

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

ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

September 26, 2019

TO: School Board Members

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

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

SUBJECT: **REVISION TO EE-5, DIRECT NEGOTIATION RECOMMENDATION OF \$500,000 OR GREATER – FY20-077 – LIBRARY, TEXTBOOK, AND RESOURCE MANAGEMENT SOFTWARE, FOR THE OCTOBER 2, 2019, SCHOOL BOARD OPERATIONAL MEETING**

Attached is a revision to EE-5, Direct Negotiation Recommendation of \$500,000 or Greater – FY20-077 – Library, Textbook, and Resource Management Software, for the October 2, 2019, School Board Operational Meeting.

Exhibits:

- Added agreement

RWR/MLW/MCC:bm
Attachment

cc: Senior Leadership Team

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2019, 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

FOLLETT SCHOOL SOLUTIONS, INC.
(hereinafter referred to as “VENDOR”),
whose principal place of business is
1340 Ridgeview Drive, McHenry, Illinois 60050

WHEREAS, SBBC is in need of a library and resource management system and has agreed to purchase and license such system from VENDOR; and

WHEREAS, VENDOR agrees to sell and license such system called Destiny or Destiny Solution to SBBC; 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.

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 November 1, 2019 and conclude on October 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods.

2.02 **Description of Goods or Services Provided.** VENDOR will provide software and training to upgrade to Textbook and Resource Manager as described in **Exhibit A** (Cost of Software and Services) and **Exhibit B** (Statement of Work).

(a) VENDOR Responsibilities:

1. License. Upon commencement of the hosted services provided under the Agreement, SBBC will be licensed to use the Destiny software (the “Software”) according to this Agreement and the VENDOR’s Product Licensing Terms (**Exhibit C**), incorporated into this Agreement by reference. In the event of a conflict between the terms of this Agreement and the VENDOR’s Product Licensing Terms, the terms of this Agreement shall govern. Access or use of certain additional or special features of Destiny, including but not limited to Destiny Discover, requires that SBBC maintains current VENDOR support services.

2. Services. Software Implementation Support, Project Management and Software Maintenance and Support purchased under this Agreement are set forth in detail, including SBBC’s obligations in receiving the services, under the Statement of Work attached to and incorporated into this Agreement as **Exhibit B** (the “SOW”). SBBC will receive, at no additional cost, any corrections, enhancements, updates or other modifications to the Software to the extent they are made generally available to the VENDOR’s customers, provided SBBC has continuously maintained and paid for Support and Maintenance or makes payment to become current on continuous Support and Maintenance. The twelve (12) month support renewal periods (each, a “Support Renewal Period”) shall begin on the first anniversary of the date of purchase and shall renew upon approval by an Amendment if beyond the initial three year term of this Agreement pursuant to section 2.01. Fees for each Support Renewal Period shall be invoiced, and due and payable, in advance of the start of each such Support Renewal Period.

3. Hosted. Pursuant to the SOW, VENDOR will provide to SBBC hosted services (“Hosted Services”). VENDOR may provide the Hosted Services from any facility and may from time to time transfer any or all of the Hosted Services to any new facilities or relocate the personnel, equipment, and other resources used in providing Hosted Services. VENDOR will back up the SBBC database at the VENDOR’s Hosted Center daily and will store the backup in accordance with industry standards.

4. Service Levels. Destiny Cloud is provided twenty-four (24) hours per day, seven (7) days per week. VENDOR shall provide the following service levels for Destiny Cloud: 99% up-time, Monday through Friday during the hours of 6:00 a.m. to 6:00 p.m., Central Standard Time (“Up-time”).

5. Security. VENDOR agrees to employ commercially reasonable security measures that comply with all applicable federal and state laws and regulations regarding data security and privacy for provision of the Hosted Service.

6. Third Party Equipment and Software. Unless otherwise indicated in the SOW, VENDOR will be responsible for the purchase of, and entering into appropriate licensing agreements concerning, any third-party equipment and software necessary for the performance of the Hosted Service. Ownership and/or licenses for the third-party equipment and software shall be in the name of VENDOR.

7. Limited Warranties. VENDOR warrants, for the benefit of SBBC only, that the third-party equipment purchased under this Agreement will conform in all material respects to the specifications supplied by the manufacturer and shall be free of material defects. VENDOR's sole obligation and SBBC's exclusive remedy for any defect or nonconformity in the equipment will be VENDORS's cooperation with SBBC to provide it with the benefit of any warranty and support commitment of the third-party manufacturers and suppliers of the equipment. VENDOR warrants that the services provided under the attached SOW will be performed using generally accepted industry standards and practices and in compliance with all applicable state, federal, municipal or local educational institution codes.

(b) SBBC Responsibilities: In addition to any other duties and obligations set forth in this Agreement, SBBC will undertake the following responsibilities at SBBC's sole cost and expense:

1. Completion of any SBBC requirements set forth in Exhibit B SOW;
2. Provision and continuous operation of all communication lines, parts, modems, interface equipment and workstations as necessary or reasonably appropriate for use and maintenance of the network capacity between SBBC facilities and the hosted system;
3. Cooperation with and assistance to VENDOR with the transition to the Hosted Service;
4. Inspection and review of all reports and other output provided by VENDOR and notification to VENDOR of any incorrect reports or output within three business days after its receipt (or other mutually agreed upon time frame);
5. Training of appropriate SBBC personnel to properly prepare input for and to effectively utilize output from the hosted system; and
6. Cooperation with VENDOR by, among other things, making available, as reasonably requested, management decisions, information, approvals, and acceptances so that VENDOR may properly accomplish its obligations and responsibilities under this Agreement.
7. Payment. SBBC will make payments for the quoted price of the Software according to the Payment Schedule in this Agreement. On-time payments prior to term expiration are required for annual licensing to use Destiny Cloud.

(c) **Ownership.** All SBBC Personally Identifiable Information and other data received by VENDOR from SBBC (collectively, “SBBC Data”) will remain SBBC’s property, and upon the termination of this Agreement for any reason, SBBC will be provided an opportunity to export catalog and patron data in a reasonable timeframe, not to exceed 120 days past termination date. VENDOR shall terminate SBBC’s access to the VENDOR hosted service and destroy SBBC Data after SBBC’s timeframe to export data has passed. VENDOR may use aggregate data from schools or districts for marketing purposes. VENDOR shall own all intellectual property rights, including copyright, trademark, patent and trade secret rights in and to the Software, and this Agreement shall not be construed as a transfer of any right, title or interest in the Software.

(d) **Delays.** VENDOR is not responsible for any failure to provide Destiny Cloud if such failure is caused by changes to the format of the SBBC Data, changes to SBBC’s equipment or software, or SBBC’s delay or failure in the performance of SBBC responsibilities.

