

AGREEMENT

THIS AGREEMENT is made and entered into as of this day of , ,
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
(hereinafter referred to as "PCG"),
whose principal place of business is
148 State Street, 10th floor, Boston, Massachusetts 02109

SBBC and Public Consulting Group are referred to collectively herein as the "Parties".

WHEREAS, PCG desires to continue to provide to SBBC the Internet-based Electronic Management System ("EMS") currently implemented in the school District for Individual Education Plans, Education Plans for Gifted and Service Plans for Private School students and to assist administrators and teachers with the reporting requirements of the Individuals with Disabilities in Education Act of 2004 9PL 105-17) ("IDEA"), and to renew the license to access PCG's related proprietary systems and documentation including, but not necessarily limited to EasyFAX, the Gifted Module, Paperclip, Advanced Reporting, Due Process and Behavior Plus.

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 The School Board; 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 incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2014 and conclude on June 30, 2015. This Agreement will be for one year with two one-year renewals.

2.02 **Pricing: Option Period.** The pricing as detailed in Attachment B, constitutes a fixed cost for all licensed software, implementation, customization services, maintenance, support services, materials and services, instructional end-user and administrator training costs and any PCG or third party products for the Initial Term. The Parties agree that the firm fixed costs (a/k/a “Fixed Cost”) shall not include any products, services or expenses not specified in Attachment B, and is dependent upon both Parties fulfilling their respective obligations hereunder. In the event the Parties elect to extend the Term of this Agreement, the Parties agree that the pricing for Annual Support and Maintenance (on Attachment B) shall be in accordance with article 2.15.

2.03 **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 licensed services or of 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 foregoing obligations are subject to and conditioned upon SBBC’s full cooperation with PCG in the defense of such Infringement Claims.

2.04 **Order of Priority.** In the event of a conflict between documents, which are incorporated herein by reference, the Parties agree that the order of priority shall be as follows:

- A. This Agreement, then
- B. Attachment A and B

2.05 **Inspection of PCG’s Records by SBBC.** PCG shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All PCG’s Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC’s agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by PCG or any of PCG’s payees pursuant to this Agreement. PCG’s Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. PCG’s Records subject to this section shall include any and all documents pertinent to the

evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) PCG's Records Defined. For the purposes of this Agreement, the term "PCG's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

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

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to PCG's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

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

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by PCG in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by PCG. If the audit discloses billings or charges to which PCG is not contractually entitled, PCG shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

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

(h) **Inspector General Audits.** *PCG* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

2.7 **Independent Contractor.** SBBC and *PCG* are and at all times shall be and remain independent contractors as to each other. At no time shall either Party be deemed to the agent or employee of the other Party, and no joint venture, partnership, agency or other similar relationship shall be created or implied by virtue of this Agreement.

2.8 **Grant of License for EMS Service.**

2.09.1 Subject to the terms and provisions of this Agreement and SBBC's performance of all its obligations under this Agreement, *PCG* hereby grants SBBC, and SBBC hereby accepts, a non-exclusive, non-transferable right and license, during the Term only, to access via the Internet and use the EMS Service to the extent reasonably necessary.

2.9 **Grant of License for Documentation.**

2.9.1 *PCG* hereby grants SBBC, and SBBC hereby accepts, a non-exclusive, royalty-free license under *PCG*'s copyrights in *PCG*'s Documentation, during the Term only.

2.9.2 To incorporate *PCG*'s Documentation, in whole or in part, into other written materials prepared by or for SBBC with respect to EMS Service; and

2.9.3 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 EMS Service, and , if such SBBC Documentation

is in an on-line format, allow SBBC Users to make print copies of the same.

2.10 Restriction on License Grant.

- 2.10.1 SBBC shall not use or grant to any person or entity other than authorized SBBC Users the right to use the EMS Service. SBBC shall not distribute, market, or sublicense the EMS Service and SBBC Users shall not distribute, market, or sublicense the EMS Service.
- 2.10.2 SBBC shall ensure the appropriate proprietary notices indicating PCG's Intellectual Property Rights in the EMS 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.
- 2.10.3 SBBC shall not distribute or knowingly permit distribution of EMS documentation or Intellectual Property to any individual or organization that is not part of SBBC or an authorized SBBC User.
- 2.10.4 SBBC shall not transfer or permit access to the EMS Service to any third party or permit any SBBC User to transfer or allow access the EMS Service to any unauthorized person.
- 2.10.5 SBBC shall not decompile, disassemble, or otherwise attempt to reverse engineer the EMS Services or any portion thereof and shall not permit any SBBC User to decompile, disassemble, or otherwise attempt to reverse engineer the EMS Services or any portion thereof.

