00
Year 2	12	\$ 14,732.33	\$ 176,788.00 \$ 176,588.00
Year 3	12	\$ 14,732.33	\$ 176,788.00 \$ 176,588.00
Grand Total (rounded)			\$ 619,300.00 \$ 618,416.00

Procurement Method

Direct negotiation was conducted with the Vendor based on Purchasing Policy 3320. Pursuant to Purchasing Policy 3320, Section II, N, and pursuant to the Department of Education, Rule 6A-1.012, 11 (b), Florida Administrative Code as authorized by Section 010.04(4) (a), Florida Statutes, a contract for commodities or contractual services may be awarded, without competitive solicitations, if state or federal law, a grant or a state or federal agency contract prescribes with whom The School Board must contract or if the rate of payment is established during the appropriations process.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 12th day of June, 2018, 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

THE LIFE EXCELERATOR, INC.
(hereinafter referred to as “VENDOR”),
whose principal place of business is
7600 Yaupon Dr. Austin, TX 78759

WHEREAS, VENDOR offers the Leaps program, an online system of research-based tools and resources that provide social, emotional and behavior learning capabilities, while also being compliant with Positive Behavior Intervention and Supports (PBIS) and Response to Intervention for Behavior (RtI-B) initiatives for SBBC; and

WHEREAS, the SBBC has used the VENDOR’s LEAPS program successfully for several years District-wide; and

WHEREAS, SBBC policy 3320, Part VI.C.5(c), and Rule 6A-1.012(14), Florida Administrative Code, permit the acquisitions of information technology as defined in Section 282.0041(11), Florida Statutes, by direct negotiation; and

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

1.01 **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 **September 1, 2018** and conclude on

October 31, 2021. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods through a written amendment to this Agreement.

2.02 **Description of Goods or Services Provided.** VENDOR shall provide access to the Leaps online system of tools, resources and registration site where any and all educators in SBBC will be able to register for their individual license. Further, VENDOR will assist SBBC administrators in planning for successful behavior invention and prevention initiatives and assure that all schools are setup to be successful in using Leaps for the benefit of their student.

(a) **Lesson Plans.** VENDOR will include more than 240 research-based lesson plans for use at three (3) different levels of student maturity, covering all levels of K-12 education. These lesson plans enable educators to address as many as 109 social or emotional skills that have been identified through research to be the critical skills young people need to know and understand in order to be successful in life at home, in their community, in school and eventually in advanced education or training and in the workplace.

(b) **Assessment Tools.** VENDOR will provide fully vetted assessment tools that will enable SBBC educators to identify the specific social and emotional needs of their student(s). These assessments include group or classroom assessments that function as a behavior Tier 1 or prevention level, as well as individual assessments that provide an accurate assessment of a student's needs for use in intervention and remedial levels of training on a small group or individual level (Tier 2 and 3).

(c) **Reports.** VENDOR will provide monthly reports to SBBC that demonstrate fidelity of implementation, identify areas where additional coaching may be needed to accurately measure the progress of students.

(d) **Training.** VENDOR will provide access to online training, both live and recorded, for all users. VENDOR will provide onsite training once a year and unlimited online training at no additional charge.

(e) **Support.** VENDOR will provide telephone support and technical assistance during normal business hours of 8:00 a.m. – 4:30 p.m.

2.03 **Cost of Goods or Services.** SBBC shall pay VENDOR for software licensing subscription cost as defined in **Exhibit A** upon receipt of a valid SBBC purchase order and appropriate invoice. Due net 30 upon invoice to be paid no earlier than September 1, 2018, November 1, 2019 and November 1, 2020.

2.04 **Priority Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

First: This Agreement, then;
Second: Exhibit A

2.05 **SBBC Disclosure of Education Records.**

(a) SBBC Staff Members (such as teachers or guidance counselors) create student profiles by manually entering the following student education records into VENDOR's software:

1. first and last name
2. date of birth
3. identification (ID) number
4. grade level

(b) VENDOR provides SBBC with a comprehensive social, emotional and behavioral development program which includes an assortment of lessons, allowing teachers to provide specific lessons to address individual student needs. The personal identifiers shared with the VENDOR are used to establish individual student profiles to facilitate SBBC Staff Members to assess and identify specific program elements needed for the student. VENDOR has access to Student ID to assist with technical support needs, student's date of birth, grade level and SBBC Staff Member's name to assist VENDOR's research for new program developments and improvements for SBBC.

(c) VENDOR is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in 2.04 (b) and for the purposes listed in section 2.04 (a). Prior written consent of the parent or student age eighteen (18) or over is needed for any types or purposes of disclosures of education records beyond those listed above.

(d) VENDOR shall not prompt or request SBBC student or faculty users to provide any additional personally identifiable information during use of software, website or program services pursuant to this Agreement. VENDOR shall not use or re-disclose any student information for any purpose not listed in section 2.05 of this Agreement. This provision supersedes any of VENDOR's privacy policies re: collecting and using student information.

2.06 **VENDOR Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, VENDOR 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 safety 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 any 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) VENDOR 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.