2.03 **Cost and Payment.** The Costs for the goods and services provided under this Agreement are detailed in **Exhibit A** (Cost of Software and Services).

(a) SBBC agrees to make the following payments, payable in US Dollars, subsequent to VENDOR providing software and services and VENDOR’s submission of an appropriate invoice to be paid net thirty (30) calendar days after the issuance of the invoice. The VENDOR will submit an invoice upon completion of the deliverables indicated in Exhibit A:

| Year | Description | To be invoiced on or after dates below | Amount |
|-------------------------|-----------------------------|---|------------------|
| 1 | Resource Manager | 30-days after completion of deliverables | \$190,014 |
| | Library Manager & TitlePeek | 11-01-2019 | \$106,800 |
| 2 | Resource Manager | 11-01-2020 | \$145,600 |
| | Library Manager & TitlePeek | 11-01-2020 | \$156,800 |
| 3 | Resource Manager | 11-01-2021 | \$145,600 |
| | Library Manager & TitlePeek | 11-01-2021 | \$156,800 |
| THREE YEAR TOTAL | | | \$901,614 |

(b) **Additional sites.** Through the course of this Agreement, additional sites may be added at the pricing schedule that follows:

| License Name | Year 1 | All Other Years of the contract term |
|-----------------------------------|---------------------|---|
| Library Manager | \$2,061.05 per site | \$550 per site |
| Resource Manager Complete Edition | \$799 per site | \$650 per site |
| TitlePeek Solution | \$150 per site | \$150 per site |

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

First: This Agreement, then;
Second: Exhibit A, B, C and D

2.05 **SBBC Disclosure of Education Records.**

(a) SBBC will provide VENDOR with the following education records:

- 1) Student's first, middle and last name
- 2) Student's SBBC identification number
- 3) Student's birthdate
- 4) Student's gender
- 5) Student's address
- 6) Student's home phone number
- 7) Student's grade level
- 8) Student's teacher of record
- 9) Student's Schedule data:
 - i. School number
 - ii. Course number
 - iii. Section number
 - iv. Personnel number
 - v. From period
 - vi. Subject area
 - vii. Class meet days

(b) The purpose of the disclosure of the education records is to provision and deprovision student accounts to facilitate the student checking out materials such as books or equipment, track the return of items, assess fees in cases where the item is unreturned and retain information on student's reading and checkout history. Student is able to enter reviews on library resources and create collections of materials created by students.

(c) VENDOR is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes listed above. Pursuant to the Family Education Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. 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 employee 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 above in this Agreement. This provision supersedes any of VENDOR's privacy policies regarding 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 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 promptly 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, 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:

- 1) Staff's first and last name
- 2) Staff's personnel number
- 3) Staff's email address
- 4) Staff's location

(b) VENDOR will utilize employee's information to facilitate provisioning and deprovisioning of user accounts giving SBBC staff access to track and log inventory items, review student accounts, check out and in items as needed.

(c) VENDOR shall not use the employee records listed for any purpose other than those listed above 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 **Safeguarding Confidential Employee Records.** Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

- 1) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records;
- 2) hold the employee records in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law;
- 3) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement;
- 4) protect employee records through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;
- 5) notify SBBC immediately upon discovery of a breach of confidentiality of employee 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;
- 6) prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so; and
- 7) be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law. This section shall survive the termination of all performance or obligations under this Agreement.

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 workspace 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) calendar 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: Chief Information Officer

The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To VENDOR: SVP Technology Platforms
Follett School Solutions, Inc.
1340 Ridgeview Dr.
McHenry, IL 60050

With a Copy to: FSS Bid Administrator
Follett School Solutions, Inc.
1340 Ridgeview Dr.
McHenry, IL 60050

2.11 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468 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, 1012.465, 1012.467 and 1012.468 Florida Statutes.

2.12 **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.

2.13 **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 third party 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 third party 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) **Technology Errors & Omissions.** VENDOR shall maintain 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) calendar 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) TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR DAMAGES DUE TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, VENDOR'S LIABILITY FOR DAMAGES OF ANY TYPE RELATED TO OR ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE INSURANCE LIMITS CONTAINED IN THIS SECTION 2.14, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR ANOTHER THEORY OF LIABILITY.

(h) 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.

(i) 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 fifteen (15) days if required insurance is cancelled.

(j) 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.** Exhibits A, B, C and D are 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 thirty (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar 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) calendar 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.

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FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

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FOR VENDOR:

(Corporate Seal)

FOLLETT SCHOOL SOLUTIONS, INC.

ATTEST:

By _____
George Gatsis, SVP

, Secretary

-or-

Witness

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 _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of
_____, 20__ by _____ of

Name of Person

_____, on behalf of the corporation/agency.

Name of Corporation or Agency

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

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.

EXHIBIT A

Cost of Software and Services

| Summary of Software and Services: Year 1 Costs | Pricing |
|--|---|
| | List Price \$1,187,002.00 |
| | Less Discount Credit (\$996,988.00) |
| | Final Price \$190,014.00 |

Destiny Cloud

PN291 – Upgrade to Textbook & Resource Manager Bundle Promo

- | | |
|--|--------------|
| <ul style="list-style-type: none"> • Upgrade to Destiny® Textbook Manager and Destiny Resource Manager Bundle Package for two hundred twenty-two (222) location(s) <ul style="list-style-type: none"> ○ Online documentation and Help ○ Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management. ○ District already owns Destiny Textbook Manager for same number of sites upgrading to bundle package. | \$171,828.00 |
|--|--------------|

PN293 – Add on Resource Manager Promotion

- | | |
|--|------------|
| <ul style="list-style-type: none"> • Destiny Resource Manager – Complete Edition for two (2) location(s) <ul style="list-style-type: none"> ○ Online documentation and Help ○ Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management. • Server maintenance and support | \$1,548.00 |
|--|------------|