2.11 Reservation of Rights.

- 2.11.1 Subject to the license rights granted to SBBC by this section 2.12.1 of Article 2, all right, title, and interest in and to EMS Service, including the Intellectual Property Rights and technology inherent in EMS 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 EMS Service, in whole or in part, is granted in this Agreement, except as in 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 EMS Service or PCG's Trademarks.
- 2.11.2 Except as expressly authorized by this Agreement, SBBC shall not use, display, copy, distribute, modify, or sublicense the EMS Service. In addition, SBBC shall not modify, transfer, rent, lease, reverse engineer, decompile, or disassemble the EMS 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 propriety

notices placed on, or contained within the EMS Service and expressly agrees not to circumvent, or knowingly permit third parties to circumvent, any security or other protections within the EMS Service.

2.12 Access to EMS Service

2.12.1 PCG will continue to provide access to the EMS Service to SBBC via a private account accessed through the Internet, from which SBBC will be capable of using the EMS Service as permitted by this Agreement. PCG will not provide the Internet connectivity to SBBC, and obtaining and maintaining such connectivity will be the sole responsibility of SBBC. PCG, will 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.

2.13 Support.

2.13.1 General Technical Support. PCG will continue to provide technical support and make available a number of qualified personnel to SBBC during the Term to provide such support to SBBC. This personnel will be skilled in the functioning and application of the EMS Service sufficient to answer questions and provide support.

2.13.2 E-mail Support. E-mail support will be provided via the designated links on the EMS Message Board page.

2.13.3 Telephone Support. Telephone support will be provided by PCG via a toll free telephone number. This number connects the SBBC User with the EMS help desk.

2.13.4 Project Support. PCG agrees to provide consulting services support to SBBC for unique projects on an as-available basis, upon SBBC's request and at PCG's standard hourly billing rates.

2.14 Training

2.14.1 Refresher training of staff shall be provided to SBBC at no additional cost up to a maximum of five days during the initial term. Training will be provided in sessions to accommodate no more than 25 trainees at one particular time. PCG will also provide one day of "Administrator" training to show designated staff how to access data, run reports, etc. In subsequent years of the contract, PCG will provide one day of refresher training at no additional cost. Additional trainings of SBBC staff as requested by an authorized representative of the School District may be contracted at a cost of \$2,000 per calendar day per trainer, unless other terms are agreed to in writing signed by the Parties.

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

2.14.3 Training Types. Each training session will be divided into two parts: (i) Lecture and (ii) Hands-On Practice.

2.15 Payment. In consideration of the licenses granted by PCG to SBBC under this Agreement, SBBC shall pay PCG an Annual Itemized License Fee as set forth in **Attachment B**.

2.15.1 Annual Fee.

- (a) The Annual Fee for the Initial Term shall be due and payable to PCG in advance, within 30 days of the Effective Date. Subsequent Annual Fees shall be due as set forth in **Attachment B** and payable to PCG on or before the fifteenth (15th) day of the calendar month preceding the next Renewal Term. Should this Agreement be terminated prior to the expiration of the current Term, such pre-paid fees shall be pro-rated and refundable of the remaining un-used Term.
- (b) The Annual Fee for each Renewal Term shall be 105% of the price for the previous Term (Initial Term or Renewal Term), unless otherwise agreed in advance by the Parties.

2.16 **Limited Warranty.** PCG represents and warrants that it has the right to license the EMS Service as specified by this Agreement, and that the use of the EMS 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 EMS Service hereunder, and during the ninety (90) day period following the installation of each Update, Upgrade and New Release hereunder, the EMS Service will operate in accordance with the applicable Documentation, provided that the EMS 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 prove access to the EMS Service. PCG shall use reasonable efforts to maintain the EMS service and to correct any problems that may arise with the use of the EMS Service.

2.17 **DISCLAIMER.** PCG SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EMS PRODUCTS OR ANY OTHER GOODS OR SERVICES PROVIDED BY PCG, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

2.18 **Ownership.** SBBC Acknowledges that PCG owns the EMS Service, that the EMS Service is not generally published, and that the EMS Service embodies the Confidential Information and Trade Secrets of PCG. All right, title, and interest in and to the EMS Service, including, without limitation, all copyrights, trade secret rights, and other intellectual property rights pertaining in and to the EMS 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 for purposes of creating an Individualized Education Plan and any and all reports produced as a result of using the EMS Service. SBBC acknowledges that PCG shall have the right to aggregate and 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.

