

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 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

GLYNYLON, INC.

(hereinafter referred to as "VENDOR"),
whose principal place of business is
300 North Mckemy Avenue
Chandler, AZ 85226

WHEREAS, the SBBC is in need of High School Co-Enrolled Credit Recovery and Acceleration services to provide an opportunity for students to take courses for either credit recovery or grade forgiveness based on national and state content standards; and

WHEREAS, VENDOR is willing to provide a complete course of study, based on a digital curriculum, that comprises standards-based instructional content specifically developed for online delivery, with assessment opportunities integrated throughout, to support learning for all students, and resources to support effective teaching; and

WHEREAS, SBBC desires to have its students, teachers and staff access and use the digital curriculum for professional development and to have VENDOR perform certain related services, all pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, SBBC issued a Request for Proposal identified as RFP 19-059V, High School Co-Enrolled Credit Recovery and Acceleration (hereinafter referred to as "RFP"), dated July 23, 2018, and amended by Addendum No. 1 dated August 22, 2018 and Addendum No. 2 dated August 22, 2018, each of which is incorporated by reference herein, for the purpose of receiving proposals for High School Co-Enrolled Credit Recovery and Acceleration.

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 January 1, 2019 and conclude on January 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period.

2.02 **Description of Goods or Services Provided.** VENDOR shall work with SBBC to provide its students with innovative education solutions, using virtual learning programs to help students regain lost credit, complete Advanced Placement courses, and gain access to education when personal challenges prevent them from participating in a traditional classroom as detailed in their proposal.

(a) **VENDOR's Responsibilities.**

1) VENDOR shall collaborate with SBBC to execute an implementation plan that consists of project monitoring, clear and measurable milestones, a well-defined path for issue resolution and change control pursuant to the requirements of the RFP, see **Exhibit A**.

2) Customer service availability from Monday through Friday, 8:00 a.m. – 9.00 p.m. EST.

2.03 **Cost of Goods or Services and Payment.** VENDOR shall be paid an amount not to exceed Two Hundred Seventy-Seven Thousand Dollars and 00/100 Cents (\$277,000.00) after receipt of an appropriate invoice for satisfactory implementation of their solution and delivery of professional development as detailed below:

(a) VENDOR shall be paid an amount not to exceed Two Hundred Forty Thousand Dollars and 00/100 Cents (\$240,000.00) within thirty (30) days after receipt of an appropriate invoice for multiple enrollment subscription licenses as detailed below:

- 1) Eighty Thousand Dollars and 00/100 Cents (\$80,000.00), to be paid on or after January 1, 2019.
- 2) Eighty Thousand Dollars and 00/100 Cents (\$80,000.00), to be paid on or after January 1, 2020.
- 3) Eighty Thousand Dollars and 00/100 Cents (\$80,000.00), to be paid on or after January 1, 2021.

Description	Price P/U	Licenses Per Year	Yearly Cost	Total Cost for 3 Years
Comprehensive Courses - 12 month multiple enrollment subscription	\$25	2,000	\$50,000	\$150,000
Comprehensive Courses - 12 month multiple enrollment subscription (BASE SEL)	\$30	1,000	\$30,000	\$90,000
TOTAL			\$80,000	\$240,000

(b) VENDOR shall be paid an amount not to exceed \$37,000 within thirty (30) days after receipt of an appropriate invoice for performing training and professional development as detailed below:

Description	Price Per Class	Year 1	Year 2	Year 3
(6 Hour) In Person Professional Development for Implementation Strategy & Plan	\$2,500	6 Sessions	2 Sessions	2 Sessions

(4 Hour) In Person Professional Development for Functionality Training & Best Practices	\$1,500	4 Sessions	2 Sessions	2 Sessions
TOTAL (per year)		\$21,000	\$8,000	\$8,000
TOTAL Cost for 3 years				\$37,000

(c) Unused licenses may be rolled over or converted to training and professional development, as determined between SBBC and VENDOR.

2.04 **Additional Subscriptions.** Additional subscriptions may be purchased at the same price, for access through the same order end date as the original order subsequent to approval through an Amendment to Agreement that is approved by both parties.

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

- First: This Agreement, then;
- Second: Addendum No. 2 to RFP 19-059V, then;
- Third: Addendum No. 1 to RFP 19-059V, then;
- Fourth: RFP 19-059V – High School Co-enrolled Credit Recovery and Acceleration, then;
- Fifth: Proposal submitted by VENDOR in response to RFP 19-059V.

