

**AGENDA REQUEST FORM**  
**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

Meeting Date <b>02/01/11</b>	<b>Open Agenda</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Time Certain Request</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Agenda Item Number <b>E-1</b>
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**TITLE:** **PCG BehaviorPlus™mobile**

**REQUESTED ACTION:**  
 Approve the Agreement between The School Board of Broward County, Florida, and Public Consulting Group, Inc. (PCG) for the BehaviorPlus™mobile Service to utilize with our current Electronic Management System, EasyIEP®.

**SUMMARY EXPLANATION AND BACKGROUND:**  
 In October 2009, the Florida Department of Education came to Broward as part of the State's Level 3 Monitoring. Their conclusion was, although there was a vast amount of behavior data collected, there was not a means to analyze such data. The analysis of collected data is necessary to be able to move students to their least restrictive environment, as well as, to meet IEP goals.  
 PCG has developed BehaviorPlus™mobile Service. This program would work alongside of EasyIEP®. This component will provide the capability to capture behavior frequency, duration, ABC (Antecedents, Behavior, Consequences) and goal progress events for students through the use of a Personal Digital Assistant (PDA). This data will synchronize into EasyIEP® where users will be able to view, edit and analyze data collected.  
 Included in the proposed three year agreement, PCG will provide 300 HP iPAQS loaded with the BehaviorPlus™mobile software, initial training of 300 District staff, technology support, and drill down data reports.  
 The Agreement(s) have been approved as to form and legal content by the School Board Attorney.

**SCHOOL BOARD GOALS:**

- Goal One: Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education.
- Goal Two: Improve the health and wellness of students and personnel.
- Goal Three: Provide a safe and secure physical and technological environment for all students and employees.
- Goal Four: Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position.
- Goal Five: Recruit, develop, retain, and recognize high performing and diverse faculty and personnel.
- Goal Six: Build strong partnerships with family, business, community and government at the classroom, school, area, and district level.
- Goal Seven: Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.

**FINANCIAL IMPACT:**  
 The financial impact to the District is \$340,100. The source of funds is ARRA stimulus funds under IDEA. There is no additional financial impact to the District.

**EXHIBITS: (List)**  
 1. Copy of the Agreement

<b>APPROVED</b>	<b>SOURCE OF ADDITIONAL INFORMATION:</b> Tara Rodger Jeffrey S. Moquin Donnie Carter						
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(For Official School Board Records' Office Only)

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
**Donnie Carter, Chief Operations Officer**  
**Office of the Chief Operations Officer**

Approved in Open Board Meeting on: **FEB 1 - 2011**

By:  School Board Chair

## AGREEMENT

THIS AGREEMENT entered into on the 1<sup>st</sup> day of February ~~2010~~<sup>2011</sup> 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**

**PUBLIC CONSULTING GROUP, INC.**  
(hereinafter referred to as "PCG"),  
whose principal place of business is  
148 State Street, 10th Floor, Boston, Massachusetts 02109

**WHEREAS**, PCG desires to provide to SBBC a PDA-based behavioral data collection tool ("BehaviorPlus™*mobile*") to assist administrators and teachers with data collection of behavioral events in the classroom; and

**WHEREAS**, SBBC and Public Consulting Group, Inc. are referred to collectively herein as the "Parties"; and

**WHEREAS**, Section 6A-1.012(10), Florida Administrative Code, permits district school boards to acquire information technology resources through direct negotiation and contract with a vendor or supplier or through the bid process, as best fits the needs of the school district as determined by SBBC; and

**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 herein incorporated by reference.

## **ARTICLE 2 - SPECIAL CONDITIONS**

**2.01 INITIAL TERM:** The initial term of this Agreement shall commence on February 1, 2011 and shall end three (3) calendar years thereafter unless sooner extended or terminated pursuant to Section 2.06 of this Agreement. This Agreement can be extended by mutual Agreement, via written notification from SBBC to PCG at least 30 days prior to the then-current termination date, for a maximum of two (2), one (1) year periods.

### **2.02 INDEMNIFICATION:**

A. By SBBC: SBBC agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. Nothing herein shall be construed as consent by SBBC to be sued by third parties in any matter arising out of any contract. Nothing herein shall be construed as a waiver by SBBC of any rights or limits to liability under Section 768.28, Florida Statutes.