2.19 **Confidentiality Obligations.** Subject to applicable law, 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; or in response to a request for public records under Section 119.07, Florida Statutes; (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 acknowledges that this agreement is a public record under section 119.07, Florida Statutes and that no material shall be considered to be confidential information unless it is exempt from public inspection under Section 119.07, Florida Statutes.

2.20 **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 2.21 of this Agreement.

2.21 **SBBC Duties.** SBBC will take reasonable steps to protect the EMS 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 EMS Service, including all deletions of such data by SBBC Users.

2.22 **PCG Duties.** PCG will take reasonable steps to protect the data that SBBC enters as part of its use of the EMS 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, and within 14 school days, PCG will provide data to SBBC, including all database tables and description of the table structure. PCG may keep a backup copy of the data unless otherwise agreed by the parties, subject to applicable law.

2.22.01 **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 EMS Service.

2.23 **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's use of the EMS Service with respect to PCG's Trademarks shall inure exclusively to the benefit of PCG.

2.24 **Effect of Termination.** Upon termination or expiration of this Agreement: (i) all licenses granted to SBBC by PCG will terminate; and (ii) all SBBC User access to the EMS Service will terminate.

2.25 **No Damages for Termination.** Neither party will be liable to the other for damages of any kind, including incidental or consequential damages, or lost profits, on account of the termination or expiration if this Agreement in accordance with its Terms. Each party waives any right it may have to receive any compensation or reparations on termination or expiration of this Agreement, other than as expressly provided in this Agreement. Neither party will be liable to the other on account of termination or expiration of this Agreement for reimbursement or damages for the loss of goodwill, prospective profits, or anticipated income, or on account of any expenditures, investments, leases, or commitments made by either party or for an other reason whatsoever based upon or growing out of such termination or expiration.

2.26 **Additional Service.** The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement signed by each party.

2.27 **Cooperative Purchasing.** The Terms and Conditions of this Agreement may be extended to any other school district or other entity to permit those other entities to contact with PCG for the goods or services set forth in this Agreement, subject to the mutual Agreement of PCG and the other entity, which may include different payment terms. School District assumes no authority, liability, or obligation to PCG or to any other entity with respect to any such resulting contract.

2.28 **Waiver and Non-Exclusive Remedy.** No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights. Except as otherwise specified in this Agreement, the exercise by either party of any remedy under this Agreement is without prejudice to its other remedies under this Agreement or otherwise.

2.29 **Infringements.** SBBC shall promptly notify PCG of any third-party infringements of any of the PCG Trademarks used in connection with the EMS 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.

2.30 **Patent or Copyright Infringement- Indemnity.** PCG shall hold harmless and defend SBBC against any and all suits on any claim that the use by SBBC of the deliverables provided under this agreement by PCG infringes in any United States patent right or copyright, provided PCG is promptly notified in writing of any such suit or claim against SBBC, and further provided that SBBC permits PCG to defend, compromise or settle the same, and gives PCG all available information, reasonable assistance, and authority to enable PCG to do so. PCG shall not be liable under this section if the infringement arises out of SBBC's activities after PCG has notified SBBC that PCG believes in good faith that SBBC's activities may result in such infringement. This indemnity shall not apply to any infringement arising out of; (i) the alteration or modification of the deliverables by SBBC; (ii) any use of the deliverables which is not authorized herein; or (iii) use of the deliverables with any computer hardware or software not supplied or approved by PCG. This provision sets forth PCG's sole obligation and liability and SBBC's exclusive remedy for any propriety rights infringement by the deliverables. PCG's obligations hereunder specifically exclude any obligations with respect to any patent, copyright, trademark or other intellectual property right outside of the United States.

2.31 **Limitation of Liability** Neither Party shall be liable to the other Party for damages for any cause related to or arising out of this Agreement, any attachment, or the relationship contemplated hereby, whether in contract, negligence or tort, in an amount that exceeds the total fees and charges paid by SBBC to PCG under this Agreement during the three (3) year period immediately prior to the event which gave rise to such damages hereunder. Neither party shall be liable to the other Party under any legal theory, whether in an action based on contract, tort (including negligence and strict liability) or any legal theory, however arising, for any incidental, special, exemplary or consequential damages, including but not limited to damages resulting from lost profits, interruption of business, loss of data or program, loss of use of computer hardware, or loss of goodwill, even if advised of the possibility of such damages. Notwithstanding the foregoing, this section shall not apply with respect to the application of Section 2.30 and 2.33 of this Agreement.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its 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.

