

SUBSCRIPTION AGREEMENT for CLASSWELL PREMIUM SERVICE

This is a special agreement made between **Classwell Learning Group Inc.**, ("Classwell"), a Delaware Corporation, with offices at 31 St. James Place, Suite 350, Boston, Massachusetts 02116, and **The School Board of Broward County, Florida** ("Customer"), through a Goals 2000 Grant.

Section 1. Customer Subscription

Classwell will provide subscription educational services ("Premium Services") in accordance with the Terms of Use posted on its website. Classwell grants to Licensed Users a non-exclusive, non-transferable and limited right to access and use the Premium Services. "Licensed Users" shall include only natural persons who:

- a) register to use the Web Site;
- b) agree to the terms of Classwell's Privacy Policy and of Classwell's Terms of Use Agreement;
- c) in the case of children under 13 years of age, have obtained their Parent's written consent to use and access the Web Site; and
- d) are described by any of the following:
 - i. A Teacher or Administrator, employed or retained by Customer, whose principal work location is the Designated Site;
 - ii. A regularly enrolled Student in grades pre-K through 12 who attends classes or takes instruction principally at the Designated Site; or
 - iii. A Parent of such a regularly enrolled Student.

Classwell claims and reserves all rights now allowed by law or hereinafter granted in the website and the Services provided hereunder. Only Licensed Users associated with the Designated Site specified in Exhibit A may access the Premium Service, for the term therein specified. Customer shall use the Services only for the purpose of education of its regularly enrolled Students and shall not use the Services for any commercial purpose whatsoever.

Section 2. Customer Responsibilities.

Any Customer responsibilities required under this Agreement may be performed on behalf of Customer by Grant Facilitators of the Goals 2000 Grant. Customer shall make reasonable efforts to administer and control activities of Licensed Users so as to comply with this Agreement, and Customer shall be responsible for supervision of students in their use of the Services. Customer shall employ reasonable procedures to prevent unauthorized copying.

Section 3. Parental Consent.

Customer is responsible for obtaining the consent of each student's parent to the collection, use, and disclosure to Classwell of each student's personal information. No password shall be provided to any student under the age of 13 unless Customer has obtained the express written consent of the student's parent. At all times Customer

shall request, gather, and maintain information in full compliance with the Children's Online Privacy Protection Act of 1998 (COPPA) and the Family Educational Rights Protection Act (FERPA).

Section 4. Limited Warranty

Classwell warrants to Customer that the Premium Service will perform substantially in accordance with the Documentation accompanying the Service, and Classwell will either replace or correct components that do not perform substantially in accordance with the Documentation, without charge. Certain hazards are inherent in electronic communication, which may cause delays, omissions and inaccuracies. **Classwell does not warrant that the Services will be error-free, uninterrupted or without defects, or that the Web Site or Services will meet any particular standard of performance. Classwell disclaims any warranties of merchantability and fitness for a particular purpose.**

Section 5. Liability.

Each party 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 contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable. 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 manner arising out of any contract.

Section 6. Special Pricing.

By special arrangement between Classwell and Customer to support Oriole Elementary, Lauderhill Middle, and Boyd H. Anderson for 1 year, the special rate for the initial year of this agreement will be \$16,000.00 (approximately \$40.00 per child).

Section 7. Patent or Copyright Infringement -- Indemnity.

Classwell shall hold harmless and defend Customer against any and all suits based on any claim that the use of the Services by Customer under this Agreement infringes on any United States patent right or copyright, *provided* Classwell is promptly notified in writing of any such suit or claim against Customer, and *further provided* that Customer permits Classwell to defend, compromise, or settle the same, and gives Classwell all available information, reasonable assistance, and authority to enable

Classwell to do so. This indemnity shall not apply to any infringement arising out of: (i) the alteration or modification of the Services by Customer; (ii) any use of the Services which is not authorized herein or not used in accordance with the applicable documentation; (iii) use of the Services with any computer hardware or software not supplied or approved by Classwell. This provision sets forth Classwell's sole obligation and liability and Customer's exclusive remedy for any proprietary rights infringement by Classwell.

Section 8. 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.

Section 9. Termination.

Customer may terminate this Agreement without cause upon thirty (30) day's written notice to Classwell. In the event that Customer exercises such right of termination,

Classwell is entitled to payment for all services rendered through the date of delivery of the notice of termination.

Section 10. 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.

Section 11. 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.

The School Board of Broward County, Florida

By: _____
(signed)
Name: Paul D. Eichner, Esquire
Title: Chairperson

Date

(Corporate Seal)

ATTEST:

Franklin L. Till, Jr., Superintendent of Schools

Dated: _____, 2001.

Classwell Learning Group Inc.

Deborah B. Sorgi

(signed)
Name: Deborah B Sorgi
Title: Senior VP of Sales

31 July 2001

Date

Approved as to form:

School Board Attorney

EXHIBIT A

Effective Date: August 21, 2001

End Date: June 14, 2002

Customer: School Board of Broward County

Site: The Premium Service will be used only at the following location (s):

Lauderhill Middle School
 1909 N.W. 49th Ave.
 Lauderhill, FL 33313
 954-497-3950

Oriole Elementary
 3081 N.W. 39th Street
 Lauderdale Lakes, FL 33309
 954-497-3930

Boyd H. Anderson High School
 3050 N.W. 41st Street
 Lauderdale Lakes, FL 33309
 954-497-3800

Site Administrator for Customer:

Nancy Barba
 Name
Director, Program Development and Alignment
 Title
954-767-8547
 Telephone
954-768-8926
 Fax Number
BarbaNancy@ets01.broward.k12.fl.us
 E-mail Address

LICENSE FEE

License Fee - Number of Students: Lauderhill – 1,219 students	<u>\$16,000.00</u>
Oriole - 851 students	
Boyd Anderson-2,786 students	
(Only 40 will participate in the grant project)	

Premium Service includes one free day of training for the Site Administrator and up to 5 teachers (Classwell may combine staff from multiple sites for training). Also included are a Getting Started Manual, on-line tutorial and help, product upgrades, and on-going customer care via telephone and web-enabled technologies.

OPTIONAL SERVICES FEES

Additional on-site training may be purchased and Customized Implementation Plans (CIP's) may be purchased at the rate of \$1500 per day plus travel & reasonable expenses. Other Additional Services are billable at the rate of \$150.00 per hour. (See paragraphs 2.3 through 2.6).

Additional On-Site Training	Estimated Fee	- days @ \$1,500 =	\$ N/A
Customized Implementation Plans	Estimated Fee:	- days @ \$1,500 =	\$ N/A

Print On Demand Services

15,000 Pages Included in Premium Service at no additional charge

- Additional Pages at N/A \$ N/A

Additional Services	Estimated Additional Service Fee	\$ N/A
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Roster

Site Administrator

Name

E-Mail Address

Nancy BarbaBarbaNancy@ets01.broward.k12.fl.us

Teachers

Name

Grade Level

E-Mail Address

Phillip Patton6-8pattonphillip@broward.k12.fl.usRamon DawkinsPk-5cohencarol@broward.k12.fl.usJulie Biancard9-12biancardjulie@broward.k12.fl.us