B. By PCG: PCG 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 PCG, its agents, servants or employees; the equipment of PCG, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of PCG or the negligence of PCG'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 PCG, SBBC or otherwise.

### **2.03 DEFINITIONS:**

In addition to the terms defined elsewhere in the Agreement, the parties agree to the following definitions:

**2.03.1 "BehaviorPlus™ mobile Service"** means: (i) the PDA and Internet-based services identified in this Agreement; (ii) all New Releases applicable to the foregoing core application and generally released by PCG; and (iii) the documentation developed by PCG for distribution and use in combination with the foregoing.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

**2.03.2 “New Releases”** means any new revisions made to the BehaviorPlus™*mobile* Service. Certain features that address specific changes requested by SBBC or are typically provided at an additional charge are not included in the definition of a “New Release”.

**2.03.3 “Updates”** means any modifications required to be made to the BehaviorPlus™*mobile* Service and/or documentation in order to correct operational errors.

Standard Upgrades to the core system will be provided free of charge to SBBC for the term of the contract. Custom Upgrades for new features requested by SBBC will carry an additional charge. These charges will be agreed upon in advance of the upgraded functionality being provided to the District.

**2.03.4 “Configuration Services”** means the addition of a new user type for the users of the software and configuration of the list items related to the software. The lists include Activity, Antecedents, Behaviors, Consequences, Function, Location, Proactive Strategy, Replacement Skills, Setting Event, and Target Behavior.

### **2.04 EQUIPMENT:**

SBBC will obtain from PCG, as described in Attachment A, BehaviorPlus™*mobile* unit(s) and provide to its school and administrative employees, contractors, and authorized users for their use in behavioral event data collection.

### **2.05 LICENSE AND SERVICES:**

PCG will license to SBBC the software and related proprietary systems and documentation described in Attachment A; and will supply services to support the solution.

**2.05.1 Grant of License for BehaviorPlus™*mobile* Service.** Subject to the terms and conditions of this Agreement and SBBC's performance of all of its obligations under this Agreement, PCG hereby grants to SBBC, and SBBC hereby accepts, a non-exclusive, non-transferable right and license, during the term of the Agreement only, to access via the Internet and use the BehaviorPlus™*mobile* Service to the extent reasonably necessary.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

**2.05.2 Grant of License for Documentation.** PCG hereby grants to SBBC, and SBBC hereby accepts, a non-exclusive, royalty-free license under PCG's copyrights in PCG's documentation relating to the BehaviorPlus™mobile Service, during the term of the Agreement only, as follows:

**2.05.2.1** to incorporate PCG's documentation, in whole or in part, into other written materials prepared by or for SBBC with respect to the BehaviorPlus™mobile Service; and

**2.05.2.2** to reproduce and distribute modified and original versions of PCG's documentation, in hard copy or in an on-line format, as part of SBBC's documentation for the BehaviorPlus™ Service, and, if such SBBC's documentation is in an on-line format, allow SBBC Users to make print copies of the same.

### **2.05.3 Restrictions on License Grant.**

**2.05.3.1** SBBC shall not use or grant to any person or entity other than authorized SBBC Users the right to use the BehaviorPlus™mobile Service. SBBC shall not distribute, market, or sublicense the SBBC BehaviorPlus™mobile Service, and SBBC Users shall not distribute, market, or sublicense the BehaviorPlus™mobile Service.

**2.05.3.2** SBBC shall ensure that appropriate proprietary notices indicating PCG's intellectual property rights in the BehaviorPlus™mobile Service and related documentation are placed on all copies of written materials distributed by SBBC relating thereto. Examples of such documentation include training materials and manuals.

**2.05.3.3** SBBC shall not distribute or knowingly permit distribution of BehaviorPlus™mobile documentation or other PCG intellectual property to any individual or organization that is not part of the SBBC or an authorized SBBC User.

**2.05.3.4** SBBC shall not transfer or permit access to the BehaviorPlus™mobile Service to any third party or permit any SBBC User to transfer or allow access the BehaviorPlus™mobile Service to any unauthorized person.

