

AGREEMENT

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

INNOVATIONS FOR LEARNING, INC.
(hereinafter referred to as "IFL"),
whose principal place of business is
518-526 Davis Street
Evanston, Illinois 60201

WHEREAS, IFL is a nonprofit organization dedicated to improving student literacy and providing teacher-led learning services to substantially improve reading in underperforming elementary schools;

WHEREAS, IFL is the provider of TeacherMate® Differentiated Instruction System and TeacherMate® Listening Center ("TeacherMate®"), a research-based, individualized reading practice for students in grades K-1;

WHEREAS, IFL is the provider of TutorMate®, an Online Literacy Program ("TutorMate®");

WHEREAS, SBBC and IFL wish to enter into an agreement to provide SBBC with access to TeacherMate® and TutorMate® per Attachment A, incorporated herein by reference;

WHEREAS, IFL will provide SBBC with technical and professional development support per Attachment B, incorporated herein by reference; and

WHEREAS, under School Board Policy 3320, Part II, H, and the Department of Education, Rule 6A-1.012, 11(b), Florida Administrative Code as authorized by Section 1010.04(4)(a), Florida Statutes, the requirement for requesting competitive solicitation for commodities or contractual services from three (3) or more sources is hereby waived for SBBC's purchase of educational services and any type of copyrighted materials;

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 are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2020 and shall conclude on June 1, 2021.

2.02 **IFL Responsibilities.**

(a) **Services:** IFL shall provide SBBC the licenses, access, and services described in Attachment A, attached hereto and incorporated herein by reference.

(b) **Support:** IFL shall provide SBBC with the professional development support described in Attachment B, attached hereto and incorporated herein by reference.

2.03 **SBBC Responsibilities.**

(a) **Staffing:** SBBC shall provide staffing for the required training provided by IFL as indicated in Attachment C attached hereto and incorporated herein by reference.

(b) **Pricing:** SBBC shall pay IFL Three Hundred Thousand Dollars and 00/100 (\$300,000) in accordance with the itemization referenced below:

Activity	Amount
District Partnership Fee	
2019-2020 TutorMate District Partnership Fee	\$132,000.00
TeacherMate	
Endeavor - TeacherMate ELI Model at 50% (5 classrooms at \$6,000; 5 classrooms at \$3,000)	\$ 45,000.00
TeacherMate	
Walker - TeacherMate ELI Model at 50% (7 classrooms at \$3,000)	\$ 21,000.00
TeacherMate	
Park Ridge - TeacherMate ELI Model (5 classrooms at \$6,000)	\$ 30,000.00
TeacherMate	
Flamingo - TeacherMate ELI Model (5 classrooms at \$6,000)	\$ 30,000.00
TeacherMate	
Thurgood Marshall - TeacherMate ELI Model (3 classrooms at \$6,000)	\$ 18,000.00
TeacherMate	
Sunland Park - TeacherMate ELI Model (4 classrooms at \$6,000)	\$ 24,000.00
Upon receipt of purchase order, Innovations for Learning will invoice in the amount shown on this quote and renew services for the 2019-2020 school year.	
TOTAL	\$300,000.00

This pricing constitutes a fixed cost for site licenses, teacher training, and professional development for existing classrooms.

2.04 SBBC Disclosure of Education Records.

(a) Purpose: SBBC will provide the data listed in this section to create class rosters in the TutorMate® platform for tutor assignment, tracking, and monitoring of tutor sessions with students, in order to monitor student reading level progress and assist with reporting the results to SBBC. For TeacherMate®, IFL requests the same data as TutorMate® plus a Benchmark Assessment System (BAS) benchmark reading level data for all K-4 students in the schools, for IFL partners to use as both baseline and comparison data with IFL's program data to track and measure efficacy.

(b) SBBC will provide IFL with the following education records:

- 1) Student First and Last Name
- 2) Student Grade Level
- 3) Student Gender
- 4) School Name
- 5) Beginning of Year BAS Instructional Reading Level for all grade 1-4 students for participating schools
- 6) End of Year BAS Instructional Reading Level for all K-4 students for participating schools

(c) SBBC will obtain written consent from each minor student's parent/guardian or student age 18 years or older prior to disclosing the education records listed in this section.

(d) Except for the students that are actively participating in the IFL TeacherMate®, all data may be de-identified as it is used strictly for baseline purposes. For data related to actively participating students, IFL will need to map district data to IFL program data and once that work is completed, all data will be de-identified.