2.06 **SBBC Disclosure of Education Records.**

(a) SBBC will provide education records to the VENDOR for the following purposes:

- 1) To register/create an account for each user;
- 2) For VENDOR to create reports on performance statistics, completion statistics, time on tasks and enrollment summary.

(b) Type of Education records:

1) SBBC will provide VENDOR with the following education records:

- i. student first and last name
- ii. student identification number
- iii. username
- iv. teacher identification number
- v. campus identification number

2) In addition to education records provided by SBBC, VENDOR will also have access to the following education records created on their system:

- i. Student scores
- ii. Course information
- iii. Assignments

(c) SBBC will obtain consent from each student's parent/guardian or student age 18 or older whose education records are to be shared prior to disclosing or allowing access to the education records listed above.

(d) The requirements of this section shall supersede any uses of student information as listed in VENDOR's privacy policies.

2.07 **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 re-disclose 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.

2.08 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.

2.09 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:
Chief, School Performance and Accountability
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

- To **VENDOR**:
Legal Department
Glynylon, Inc. d/b/a Odesseyware
300 North Mckemy Avenue
Chandler, AZ 85226

2.10 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.

2.11 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR 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, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

2.12 **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.

2.13 **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.

(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) **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.

(e) **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.

(f) **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.

(g) **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.

(h) 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.

2.14 **Nondiscrimination.**

(a) As a condition of entering into this Agreement, VENDOR represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, VENDOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.15 **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.

2.16 **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.

2.17 **Retention Period.** VENDOR shall retain student education records for a minimum of five (5) years.

2.18 **Incorporation by Reference.** Exhibit A attached hereto and the RFP, its Addenda and the Proposal which are 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:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Nora Rupert , Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Kathelyn Jacques Adams

Digitally signed by Kathelyn Jacques-
Adams, Esq. - kathelyn.jacques-
adams@gbrowardschools.com
Reason: Glynylon, Inc.
Date: 2018.10.19 09:11:18 -04'00'

Office of the General Counsel

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FOR VENDOR:

(Corporate Seal)

GLYNYLON, INC.

ATTEST:

By Charles Mallon

Name CHARLES MALLON

Title CFO

, Secretary

[Signature]
-or-

Witness

Cynthia Nubee

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 ARIZONA

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 18th day of October, 2018 by Charles Mallon of Glynlyon, Inc. on behalf of the corporation/agency.

He/She is personally known to me or produced driver's license as identification and did/did not first take an oath.

My Commission Expires:

[Signature]
Signature - Notary Public

Kristen Marie Pizzuto
Printed Name of Notary

203316320
Notary's Commission No.





Exhibit A

19-059V Implementation Plan

SPRING 2019	Description	Who should attend?	Completion Date	Amount of PD
Implementation Meeting	2-3 hour Training for district stakeholders to go over Implementation plans, goals, structure, and set-up of the Odysseyware system to address all student populations	District Stakeholders	Early priority	½ Day
District Ownership of Curriculum	If needed, Odysseyware will work with curriculum specialists to sequence and align course curriculum to district benchmarks, student learning objectives, and credit recovery expectations.	Curriculum teams for all subject areas intended for Credit Recovery	Early priority	½ Day (*ideally on same day as Implementation Meeting)
Credit Recovery Training	Product training regarding the basics of the student and teacher experience, reading reports, understanding the difference between Credit Recovery, and obtaining usernames/passwords	Facilitators who will work directly with students using Odysseyware	Before student start date	1 day (*30 participant max)
Site Visits & Follow Up	Odysseyware staff to visit with teachers (2 school sites per day) to offer hands on support, coaching and modeling, and provide feedback to district on status of implementation	*Staff will be visited in their classroom/lab	2-3 weeks after students begin working	2 days (*2 schools per day)
Open Q&A Sessions	Scheduled blocks of time that teachers can sign in during their planning period to get real-time support from Odysseyware and allow for Q&A, product walk-through, follow up, and reiterating best practices	Facilitators who will work directly with students using Odysseyware	Mid-semester	4 web hours
Implementation Review	Meeting scheduled with district stakeholders to review usage, look at data aligned to implementation goals, and discuss any additional needs.	District Stakeholders	End of Spring Semester	1 day