**2.05.3.5** SBBC shall not decompile, disassemble, or otherwise attempt to reverse engineer the BehaviorPlus™mobile Service or any portion thereof and shall not permit any SBBC User to decompile, disassemble, or otherwise attempt to reverse engineer the BehaviorPlus™ Service or any portion thereof.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

### **2.05.4 Reservation of Rights.**

**2.05.4.1** Subject to the license rights granted to SBBC by this Section 2.05, all right, title, and interest in and to the BehaviorPlus™ mobile Service, including the intellectual property rights and technology inherent in BehaviorPlus™ mobile Service, are and at all times will remain, the sole and exclusive property of PCG. No right to use, print, copy, distribute, integrate, or display the BehaviorPlus™ mobile Service, in whole or in part, is granted in this Agreement, except as is explicitly provided in this Agreement. Nothing contained in this Agreement will directly or indirectly be construed to assign or grant to SBBC any right, title, or interest in or to PCG's intellectual property rights or other rights in and to the BehaviorPlus™ mobile Service or PCG's trademarks.

**2.05.4.2** Except as expressly authorized by this Agreement, SBBC shall not use, display, copy, distribute, modify, or sublicense the BehaviorPlus™ mobile Service. In addition, SBBC shall not modify, transfer, rent, lease, reverse engineer, decompile, or disassemble the BehaviorPlus™ mobile Service. PCG reserves all rights not expressly granted to SBBC by this Agreement. SBBC will not alter, remove, modify, or suppress any confidentiality legends or proprietary notices placed on, or contained within the BehaviorPlus™ mobile Service and expressly agrees not to circumvent, or knowingly permit third parties to circumvent, any security or other protections within the BehaviorPlus™ mobile Service.

**2.05.5 Access to BehaviorPlus™ mobile Service.** PCG will provide access to the BehaviorPlus™ mobile Service to SBBC via a private account accessed through the Internet, from which SBBC will be capable of using the BehaviorPlus™ mobile Service as permitted by this Agreement. PCG will not provide the Internet connectivity to SBBC. Obtaining and maintaining such connectivity will be the sole responsibility of SBBC.

**2.05.6 New Releases, Upgrades, and Updates.** PCG will, as soon as practicable, provide SBBC with advance notice of each New Release, Upgrade or Update and provide notice whether such New Release, Upgrade or Update will be provided via the Internet. Standard Upgrades to the core system will be provided free of charge to SBBC for the term of the contract. Custom Upgrades for new features requested by SBBC will carry an additional charge. These charges will be agreed upon in advance of the upgraded functionality being provided to SBBC.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

### **2.06 TERMINATION – CANCELLATION:**

This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to PCG. In case of termination without cause, SBBC shall pay the remaining unpaid balance for items and services that have been delivered as of the date the termination becomes effective, as identified in Attachment A, and shall be entitled to no further updates, enhancements, training or support.

### **2.07 SBBC PROPERTY RIGHTS:**

**2.07.1 Hardware:** After the first invoice payment of \$190,100, the 300 HP iPAQ devices described in Attachment A will become and remain the sole property of SBBC.

**2.07.2 Software:** PCG at all times retains ownership of the BehaviorPlus™ *mobile* Service software and related documentation. The SBBC license to use the software and related documentation ends upon termination of this Agreement.

**2.07.3 Data:** SBBC at all times owns any student data that is entered in the system up to the contract termination date. PCG will maintain all data captured during the active contracting period, and SBBC will continue to have access to the data as long as the students remain active. PCG will return to SBBC all data captured by its system 60 days after contract termination, unless otherwise directed in writing by SBBC. PCG at its sole option may retain a backup copy, subject to applicable law.

**2.08 PRICING; OPTION PERIOD:** The pricing as detailed in **Attachment A**, constitutes a fixed cost for all licensed software, hardware, implementation, configuration services, maintenance, support services, materials and hosting services, instructional end-user and administrator training costs and any PCG or third party products. The Parties agree that this fixed cost does not include any products, services or expenses not specified in **Attachment A**, and is dependent upon both Parties fulfilling their respective obligations hereunder.

### **2.09 SUPPORT:**

**2.09.1 General Technical Support.** PCG will make available a sufficient number of qualified personnel in accordance with Attachment A, to provide support outlined in Attachment A. Such personnel will be skilled in the functioning and application of the BehaviorPlus™ *mobile* Service sufficient to answer questions and provide support.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

**2.09.2 Telephone Support.** Telephone support will be provided by PCG via a toll free telephone number. This number will connect the SBBC User with the BehaviorPlus™ *mobile* help desk during the business hours of 7:30am to 5:30pm EST.