2.05 IFL Confidentiality of Education Records.

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

- 1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;
- 2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
 - 4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
 - 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
 - 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
 - 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or information Technology staff to resolve any privacy investigations and concerns in a timely manner;
 - 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
 - 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
 - 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and
 - 11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).
- (c) 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.

- (d) IFL 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.

2.06 SBBC Disclosure of Employee Information.

- (a) SBBC will provide the following employee information to IFL:

- 1) Participating Teacher First and Last name
- 2) Participating Teacher Email Addresses

(b) IFL shall not use these employee records 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 under federal or state law.

2.07 IFL Safeguarding Confidential Employee Information. Notwithstanding any provision to the contrary within this Agreement, IFL shall:

(a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records;

(b) 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;

(c) 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;

(d) protect employee records through administrative, physical, and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;

(e) 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;

(f) 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

(g) 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.

2.08 Studies Conducted for SBBC. Under the terms of this Agreement, IFL will be conducting studies for, or on behalf of SBBC, to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. The purpose and scope of the study/studies will be mutually agreed upon and submitted for SBBC's Institutional Review Board ("IRB") approval. SBBC may disclose personally identifiable information from an education record of a student to IFL for it to conduct said study. The type of personally identifiable student information to be disclosed by SBBC to IFL is described as follows: Beginning middle and end of year benchmark reading assessment results by students in kindergarten through grade 3. IFL shall conduct the study in a manner that does not permit disclosure of personal identification of parents and students by or to individuals other than the representatives of IFL that have legitimate interests in the information. The study shall commence August 1, 2019 and conclude December 31, 2020. IFL agrees that it shall destroy or return any disclosed information to SBBC when no longer needed for the purposes for which the study is to be conducted. IFL acknowledges and agrees that it may use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in this Agreement. IFL shall submit all educational research to SBBC's IRB for review and prior approval. IFL shall comply with all the requirements of the IRB.

2.09 Inspection of IFL Records by SBBC. IFL 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 IFL'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 IFL 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 IFL 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 IFL pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide IFL 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 IFL'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 IFL 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 IFL'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 IFL in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by IFL. If the audit discloses billings or charges to which IFL is not contractually entitled, IFL shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, IFL 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 IFL 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 IFL pursuant to this Agreement and such excluded costs shall become the liability of IFL.

(g) Inspector General Audits. IFL 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: Daniel Gohl, Chief Academic Officer
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To IFL: Seth Weinberger
Executive Director
649 Michigan Avenue
Evanston, IL 60201

With a Copy to Kim Whitten
Executive Director of Florida

108044 Barbados Isle Drive
Tampa, Florida 33647

2.11 **Background Screening.** IFL shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (a) are to be permitted access to school grounds when students are present, (b) will have direct contact with students, or (c) 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 IFL or its personnel providing any services under the conditions described in the previous sentence. IFL 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 IFL and its personnel. The parties agree that the failure of IFL 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. IFL 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 IFL's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.12 **Public Records.** Any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) **By IFL:** IFL agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not

limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by IFL, its agents, servants or employees; the equipment of IFL, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of IFL or the negligence of IFL'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 IFL, SBBC or otherwise.

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

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

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

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

(g) **Required Conditions.** Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.

- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) **Cancellation of Insurance.** IFL is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

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

2.15 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

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

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

2.18 **Incorporation by Reference.** Attachments A, B and C 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 will act 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, if either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (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 ~~effect~~ affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

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

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

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

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

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

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

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

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

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first above written.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR IFL:

(Corporate Seal)

ATTEST:

Innovations for Learning, Inc.

By *Kim Whitten*

Name: Kim Whitten

Title: Chief Operating Officer

_____, Secretary

-or-

[Signature]
Witness

[Signature]
Witness

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

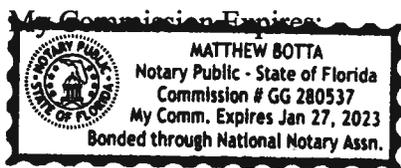
STATE OF Florida

COUNTY OF Pasco

The foregoing instrument was acknowledged before me this 2nd day of Dec., 2019 by Kimberly Whitten of

_____, on behalf of the _____
Name of Person Name of Corporation or Agency

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



(SEAL)

[Signature]
Signature - Notary Public

MATTHEW BOTTA

Printed Name of Notary

Notary's Commission No.