



THIS AGREEMENT, including all appendices, exhibits and schedules attached hereto, (the “Agreement”), is made as of this **25th day of April, 2007**, by and between **The School Board of Broward County, Florida** (“Client”) and the College Board (the “College Board”).

WHEREAS, the College Board shall furnish, and Client shall receive, the SpringBoard™ Program, a proprietary program that helps prepare 6<sup>th</sup> through 12<sup>th</sup> grade students to succeed at college-level work, which includes a website license and professional development services that integrate rigorous standards, professional development, instructional resources, and diagnostic assessments in mathematics and/or English language arts through a web-supported, integrated program (the “SpringBoard Program”); and

WHEREAS, the College Board shall make available, and Client may order, products related to the SpringBoard Program.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree to the following:

**1. Term.** This Agreement shall be for a term beginning as of May 1, 2007 and, unless sooner terminated as provided in this Agreement, will expire on the last official day of the 2007-2008 school year (excluding summer school) according to the school calendar approved by Client (“Term”).

**2. License Grant.** The following licenses are referred to herein collectively as the “Licenses”.

**2.1 Site License.** The College Board hereby grants to Client a limited, non-exclusive, non-transferable, non-assignable, revocable license during the Term of this Agreement to use the SpringBoard website (the “SpringBoard Site”) and to allow each of the schools listed in Attachment I, annexed hereto and made a part hereof (the “Schools”), to use the SpringBoard Site. Access to the SpringBoard Site is for the sole purpose of improving teaching and learning of students in the grades designated by Client in Attachment I in mathematics and/or English language arts within the Schools. The foregoing license grant is subject to and conditioned upon Client’s acceptance and compliance with: 1) the terms and conditions of this Agreement; 2) the terms and conditions governing use of and access to the SpringBoard Site for teachers and for students located at [www.springboard.collegeboard.com](http://www.springboard.collegeboard.com) (collectively, “Site Terms and

Conditions”); and 3) the privacy policy for the SpringBoard Site located at [www.springboard.collegeboard.com](http://www.springboard.collegeboard.com) (“Privacy Policy”).

**2.2 SpringBoard Materials.** The College Board hereby grants to Client during the Term of this Agreement a limited, non-exclusive, non-transferable, non-assignable, revocable license to use SpringBoard professional development materials provided by the College Board to the Schools and their administrators, teachers, and/or students as part of the Institutes (as defined below), and all content available on the Site, in print, or otherwise provided to Client (collectively, the “Materials”) for the sole purpose of use within the classroom of a teacher participating in the SpringBoard Program at a School or for non-commercial, non-distributable use within the classrooms of teachers participating in the SpringBoard Program at a School in accordance with the Site Terms and Conditions. Under this license grant, Client is permitted to print copies of the Materials and make derivative works of the Materials only for the uses prescribed in this Section 2 (License Grant).

Except as expressly provided herein, Client is prohibited from copying, disseminating, publishing, displaying or distributing in any form, or reproducing the Materials in whole or in part, without the prior written consent of the College Board. Client does not gain any ownership interest in the Materials or in the derivative works thereof due to Client’s use of the Materials or such derivative works in connection with the SpringBoard courses or Client’s participation in enhancements or modifications thereof, or on any other basis.

**2.3 Reserved Rights of College Board.** The College Board retains all rights not expressly granted under this Agreement. In no way shall this Section 2 (License Grant) be construed to grant Client any rights other than those expressly granted herein. Client acknowledges and agrees that the College Board owns all right, title and interest in and to the SpringBoard Site and the Materials, including without limitation all copyrights, trademarks, trade secrets, patents, and other similar proprietary rights, and all renewals and extensions thereof.

**2.4 Third Party Content.** Client acknowledges that the College Board: (a) obtains permission to use certain content from persons, other than the parties to this Agreement, whose text, information, data, images (still and moving), sound recordings, and/or software (“Third Party Content”) is included in the Materials; and (b) may, at the sole discretion of the College Board, eliminate such content from the Materials at any time. Third Party Content is owned by the respective authors of such content, and Client shall not obtain any rights in such content except as provided in this Agreement.

**2.5 Schools’ Compliance with License Terms.** Client shall be responsible for the Schools’ compliance with the terms of all Licenses set forth in this Section 2 (License Grant).

**3. Services.** For the Term the College Board shall provide Client with no more than two (2) professional development workshops, not to exceed a total of six (6)-days of professional development for teachers participating in the Springboard Program (the “Services”), provided that the College Board’s provision of the Services is conditioned upon Client’s fulfillment of its obligations under this Agreement, which include, without limitation, those set forth in Section 6

(Client Obligations). Unless the parties otherwise agree, during the Term, the Services include a four (4) or five (5) day professional development workshop (the “Summer Institute”) and a two (2) or one (1) day follow up professional development workshop (the “Follow Up Institute”) as described in Sections 3.1 (Summer Institute) and 3.2 (Follow Up Institute) below.

The Summer Institute and Follow Up Institute are referred to collectively as the “Institutes.” Client may purchase additional or repeat Institutes from the College Board at the discretion of the College Board.