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Implementation Services

- **Project Management:** includes a central point of contact during the implementation of Destiny Cloud.
- **System Setup:** consists of remote initial setup of district and schools, and initial data load.
- **Technical Administrative Training:** consists of remote brief technical training for Destiny Cloud. For the most optimal learning experience, we recommend no more than twelve (12) participants.
- **Managing Your Resources and Defining Templates Webinar:** This instructor-led, web-based training provides the tools you need to begin incorporating Destiny into SBBC’s daily routine. SBBC will learn about the terms and definitions used in Destiny Resource Manager, as well as how to create a category hierarchy (known as a template) to properly track and account for SBBC’s valuable resources. This training is after SBBC’s Planning Meeting and Destiny installation. (Maximum: 12 participants)
- **Resource Manager–Security Setup Webinar:** This instructor-led, web-based training introduces you to the Destiny hierarchy. This hierarchy is how you control who in the district can access various features and data in Destiny. The training focuses on the default district and site-level users that are set up during installation, typical tasks for these users, and how to decide who in SBBC might fit these roles. To ensure SBBC users have access to only the software features they need, you’ll look at the available permissions, and assign the appropriate access levels, usernames and passwords. (Maximum: 12 participants)
- **Resource Manager - Site Essentials On-Site Training – 1 Day:** On-site, 1 day training covers the basics users need to begin using Resource Manager. Users take a look at how they do their job and then apply that in the software. Toolkits, available before, during, and after training, consist of lesson plans, quick reference guides, and videos. A maximum of twenty (20) participants can attend. \$1,650.00

Additional Training

- Destiny Resource Manager On-Site Training – additional ten (10) consecutive day(s) \$9,990.00

Managed Services

- Two (2) day(s) Onsite Consulting Services \$2,998.00
- Sixteen (16) hour(s) Destiny – Account Management – Custom Engagement \$2,000.00

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**Current Renewal of Annual Licensing and Maintenance Costs*
 (11/1/19-10/31/20) – Not included in Initial Year One Costs Above**

Destiny Cloud – Library Manager and TitlePeek

- Destiny Library Manager for two hundred twenty-four (224) location(s) \$73,200.00
 - Alliance Plus
 - Destiny Discover
 - Collections
 - One Search
 - Online documentation and Help
 - Note: Library Manager is designed specifically as a Library management tool
- TitlePeek solution for two hundred twenty-four (224) location(s) \$33,600.00
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$106,800.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise the VENDOR reserves the right to turn off the Services.

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Annual Licensing and Maintenance Costs- Optional (Year 2)

Destiny Cloud

- Destiny Resource Manager – Complete Edition for two (2) location(s) \$1,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management
- Upgrade to Destiny® Textbook and Resource Manager Bundle Package for two hundred twenty-two (222) location(s) \$144,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management.
 - District already owns Destiny Textbook Manager for same number of sites upgrading to bundle package.
 - SBBC's Annual Renewal will be reduced at the time of the existing Textbook Manager renewal date.
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$145,600.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Renewal of Annual Licensing and Maintenance Costs-optional* (11/1/20-10/31/21)

Destiny Cloud – Library Manager and TitlePeek

- Destiny Library Manager for two hundred twenty-four (224) location(s) \$123,200.00
 - Alliance Plus
 - Destiny Discover
 - Collections
 - One Search
 - Online documentation and Help
 - Note: Library Manager is designed specifically as a Library management tool
- TitlePeek solution for two hundred twenty-four (224) location(s) \$33,600.00
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$156,800.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Annual Licensing and Maintenance Costs-optional* (Year Three)

Destiny Cloud – Resource Manager

- Upgrade to Destiny Textbook and Resource Manager Bundle Package for two hundred twenty-two (222) location(s) \$144,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management.
 - District already owns Destiny Textbook Manager for same number of sites upgrading to bundle package.
 - SBBC's Annual Renewal will be reduced at the time of the existing Textbook Manager renewal date.
- Destiny Resource Manager – Complete Edition for two (2) location(s) \$1,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$145,600.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Renewal of Annual Licensing and Maintenance Costs-optional* (11/1/21-10/31/22)

Destiny Cloud – Library Manager and TitlePeek

- Destiny Library Manager for two hundred twenty-four (224) location(s) \$123,200.00
 - Alliance Plus
 - Destiny Discover
 - Collections
 - One Search
 - Online documentation and Help
 - Note: Library Manager is designed specifically as a Library management tool
- TitlePeek solution for two hundred twenty-four (224) location(s) \$33,600.00
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$156,800.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Annual Licensing and Maintenance Costs-optional* (Year Four)

Destiny Cloud – Resource Manager

- Upgrade to Destiny Textbook and Resource Manager Bundle Package for two hundred twenty-two (222) location(s) \$144,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management.
 - District already owns Destiny Textbook Manager for same number of sites upgrading to bundle package.
 - SBBC's Annual Renewal will be reduced at the time of the existing Textbook Manager renewal date.
- Destiny Resource Manager – Complete Edition for two (2) location(s) \$1,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$145,600.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Renewal of Annual Licensing and Maintenance Costs-optional* (11/1/22-10/31/23)

Destiny Cloud – Library Manager and TitlePeek

- Destiny Library Manager for two hundred twenty-four (224) location(s) \$123,200.00
 - Alliance Plus
 - Destiny Discover
 - Collections
 - One Search
 - Online documentation and Help
 - Note: Library Manager is designed specifically as a Library management tool
- TitlePeek solution for two hundred twenty-four (224) location(s) \$33,600.00
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$156,800.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Annual Licensing and Maintenance Costs-optional* (Year Five)

Destiny Cloud – Resource Manager

- Upgrade to Destiny Textbook and Resource Manager Bundle Package for two hundred twenty-two (222) location(s) \$144,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management.
 - District already owns Destiny Textbook Manager for same number of sites upgrading to bundle package.
 - SBBC's Annual Renewal will be reduced at the time of the existing Textbook Manager renewal date.
- Destiny Resource Manager – Complete Edition for two (2) location(s) \$1,300.00
 - Online documentation and Help
 - Note: Resource Manager is designed specifically as a tool for District/School resource (non-library) management
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$145,600.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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Renewal of Annual Licensing and Maintenance Costs-optional* (11/1/23-10/31/24)

Destiny Cloud – Library Manager and TitlePeek

- Destiny Library Manager for two hundred twenty-four (224) location(s) \$123,200.00
 - Alliance Plus
 - Destiny Discover
 - Collections
 - One Search
 - Online documentation and Help
 - Note: Library Manager is designed specifically as a Library management tool
- TitlePeek solution for two hundred twenty-four (224) location(s) \$33,600.00
- District Technical Support includes:
 - Toll-free telephone technical support for designated SBBC contacts
 - 24/7 customer Web Portal, with searchable online knowledge base
 - Unlimited email support
 - Resource Center (how-to's, training tools, and videos)
 - Product updates

Total Annual Licensing and Maintenance Costs: \$156,800.00

*You must have paid or pay for all prior years' Annual Licensing and Maintenance Costs and renew maintenance for all sites and Management Systems at the same time in order to continue to receive access to Destiny Cloud. Otherwise VENDOR reserves the right to turn off the Services.

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EXHIBIT B

Statement of Work (SOW)

Any capitalized terms not defined in this Statement of Work (SOW) have the meanings given them in the Agreement.

