

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2020,
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

THINKMAP, INC.

(hereinafter referred to as "VENDOR"),
whose principal place of business is
777 Mariners Island Blvd, Suite 600
San Mateo, California 94404

WHEREAS, VENDOR supplies an online platform known as Vocabulary.com ("Vocabulary.com"), that offers systematic, lasting, vocabulary improvement that goes beyond rote memorization to teach all the meanings and subtle nuances of words; and

WHEREAS, Vocabulary.com is backed by research and used in over twenty-eight thousand (28,000) schools, and has been integrated into the SBBC curriculum and its teachers' everyday activities; and

WHEREAS, SBBC teachers use Vocabulary.com with emphasis on, helping students learn specific words from their reading, including word lists from Houghton Mifflin Harcourt's instructional materials; and

WHEREAS, pursuant to SBBC Policy 3320, Section II, H, and Department of Education, Rule 6A-1.012, II(b), Florida Administrative Code as authorized by Section 1010.04(4)(a), Florida Statutes, the requirement of requesting competitive solicitation for commodities or contractual services from three (3) or more sources is hereby waived for SBBC's purchase of computer software.

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 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 commences on August 1, 2020 and concludes on July 31,

2021. 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 shall:

- (a) Provide SBBC with a subscription to Vocabulary.com, a web-based instructional resource accessed at <http://www.vocabulary.com> that uses adaptive technology to offer differentiated vocabulary instruction to students at all levels. Vocabulary.com continuously assesses each student and focuses their efforts on words they need to learn. Vocabulary.com identifies the words students are having the most trouble learning and works with the students until they achieve mastery.
- (b) Provide SBBC with a district site license for online access to Vocabulary.com for all SBBC students in Grade 5 through Grade 12 (approximately 136,000 students), and full access to the Vocabulary.com instructional and reporting tools for the teachers and administrators who work with and support these students.
- (c) Integrate the subscriptions of the current subscribers into the subscription under this Agreement, so that VENDOR's reporting of SBBC's data for all schools is consolidated.
- (d) Technical support as necessary to support successful implementation and use of Vocabulary.com in SBBC schools.
- (e) Provide six (6) full days of on-site training (to the extent practical given the ongoing COVID-19 pandemic), as well as unlimited access to scheduled and on-demand Webinars. To the extent on-site training is not practical due to the ongoing COVID-19 pandemic, VENDOR will provide virtual training.

SBBC shall:

- (f) Provide technical support as necessary to support successful implementation and use of Vocabulary.com in SBBC schools.
- (g) Provide information on SBBC's literacy philosophy and programs to ensure an implementation of Vocabulary.com that aligns with SBBC goals.
- (h) Provide an SBBC contact to support communication between SBBC and VENDOR concerning Vocabulary.com.
- (i) Facilitate communications and feedback regarding successes and challenges throughout the term of this Agreement.

2.03 Cost and Payment.

- (a) **Cost:** The total price for site licenses provided under this Agreement is Four Hundred Six Thousand Two Hundred Fifty Dollars and 00/100 Cents (\$406,250.00) as outlined in

Attachment A.

(b) **Payment:** VENDOR shall submit a proper and appropriate invoice in the amount of Four Hundred Six Thousand Two Hundred Fifty Dollars and 00/100 Cents (\$406,250.00) on or after August 1, 2020 and SBBC shall pay the invoice within thirty (30) calendar days of the invoice date.

2.04 SBBC Disclosure of Education Records.

(a) SBBC will provide VENDOR the education records listed in this section for the purposes stated below:

- 1) To create user account
- 2) To create usage and performance reports: measuring student program usage, words mastered, questions answered, and hours spent using the program.

(b) SBBC will provide VENDOR with the following education records at the time of account creation through SBBC's integration system:

- 1) Student first and last name
- 2) School email address
- 3) School Association (name of school)
- 4) Teacher Association (name of teacher)

(c) In addition to the education records being disclosed by SBBC in this section, VENDOR will also have access to work and information input by students in VENDOR's online platform.

(d) 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.

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

2.05 VENDOR Confidentiality of Education Records.

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

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

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 years 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 VENDOR's 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 to be satisfied by the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) As between the parties, 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 survives the termination of all performance required or conclusion of all obligations existing under this Agreement. VENDOR has no obligation to indemnify for any claim based on or arising out of the wrongful act or omission of the SBBC or their officers, employees or agents.

2.06 SBBC Disclosure of Employee Records.

(a) SBBC will provide VENDOR the employee records listed in this section to create user accounts.

(b) SBBC will provide the following employee information to VENDOR through SBBC's integration system:

- 1) Employee first and last name
- 2) Employee identification number
- 3) School association (name of school)

(c) In addition to the employee records being disclosed by SBBC in this section, VENDOR will also have access to work and information input by teachers in VENDOR's online platform.

(d) VENDOR shall not use the employee records listed in this section 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.

(e) The requirements of this section shall supersede any use of employee records as listed in VENDOR's privacy policies.

2.07 VENDOR Safeguarding Confidential Employee Records.

Notwithstanding any provision to the contrary within this Agreement, VENDOR 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, including, but not limited to those required by Section 501.171, Florida Statutes; and

(g) be responsible for any fines or penalties for VENDOR's failure to meet notice requirements pursuant to federal and/or Florida law. This section survives the termination of all performance or obligations under this Agreement.