**3.1 Summer Institute.** The College Board will provide one (1) Summer Institute. The Summer Institute shall consist of a period of five (5) successive days mutually selected, agreed upon, and scheduled by the College Board and Client, which will precede the students’ first day of an academic year and wherein the College Board will provide Client officials and the Schools’ teachers and administrators with instructional strategies, technical training, and associated support needed to implement and sustain the SpringBoard Program in the Schools. At each Summer Institute the College Board will provide each attending teacher from the Schools with one teacher version of the instructional materials (which includes the student content of the instructional materials). Client may purchase additional copies of the instructional materials from the College Board, in accordance with Attachment II Scope of Products.

**3.2 Follow Up Institute.** The College Board will provide one (1) Follow Up Institute. The Follow Up Institute shall consist of one (1) day mutually selected, agreed upon, and scheduled by the College Board and Client. The Follow Up Institute serves as the component of SpringBoard professional development wherein best practices and effective strategies are shared and explored based on classroom experiences with the SpringBoard Program.

**3.4 Registration-Related Adjustments.** The College Board will engage consultants for the Institutes based on the number of teachers who Client has indicated will be participating and the level(s) of and grade-specific content relevant to those teachers. If registration for an Institute is sufficiently high the College Board and Client may discuss scheduling an additional Institute at a mutually agreed upon date, time, and place. The number of days of an Institute may vary upon mutual agreement of the College Board and Client. In the event Client requests that the Institutes be given with more than two (2) site visits, Client shall be responsible for the College Board’s additional costs and expenses related to such additional Institute(s).

**3.5 Rescheduled Institutes; Cancellation.** The College Board shall make the Institutes available to Client at the dates and times agreed upon by the College Board and Client. In the event that Client wishes to reschedule an Institute, Client shall notify the College Board in writing no later than thirty (30) days prior to the first day of the Institute. If Client reschedules an Institute less than thirty (30) days prior to the first day of the Institute, Client shall pay a rescheduling fee as set forth in Section 7.3 (Rescheduling Costs). The College Board shall cooperate with Client to reschedule any Institute. In the event the College Board cancels an Institute, client shall not be obligated to pay a rescheduling fee.

**3.6 Data Extraction.** Upon request, and subject to an agreed upon additional fee, the College Board will provide Client with the data relating to Client's students used to generate the diagnostic assessment reports available through the SpringBoard Program. Client shall treat such data in the same manner that it treats other education records.

**4. Products.** During the Term, the College Board shall make available certain products related to the SpringBoard Program ("Products") pursuant to the terms and conditions set forth in Attachment II Scope of Products, annexed hereto and made a part hereof, provided that the College Board's furnishing of such Products is conditioned upon Client's fulfillment of its responsibilities as set forth under this Agreement.

**5. College Board Obligations.** The College Board shall perform its obligations under this Agreement in a professional, workmanlike manner and in compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations. Within thirty (30) business days of receipt of the Schools' textbooks, the College Board will correlate the Schools' textbooks to the College Board Standards for College Success and load the correlations onto the SpringBoard Site, provided that Client sends a copy of such textbooks to the College Board or its designee. The College Board or its vendor will return the textbooks promptly to Client once the correlation is complete.

**6. Client Obligations.** The College Board's obligation to furnish Client with the Licenses, Services, and Products is contingent upon Client's performance of the following obligations:

**6.1** Client will collect and provide the College Board with the information needed to implement the SpringBoard Program in the Schools.

**6.1.1** A minimum of thirty (30) business days prior to the first scheduled day of the Summer Institute, Client shall provide the College Board with the following implementation information ("Implementation Information") that includes without limitation:

**6.1.1.1 District Information;** District contact information, superintendent or Designee's contact information, District SpringBoard Coordinator, District contract signatory, number of participating middle schools, and the district mathematics and English Language Arts textbook information.

**6.1.1.2 School Information;** School contact information, principal contact information, school SpringBoard coordinator, and SpringBoard information Technology contact.

**6.1.1.3 Professional Development;** Teachers & staff to be trained, number of student books to be purchased by grade and subject area, number of scanners purchased, and dates for Summer Institute and Follow-Up Institute.

The College Board reserves the right to change the Implementation Information at any time. In the event the College Board does not receive the information required under this Section 6.1.1 within said time frame, the Summer Institute may be held; however, the quality of the SpringBoard implementation may be affected, and the College Board shall not be responsible for any problems, issues or effectiveness of the SpringBoard Program, the Site or the Services based on Client's failure to provide such information on a timely basis.

**6.1.2** Client shall provide the College Board with any updates to the Implementation Information and/or information requested in Attachment I a minimum of thirty (30) business days prior to commencement of each Follow Up Institute. The College Board shall not be responsible for any problems, issues or effectiveness of SpringBoard, the Site or the Services based on Client's failure to provide such information on a timely basis.

**6.1.3** At least thirty (30) business days before the first scheduled day of each Institute, Client shall provide the College Board with a list of the names of all participants in such Institute; including the subject(s) that each participant teaches; for English language arts teachers, the specific grade levels taught by each teacher (grades 6-8); and for math teachers, the specific math courses taught by each teacher (6<sup>th</sup> grade math, 7<sup>th</sup> grade math, Algebra I). Client agrees that the College Board may rely on such list in determining the number and levels of Materials and of consultants provided by the College Board to Client at such Institute.

**6.1.4** Client shall register participating students in the Schools for the SpringBoard Program directly on the Springboard Site ("Registration Information"). Unless the College Board otherwise directs, the Registration Information shall include each student's username, password, first and last name, grade and birth date.