Services

This SOW specifies the services (referred to herein interchangeably as “Services” or the “project”) to be provided under the Agreement beginning on or as soon as practical after the Effective Date. VENDOR will complete the Services according to the schedule below, unless otherwise agreed upon by the parties.

Overview

The Follett Destiny Solution will be specifically tailored with applicable components, among which are implementation services, data services, customized services, Digital Content Solutions, peripherals, additional training services and/or post-implementation services.

Note: The Follett Destiny Solution is a Schools Interoperability Framework (SIF) certified product based on the US SIF Specification. The Destiny SIF agent and SIF implementation services are sold by Kimono (web.kimonocloud.com).

Application Software and Online Services

This SOW covers SBBC’S Solution, including the following Follett Destiny Solution components:

- Destiny Resource Manager – Complete Edition

Destiny Cloud provides access to support the resource management needs of SBBC. The core of the solution consists of several applications and online service components for inventory management, including:

Application:

- Centralized database and application
- Cataloging
- Circulation
- Inventory
- Searching
- Reporting
- Off-line Circulation
- Online help

Implementation Services

Project Management

VENDOR will provide project management services in accordance with industry standard techniques. The Project Manager is SBBC’s central point of contact during the implementation of Destiny, to guide and oversee the entire implementation.

SBBC’s Project Manager focuses on the following objectives:

- Facilitation of all project planning activities

- Creation of a Project Plan that is developed and agreed to in writing by both SBBC and VENDOR
- Coordination of all internal resources to ensure that timelines and deadlines are met
- Successful completion of the project and written SBBC Acknowledgement of Delivery of the Destiny Solution

Project planning includes the following key activity:

Project Planning Meeting: This meeting will be used to gather information related to SBBC’s servers, network, Student Information System (SIS) and address any questions or concerns. The expected outcome of this Project Planning Meeting is to develop the implementation, installation and training plan and to ensure that proper expectations are set regarding project responsibilities and schedule. Implementations consisting of more than 26 school locations have the option for the Project Planning Meeting to be held on site.

Additionally, the Project Manager will coordinate the efforts of the various internal resources to ensure that timelines and deadlines are met. The Project Manager guides the project from the time of purchase commitment through the Acknowledgement of Delivery.

VENDOR Project Manager Responsibilities:

- Facilitate all project planning activities
- Create a detailed Project Plan
- Manage the Project Plan to ensure that deadlines are met, and mitigate whenever plan objectives are at risk
- Maintain project documentation and provide periodic status reports
- Work with SBBC’s primary point of contact to resolve any issues that develop during the project
- Ensure communication between the Implementation Team and SBBC
- Transition SBBC to VENDOR’s Customer Service team within the agreed upon period, not to exceed 60 days of receipt of Acknowledgement of Delivery letter

SBBC Responsibilities:

- Assign a single SBBC point of contact to work directly with the Project Manager.
- Participate in the Project Planning Meeting with VENDOR—SBBC project stakeholders must attend.
- Provide a list of sites that will use the Destiny Solution under the Agreement. This must be documented in Schedule C of this Agreement.
- Meet commitments as agreed upon in the Project Plan. If deadlines are not met, the overall Project Plan may need to be modified to compensate for changes. Should SBBC not meet a commitment set forth in the agreed Project Plan, VENDOR cannot guarantee that the original timelines can be kept. Any changes to the agreed upon Plan must be evidenced in writing signed by the parties.
- Participate in conference calls as needed.

System Setup Services

System Setup

System setup for Destiny Cloud provides SBBC school with configured access to SBBC’s Destiny software via a Web site address (URL). Data can be imported into Destiny in many ways including: Bibliographic data that is processed by VENDOR, current system patron data from a data extraction, and SIS patron data exported in a CSV file format.

It is the **SBBC's** responsibility to provide written verification of Destiny Cloud delivery immediately following the System Setup via the Acknowledgement of Delivery document (AOD).

There are some services that the **VENDOR** will not perform for SBBC:

- **VENDOR** will not install any hardware or software at SBBC (District or schools).
- **VENDOR** will not configure SBBC's networking infrastructure. SBBC's entire district-networking infrastructure must be up and running to support the service. This includes all routers and Wide Area Network links.

No school visits are included within the scope of this Agreement. However, during the system setup the **VENDOR** Implementation Specialist will illustrate workstation configurations that support Destiny.

Technical Administrative Training

VENDOR's Technical Specialist will deliver a brief technical training for SBBC technology staff. For Destiny Cloud, this training will focus on technical administrative functions you need to understand (does not include managing a Destiny server since the server will be managed by **VENDOR**).

SBBC can have up to 12 users at this training session. Attendees who participate in this training will be the only ones authorized to contact **VENDOR's** Technical Support hotline for help. Additional attendees can be added at an additional cost.

VENDOR may utilize remote, web-based conferencing tools to facilitate this training. If this training is delivered with remote, web-based conferencing tools, high-speed Internet access is required. For best results, SBBC should select a quiet room with a quality conference telephone.

Data Services

VENDOR understands that accurate and reliable data is critical to the success of SBBC. We recommend that you consider these optional services to enhance SBBC's data quality.

Resource Data Services Not Included in Agreement

You have elected not to include **VENDOR's** data services in this Agreement. Therefore, you are wholly responsible for results created by data loaded into SBBC's Destiny Solution. **VENDOR** cannot be held responsible for the costs associated with correcting any issues related to data not processed by **VENDOR**.

Training Services

Training should be scheduled within 30 days, and completed within 90 days, of the signed Acknowledgement of Delivery (AOD). If training is not completed within 90 days of the signed AOD, **VENDOR** is not obligated to complete the training but may do so depending upon the circumstances. If SBBC elects to receive training at a later date, you may be charged up to current market prices. **SBBC** is not permitted to videotape or record in any way **VENDOR** delivered services or training events.

Managing SBBC Resources and Defining Templates Webinar

This instructor-led, web-based training provides the tools SBBC needs to begin incorporating Destiny into SBBC's daily routine. You'll learn about the terms and definitions used in Destiny Resource Manager, as well as how to create a category hierarchy (known as a template) to properly track and account for SBBC's valuable resources.

This training is after SBBC's Planning Meeting and Destiny installation. (Maximum: 12 participants)

Resource Manager–Security Setup Webinar

This instructor-led, web-based training introduces you to the Destiny hierarchy. This hierarchy is how you control who in the district can access various features and data in Destiny. The training focuses on the default district and site-level users that are set up during installation, typical tasks for these users, and how to decide who in SBBC might fit these roles. To ensure SBBC users have access to only the software features they need, you'll look at the available permissions, and assign the appropriate access levels, usernames and passwords. (Maximum: 12 participants)

Resource Manager - On-Site Training – 1 Day:

On-site 1 day training covers the basics school-level staff need to begin using Resource Manager. Users take a look at how they do their job and then apply that in the software. Toolkits, available before, during, and after training, consist of lesson plans, quick reference guides, and videos. A maximum of twenty (20) participants can attend. Attendees who participate in this training will be authorized to contact VENDOR's toll-free technical support hotline for help.

