

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

JIGSAW LEARNING, LLC

(hereinafter referred to as “Teachtown”),
whose principal place of business is
330 West Cummings Park, Woburn, MA 01801

WHEREAS, SBBC desires to deliver high-quality instruction for preschool students with moderate to severe disabilities in the areas of social emotional development and pre-academic skills, and

WHEREAS, SBBC desires to provide a research and evidence based progress monitoring tool for ESE Pre-K teachers to collect data and report accurate student progress, and

WHEREAS, Teachtown provides a research and evidence-based intervention for preschool through middle school students with moderate to profound disabilities and the program name is Teachtown: Basics; and

WHEREAS, Teachtown: Basics is a blend of online software and offline staff-led lessons with sophisticated data tracking and reporting; and

WHEREAS, SBBC desires to implement Teachtown: Basics for more intensive Pre-K students who benefit from Applied Behavior Analysis (ABA) instruction; and

WHEREAS, Rule 6A-1.012, 11(b), and 14, Florida Administrative Code and School Board Policy 3320, Section II.H, authorizes the purchase of any type of copyrighted materials, instructional materials and computer software without competitive solicitations.

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

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2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 24, 2020** and conclude on **July 23, 2021**. The term of the Agreement may, by mutual agreement between SBBC and Teachtown, be extended for one (1) additional one (1) year period.

2.02 **Online and App-Based Lessons.** Teachtown shall provide SBBC access to Teachtown: Basics on platforms of SBBC's choosing including browser-based from any desktop or laptop computer, I-Pad (3rd generation or higher), and Chrome App on Chrome Books or any other desktop or laptop device. Such access will be provided to SBBC twenty-four (24) hours a day, seven (7) days a week during the term of this Agreement. Furthermore, access shall be provided to SBBC students at home or any other setting where SBBC students receive services of any type at no additional cost. SBBC may mix/match choices of devices so that no SBBC student is tied to only one device. Teachtown: Basics delivers over five hundred (500) lessons and newly added lessons are available to SBBC as soon as they are deployed at no additional cost. Teachtown: Basics is adaptive and continuously adjusts to students' learning levels as needed so students are always working through skills at a difficulty level appropriate for them.

2.03 **Off-Computer Lessons.** Teachtown shall provide SBBC over three hundred (300) "generalization lessons" suitable for use during the school day, at home, or any other setting where SBBC students receive services of any type. Teachtown off-computer lessons provide students the opportunity to generalize, or transfer, skills mastered on the computer into the naturalistic setting.

2.04 **Assessment Tools.** Teachtown: Basics provides the most powerful data capture functionality of any program of its kind. For on-computer lessons, every click of the mouse is tracked enabling SBBC to measure usage and progress in real-time. This de-identified data is tagged to allow SBBC to know which educational setting each student is in when working through their lessons. For off-computer lessons, Teachtown: Basics includes an easy to use assessment toolset allowing SBBC staff to capture observed skills with basically only two (2) - three (3) clicks or touches of a tablet device.

2.05 **Reports.** Because of the richness of the de-identified data collected, Teachtown provides a large number of customizable reports which will provide SBBC key progress and usage metrics as soon as students start using the program. Such reports are an important element in differentiating student instruction, reporting progress against student IEPs, and identifying staff that may be in need of support using the program. These reports have proven highly valuable to parents and school districts have found they provide near irrefutable compliance data when needed.

2.06 **Coaching.** Teachtown shall work with SBBC to customize the professional development activities that best meet the needs of SBBC students and staff. Teachtown shall deliver, at the dates and times of SBBC's choosing, six (6) in-classroom or virtual coaching days working side-by-side with SBBC staff to ensure the highest implementation fidelity possible. Additionally, online video tutorials are provided in addition to in-classroom training and coaching allowing for persistent on-demand refresher training at no additional cost.

2.07 **SBBC Disclosure of Education Records**

(a) SBBC will provide Teachtown the personally identifiable education records listed in this section to create user accounts for Teachtown's online platform.

(b) SBBC will provide Teachtown the following education records:

- 1) First and last name; and
- 2) Gender; and
- 3) Birthdate

(c) In addition to the education records being disclosed by SBBC in this section, Teachtown will also have access to personally identifiable work and information entered by students in Teachtown's online platform, as well as students' progress based on their responses to activities generated by Teachtown's online platform. Progress will be measured on cognition, language arts, mathematics and additional areas.

(d) Teachtown 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 Teachtown's privacy policies.

2.08 **TEACHTOWN's Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, TEACHTOWN 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; and

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; and

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; and

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; and

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; and

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; and

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; and

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; and

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law; and

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) TEACHTOWN 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.

2.09 **SBBC Disclosure of Employee Records.**

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

(b) SBBC will provide the following employee records to Teachtown:

- 1) employee first and last name; and
- 2) employee work email address; and
- 3) school location

(c) Teachtown 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.

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

2.10 **Teachtown's Safeguarding Confidential Employee Records.** Notwithstanding any provision to the contrary within this Agreement, Teachtown 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.

2.11 **Program Evaluation.**

(a) Primary Investigators of program evaluation studies conducted by Teachtown that impact the daily activities of students, parents or staff, or require use of data from the same individuals must submit a Research Request to the District's Institutional Review Board (IRB) for review and approval prior to the initiation of any study-related activities. The District's IRB and

Research Review Process reviews the design, procedures, and potential impact on school and district operations to ensure:

- 1) the purpose, scope, limitations, and duration of study is clearly outlined;
- 2) the protection of human subjects in the research process;
- 3) personally identifiable information (PII) is only used for purposes of the identified study;
- 4) PII is only used by representatives of the organization identified in this Agreement; and
- 5) the safe and confidential storage and transmittal of education records.