**6.1.5** Client shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and its implementing regulations, 34 C.F.R. pt. 99 ("FERPA") in connection with the SpringBoard Program. Client shall obtain any and all consents necessary for students to participate in the SpringBoard Program, and Client shall include in its annual notification of rights under FERPA criteria that support the designation of the College Board and its employees as school officials with legitimate educational interests. Client authorizes the College Board to use personally identifiable, non-directory information to conduct studies with the purpose of improving instruction for the SpringBoard Program in accordance with 34 C.F.R. 99.31(a)(6)(i). To the extent the Registration Information includes only directory information, the College Board may redisclose the Registration Information in accordance with the Privacy Policy upon the consent of the parents or students eighteen (18) years of age or older.

**6.2** Client shall designate, and shall cause each School to designate, a SpringBoard Program coordinator and an information technology contact.

**6.2.1** The Client SpringBoard Program coordinator shall be Client's principal contact with the College Board, shall assist in the organization and implementation of training for the SpringBoard Program, and shall otherwise support Client's implementation of the SpringBoard Program.

**6.2.2** The School SpringBoard Program coordinator shall work with the Client SpringBoard Program coordinator to implement the SpringBoard Program in his or her School.

**6.2.3** The Client information technology contact and the School information technology contacts shall arrange for access to the SpringBoard Site from Client's information technology system and address any technical issues that may arise in the course of the SpringBoard Program.

**6.3** Client shall send all mathematics and English language arts teachers at the Schools to attend the Summer Institute before participating in the SpringBoard Program. Client shall send all teachers at the Schools to attend the Follow Up Institute.

**6.4** Client shall use best efforts to ensure that in the event a student is participating in the SpringBoard Program in connection with any subject or level, all students within that subject and level participate in the SpringBoard Program. Client acknowledges that it is not the College Board's intent that students be individually selected for participation in the SpringBoard Program.

**6.5** Client acknowledges that successful implementation of the SpringBoard Program is contingent on active participation and understanding of the SpringBoard Program by administrators. To facilitate successful implementation of the SpringBoard Program in the Schools, Client will encourage the principal of each School to attend at least two (2) mornings of the Summer Institute.

**6.6** Client will ensure network access and Internet connectivity during the Summer Institute and Follow Up Institute, and will require the Client information technology contact or another appropriate staff person to be available during the entire Summer Institute and Follow Up Institute to assist in the maintenance of such network access and Internet connectivity.

**6.7** Client shall be responsible for confirming that the duration, scope, and dates of the Institutes are in compliance with applicable local, state, and federal statutes and regulations, applicable standards of relevant national professional associations, and applicable collective bargaining agreements.

**6.8** In the event Client fails to provide the College Board the information requested and/or within the time frames specified in this Section 6 (Client Obligations), the College Board shall be excused from performance of each of its obligations that cannot be fulfilled without such information.

## **7. Payment.**

**7.1. Fee and Payment.** The fee for the Licenses and the Services (the “Fee”) shall be **\$257,034.00** for the Term. Client shall pay the Fee within thirty (30) days after the first day of the initial Institute or Client’s receipt of an invoice, which ever occurs sooner.

**7.2 Costs Excluded from Fee.** The Fee does not cover the following costs associated with the Summer Institute and the Follow Up Institute: meeting room fees, audio-visual fees, food, insurance, fees for applicable substitute teachers and other costs for Client personnel, and other on-site or transportation expenses. Client shall be responsible for and pay directly the costs not covered by the Fee.

**7.3 Rescheduling Costs.** In addition to the Fee, for each Institute rescheduled less than thirty (30) days prior to the first day of an Institute, Client shall pay the College Board for its reasonable actual costs incurred to reschedule the Institute, including consultant fees, materials costs, and other expenses incurred prior to the College Board’s receipt of Client’s request to reschedule the Institute.

**7.4 Student Workbooks.** Client may purchase student workbooks directly from the College Board pursuant to the terms and conditions prescribed in Attachment II Scope of Products.

**7.5 Scanners.** Client may purchase scanners and bubble sheets directly from the College Board pursuant to the terms and conditions prescribed in Attachment II Scope of Products.

**7.6 Accounts and Records.** The College Board shall maintain supporting documents to substantiate invoices and shall furnish the same if required by Client for a period of three (3) years after the date of each invoice.

## **8. Representations and Warranties.**

**8.1 Client Representations and Warranties.** Client represents and warrants to the College Board that:

**8.1.1** Client is empowered under applicable State laws to enter into and perform this Agreement.

**8.1.2** The execution and delivery of this Agreement by Client and the performance by Client of its obligations under this Agreement have been duly and validly authorized.

**8.1.3** To the extent that the Registration Information or other personally identifiable information from education records of students disclosed by Client to the College

Board includes information other than directory information, for purposes of FERPA the College Board and its employees and independent contractors are “school officials” whom Client has determined to have “legitimate educational interests”, and Client may disclose such non-directory information to the College Board consistent with FERPA and other applicable law and policy.

**8.1.4** Client has a policy on acceptable use of computer equipment and services by teachers, other staff, and students that is at least as rigorous as the Site Terms and Conditions. The Site Terms and Conditions are consistent with and sufficient under Client’s computer use and other relevant policies.

**8.1.5** Client has a policy on confidentiality of student records consistent with and sufficient under FERPA. The Privacy Policy is consistent with and sufficient under Client's FERPA and other relevant policies.

**8.2 College Board Representations and Warranties.** The College Board represents and warrants to Client that:

**8.2.1** The College Board is a corporation duly organized and existing, and in good standing under the laws of the State of New York.