Additional Training Services

Destiny Training

Additional training content can be purchased and delivered at the time of implementation or later. Additional training sessions will provide each librarian, textbook coordinator or resource manager in SBBC with complementary skills to maximize use of SBBC's Destiny Solution. The format is hands-on, with the number of attendees per session based on the options selected.

Resource Center

VENDOR's new virtual **Resource Center** is a convenient, one-stop online home for learning everything you need to know about using digital VENDOR's products and software.

By visiting <http://resources.folletlearning.com>, you can find how-to's, training tools and videos that will help guide you to getting the most out of VENDOR's products. The Resource Center's **How to Use Your Follett Products** and **What's New** sections provide information on VENDOR's most recent products and updates, and also supply answers to any product questions. The **Discover Content** section is dedicated to helping you stay informed on trending titles and themed collections, gain exclusive insight with "Behind the Book Interviews" from favorite authors, and see what K-12 students are really reading with the "Follett Student's Choice" Top 10 lists.

Managed Services

- Onsite Consulting Services

Post Implementation Support Services

District Technical Support

District Technical Support is included with SBBC's Destiny Service Agreement, and features the following services:

- Software updates during the year
- Toll-free telephone technical support for designated SBBC contacts
- 24/7 customer Web Portal, with searchable online knowledge base
- Unlimited email support
- Resource Center (how-to's, training tools, and videos)

Note: VENDOR will only provide support for the current and one prior release of software. VENDOR will only provide support to the extent that the applicable Management product is utilized as licensed. Any use beyond the intended use of the product, as outlined in the Statement of Work, may result in cancellation of Support.

Telephone support for issue resolution

SBBC's designated SBBC contacts will have access to VENDOR'S's staff of product and technical experts via a toll-free number from 6 a.m. to 6 p.m. Central Time, Monday through Friday. The expectation is that the designated contacts are the point of contact for all end users within the district. VENDOR will not provide technical support to SBBC staff members that have not been designated by SBBC.

SBBC Requirements:

- Only the designated SBBC contacts may contact VENDOR Technical Support.
- Unless trained by VENDOR personnel, site-based staff must contact a designated representative within SBBC for support.

Customer Web Portal

VENDOR has a web-based support portal, which is available 24/7 to all customers with a current support Agreement. It includes:

Keyword searchable knowledge base containing articles written by product and system experts

- User guides and manuals
- User groups/online discussion groups
- Electronic newsletters
- Frequently Asked Questions (FAQs)

Email support

Technical support is available to SBBC via email at any time. SBBC can use this method of support for issues that do not require immediate assistance.

Digital Resource Limit

Digital content that is uploaded and cataloged is limited to 1 GB per Destiny database (for district if the Destiny database serves a multi-school district; or individual school, if the database is limited to a specific school). If at any time you exceed this limit and wish to purchase additional space, you may do so at an additional cost of \$5.00 per GB annually.

*Note: Licenses are transferable.

Please indicate the Web site address (URL) you wish to have for SBBC's Destiny Cloud Solution.

The format required is yourdistrictname.follettdestiny.com.

| | |
|-------------|---------------------|
| 1st choice: | .follettdestiny.com |
| 2nd choice: | .follettdestiny.com |
| 3rd choice: | .follettdestiny.com |

EXHIBIT C

VENDOR'S PRODUCT LICENSING TERMS

IMPORTANT

These Product Licensing Terms (these "Terms") are incorporated by reference into the Agreement (the "Agreement" and, together with these Terms, this "Agreement") between SBBC and Follett School Solutions, Inc. ("VENDOR") governing the use of the Follett Destiny solutions described in the Agreement, and any revisions and updates to those solutions (collectively, the "Product"). To be clear, the term "Product," as used in these Terms, includes any software, data, reports and/or other instructional materials provided with the Product or generated by the Product. The term "SBBC" refers to the educational institution, cooperative, consortium or service center that has acquired a license to the Product from VENDOR, including any district, school or other entity to whom VENDOR rightfully provides access to the Product. By installing, accessing or using all or any portion of the Product, SBBC agrees to be bound by these Terms. If SBBC does not agree to these Terms, do not install, access or use the Product and promptly return any Product to VENDOR.

1. Ownership of the Product and License to Use the Product.

11 *Ownership of the Product.* The Product is owned by VENDOR and/or its third-party licensors. The Product is protected by U.S. and international copyright law. VENDOR and its licensors retain all title to and ownership of the Product, with the exception of the following limited use license:

12 *General License.* VENDOR grants SBBC a limited license to use the Product during the term of the Agreement, for the number of sites indicated in this Agreement, for non-commercial, educational purposes only. If SBBC has obtained a single site license, SBBC may install and use one copy of the Product on a central server located within and under the control of SBBC's site, or access the Product from VENDOR's hosted facility, for the purpose of managing SBBC's site library, media, asset and textbook collection. If SBBC has acquired a district license to use the Product, SBBC may install a copy of the Product on a central server or servers located within and under the control of SBBC, or access the Product from VENDOR's hosted facilities, for the purpose of managing the library, media, asset and textbook collections of the sites within SBBC and for whom SBBC has paid a license fee to VENDOR. The Product modules (Library Manager, Resource Manager, Textbook Manager, Asset Manager and Media Manager, Analytics, Collections) may only be used for the purposes for which they were intended (e.g. Library Manager for library collections only). SBBC is required to provide these Terms to any districts, schools or other entities to whom access to the Product is rightfully provided.

13 *Password.* SBBC will have the ability to assign users of the Product and associated passwords. SBBC is responsible for maintaining the security of passwords and agree not to post passwords on any Web site accessible to the public. SBBC agrees to assume responsibility for the results of any misuse passwords and to report any misuse of the passwords immediately to VENDOR.

14 *Prohibited Use.* SBBC may not copy the Product without VENDOR's permission, except to make a backup copy. SBBC may copy the Product's accompanying documentation to be used for internal use only, as necessary to use the Product. SBBC may use the Product to generate reports for internal use only. SBBC may not use the Product or allow any third party to use the Product for any commercial purpose or in any manner not set forth in this Agreement or the Solution Agreement. SBBC may not loan, sublicense, rent, lease, transfer, or assign the Product or any portion thereof to any third party. SBBC may not remove any copyright, trademark or other intellectual property rights notices from the Product, including from any reports or data generated by the Product. SBBC may not reverse engineer, decompile, disassemble, or in any way modify the Product or any portion thereof without prior written consent of VENDOR. Any modifications SBBC makes to the Product will remain the property of VENDOR and/or its licensor(s). This Product may not be used except for the purposes specifically licensed. A breach of any term in this Section 1.4 will be considered a breach of a material term.