2.07 SBBC Disclosure of Employee Information.

(a) SBBC will provide the following employee information to VENDOR by way of the employee entering their own information to set up their own account:

- 1) first and last name
- 2) SBBC business email address
- 3) school location
- 4) position title

(b) VENDOR will utilize employee's information to create user accounts to be able to add students and perform ob responsibilities.

(c) VENDOR shall not use the employee records listed in 2.07 (a) for any purpose other than those listed in 2.07 (b) or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

2.08 Research. VENDOR agrees to comply with all requirements of the District's Institutional Review Board (IRB) and Research Review Process for the purpose of conducting research or evaluating the impact of a program on student outcomes. Questions regarding this process may be directed to BCPS.IRB@browardschools.com.

2.09 Inspection of VENDOR's 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's applicable 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 the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) 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'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 VENDOR pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to 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.

(d) 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 SBBC's denial of some or all of any VENDOR's claims for payment.

(e) 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 VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually entitled, VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, 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 Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) 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.

2.10 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, ESLS, Pre-K / Elementary
The School Board of Broward County, Florida
1701 NW 23rd Avenue
Fort Lauderdale, Florida 33312

To VENDOR: The Life Excelerator, Leaps
PO Box 203004
Austin, Texas 78720

With a Copy to: Dennis Henegar, CEO
7600 Yaupon
Austin, Texas 78759

2.11 **Background Screening.** VENDOR shall 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 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 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.

2.12 **Public Records.** Any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored

electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

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.

2.13 **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 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 VENDOR, its agents, servants or employees; 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, 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 VENDOR, SBBC or otherwise.

2.14 **Insurance Requirements.** VENDOR shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** VENDOR shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Professional Liability/Errors & Omissions. VENDOR shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) Workers' Compensation. VENDOR shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) Auto Liability. VENDOR shall maintain Owned, Non-Owned and Hired Auto Liability insurance 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 required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) Verification of Coverage. Proof of the required insurance must be furnished by VENDOR to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms 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. VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.15 **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.

2.16 **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.

2.17 **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.

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

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 Agreement.

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 **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.

3.05 **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. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. 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 **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.

3.07 **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.

3.08 **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 exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **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.

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

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **Agreement 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.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **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.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC:

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By Nora Rupert
Nora Rupert, Chair

ATTEST:

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

Approved as to Form and Legal Content:

Kathelyn Jacques Adams

Digitally signed by Kathelyn Jacques-
Adams, Esq. - kathelyn.jacques-
adams@gbrowardschools.com
Reason: The Life Excelerator, Inc.
Date: 2018.05.21 10:04:57 -04'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

ATTEST:

THE LIFE EXCELERATOR, INC.

By *Dennis Henegar*
Dennis Henegar, Chief Executive Officer

, Secretary

-or-

Tim Hype
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 TEXAS

COUNTY OF Williamson

The foregoing instrument was acknowledged before me this 18 day of May, 2018 by Dennis Henegar of The Life Exceleator INC, on behalf of the corporation/agency.

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

My Commission Expires: July 20, 2021

Sandra Michaelson
Signature – Notary Public

Sandra Michaelson
Printed Name of Notary

13121352
Notary's Commission No.

(SEAL)

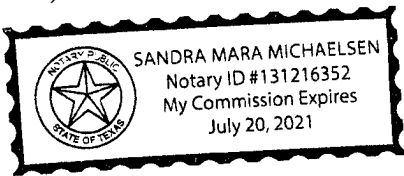


EXHIBIT A

Send Purchase Order or Payment To:

Price Quote



P.O. Box 203004
Austin, Texas 78720-3004

TAX ID 74-2973413



PREPARED FOR

School Board of Broward County, FL
Financial Reporting Department
Attn: Accounts Payable
1643 North Harrison Pkwy, Bldg H
Sunrise, FL 33323

QUOTE # 2589

DATE PREPARED 03/23/2018

ITEM	QTY	RATE	AMOUNT
District Wide License Subscription Year one renewal of a district wide license subscription for all public schools in Broward County that provides any and/or all educators in those schools continuing full access to the LEAPS curriculum and assessment tools. THIS SUBSCRIPTION WILL RUN FOR 14 MONTHS - FROM SEPT 1, 2018 THRU OCT 31, 2019. The price remains the same as the original subscription prorated from 12 months 14 months to move the expiration date as requested by the district	1	265,240.00	265,240.00
District Wide License Subscription Year two of the subscription renewal under the proposed contract from NOV 1 2019 THRU OCT 31, 2020 WITH A DISCOUNT OF more than 22.5% off the annual price of the first year	1	176,588.00	176,588.00
Site License Renewal Year three of the subscription renewal under the proposed contract will run from NOV 1, 2020 THRU OCT 31, 2021 WITH THE SAME 22.5% DISCOUNT	1	176,588.00	176,588.00

This quote provides a description of product and service offerings, and a price for those items, for the purpose of generating a purchase order or check. This pricing offer is good for 30 days from the date of the quote.

QUOTE TOTAL \$618,416.00

Call toll free (877) 775-3277 ext. 554 if you have any questions.

PHONE	FAX	E-MAIL	WEBSITE
(877) 775-3277	(512) 401-6537	businessoffice@goleaps.com	www.goleaps.com