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 caused by 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.

ARTICLE 3 – GENERAL CONDITIONS

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

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

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall pay the other party for all services rendered through the effective date of termination.

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

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

3.08 **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.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.11 **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.

3.12 **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.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

3.16 **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.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

3.20 **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.

3.21 **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.

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

3.23 **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.

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

3.25 **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: *Chief Academic Officer*
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: *Executive Director of ESE & Support Services*
The School Board of Broward County, Florida
1701 NW Twenty-Third Avenue, Second Floor
Fort Lauderdale, Florida 33311

To Public Consulting Group: *President/ Chief Executive Officer*
PUBLIC CONSULTING GROUP, INC.
148 State Street, 10th Floor
Boston, Massachusetts 02109

With a Copy to: Associate Manager
Public Consulting Group, Inc.
500 East Broward Blvd, Suite 1420
Fort Lauderdale, Florida 33312

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

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

FOR SBBC

(Corporate Seal)

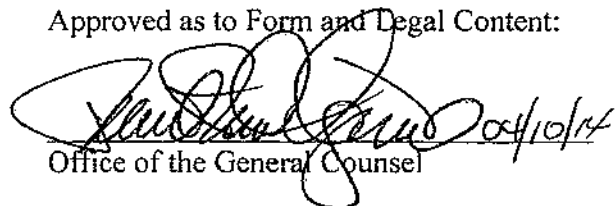
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Patricia Good, Chair

Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:


Office of the General Counsel

FOR Public Consulting Group

(Corporate Seal)

ATTEST:

[Signature], Secretary
-or-

Public Consulting Group

By [Signature]

Witness

Witness

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

STATE OF Massachusetts

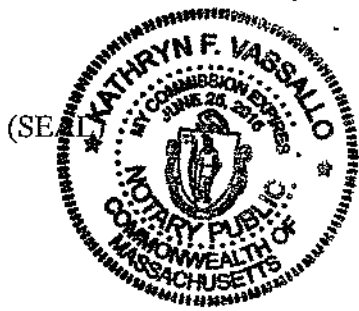
COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 8th day of April, 2014 by William S. Mosakowski of _____
Name of Person

Public Consulting Group Inc, on behalf of the corporation/agency.
Name of Corporation or Agency

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

My Commission Expires:
June 25, 2015



Kathryn F Vassallo
Signature – Notary Public

Kathryn F Vassallo
Printed Name of Notary

Massachusetts / County of Suffolk
Notary's Commission No.

ATTACHMENT A

DEFINITIONS

Definitions. In addition to the terms defined elsewhere in this Agreement, terms appearing in capital letters shall have the following meaning:

- (a) **Annual Fee** means the renewable license fee that is to be paid by SBBC to PCG for twelve (12) consecutive months of access to the EMS Service, calculated and payable in accordance with Attachment B which is attached to this Agreement.
- (b) **Confidential Information** means information designated or treated as confidential by either party, or which under the circumstances surrounding disclosure should in good faith be treated as confidential, including, without limitation: (a) computer programs, electronic codes, algorithms, know-how, formulas, processes, ideas, data, inventions (whether or not patentable or registerable under patent, copyright, or similar statutes), schematics, teaching and development techniques, trade secrets, improvements, research projects, and code; (b) information about costs, profits, markets, sales customers, or clients; (c) technical, business and financial plans; (d) employee personnel files and compensation information; (e) discoveries, developments, designs, improvements, regardless of the form of communication in each case, including extracts or summaries; and (f) any record (whether in print, electronic, or any other medium) maintained by SBBC, a SBBC employee or agent, or a party acting on SBBC's behalf, which is directly related to an identified student. "Confidential Information" also specifically includes EMS, any third-party information disclosed to either party obligations of confidentiality, and the identity of or any medical, financial, or personal information pertaining to anyone within PCG or SBBC. Notwithstanding the foregoing, however, "Confidential Information" does not include information that: (i) was rightfully in possession of or known to the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party; (ii) is, or subsequently becomes, legally and publically available without breach of this agreement; (iii) is rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality; or (iv) is disclosed by the receiving party under a valid order of a court or government agency, provided that the receiving party provides prior written notice to the disclosing party of such obligation and the opportunity to oppose such disclosure.
- (c) **Documentation** means all technical information, training materials, instructions, manuals and diagrams (in printed, electronic, or other media) pertaining to the EMS Service.
- (d) **EMS Service** means (i) the Internet-based services identified in this Agreement; (ii) all products related to such services; (iii) all New Releases, Updates and Upgrades applicable to the foregoing and generally released by PCG; and (iv) the Documentation developed by PCG for distribution and use in combination with the foregoing.
- (e) **Intellectual Property Rights** means patent rights, copyrights (including but not limited to copyrights in audiovisual works and applicable Moral Rights), trade secrets rights, trademark rights, and any other intellectual property rights recognized by the law of each applicable jurisdiction in which licenses for the EMS Service are marketed and licensed by PCG.