(b) The purposes and scope of the study or program evaluation to be conducted by Teachtown can be described as:

- 1) to evaluate the effectiveness of the Teachtown program; and
- 2) to improve the Teachtown program.

(c) The duration of the study commences on the date signed by all parties and concludes at the end of business on July 23, 2021 and must be conducted during the term of this Agreement.

(d) Teachtown shall destroy or return any disclosed information to SBBC when no longer needed for the purposes for which the study is to be conducted.

(e) Teachtown shall comply with all requirements of the District's IRB and Research Review Process. Questions regarding this process may be directed to BCPS.IRB@browardschools.com

2.12 **Support.** SBBC shall have access to a Teachtown's Client Services Representative to provide help and support from the hours of 8:30 am to 8:00 pm ET.

2.13 **Cost and Payment.** The cost of six (6) on-site and/or virtual Basics Coaching days and Three Hundred (300) student licenses by Teachtown which will run from July 24, 2020 through July 23, 2021 will be a total of Eighty-Two Thousand, Two Hundred Dollars and 00/100 Cents (\$82,200.00). Licenses are re-assignable and SBBC may move licenses from child to child as needed to consider transfers in/out of district and other educational needs. Upon receipt of a valid SBBC purchase order, Teachtown will submit a proper and appropriate invoice in the amount of Seventy-One Thousand Seven Hundred Dollars and 00/100 Cents (\$71,700.00) for the student licenses and SBBC will pay Teachtown same amount within thirty (30) calendar days of receipt of such invoice. Additionally, subsequent to satisfactory completion of six (6) onsite and/or virtual Basic Coaching Training per SBBC staff, Teachtown will submit a proper and appropriate invoice in the amount of One Thousand Seven Hundred Fifty Dollars and 00/100 Cents (\$1,750.00) per onsite Basic Coaching Training session and SBBC will pay Teachtown within thirty (30) calendar days of receipt of such invoice(s).

2.14 **Contact Information.** SBBC will provide to Teachtown a list of all schools using the Teachtown program, along with the contact information (email, mailing address, and phone number) of the principal or director of each school or site.

2.15 **Inspection of Teachtown's Records by SBBC.** Teachtown 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 Teachtown'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 Teachtown 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 Teachtown'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 Teachtown pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide Teachtown 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 Teachtown'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 Teachtown 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 Teachtown'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 Teachtown in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Teachtown. If the audit discloses billings or charges to which Teachtown is not contractually entitled, Teachtown 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, Teachtown 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 Teachtown 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 Teachtown pursuant to this Agreement and such excluded costs shall become the liability of Teachtown.

(g) Inspector General Audits. Teachtown 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.

2.16 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: Executive Director, ESLS
Exceptional Student Learning Support
The School Board of Broward County, Florida
1701 NW 23rd Avenue
Fort Lauderdale, Florida 33311

To Teachtown: Kim Johnson
330 West Cummings Park
Woburn, MA 01801

With a Copy to: Kim Johnson
330 West Cummings Park
Woburn, MA 01801

2.17 **Background Screening.** Teachtown 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 Teachtown or its personnel providing any services under the conditions described in the previous sentence. Teachtown 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 Teachtown and its personnel. The parties agree that the failure of Teachtown 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. Teachtown 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 Teachtown's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

2.18 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Teachtown 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, Teachtown 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. Teachtown 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 Teachtown does not transfer the public records to SBBC. Upon completion of the Agreement, Teachtown shall transfer, at no cost, to SBBC all public records in possession of

Teachtown or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Teachtown transfers all public records to SBBC upon completion of the Agreement, Teachtown shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Teachtown keeps and maintains public records upon completion of the Agreement, Teachtown 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.

2.19 **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 Teachtown.** Teachtown 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 Teachtown, its agents, servants or employees; the equipment of Teachtown, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Teachtown or the negligence of Teachtown'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 Teachtown, SBBC or otherwise.

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

(a) **General Liability.** Teachtown 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.** Teachtown 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. Teachtown 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. Teachtown 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 Teachtown 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 Teachtown to remedy any deficiencies. Teachtown 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. Teachtown 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.

2.21 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.

2.22 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.

2.23 **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.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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.

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 IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOWS]

FOR TEACHTOWN

(Corporate Seal)

ATTEST:

JIGSAW LEARNING, LLC

David Cappellucci
David Cappellucci, Secretary
-or-

By [Signature]
Print Name: Kimberly A Johnson
Title: Vice President

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 Massachusetts

COUNTY OF Essex

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 14th day of July 2020 (date) by Kimberly Johnson (name of officer or agent, title of officer or agent) of Jigsaw Learning LLC dba Teachtown (name of corporation acknowledging), a Delaware (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me (underline if applicable) or has produced MA Drivers license (type of identification) as identification and who did/ did not first take an oath this 14th day of July, 2020.

My Commission Expires:

[Signature]
Signature - Notary Public

Shelby R Kusch
Printed Name of Notary

(SEAL)

N/A in Massachusetts (commission expiration date)
Notary's Commission No.