**8.2.2** The College Board is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

**8.2.3** The College Board is empowered under applicable laws and by its Certificate of Incorporation and By-Laws to enter into and perform this Agreement.

**8.2.4** College Board shall comply with the Family Educational Rights and Privacy Act in accordance with 34 C.F.R. 99.33(b) solely in the event that the College Board rediscloses non-directory information to third parties, as described in Section 15 (Confidentiality).

**9. Disclaimer of Implied Warranties.**

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8 (REPRESENTATIONS AND WARRANTIES), COLLEGE BOARD HEREBY DISCLAIMS ALL OTHER GUARANTEES OR WARRANTIES WITH RESPECT TO ANY LICENSE, CONTENT, MATERIALS, PRODUCT OR SERVICE PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COLLEGE BOARD DOES NOT WARRANT THE OPERATION OF THE LICENSES OR PRODUCTS TO BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED.



## **10. Indemnification.**

**10.1 By Client.** To the extent permitted by law, Client agrees to be fully responsible for its acts of negligence or its agents' acts of negligence when performing its obligations under this Agreement and agrees to be liable for any damages resulting from said negligence. To the extent permitted by law, Client shall indemnify, defend and hold harmless the College Board and its respective officers, trustees, employees, permitted successors and assigns, agents, affiliates and subsidiaries against and from all losses, expenses, damages and costs (including reasonable attorneys' fees) arising from any third party claim that may at any time be incurred by any of them by reason of: (a) Client's breach of its obligations under this Agreement; (b) any breach of Client's representations and warranties or covenants contained in this Agreement; (c) the willful misconduct or intentionally tortious conduct of Client or any of its employees in connection with the performance of obligations under this Agreement; (d) any allegation, claim or suit threatened, made or brought against any of them related to any matter covered by said representations and warranties or covenants; or (e) Client's misuse of the Materials. Nothing herein shall be construed as a waiver of sovereign immunity by the Client.

**10.2 By the College Board.** The College Board agrees to indemnify, hold harmless and defend Client, 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 Client, 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 negligence of the College Board or the negligence of the College Board's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including Client's property, and injury or death of any person whether employed by the College Board, Client or otherwise.

**11. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE COLLEGE BOARD AND THE COLLEGE BOARD'S OFFICERS, TRUSTEES, PARTNERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND ANY OF THEM, TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR WARRANTY, EXPRESS OR IMPLIED, OF THE COLLEGE BOARD OR THE COLLEGE BOARD'S OFFICERS, TRUSTEES, PARTNERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS OR ANY OF THEM, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY THE COLLEGE BOARD UNDER THIS AGREEMENT AS OF THE DATE OF SUCH CLAIM, LOSS, COST OR DAMAGE OCCURRED.

IN NO EVENT SHALL EITHER PARTY, THEIR AFFILIATES OR THEIR SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES FOR LOSS OF PROFITS OR SAVINGS, LOSS OF USE, BUSINESS INTERRUPTION OR THE LIKE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. Termination.**

**12.1 Client Termination.** Client shall have the right to terminate this Agreement: (a) if the College Board fails to cure any material breach of any provision of this Agreement within thirty (30) days after written notice thereof is given to the College Board in accordance with Section 20 (Notices) setting forth the pertinent facts alleging such breach; (b) for material breaches that cannot be cured within thirty (30) days, if the College Board fails to commence the process of curing within fifteen (15) days after written notice and to complete such cure within sixty (60) days after written notice unless such time limit is waived by Client, or (c) for convenience and without cause upon thirty (30) days written notice to the College Board.

**12.2 College Board Termination.** The College Board shall have the right to terminate this Agreement:

**12.2.1** Immediately, upon the later date of Client's failure to pay for Services within sixty (60) days after the date on which payment is due in accordance with Section 7 (Payment) or within ninety (90) days after the first day of the Summer Institute;

**12.2.2** Immediately, if Client has breached any of its representations and warranties under Section 8.1 (Client Representations and Warranties);

**12.2.3** Immediately, if Client violates the obligations prescribed in Section 15 (Confidentiality) or Section 2 (License Grant); and

**12.2.4** In addition to the foregoing: (a) if Client fails to cure any material breach of any provision of this Agreement within thirty (30) days after written notice thereof is given to Client in accordance with Section 20 (Notices) setting forth the pertinent facts alleging such breach; or (b) for material breaches that cannot be cured within thirty (30) days, if Client fails to commence the process of curing within fifteen (15) days after written notice and to complete such cure within sixty (60) days after written notice unless such time limit is waived by the College Board.

**12.3 Rights After Termination.** If this Agreement, any Services, License, or Product request hereunder is terminated for any reason, all rights granted to Client hereunder with respect to the Licenses, Services and Products shall cease, and Client shall immediately notify all teachers and students participating in the SpringBoard Program that they may no longer use the SpringBoard Site. Upon termination of this Agreement, College Board shall terminate Client's

access to the SpringBoard Site, and any and all other systems to which Client has access under this Agreement.

Upon termination, Client shall promptly pay to the College Board all Fees and other amounts due and owing under this Agreement for the Services performed, Products furnished and Licenses granted through the effective date of termination in accordance with invoices issued or to be issued by the College Board therefor. Such expenses include, but are not limited to, the costs associated with the College Board's initial deployment of resources in preparation for providing the Services under this Agreement. If this Agreement is terminated, Client shall not be entitled to a refund of any Fee paid .