**2.10 TRAINING:** Training will be provided as defined in Attachment A for the BehaviorPlus™ *mobile*.

**2.10.1 Training Schedule.** PCG and SBBC will agree upon a suitable training schedule.

**2.10.2 Training Types.** Training will consist of three types: (i) Administrative; (ii) Initial; and (iii) Refresher. Each training session will be divided into two parts: (i) Lecture and (ii) Hands-On Practice.

**2.11 PAYMENTS:** In consideration of the hardware, software licenses, training, support, and other services provided and granted by PCG to SBBC under this Agreement, SBBC shall pay PCG an Annual Fee as set forth in **Attachment A**. Payments are due 30 days after invoice by PCG on or before the fifteenth (15th) day of the calendar month preceding that next additional year. Should this Agreement be terminated prior to the expiration of the then-current term, PCG shall return a prorated portion of any pre-paid fees.

### **2.12 SBBC Photo Identification Badge:**

**Background Screening:** PCG agrees to comply with all the requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that PCG and all 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. **Personnel shall include employees, representatives, agents or sub-contractors performing duties under the contract to SBBC and who meet any or all of the three requirements identified above.** This background screening will be conducted by SBBC in advance of PCG or its personnel providing any services. PCG will bear the cost of acquiring the background screening required under Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to PCG and its personnel. The Parties agree that the failure of PCG to perform any of the duties described in this section shall constitute a material breach of this RFP/BID entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. PCG agrees to indemnify and hold harmless SBBC, its officers and employees of any liability in the form of physical or mental injury, death or property damage resulting in PCG's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

**SBBC issued identification badges must be worn at all times when on SBBC property and must be worn where they are visible and easily readable,**

L-1 Enrollment Services has been contracted to provide all background and fingerprinting services. All questions pertaining to fingerprinting, photo identification and background check services must be directed to the EasyPath Project Coordinator at 754-321-1830 or [easyathinfo@L1ID.com](mailto:easyathinfo@L1ID.com). **Each individual, for whom a SBBC photo identification badge is requested, must fill out the forms that are required, provide his/her driver's license and social security card, and must be fingerprinted.** A background check will be conducted for each badge applicant. SBBC reserves the right to require additional information, should it be necessary, and to deny the issuance of a badge to an applicant. Any applicant, that has been denied a badge, is prohibited from entering SBBC property as an employee, sub-contractor or agent of a contract PCG. There will be two websites used for services: 1) <http://www.L1Enrollment.com> (used for scheduling and registering applicants) and 2) <http://sbbc-easypath.browardschools.com> (used for vendors to check the status of applicants and order replacement badges). The total fee for the SBBC photo identification badge, fingerprinting and a FBI background check can be found at the following website: [www.L1Enrollment.com](http://www.L1Enrollment.com). Payment options can be made by electronic check (e-check), Visa, Mastercard or use of an established escrow account code.

**These fees are non-refundable and are subject to change without notice. Badges are issued for a one-year period and must be renewed annually. The renewal date will be one year from date of issuance. Failure to renew the badge, at that time, will result in the vendor being required to re-apply and pay the going rate for badging and fingerprinting.**

**Vendors shall return expired and/or terminated employee badges to the following location: The School Board of Broward County, Florida, Attn: L-1 Enrollment Services, 600 SE 3<sup>rd</sup> Avenue, Fort Lauderdale, Florida 33301**

### **2.13 WARRANTY AND DISCLAIMER:**

**2.13.1 Limited Warranty.** PCG represents and warrants that it has the right to license the BehaviorPlus™ mobile Service as specified by this Agreement, and that the use of the BehaviorPlus™ mobile Service contemplated in this Agreement does not infringe upon, violate, or constitute a misappropriation of any copyright, trademark, trade secret, or any other proprietary right of any third party. Further, PCG represents and warrants that, during the ninety (90) day period following the initial installation of the BehaviorPlus™ mobile Service hereunder, and during the ninety (90) day period following the installation of each Update, Upgrade, and New Release hereunder, the BehaviorPlus™ mobile Service will operate in accordance with the applicable Documentation, provided that the BehaviorPlus™ Service is operated in compliance with such Documentation. Under no circumstances will PCG be responsible for SBBC's hardware, software, browsers, or Internet connections that provide access to the BehaviorPlus™ mobile Service.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

PCG shall use reasonable efforts to maintain the BehaviorPlus™mobile Service and to correct any problems that may arise with the use of the BehaviorPlus™ Service.