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SUMMER 2019					
PD Type	Description	Who should attend?	Completion Date	Amount of PD	
Summer School training	Facilitator training for those who will be working with students during summer school session	Summer School Staff	Before beginning of summer school session	1 days (*limit 30 attendees per day)	
Summer School Site Visits & Follow Up	Odysseyware staff to visit with teachers at summer school site to offer hands on support, coaching and modeling, and provide feedback to district on status of summer usage	Summer School Staff	1 week after Summer School session begins	1 days	

FALL 2019					
PD Type	Description	Who should attend?	Completion Date	Amount of PD	
Credit Recovery Training	Product training regarding the basics of the student and teacher experience, reading reports, understanding the difference between Credit Recovery, and obtaining usernames/passwords	Facilitators new to Odysseyware who will work directly with students	Before student Fall start date	1 day (*30 participant max)	
Credit Recovery Training (Advanced)	This session is for those who have already been using Odysseyware. Participants will delve deeper into the tools available for teachers and students to meet specific learner needs. This session will allow experienced users to address their specific needs.	Facilitators who will work directly with students using Odysseyware	Before student Fall start date	1 day (*30 participant max)	
Site Visits & Follow Up	Odysseyware staff to visit with teachers (2 school sites per day) to offer hands on support, coaching and modeling, and provide feedback to district on status of implementation	*Staff will be visited in their classroom/lab	2-3 weeks after students begin working	2 days (*2 schools per day)	
Open Q&A Sessions	Scheduled blocks of time that teachers can sign in during their planning period to get real-time support	Facilitators who will work directly with	Mid-semester	4 web hours	



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End-of-Year Review	from Odysseyware and allow for Q&A, product walk-through, follow up, and reiterating best practices	students using Odysseyware District Stakeholders	Before or shortly after end of Fall semester	½ day
Curriculum Review	Meeting scheduled with district stakeholders to review usage, look at first year usage and progress towards goals, make plans for cleaning up data on URL, and discuss needs for upcoming year. Meeting with district curriculum specialist to decide if any curriculum changes need to be made before next year's usage	District Curriculum Specialists	Before or shortly after end of Fall semester	½ day (*ideally same day at end-of-year review)

YEAR 2 & 3	CONTINUED IMPLEMENTATION SUPPORT	Who should attend?	Completion Date	Amount of PD
PD Type	Description			
Credit Recovery Training 101	Product training regarding the basics of the student and teacher experience, reading reports, understanding the difference between Credit Recovery, and obtaining usernames/passwords	New Facilitators who will work directly with students using Odysseyware	Before student start date	1 day (*30 participant max)
Credit Recovery Training 201	For those who have completed basic product training and have begun using the Odysseyware program. Participants will delve deeper into the tools available for teachers and students to meet specific learner needs. This session will allow experienced users to address their specific needs	Experienced Facilitators who will work directly with students using Odysseyware	Before student start date	1 day (*30 participant max)
Fall Site Visits & Follow Up	Odysseyware staff to visit with teachers (2 school sites per day) to offer hands on support, coaching and modeling, and provide feedback to district on status of implementation	*Staff will be visited in their classroom/lab	2-3 weeks after students begin working	2 days (*2 schools per day)
Spring Site Visits & Follow Up	Odysseyware staff to visit with teachers (2 school sites per day) to offer hands on support, coaching and modeling, and provide feedback to district on status of implementation	*Staff will be visited in their classroom/lab	2-3 weeks after students begin working	2 days (*2 schools per day)



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Summer School training	Facilitator training for those who will be working with students during summer school session	Summer School Staff	Before beginning of summer school session	1 days (*limit 30 attendees per day)
Summer School Site Visits & Follow Up	Odysseyware staff to visit with teachers at summer school site to offer hands on support, coaching and modeling, and provide feedback to district on status of summer usage	Summer School Staff	1 week after Summer School session begins	1 days
End-of-Year Review	Meeting scheduled with district stakeholders to review usage, look at first year usage and progress towards goals, make plans for cleaning up data on URL, and discuss needs for upcoming year.	District Stakeholders	Before or shortly after end of Fall semester	½ day

**If there is an expansion of usage into additional implementation models, this may require additional service hours not outlined above*