**13. Independent Contractor.** Client and the College Board recognize and agree that the College Board is an independent contractor, and that neither the College Board nor any of the College Board's employees or agents is an employee of Client. The parties understand and agree that Client is not liable for Social Security contributions pursuant to 42 U.S. Code, Section 418, relative to the compensation to the College Board for Services performed as an independent contractor under this Agreement.

**14. Responsibility for Payment of Taxes.** Client will be responsible for any sales, use, federal excise, value added or any similar tax imposed by any governmental authority with respect to the Products, Services and Licenses, except where Client provides the College Board with a valid exemption certificate or other satisfactory documentation of tax-exemption. Client assumes no responsibility for: (i) any taxes imposed on or with respect to the College Board's net or gross income, capital or franchise taxes; or (ii) employee withholding taxes, FICA, Medicare taxes, unemployment insurance or other taxes with respect to payment of any compensation, wages, benefits, or taxes by, or on behalf of the College Board, its employees and/or others by reason of this Agreement. Each party will provide and make available to the other any tax exemption certificates or other tax-related information reasonably requested by the other party.

**15. Confidentiality.** All information exchanged hereunder to which either party shall have access in connection with this Agreement, including the terms of this Agreement, is confidential ("Confidential Information"), and except as otherwise expressly provided in this Agreement, neither party will authorize or permit the other party's Confidential Information to be conveyed or in any manner communicated to or made available to any third party or to be physically duplicated or reproduced or used by or for the benefit of any third party, in whole or in part; provided, however, that Confidential Information shall exclude any data or information that: (a) is publicly disclosed or expressly approved for public disclosure by the act of an authorized agent of either party; (b) becomes publicly known without breach of any confidentiality obligation; or (c) is required to be disclosed pursuant to any applicable law or regulation, government authority or duly authorized subpoena or court order, provided that the disclosing party in such event shall provide the other party with notice of such requirement as soon as practicable after such requirement becomes known to the disclosing party (and in any event before any such Confidential Information is disclosed).

To the extent that the Registration Information or other personally identifiable information from education records of students disclosed by Client to the College Board includes information other than directory information, the College Board may redisclose such non-directory information to third parties in accordance with the Privacy Policy, provided that, in accordance with 34 C.F.R. 99.32(b) and 99.33(b), the College Board informs Client of the names of such third parties and the legitimate interests that they have in requesting or obtaining such Registration Information.

**16. Governing Law.** The execution, validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Florida (excluding the choice of law rules thereof).

**17. Waiver.** No waiver of any breach of any provision of this Agreement shall operate as a waiver of any other provision of this Agreement or as a waiver of subsequent or other breaches of the same or any other provision of this Agreement, nor shall any action or non-action by either party be construed as a waiver of any provisions of this Agreement or of any breach thereof unless the same has been expressly declared or recognized as a waiver by such party in writing.

**18. Cooperation.** Client shall be responsible for performing its obligations under this Agreement, which include without limitation those set forth in the Section 6 (Client Obligations). In addition, Client shall cooperate fully with the College Board and its agents and provide all assistance as reasonably necessary for the College Board to provide the Licenses and Products and perform the Services, including, but not limited to, providing prompt access to Client's personnel, equipment, software, systems, documentation and other information and resources reasonably required by the College Board.

**19. Force Majeure.** The College Board shall not be responsible for damages, delays or failure of performance resulting from the occurrence of a contingency the nonoccurrence of which was a basic assumption under which this Agreement was made, including, but not necessarily limited to, Client's failure to comply with Section 18 (Cooperation), acts of God, power failures, earthquakes, acts of war and epidemics, act of enemies, acts of terrorism, embargoes, expropriation or labor strike, any unanticipated federal, state or municipal governmental regulation or order, or other such disasters beyond the control of the affected party.

**20. Notices.** All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended on the day so delivered, if delivered by registered or certified mail, return receipt requested, on the seventh (7<sup>th</sup>) day following such mailing or by national courier service on the third (3<sup>rd</sup>) business day following such mailing, or if sent by telecopier on the day telecopied, or if not a business day, the next succeeding business day, *provided that*, the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

To College Board:

SpringBoard School Success Team  
45 Columbus Avenue  
New York, NY 10023  
Tel: (212) 713-8000  
Fax: (212) 713-7730

with a copy to:

Office of Legal Counsel  
College Board  
45 Columbus Avenue  
New York, NY 10023  
Tel: (212) 713-8000  
Fax: (212) 713-8036

To Client:  
The School Board of Broward County, Florida  
ATTN: Superintendent of Schools (Interim)  
600 SE Third Avenue  
Fort Lauderdale, FL 33301  
(754)321-0000

**21. No Third Party Rights.** Nothing contained in this Agreement, express or implied, establishes or creates, or is intended or will be construed to establish or create, any right in or remedy of, or any duty or obligation to, any third party.

**22. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**23. Entire Agreement.** This Agreement supersedes all prior oral and written proposals and communications between the College Board and Client related to the Services, Products, or Licenses, and Amendments validly executed by the College Board and Client are herein incorporated by reference to this Agreement. This Agreement may not be modified unless in writing and signed by both parties hereto.

**24. Survival.** The following provisions shall survive the expiration or termination for any reason of this Agreement: Sections 7, 9, 10, 11, 12, 13, 14, 15, 16 and 24.