**2.13.2 Disclaimer.** PCG SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO THE BehaviorPlus™*mobile* PRODUCTS OR ANY OTHER GOODS OR SERVICES PROVIDED BY PCG, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **2.14 PROPRIETARY RIGHTS; PROTECTION OF CONFIDENTIAL INFORMATION:**

**2.14.1. Ownership.** SBBC acknowledges that PCG owns the BehaviorPlus*mobile*™ Service, that the BehaviorPlus*mobile*™ Service is not generally published, and that the BehaviorPlus*mobile*™ Service embodies the Confidential Information of PCG. All right, title, and interest in and to the BehaviorPlus*mobile*™ Service, including, without limitation, all copyrights, trade secret rights, and other intellectual property rights pertaining in and to the BehaviorPlus*mobile*™ Service shall remain vested in PCG and its third-party licensors. PCG acknowledges that SBBC owns all of the data inputted by each SBBC User and any and all reports produced as a result of using the BehaviorPlus*mobile*™ Service. SBBC acknowledges that PCG shall have the right to aggregate any data input by SBBC or SBBC Users for PCG's own purposes, but shall not use or disclose personal or individual identifying information where the use or disclosure would constitute a breach of a known privacy policy adopted by either PCG or SBBC.

**2.14.2. Confidentiality Obligations.** Each party agrees that: (i) neither party will disclose to any third party any of the other party's Confidential Information except to the receiving party's employees and contractors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein; (ii) each party will use the same degree of care it uses to maintain the confidentiality of its own information of similar importance in its possession or control, but in no event less than a reasonable degree of care; and (iii) neither party will use or authorize the use of Confidential Information for any purpose other than to fulfill such party's obligations hereunder. Each party agrees that neither party will disclose to any third party any of the terms of this Agreement, which will be treated as Confidential Information, except to the receiving party's employees, contractors, and advisors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein, and neither party will use the terms of this Agreement for any purpose other than to fulfill such party's obligations under this Agreement, except as either party is otherwise required by law.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

**2.14.3. Injunctive Relief.** Each party acknowledges that the other party's Confidential Information contains trade secrets of such other party, the disclosure of which would cause substantial harm to such other party that could not be remedied by the payment of damages alone. Accordingly, such other party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of this Section 2.14.

**2.14.4. SBBC Duties.** SBBC will take reasonable steps to protect the BehaviorPlus*mobile*<sup>™</sup> Service from unauthorized access, copying, dissemination, and disclosure, and from other unauthorized use, and will report promptly to PCG any such use of which SBBC becomes aware. SBBC shall be responsible for the quality, integrity, and accuracy of all data entered and used in connection with the BehaviorPlus*mobile*<sup>™</sup> Service, including all deletions of such data by SBBC Users.

**2.14.5. PCG Duties.** PCG will take reasonable steps to protect the data that SBBC enters as part of its use of the BehaviorPlus*mobile*<sup>™</sup> Service. PCG will use technical, administrative, and physical safeguards to protect against unintentional loss and against unauthorized access, destruction, misuse, modification, and disclosure. Although no computer system or information can ever be fully protected against every possible hazard, PCG is committed to providing reasonable and appropriate security controls to protect information against foreseeable hazards. PCG recognizes that SBBC data is the property of SBBC. Upon contract termination, or at SBBC's request, PCG will provide all data to SBBC, including all database tables and a description of the table structure. PCG may keep a backup copy of the data unless otherwise agreed by the parties, subject to applicable law.

**2.14.6. Third Party Infringement.** PCG reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in the BehaviorPlus*mobile*<sup>™</sup> Service.

### **2.15 PRODUCT MARKING:**

**2.15.1. Ownership of PCG Trademarks.** SBBC acknowledges that PCG is and shall remain the owner of all right, title, and interest in and to each of PCG's Trademarks in any form or embodiment thereof, and is also the owner of all goodwill associated with PCG's Trademarks. All goodwill generated by SBBC use of the BehaviorPlus*mobile*<sup>™</sup> Service with respect to PCG's Trademarks shall inure exclusively to the benefit of PCG.