15 *New Versions.* When SBBC install or access a new version of the Product accompanied by a new license, provided SBBC license fee entitles SBBC to the new version, SBBC's use of the new version constitutes acceptance of the

new license and the termination of SBBC's license to use any previous version of the Product.

16 *Follett Digital Platform.* The Product supports the usage of Follett eBooks, Follett audiobooks and other digital content ("eBooks") purchased separately from VENDOR. VENDOR provides for a secure eBook platform ("Follett Platform") accessible from the Product to support access to these eBooks. By installing, accessing or using all or any portion of the Follett Platform, you agree to be bound by the terms included as **Exhibit D**.

2 *Termination for Breach.* If SBBC breaches any material terms of this Agreement or fails to pay license fees as they become due, VENDOR may immediately terminate SBBC license to use the Product, including by disabling any on-line access, in addition to taking any other legal remedies available to it. Upon termination of SBBC license, VENDOR will disable SBBC access to the Product, SBBC must either return any copies of the Product to VENDOR or destroy the copies and certify in writing that SBBC has done so.

3 *Third Party Web Sites.* The Product may provide SBBC and SBBC patrons with links to third party web sites, including Third-Party Applications referenced in Section 5 below. SBBC acknowledges that VENDOR does not endorse or maintain control over and will not be liable for the content, advertising or other materials contained on such third party sites. SBBC's use and SBBC patrons' use of the content, goods or services on any third party site or Third Party Application will be governed by the terms and policies on that site or Third Party Application, if any. SBBC will be responsible for understanding and complying with third party sites' terms of use and instructing SBBC patrons and employees on the same.

4 *Third Party Subscription Databases.* The Product may enable SBBC and SBBC patrons to search third-party subscription databases. Access to many of these databases is strictly regulated under the terms of the license agreements between SBBC and the third-party database owners. SBBC acknowledges that it is SBBC's obligation to ensure against the unauthorized access of such third party-owned subscription databases. If the Product provides access to password protected content, SBBC agrees to password protect such access at SBBC library's server level to ensure that only SBBC patrons can use the Product, and to protect against the unauthorized use of third party-owned content, such as subscription databases.

5 *Student Privacy.* SBBC may be able to allow SBBC patrons to set up their own individual login accounts. If SBBC does so, SBBC agrees that SBBC is solely responsible for complying with all applicable state and federal laws regarding student privacy, including the federal Family Education and Privacy Act (FERPA). VENDOR warrants that it will not use any information SBBC provides from students' accounts for any purpose other than providing the Product, and that it will not disclose such information to any third party unless required by law or as directed by SBBC with respect to certain third-party applications ("Third-Party Applications") such as Bibliomaster, OverDrive MackinVIA and Axis 360, which can be integrated into VENDOR'S Product to allow SBBC and SBBC users to access such Third-Party Application. By activating, or directing VENDOR to activate, such Third-Party Application integration in the Product, SBBC authorizes VENDOR to disclose the following student information for the sole purpose of facilitating such integration:

- Location name (site name)
- Student name
- Homeroom teacher name and email address
- Grade
- User name/login of student

The Product also supports optional single sign-on technology with Google and Microsoft platforms (where a user can use a Google or Microsoft account to login to Destiny) and access to Google or Microsoft cloud storage (Google Drive or Microsoft One Drive accounts). SBBC may choose to configure this single sign-on technology in SBBC's sole discretion, in which case SBBC end user can choose to access their Google or Microsoft account from Destiny. This functionality requires the use of Google and/or Microsoft API (Application Programming Interface) Services, respectively. Requests for Google/Microsoft account information will identify the Product as seeking access to user data (the user's cloud storage location). VENDOR will utilize this account information for the sole purpose of logging in the user to Destiny, or to create links to user-selected documents for Collections. This information is being requested for no other purpose and VENDOR will not use the user data for any other purpose. The user's account ID is stored on the workstation with a cookie to support subsequent use (until the user logs out from their cloud storage location).

6 *Children's Online Privacy Protection Act ("COPPA").* As required under COPPA, VENDOR must make the following disclaimer: VENDOR DOES NOT KNOWINGLY COLLECT ANY PERSONALLY IDENTIFYING INFORMATION FROM CHILDREN UNDER THE AGE OF 13 THROUGH THE PRODUCT EXCEPT IN COMPLIANCE WITH COPPA. VENDOR cannot make that claim on behalf of third party sites found through the Product. SBBC therefore agree to inform and educate patrons under the age of 13 that they should not provide any personally identifying information on any third-party sites without the involvement and verifiable consent of their parents. As a condition to using this Product, SBBC consents to the collection of student information as agent of the parents and/or legal guardians of SBBC's students. SBBC may take any other action with respect to such information (including deletion), in each case to the extent permitted or stipulated under COPPA.

7. *SBBC Content.* The Product may allow SBBC to upload content. SBBC represents and warrants that SBBC owns or has obtained all rights, licenses and permissions necessary to use, copy, display, publish or otherwise share any content or materials SBBC makes visible outside SBBC's school via the Product ("SBBC's Content"); and SBBC's Content will not (a) be offensive or objectionable; (b) contain errors; (c) violate intellectual property rights or privacy, publicity or other rights of third parties; (d) violate any laws, rules or regulations; or (e) be harmful to the computers or networks of VENDOR or any third-party viewing or downloading SBBC's Content.

8. *No Endorsement.* VENDOR has the right, but not the obligation, to review SBBC's Content and Third-Party Content. It is SBBC's responsibility to ensure that SBBC's Content complies with the terms of this Agreement. VENDOR neither endorses nor approves of SBBC's Content or any Third-Party Content and will not be liable for SBBC's Content or any Third-Party Content.

9. *Right to Remove SBBC's Content.* VENDOR may, at its sole discretion, remove any of SBBC's Content which, in VENDOR's reasonable opinion, would violate the terms of this Agreement or is otherwise objectionable with written notification.

10. *Limited Warranty.* VENDOR warrants that for a period of 1 year from its initial delivery to SBBC site or SBBC access, in the case of online subscriptions, the Product will perform in substantial compliance with its specifications and be free of material defects and will not infringe upon the intellectual property rights of any third party. As SBBC's sole and exclusive remedy for this warranty, VENDOR will either repair the Product or refund SBBC's prorated license fee. This limited warranty does not cover any material defect or infringement resulting from any accident, abuse, or misapplication of the Product caused by SBBC, SBBC's employees, end users, agents or contractors, or any modification SBBC, SBBC's employees, end users, agents or contractors make to the Product, whether or not such modification is authorized by VENDOR .