**25. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which taken together shall constitute one and the same document.

26. **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

27. **Background Screening.** Client and College Board acknowledges and agrees that College Board shall not be required to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, insofar as the College Board and all of its personnel (1) will not access to school grounds when students are present, (2) will not have direct contact with students, or (3) will not have access or control of school funds. Client shall furnish a venue for College Board to perform Services that will not permit students to be present. As such, College Board will not successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will not be conducted by Client in advance of College Board or its personnel providing any services under the conditions described in the previous sentence. College Board will not 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 College Board and its personnel. The Parties agree that the failure of College Board to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Client to terminate immediately with no further responsibilities or duties to perform under this Agreement, except to pay College Board for all deliverables and services furnished through the date of termination. College Board agrees to indemnify and hold harmless Client, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in College Board's failure to comply with the requirements of this section or Section 1012.32 and 1012.465, Florida Statutes.

SBBC shall furnish venues for College Board to provide Services under this Agreement where students will not be present and the College Board will not have direct contact with students. The College Board and personnel shall not be required to undergo background screening unless: (i) the College Board will furnish Services under this Agreement where students will be present; (ii) the College Board will have direct contact with students; and (iii) the College Board will have access or control of school funds as part of the Services and deliverables the College Board furnished under this Agreement.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement as of the day first written above.

**THE COLLEGE BOARD**

\_\_\_\_\_  
Witness

By: Lee R. Jones  
Name: Lee R. Jones  
Title: Sr. V. Pres.

**For SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By: \_\_\_\_\_  
Beverly A. Gallagher, School Board Chair

\_\_\_\_\_  
James Notter,  
Interim Superintendent of Schools

Approved as to Form:

[Signature]  
School Board Attorney

Contract # R 2007-1046  
Please use on invoices and all  
correspondence regarding this  
contract \_\_\_\_\_.

**ATTACHMENT I****ATTACHMENT I  
SCHOOL INFORMATION**

<b>School</b>	<b>Enrollment</b>	<b>PD Year</b>	<b>Price</b>
Apollo Middle School	1,242	4	<b>\$13,041.00</b>
Arthur Ashe Middle School	882	4	<b>\$9,261.00</b>
Attucks Middle School	995	4	<b>\$10,447.50</b>
Bair Middle School	1,216	4	<b>\$12,768.00</b>
Crystal Lakes Middle School (Year 3)	1,495	4	<b>\$15,697.50</b>
Deerfield Beach Middle School	1,430	4	<b>\$15,015.00</b>
Driftwood Middle School	1,581	4	<b>\$16,600.50</b>
Margate Middle School	1,222	4	<b>\$12,831.00</b>
McNicol Middle School	1,117	4	<b>\$11,728.50</b>
Olsen Middle School	1,329	4	<b>\$13,954.50</b>
Parkway Middle School	1,320	4	<b>\$13,860.00</b>
Pompano Beach Middle School	1,086	4	<b>\$11,403.00</b>
Silver Lakes Middle School	1,042	4	<b>\$10,941.00</b>
Lauderhill Middle School	840	3	<b>\$9,660.00</b>
New River Middle School	1,476	3	<b>\$16,974.00</b>
Perry, Henry D Middle School	1,209	3	<b>\$13,903.50</b>
Rickards Middle School	1,033	3	<b>\$11,879.50</b>
Sunrise Middle School	1,269	3	<b>\$14,593.50</b>
Lauderdale Lakes Middle School	1,037	2	<b>\$12,962.50</b>
Gulfstream Middle School	308	2	<b>\$3,850.00</b>
Eagles' Nest Middle	93	2	<b>\$1,162.50</b>

Site License Subtotal: \$252,534.00

District Base Fee: \$4,500.00

Site License Total: \$257,034.00



## ATTACHMENT II

### SCOPE OF PRODUCTS

1. **SpringBoard Student Books.** Student books are available to Client upon fulfillment of its obligations under the SpringBoard Subscription Agreement (the “Agreement”) and can be ordered for the level(s) and subject(s) in which Client is implementing SpringBoard. Student Books may be ordered from the College Board with the Book Order Form annexed hereto as Attachment III-A.

1.1. **Cost.** Student Books can be purchased directly from the College Board for a cost of \$3.25 per book plus a 10% shipping charge.

1.2. **Title; Risk of Loss.** Title to and risk of loss for the Student Books shall pass to Client upon delivery to the carrier at the point of shipment, after Client has remitted payment for the Student Books.

2. **Scanners.** Client may order Scanners from the College Board with the EZ Scanner Order Form annexed hereto as Attachment III-B. A Scanner is comprised of items 1-7 as set forth in Section 2.1 below.

2.1. **Cost.** Scanners can be purchased directly from the College Board for a cost of \$395 each. This price includes the following:

1. EZData scanner
2. Power Cord
3. Serial Cable
4. Install Software on CD-ROM
5. One package of 500 bubble sheets
6. Scanner fact sheet
7. Bubble Sheet Recorder Form

Additional packages of bubble sheets (1,000/pack) may be purchased from the College Board for a cost of \$40.75 per pack, not including shipping and handling.

2.2. **Title; Risk of Loss.** Title to and risk of loss for the Equipment, shall pass to Client upon delivery to the carrier at the point of shipment. Manufacturer retains a security interest in and shall have all rights of a secured party (including the right to file a financing statement under the Uniform Commercial Code) with respect to all manufacturer products and other products and rights provided under the Agreement, until Client has remitted all undisputed payments due under the Agreement.