**2.15.2. Infringements.** SBBC shall promptly notify PCG of any third-party infringements of any of the PCG Trademarks used in connection with the BehaviorPlus*mobile*<sup>™</sup> Service, or any act of unfair competition by third parties relating to the PCG Trademarks, within a reasonable time of SBBC's knowledge of such infringements or acts.

## **ARTICLE 2 - SPECIAL CONDITIONS (Continued)**

**2.16 PROJECT MANAGER:** SBBC will designate a Project Manager as a single point of contact. It is understood that this individual will coordinate district staff to provide necessary feedback and final decisions to PCG in a timely manner.

**2.17 TERMS AND CONDITIONS:** Except as expressly provided herein, all terms and conditions set forth in the Agreement shall remain in force and effect for the contract term specified within this Agreement

**2.18 COPYRIGHT INDEMNIFICATION:** SBBC agrees to notify PCG promptly in writing of any threatened or pending judicial action brought against SBBC alleging SBBC's improper or unlawful use of any of the Services or PCG Property, including but not limited to its infringement of a valid United States copyright law, patent or regulation (all such claims being referred to collectively herein as "Infringement Claims"). PCG shall indemnify and defend the SBBC, including its board members, employees, and agents, against any and all of such Infringement Claims at its own expense and will pay (i) the legal fees of counsel engaged to defend SBBC and all of SBBC's related reasonable expenses, (ii) any costs and damages awarded against the SBBC in such action, and (iii) any amount agreed to be paid by SBBC in settlement of such action. PCG's foregoing obligations are subject to and conditioned upon SBBC's full cooperation with PCG in the defense of such Infringement Claims.

## **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 as to any rights or limits to liability existing under Section 768.28, Florida Statutes.

**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 contract.

**3.03 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.

**3.04 Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

### **ARTICLE 3 – GENERAL CONDITIONS (Continued)**

**3.05 Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

**3.06 Entire 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.

**3.07 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.

**3.08 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.

**3.09 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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**3.10 Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

**3.11 Governing Law.** 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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

**ARTICLE 3 – GENERAL CONDITIONS (Continued)**

**3.12 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**3.13 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.

**3.14 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.

**3.15 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.

**3.16 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 nullify any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**ARTICLE 3 – GENERAL CONDITIONS (Continued)**

**3.17 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: \_\_\_\_\_  
Name of District Representative  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Address

To PCG: Kristin Graf  
Name to be Provided by Other Party  
148 State Street, 10<sup>th</sup> Floor  
Address  
Boston, MA 02109  
Address

With a Copy to: \_\_\_\_\_  
Name to be Provided by Other Party  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Address

**3.18 Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**3.19 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.

**3.20 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 with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.


**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement through their duly authorized representatives.

**FOR SBBC**

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

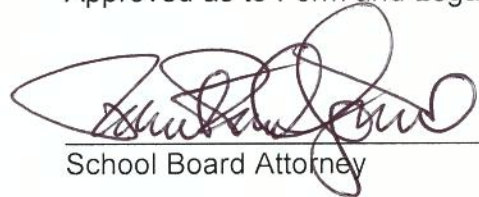
(Corporate Seal)

ATTEST:

  
James F. Notter  
Superintendent of Schools

By:   
Benjamin J. Williams, Chair

Approved as to Form and Legal Content:

  
School Board Attorney

FOR PUBLIC CONSULTING GROUP, INC

Public Consulting Group, Inc.

(Corporate Seal)

Attest: [Signature]  
Secretary

By: [Signature]

-Or-

[Signature]  
Witness

\_\_\_\_\_  
Witness

STATE OF MA

COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 2 day of December 2010 by Ashley Stephen P. Skinner of Public Consulting Group, Inc. He/She took an oath and is personally known to me or has produced Driver's License as identification.

My Commission expires:

(SEAL)

[Signature]  
Signature - Notary Public

My Commission expires:  
June 11, 2015

Ashley V. Miller  
Printed Name of Notary

## ATTACHMENT A

### Scope of Services

PCG will expand the current EMS service provided under the current EMS contract with the Parties to include an additional module to capture behavior events using BehaviorPlus™*mobile*. This component will provide the capability to capture frequency, duration, ABC and goal progress events for students through the use of a Personal Digital Assistant (PDA). The data will synchronize into EasyIEP™ where the users will be able to edit and view the data.