11. *Third Party Services.* We allow third-party companies, including AddThis and Google, to collect certain anonymous information when SBBC uses the Product. VENDOR utilizes this anonymous information to measure usage of the Product to support VENDOR'S product development efforts. These companies typically use a cookie or a third-party web beacon to collect this information.

12. *DISCLAIMER OF WARRANTY.* VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. VENDOR and its licensors are not responsible for and make no representations or warranties with regard to third party network operating systems, computer hardware, software or peripherals that SBBC uses in conjunction with the Product, OR THAT ANY NETWORK-ACCESSIBLE FEATURES OF THE PRODUCT WILL BE CONTINUALLY ACCESSIBLE OR ACCESSIBLE AT ANY TIME. THE THIRD PARTY SOURCE CODE USED IN THE PRODUCT AND ITS LICENSING TERMS. AND IS PROVIDED BY THIRD PARTY LICENSORS "AS IS," WHO DISCLAIM ANY EXPRESSED OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Licensing terms includes proprietary source code contributed by the third parties. You may not use any of these third parties' trademarks to promote or endorse any derivative products you may create using the source code unless you have obtained the trade marker owner's consent. If you have a local installation of Destiny version 15.5 or later, information regarding open source components can be located in the Follett folder at the root of a drive (i.e. C:\Follett\FSCDestiny\LicenseInfo.xlsx) on your Destiny application server. If you have a local installation of earlier version of Destiny, please contact our Technical Support team for additional information regarding open source components distributed with Destiny

13. *Additional Indemnification.*

13.1 *By* **VENDOR**. **VENDOR** agrees to indemnify, defend and hold **SBBC** harmless from and against any claims, including reasonable legal fees and expenses, based upon the Product infringing any United States copyright, patent or other intellectual property right under U.S. law; provided that **SBBC** promptly notify **VENDOR** in writing of any such claim and allow **VENDOR** to control the proceedings. **SBBC** agrees to cooperate fully with **VENDOR** during such proceedings. **VENDOR** will defend and settle at its sole expense all proceedings arising out of the foregoing claims. In the event that **SBBC** is enjoined from using the Product, **VENDOR** will, at its option, replace, in whole or in part, the Product with a substantially compatible and functionally equivalent computer program, modify the Product to eliminate the infringement, provide **SBBC** with a refund in an amount not to exceed the amounts paid to **VENDOR** for the Product, depreciated on a straight-line basis over a five (5) year term, or obtain for **SBBC** the right to continue using the Product. **VENDOR** has no obligations under this Section to the extent a claim is based upon any of the following: (i) the Product or any portion thereof has been modified, altered or changed in any manner by **SBBC** or any party acting on **SBBC**'s behalf (other than by **VENDOR** or its authorized representatives or a third party contractor of **VENDOR**), if such infringement would have been avoided in the absence of the use of such altered Product; (ii) a design created by someone other than **VENDOR** or its third party contractors; (iii) the combination, operation or use of the Product with software or hardware which was not provided by **VENDOR** or its third party contractors or approved by **VENDOR**, if such infringement would have been avoided in the absence of such combination, operation or use; (iv) use of the Product in a manner for which it was not designed; or (v) **SBBC**'s failure to install or have installed an upgrade containing designs to avoid third party infringement claims, provided that **VENDOR** has notified **SBBC** of the upgrade and its ability to cure infringement and has provided that upgrade to **SBBC** at no additional charge. This Section states **VENDOR**'s entire liability for any alleged infringement by the Product or any part thereof.

13.2 *By* **SBBC**. **SBBC** agrees to indemnify, defend and hold harmless **VENDOR**, its affiliates, and its and their shareholders, officers, directors, employees, agents, attorneys and assigns, against any losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or incurred in connection with any third-party claims, demands, actions, or arbitrations involving (a) involving breach by **SBBC** of any material term of the Agreement, these Terms, or any Terms of Use made available via the Product or (b) **SBBC**'s Content. **SBBC** will maintain liability insurance sufficient to fulfill **SBBC**'s obligations under this Section 13.2 and will submit proof of such insurance to **VENDOR** upon request.

14. *Right to Audit Compliance.* **VENDOR** will have the right to conduct or direct an independent accounting firm to conduct, during normal business hours and no more than once during any calendar year, an audit of **SBBC**'s relevant records to verify **SBBC**'s compliance with the terms of this Agreement. This provision does not limit **VENDOR**'s right to monitor its server logs for accesses made by **SBBC**, or using any access code issued to **SBBC**, to any on-line features, or to investigate any conduct **VENDOR** believes either may be a breach of the licensing terms or otherwise threatening to the integrity of its products or services.

15. *Entire Agreement.* The Agreement (including any SOW or other documents attached to the Solution Agreement), these Terms and any Terms of Use made available via the Product constitutes the entire agreement of the parties with respect to the use of the Product. The failure by **VENDOR** or **SBBC** to enforce any of its rights hereunder will not constitute a waiver of such rights. If any portion of this Agreement is found by a court of competent jurisdiction to be invalid, the other provisions will remain in full force and effect.

16. *Intellectual Property.* **VENDOR** is the owner or licensee of copyright, trademark, and other intellectual property and proprietary rights in the Product. All trademarks appearing in the Product are the property of **VENDOR** or their respective third-party owners. **VENDOR** disclaims any affiliation or endorsement of such third parties' goods or services, and does not intend to imply any endorsement or affiliation by using such marks. Likewise, such use is not meant to imply any third party's endorsement of **VENDOR**'s goods or services. Please be aware and inform **SBBC** patrons that copyright, trademark and other intellectual property rights may protect content on third party Web sites and databases accessed through the Product. Nothing in this Agreement affects such rights or implies that **SBBC**, **SBBC** patrons or **VENDOR** has any rights in this content. Use of third party content may be governed by a separate agreement with the third-party owner and **SBBC** agrees not to use the content in any way that violates this Agreement or the intellectual property rights of the third-party owner. **SBBC** also agrees to take reasonable measures to make **SBBC** patrons aware of all provisions in this Section.

17. *Exporting Products.* This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. SBBC agrees not to ship, transfer or export the Product or any data obtained from the Product into any country or use the Product or data obtained from the Product in any manner prohibited by the United States Export Administration Act or any other export laws or regulations.