2.3. **Shipping.** Shipping and handling charges are not included in the Scanner cost. Any cost of shipping and handling is the sole responsibility of Client.

2.4. Warranty. The College Board represents that each Scanner contains the following manufacturer's warranties, which vest in Client upon transfer of title of each Scanner to Client.

2.4.1 Repairs Under Warranty. All claims for warranty repairs must be submitted to the College Board, which will then provide such claims to manufacturer, and such warranty repairs and replacements shall be handled by manufacturer.

2.4.2 Warranty as to the Scanners. Manufacturer warrants that each Scanner shall be free of faulty workmanship and defective materials except those materials not supplied to Client by the College Board or manufacturer, for the term of one (1) year. The liability of the College Board and manufacturer under this warranty is limited to replacing or repairing (at manufacturer's discretion) any defective Scanner during such period provided that: (1) the College Board is promptly notified in writing by Client upon discovery of such defects; (2) the defective Scanner(s) is/are returned to manufacturer, transportation charges prepaid by Client, or said Scanner(s) is/are inspected by the College Board or manufacturer at the installation site (at manufacturer's discretion); and (3) the College Board's and/or manufacturer's examination of such Scanner(s) shall disclose to its reasonable satisfaction that such defects have not been caused by misuse, neglect, improper installation, repair, alteration, accident, or by any cause external to the Scanner(s).

In the event the defect is determined to be within the terms of this warranty, then manufacturer, at manufacturer's discretion, agrees to repair or replace the item including reimbursing Client for any prepaid shipping charges. Neither the College Board nor manufacturer assumes responsibility for the proper operation of any Scanner or Scanner-related equipment that was not provided to Client by the College Board or manufacturer pursuant to an Order Form under the Agreement. The warranties hereunder shall extend only to the Scanner(s). The warranties hereunder do not extend: (1) to any Scanner(s) which has/have been altered or repaired by personnel not authorized by the College Board or manufacturer; (2) to any Scanner(s) which has/have been subject to misuse, neglect, improper installation, repair, alteration accident, or by any cause external to the Scanner(s) or operation outside the specification provided by manufacturer or the College Board; or (3) to any Scanner which has been interconnected to and damaged by any equipment which has not been designed, manufactured or supplied by manufacturer or the College Board.

2.4.3 Warranty as to Bubble Sheets.

Bubble Sheets printed by manufacturer are warranted to scan properly if scanned on properly calibrated equipment for which the Bubble Sheets were designed. If a problem related to the Bubble Sheets occurs, manufacturer will, in the most expeditious manner, take the necessary steps to correct the problem, including replacement of defective Bubble Sheets. Replacement of any unacceptable or unscannable Bubble Sheets or arrangement for alternative data capture services will be treated as top priority by manufacturer.

The College Board's and manufacturer's liability under this warranty is limited to the foregoing remedies. This warranty does not apply to any Bubble Sheets which have been subjected to

misuse or neglect. The College Board and manufacturer reserve the right to examine all Bubble Sheets claimed to be defective.

3. **RETURN POLICY.** The College Board shall issue a refund of the purchase price for any Student Books, Scanners or Bubble Sheets (collectively “Products”) returned in their original condition within thirty (30) days of the billing date on the invoice for such Products. For Products returned thereafter, a 15% restocking charge shall be deducted from Client’s refund. Shipping charges are not refundable, and the College Board will not accept collect (C.O.D.) shipments.

4. **DISCLAIMER OF WARRANTIES.**

**EXCEPT AS EXPRESSLY STATED HEREIN, COLLEGEBOARD AND MANUFACTURER HEREBY DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE WORKBOOKS, SCANNERS AND BUBBLE SHEETS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**NEITHER THE COLLEGE BOARD NOR MANUFACTURER SHALL BE LIABLE TO CLIENT, OR ANY OTHER PERSON FOR ANY LOSS OF BUSINESS, PROFITS, SAVINGS, OR GOODWILL WHATSOEVER AND HOWSOEVER CAUSED, OR FOR ANY OTHER INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE AGREEMENT, INCLUDING THE TERMS CONTAINED HEREIN, THE WORKBOOKS, BUBBLE SHEETS, SCANNERS OR THEIR USE, OR SERVICES PROVIDED REGARDLESS OF THE FORM OF ACTION UNDER WHICH A CLAIM IS MADE. IN NO EVENT SHALL THE COLLEGE BOARD’S OR MANUFACTURER’S AGGREGATE LIABILITY EXCEED THE PRICE PAID TO THE COLLEGE BOARD FOR THE PRODUCT UPON WHICH THE CLAIM IS BASED.**

5. **Intellectual Property Indemnification.** At manufacturer’s expense, manufacturer shall defend Client against any claim that a Scanner or its normal use infringes a U.S. Patent, and shall pay all costs and damages that a court finally awards against Client or that manufacturer agrees to in settlement of such claim. To qualify for such defense and payment, Client must give the College Board prompt written notice of such claim which the College Board shall then provide to manufacturer, allow manufacturer to control, and fully cooperate with manufacturer in the defense and all related negotiations.

If there is a claim or if, in manufacturer’s opinion, a claim is likely to occur, Client agrees to permit manufacturer, at manufacturer’s expense and option, to procure for Client the right to continue using the Scanner(s); or replace the Scanner(s) or any part thereof, with a functionally equivalent non-infringing product; or recover the Scanner(s) and refund the unamortized portion of the Scanner(s) purchase price calculated on a straight line basis over a five (5) year useful life.