2.08 **Inspection of VENDOR's Records by SBBC.** VENDOR shall establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation, and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

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

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to VENDOR's facilities, to any and all records related to all income and expenditures of funds provided by SBBC under this Agreement, and to all applicable business records of VENDOR to enable SBBC to verify the accuracy of invoices, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(d) **Failure to Permit Inspection.** Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any VENDOR's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually

entitled, VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials. This section shall apply only to the extent required by applicable law.

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

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

With a Copy to: Director, Innovative Learning Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To VENDOR: Ivan Krieg
Thinkmap, Inc.
777 Mariners Island Blvd, Suite 600
San Mateo, California 94404

Any notice to Thinkmap, Inc. must
also be sent via e-mail to
legalnotices@ixl.com

2.10 Background Screening. VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided

with respect to **VENDOR** and its personnel. The parties agree that the failure of **VENDOR** to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling **SBBC** to terminate immediately with no further responsibilities or duties to perform under this Agreement. **VENDOR** agrees to indemnify and hold harmless **SBBC**, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from **VENDOR**'s failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.11 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. **VENDOR** shall keep and maintain public records required by **SBBC** to perform the services required under this Agreement. Upon request from **SBBC**'s custodian of public records, **VENDOR** shall provide **SBBC** with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. **VENDOR** shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if **VENDOR** does not transfer the public records to **SBBC**. Upon completion of the Agreement, **VENDOR** shall transfer, at no cost, to **SBBC** all public records in possession of **VENDOR** or keep and maintain public records required by **SBBC** to perform the services required under the Agreement. If **VENDOR** transfers all public records to **SBBC** upon completion of the Agreement, **VENDOR** shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If **VENDOR** keeps and maintains public records upon completion of the Agreement, **VENDOR** shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to **SBBC**, upon request from **SBBC**'s custodian of public records, in a format that is compatible with **SBBC**'s information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

2.12 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By **SBBC**: **SBBC** agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By **VENDOR**: **VENDOR** agrees to indemnify, hold harmless and defend **SBBC**, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which **SBBC**, its agents, servants and employees may pay or become obligated to pay on account of any, all and every 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.

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

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

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

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

(d) **Auto Liability.** **VENDOR** shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

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

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

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.

- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

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

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

2.14 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.

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

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

2.17 Incorporation by Reference. Attachment A attached hereto and referenced herein is 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
Agreement with Thinkmap, Inc.

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days' written notice to the other parties of its desire to terminate this Agreement. 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 is binding upon and inures 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.** If 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, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, 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 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, constitute one and the same Agreement.

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

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

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Maya
Moore
Reason: Thinkmap
Agreement
Date: 2020.07.16 12:38:51
-04'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

THINKMAP, INC.

ATTEST:

By Paul Mishkin
Signature

_____, Secretary

Printed Name: Paul Mishkin

Title: CEO

-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 California
COUNTY OF San Mateo

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 16th day of July, 2020 by Paul Mishkin of IXL Learning, Inc.
Name of Person Name of Corporation or Agency

as CA limited liability company, on behalf of the company and is personally state

known to me or produced CA Driver's License as identification and did not first take an oath.
Type of Identification

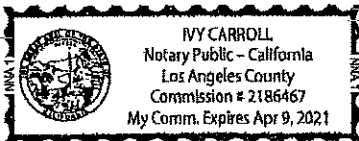
My Commission Expires: April 9, 2021

[Signature]
Signature - Notary Public

Ivy Carroll
Printed Name of Notary

2186467
Notary's Commission No.

(SEAL)





FROM Vocabulary.com 599 Broadway, 9th Floor New York, NY 10012 USA	REPRESENTATIVE Ivan Krieg ikrieg@vocabulary.com phone: (888) 237-5862 x350 fax: (212) 285-8999	QUOTE FOR Broward County Public Schools Daryl Diamond 600 Se 3rd Ave Ft Lauderdale, FL 33301 USA phone: (754) 321-2630 daryl.diamond@browardschools.com
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Total Price				\$544,000.00
Discount				-\$137,750.00
Discount Percent				25.3%
Pay this amount				\$406,250.00

BILLING CONTACT

Please verify the following information is correct:

If the information you provided (displayed to the left) is incorrect or incomplete, please check this box and update it in the space below.

Name	<u>Daryl Diamond</u>	Name	_____
Institution	<u>Broward County Public Schools</u>	Institution	_____
Address 1	<u>600 Se 3rd Ave</u>	Address 1	_____
Address 2	_____	Address 2	_____
City/State	<u>Ft Lauderdale, FL</u>	City/State	_____
Postal Code	<u>33301</u>	Postal Code	_____
Country	<u>USA</u>	Country	_____
Phone	<u>(754) 321-760-7367</u>	Phone	_____
Fax	<u>(754) 760-7367</u>	Fax	_____

ATTACHMENT A

2630

Email

Email

daryl.diamond@browardschools.com



PAYMENT OPTIONS (CHOOSE ONE)

Purchase Order

Please attach your purchase order to the quote and return it to your representative. Please reference Quote #1041862 on any correspondence.

Our Federal Tax ID number is 11-3382653.

Check / Money Order

Make check payable to Vocabulary.com or our parent company, Thinkmap, Inc.

Credit Card

Type Visa / Mastercard

American Express

Name on Card

Card Number

Exp. Date

CVV / Security Code

Billing Zip

TERMS

By signing below, you are:

1. Agreeing that you have the authority to make purchasing decisions for your institution.
2. Accepting the offer indicated above, and agreeing to pay as per terms above. (All overdue payments will be subject to a late payment charge at the rate of 1.5% per 30 days of delinquency, or if lower, the maximum rate permitted by applicable law.)
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Signature

Date

Name

Title

Institution