U.S. GOVERNMENT RESTRICTIONS

1. If the Product is acquired by or on behalf of a unit or agency of the United States Government this provision applies. The Product: (a) was developed at private expense, and no part of it was developed with government funds; (b) contains trade secret information of VENDOR for all purposes of the Freedom of Information Act; (c) is “commercial computer software” subject to limited utilization as provided in the contract between VENDOR and the governmental entity; and (d) in all respects contains proprietary data belonging solely to VENDOR.

2. For units of the Department of Defense (DOD), this Product is sold only with “Restricted Rights” as that term is defined in the DOD Supplement to the Federal Acquisition Regulations (“DFARS”) 52.227-7013(c) (1) (ii) and use, duplication or disclosure is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Product clause at DFARS 52.227-7013. Manufacturer: Follett School Solutions, Inc. 1340 Ridgeview Drive, McHenry, IL 60050-7048.

3. If the Product is acquired under a GSA Schedule, the U.S. Government has agreed: (a) to refrain from changing or removing any insignia or lettering from the Product that is provided or from producing copies of manuals or disks (except one copy for backup purposes); (b) title to and ownership of the Product and any reproduction thereof shall remain with VENDOR; (c) use of the Product and documentation shall be limited to the facility for which it is acquired; and (d) if use of the Product is discontinued at the installation specified in the purchase/delivery order and the Government desires to use it at another location, it may do so by giving prior written notice to VENDOR, specifying the type of computer and new location site.

4. U.S. Government personnel using the Product, other than under a DOD contract or GSA Schedule, are hereby on notice that use of the Product is subject to restrictions which are the same as, or similar to, those specified above.

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(+1.708.884.5100)

info@follettlearning.com or techsupport@follett.com www.follettlearning.com

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February 2019

EXHIBIT D

Follett Technology Terms of Use-ebook

FOLLETT TECHNOLOGY TERMS OF USE

LIMITED USER LICENSE AGREEMENT

This is an agreement between you and Follett School Solutions, Inc. (“Follett”) or its parent and their affiliates and subsidiaries and governs your use of Follett’s technology, including but not limited to the Follett Reader App currently known as Destiny Discover (“Reader”), the Follett Electronic Books (“eBooks”) purchased separately by your school, the secure Follett eBooks platform (“Follett Platform”) on which the eBooks are hosted, and the services and goods provided through Follett Platform (collectively “Follett Technology”). Your use of the Follett Technology is also governed by the terms and conditions of agreement between Follett and your school. In the event of any conflict between the two agreements, the agreement between Follett and your school shall apply. By installing, accessing or using all or any portion of the Follett Technology, you agree to be bound by the terms of these Agreements. If you do not agree to the terms of these Agreements, do not install, access or use the Follett Technology. Each time you access the Follett Technology you signify your acceptance and agreement, without limitation or qualification, to be bound by this Agreement. If you do not agree with each provision of this Agreement, or you are not authorized to agree to and accept this Agreement, or you do not have the legal authority to agree to and accept this Agreement, you may not use the Follett Technology.

1. THE LICENSE

1.1 You have a nonexclusive and nontransferable license for limited access to the Follett Technology.

1.2 The use of the Follett Technology shall be for personal, non-commercial, educational and research purposes. Follett reserves the right in its sole discretion to terminate your access to and usage of the Follett Technology in the event that you violate the terms of use hereunder and you fail to reasonably remedy the violation within 30 days of receiving such notice. You may not sell, transfer, publish, disclose, display or otherwise make available the Follett Technology beyond the limits of the license set out above. You shall use reasonable care to protect the copyrights and trade secrets of Follett, the eBook authors and publishers. Violation of this provision shall be the basis for immediate termination of this Agreement. Termination of this Agreement shall be in addition to and not in lieu of any other legal or equitable remedies available to Follett.

1.3 Your school has provided you with a user ID and user password enabling you to access the Follett technology. You are responsible for maintaining the security of your password and agree not to post your password on any Web site accessible to the public. You agree to assume responsibility for the results of any misuse of your password and to report any misuse of the password immediately to your school.

1.4 Follett will not be responsible for technological changes, acts of God and other events outside its control that make it impossible for you to access the Follett Technology.

2. COPYRIGHT

The Follett Technology including but not limited to the Reader, eBooks, Follett Platform and any related documentation are copyrighted by Follett, or the content providers, unless otherwise noted and no transfer of copyright is made by this license. Title, ownership rights and intellectual property rights in the

Follett technology, including but not limited to the Reader, eBooks, Follett Platform and any related software shall remain in Follett, its suppliers, licensors, and the applicable content providers. Any eBook provided hereunder, and its content, remains the property of its author or its publisher who already owns the eBook's content.

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4. CHILDREN'S ONLINE PRIVACY PROTECTION ACT ("COPPA")

As required under COPPA, Follett must make the following disclaimer: Follett School Solutions DOES NOT KNOWINGLY COLLECT ANY PERSONALLY IDENTIFYING INFORMATION ABOUT CHILDREN UNDER THE AGE OF 13 THROUGH THE PRODUCT. Follett warrants that it will not use any information you provide for any purpose other than servicing your school's subscription, and that it will not disclose such information to any third party (other than your school) unless required by law. Follett cannot make that claim on behalf of third-party sites found through the Follett technology. You therefore agree to inform and educate users under the age of 13 that they should not provide any personally identifying information on any third-party sites without the involvement and verifiable consent of their parents and/or legal guardians.

5. WARRANTY

Follett represents and warrants that it owns or controls all rights necessary and has the authority to grant you access to the Follett Technology. In addition, Follett represents and warrants that it has obtained all rights necessary in and to the Follett Technology. This limited warranty does not cover any material defect or infringement resulting from any accident, abuse, or misapplication of the Follett Technology caused by you, or any modification you, make to the Follett Technology, whether or not such modification is authorized by Follett.

6. DISCLAIMER OF WARRANTY

FOLLETT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. FOLLETT IS NOT RESPONSIBLE FOR AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THIRD PARTY NETWORK OPERATING SYSTEMS, COMPUTER HARDWARE, SOFTWARE OR PERIPHERALS THAT YOU USE IN CONJUNCTION WITH THE FOLLETT TECHNOLOGY, OR THAT ANY NETWORK-ACCESSIBLE FEATURES OF THE FOLLETT TECHNOLOGY WILL BE CONTINUALLY ACCESSIBLE OR ACCESSIBLE AT ANY TIME. THE EBOOKS AND OTHER CONTENT IS PROVIDED ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AND NEITHER FOLLETT NOR ITS CONTENT PROVIDERS MAKE ANY REPRESENTATION OR WARRANTY (WHETHER EXPRESS OR IMPLIED) ABOUT THE ACCURACY OR COMPLETENESS OF THE EBOOKS OR CONTENT.