Neither the College Board nor manufacturer shall have any obligation with respect to any claim based upon use of the Scanner(s) in violation of the Agreement; in a manner not specified in user documentation; or based on modification or customizations specified by the College Board or Client, or based on operation of the Scanner(s) with hardware, data, or programs not furnished by the College Board or manufacturer to Client or specified in the Agreement. Neither the College Board nor manufacturer shall be responsible for any cost, expense, nor compromise incurred or made by Client, unless it is made with the College Board's or manufacturer's prior written consent. This section states the College Board's and manufacturer's entire obligation to Client with respect to intellectual property infringement.

6. **Maintenance.** Client may obtain Maintenance Services directly from manufacturer via a separate agreement with manufacturer.

7. **Instructional Materials.** Additional copies of the teacher version of the instructional materials provided at the Summer Institute may be purchased directly from the College Board for a cost of \$55.00 per copy, including shipping and handling.

# BOOK ORDER FORM (Please copy this original and retain for future use)

Purchase Order No. or Contract No.:

Bill To Address:

Date:

Ship To Address:

Bill To Contact:

Bill To Phone No.:

Ship To Contact:

Ship To Phone No.:

Item	ISBN	Quantity	Price	Amount
<b>English Textual Power</b>				
Student Level I	057021464		@ \$3.25/each	
Student Level II	057021463		@ \$3.25/each	
Student Level III	057021462		@ \$3.25/each	
Student Level IV	057021461		@ \$3.25/each	
Student Level V	057021453		@ \$3.25/each	
Student Level VI	057021454		@ \$3.25/each	
Student Senior English	057021442		@ \$3.25/each	
<b>Additional Teacher Books</b>				
Teacher Level I	057021455		@ \$55/each	
Teacher Level II	057021456		@ \$55/each	
Teacher Level III	057021457		@ \$55/each	
Teacher Level IV	057021458		@ \$55/each	
Teacher Level V	057021459		@ \$55/each	
Teacher Level VI	057021460		@ \$55/each	
Teacher Senior English	057021441		@ \$55/each	
<b>Mathematics with Meaning</b>				
Student Middle School I	057021440		@ \$3.25/each	
Student Middle School II	057021438		@ \$3.25/each	
Student Algebra I	057021436		@ \$3.25/each	
Student Geometry	057021434		@ \$3.25/each	
Student Algebra II	057021432		@ \$3.25/each	
Student Pre-Calculus	057021430		@ \$3.25/each	
<b>Additional Teacher Books</b>				
Teacher Middle School I	057021439		@ \$55/each	
Teacher Middle School II	057021437		@ \$55/each	
Teacher Algebra I	057021435		@ \$55/each	
Teacher Geometry	057021433		@ \$55/each	
Teacher Algebra II	057021431		@ \$55/each	
Teacher Pre-Calculus	057021429		@ \$55/each	
			Subtotal	\$ _____
			Shipping*	\$ _____
			(*Shipping charge = 10% of subtotal)	
			<b>TOTAL</b>	\$ _____

**MAIL OF FAX FORM ALONG WITH VALID PURCHASE ORDER OR COPY OF YOUR CONTRACT TO:**

**SpringBoard Program**

**The College Board**

**45 Columbus Ave**

**New York, NY 10023**

Fax: (212) 713-7730,

attn: SpringBoard Program

SpringBoard course materials may be ordered only in the subject(s) and levels in which your district is implementing SpringBoard. Questions about this form or your order should be directed to 1-800-416-5137.

# ORDER FORM for College Board EZData Scanner for SpringBoard™

and The Official SAT Online Course™ (Please copy this original and retain it for future use)future use

## Mail or FAX this order form to:

**SpringBoard Program**  
**The College Board**  
**45 Columbus Ave**  
**New York, NY 10023**

**FAX anytime to:**

**(212) 713-7730**

(For institutional purchase orders only, please do not mail confirmation copy.)

**Sorry credit card orders are not accepted.**

**IMPORTANT:** Please print or type your name and address in the space below. Abbreviate where possible.

**DO NOT USE P.O. BOX NUMBERS.** Prices are subject to change without notice.

Bill To:	Ship To: if different from "Bill to" address
Institution _____	Institution _____
Attention _____	Attention _____
Address _____	Address _____
City _____	City _____
State _____ ZIP _____	State _____ ZIP _____
Phone _____ Fax _____	Phone _____ Fax _____
E-mail _____	E-mail _____

Item Number	Name	List Price	Quantity	Amount
047021277	EZData Scanner	\$395.00	_____	\$ _____
047021312	SpringBoard Bubble Sheets Answer Sheets (1,000/pack)	\$40.75	_____ pack(s)	\$ _____

Subtotal

\$ \_\_\_\_\_

\* \* Postage and handling

\$ \_\_\_\_\_

Please add applicable sales tax for:

\$ \_\_\_\_\_

CA, DC, FL, GA, IL, MA, PA, TX, VA, CANADA

Grand Total

\$ \_\_\_\_\_

**\* \$10.00 per scanner or scanner and bubble sheet pack order/ \$ 5.00 per bubble sheet pack order**

- ☐ **Enclosed is an institutional purchase order**  
☐ **Enclosed is my check or money order made payable to the College Board**