ATTACHMENT A

- (f) **Moral Rights** means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right existing under the law of any country in the world or under any treaty.
- (g) **New Releases** means any new revision of EMS Service that includes significant enhancements which add new features to the EMS Service and which generally will be designated by a new version number either to the left of the decimal point (e.g., from v2.03 to v3.00) or one decimal place to the right of the decimal point (e.g., from v2.03 to v2.10).
- (h) **Permitted Use** means use of the EMS Service by employees, contractors and others affiliated with or authorized by SBBC only for SBBC's internal use.
- (i) **SBBC User** means any employee, contractor and/or authorized user of "SBBC" who will be granted access to the EMS Service. Notwithstanding the foregoing, SBBC shall not grant access to the EMS Service to any competitor of PCG providing similar electronic management systems.
- (j) **Term** means collectively and individually the Initial Term and Renewal Term as defined in Article 2.
- (k) **Trademarks** means all trademarks, trade names, service marks and logos now owned or hereafter acquired by either party, and all trademarks, trade names, service marks and logos identifying or used in connection with their product or service offerings, whether or not registered under the laws of a particular jurisdiction or territory.
- (l) **Updates** means any new revisions and/or modifications required to be made to the EMS Service and/or documentation in order to correct operational errors.
- (m) **Upgrades** means any new revision of the EMS Service that includes corrections and minor modifications to existing features and which generally will be designed by a new version number which has changed from the prior number only two places to the right of the decimal point (e.g. from v2.02 to v2.03).

Proposed Contract Fees Attachment B

Cost described below are annual fees for July 1, 2014 through June 30, 2015.

EasyIEP	\$65,000		\$140,000	\$205,000	\$4,100.00	\$200,900.00
Gifted	\$20,000		\$15,000	\$35,000	\$700.00	\$34,300.00
Behavior	\$18,000	\$51,000	\$20,700	\$89,700	\$1,794.00	\$87,906.00
Due Process	\$35,000		\$10,000	\$45,000	\$900.00	\$44,100.00
Advanced Reporting			\$5,000	\$5,000	\$100.00	\$4,900.00
PSSP			\$5,000	\$5,000	\$100.00	\$4,900.00
Enhancements				\$25,000	\$500.00	\$24,500.00
Medicaid Data Exchange				\$12,000	\$240.00	\$11,760.00
EasyFAX				\$30,000	\$600.00	\$29,400.00
Paperclip	\$15,000		\$8,000	\$23,000	\$460.00	\$22,540.00
User Calendar	\$2,000		\$3,000	\$5,000	\$100.00	\$4,900.00
Total				\$479,700	\$9,594	\$470,106

Medicaid Data Exchange

This fee covers the sending and receiving the defined data sets for services on a schedule mutually agreed upon between PCG and SBBC. Once the data feeds have been uploaded and determined acceptable by SBBC, any edits to the data feeds, billing, and/or reporting on the Medicaid scope of work would be at a separate cost. Medicaid billing would be processed and invoiced at the current cost (pro-rated).

EasyFax

Fee listed in table above is for 2 dedicated fax lines.

Paperclip

Public Consulting Group will store all files uploaded through the PaperClip functionality for the length of the EasyIEP™ contract. If the contract is renewed, additional years of storage will be negotiated between PCG and School System. If the EasyIEP™ contract is not renewed or terminated, PCG will coordinate with School System to electronically transfer all of School System's data to School System by use of magnetic tape, compact disk, FTP site or other reasonable and secure method.

Storage capacity for price listed above is 100GB/year. Additional storage may be purchased by the client during the term of this contract.