- PCG will provide SBBC with 300 HP iPAQs (110, 111 or equivalent model) with BehaviorPlus™*mobile* loaded on each device.
- A new flexible interface page will be added to EasyIEP™ that will include the following links:
  - Setup
  - View Behavior Logs
  - Log Behavior Logs
- One New User Type will be added to the system to allow users to have the ability to view the flexible interface page, view and edit behavior logs as well as view the reports listed below.

### Pricing

Total price for 300 devices and license agreements and use for initial term of contract for 3 years = \$340,100 at approximately \$106,700/1<sup>st</sup> year and \$116,700/year 2 and 3.

Year 1	Year 2	Year 3	Year 4 Option	Year 5 and Ongoing
<b>\$355/license</b>	<b>\$389/license</b>	<b>\$389/license</b>	<b>\$299/license</b>	<b>105% of Previous Year TOTAL</b>
Devices = \$81,000	Maint. = \$20,200	Maint. = \$20,200	Maint. = \$10,200	
Implmnt'n = \$11,700	License = \$51,000	License = \$51,000	License = \$51,000	
Support = \$14,000	Support = \$22,500	Support = \$22,500	Support = \$10,500	
Maint. = Included	Hosting = \$23,000	Hosting = \$23,000	Hosting = \$18,000	
License = Included				
Hosting = Included				
Training = *Included				
*See Section 2.10				
<b>TOTAL = \$106,700</b>	<b>TOTAL = \$116,700</b>	<b>TOTAL = \$116,700</b>	<b>TOTAL = \$89,700</b>	

### Devices

PCG will provide 300 HP iPAQs (model 110, 111 or equivalent) each loaded with the BehaviorPlus™*mobile*. SBBC will own and is responsible for replacing and/or servicing the devices after taking ownership. PCG can provide a quote for additional devices upon request.

If additional devices are purchased during the contract, the charge for installation, maintenance, license, hosting, and support is \$355 per device in Years 1, \$389 per device in Year 2-3, \$299 per device in Year 4, and 105% of the previous year's fee for Years 5 and ongoing.

## ATTACHMENT A (Continued)

### **Invoice**

- First invoice due upon receipt of devices in the amount of \$190,100
- Second invoice due one year from receipt of devices in the amount of \$150,000
- Subsequent invoices for option period, if any, will be due 30 days after the beginning of each period.

### **Training**

*Initial Training:* PCG will train 300 SBBC staff to use the BehaviorPlus™ mobile system. PCG will provide 15 training sessions (3 hours in length for each session) with a maximum of 25 users per session. At SBBC's option, these trainings may be provided in person or virtually via web-ex, video conference or some other method.

*Administrator Training:* PCG will provide 1 day of "Administrator" training to show designated staff how to access data, run reports, customize lists and dropdown menus if desired, and generally administer the database.

*Refresher Training:* In subsequent years of the contract, PCG will provide 1 day of refresher or new user training at no extra cost, consisting of up to 4 sessions lasting 1 hour and 30 minutes to accommodate a maximum of 25 users per session up to a total of 100 users for the cumulative day's training.

*Additional Training* may be contracted at a cost of \$2,500 per day per trainer. At SBBC's option, these trainings may be provided in person or virtually via web-ex, video conference or some other method.

*Training Manuals:* PCG will provide an electronic copy of training materials, including manuals and Frequently Asked Questions.

### **Support**

During the first year of this Agreement, PCG will provide Tier One support to SBBC and answer basic functionality questions about BehaviorPlus™ mobile and the corresponding EasyIEP™ functions.

For each subsequent year of the contract, SBBC will provide Tier One support to the users.

### **Reports**

Included in the annual fee, PCG will provide access to SBBC for use of the following set of reports:

- Duration Drill Down Report
- ABC Drill Down Report
- Frequency Drill Down Report
- Goal Progress Drill Down Report

## ATTACHMENT A (Continued)

### **Additional Charge**

If SBBC wishes to change a report, create a new report or request a new feature, the fee will be based on the current billing rates according to the PCG resource level fulfilling the request.

PCG current billing rates are: Senior Consultant \$255/hr; Consultant \$210/hr; Business Analyst \$160/hr; Programmer Analyst \$160/hr and Business Analyst Apprentice \$80/hr. SBBC will be provided with the total cost before any work is initiated by PCG.