



LICENSED PRODUCT AGREEMENT

This Licensed Product Agreement ("Agreement") is by and between NCS Pearson, Inc., contracting through its Pearson Digital Learning business unit, having offices at 827 West Grove Avenue, Mesa, Arizona 85210 ("PDL"), and The School District of Palm Beach County, Florida, with offices at 3326 Forest Hill Boulevard, West Palm Beach, Florida 33406 ("Customer").

1. DEFINITIONS. For purposes of this Agreement, the following terms shall have these agreed-upon meanings:

1.1 **Documentation** shall mean all written user information, whether in electronic, printed or other format, delivered to Customer by PDL with respect to Licensed Product, now or in the future, including, but not limited to, teacher and student resource materials for use with the software component of Licensed Product, user guides or manuals, training materials, and other publications of PDL that contain, describe, explain, are used in conjunction with, or otherwise relate to Licensed Product.

1.2 **Licensed Product** shall mean all software or other electronically readable or electronically delivered product or content, and all related Documentation, licensed to Customer pursuant to this Agreement now or in the future, and regardless of the language, medium, format or system in which they may be accessed, stored, recorded or delivered; provided, however, that Licensed Product shall not include any Third Party Software.

1.3 **Licensed Site(s)** shall mean those schools or other site(s) at which Customer is authorized to utilize Licensed Product, as specified on the applicable Order Schedule.

1.4 **Order Schedule** shall mean a schedule designating Licensed Product to be licensed to Customer hereunder, the Licensed Sites, the fees payable to PDL for such license and related support and services, and, if applicable, other information specific to Customer's order for Licensed Product.

1.5 **Third Party Software** shall mean all software or other electronically readable or electronically delivered product or content identified as Third Party Software by PDL, and any related documentation supplied to Customer. Any product designated as Third Party Software is licensed by an entity other than PDL, under different license terms than those set forth herein.

2. LICENSE GRANT.

2.1 **Basic Terms.** Subject to the terms and conditions of this Agreement, including the product-specific terms and conditions set forth in the Supplemental License Terms and Conditions attached hereto and incorporated herein by reference, PDL grants to Customer a restricted, personal, non-exclusive, non-transferable license to use Licensed Product to support its internal educational functions, only at the Licensed Site(s). In no event may Licensed Product be used other than at the Licensed Site(s) or made available via a network or otherwise to any school (even if within Customer's district) or school district other than the Licensed Site(s), or to any person other than employees of or students at the Licensed Site(s), unless otherwise specifically provided in this Agreement. Unless otherwise specified herein, Licensed Product may be used in executable code form only; source code to Licensed Product will not be provided. Licensed Product shall only be used as expressly authorized by this Agreement. Licensed Product includes only those specific software products (and related Documentation) identified on an Order Schedule or otherwise supplied to Customer pursuant to this Agreement, and for which any applicable license fees are paid by Customer. In the event that the media containing Licensed Product also contains certain other portions or modules of software not identified as Licensed Product on an Order Schedule and for which Customer has not paid PDL's applicable license fees, such other portions or modules of software are not licensed to Customer and may not be used or accessed by Customer hereunder.

2.2 **Copies.** Customer shall not make copies of or otherwise reproduce any Licensed Product, including Documentation, without the express written permission of PDL, except that Customer shall have a license to make a single copy of any software component of any Licensed Product, in executable code form, only for backup or archival purposes, and that Customer may print, for Customer's internal use, an unlimited number of copies of any Documentation that is provided electronically. Customer shall retain

and include all of PDL's and its licensors' copyright and other proprietary rights notices on any such backup or archival copies of Licensed Product or any other copies of Licensed Product made with the permission of PDL. Customer shall not otherwise reproduce Licensed Product, except as required by law or court order.

2.3 License Term. Each license granted under this Agreement shall be perpetual, unless a different term is specified in the Supplemental License Terms and Conditions or a schedule to this Agreement, or this license is terminated earlier under the provisions of this Agreement. The term of the license shall commence on the date of shipment of Licensed Product to Customer pursuant to this Agreement.

3. RESTRICTIONS ON USE OF LICENSED PRODUCT.

3.1 Intellectual Property Rights. Licensed Product is proprietary to PDL and/or its licensor(s) and is protected by copyright, trade secret, and other intellectual property rights. The placement of a copyright notice on any portion of Licensed Product does not mean that such portion has been published and will not derogate any claim of trade secret protection for the same. Title to all complete or partial copies, and all applicable rights to copyrights, patents, trademarks and trade secrets in Licensed Product, are and shall remain the property of PDL or its licensor(s).

3.2 Confidentiality. Customer agrees to keep Licensed Product supplied by PDL confidential and to utilize reasonable efforts to protect and prevent Licensed Product from unauthorized disclosure or use. Customer shall not transfer, assign, provide or otherwise make Licensed Product available, in any form or via any medium (including, without limitation, broadcast or transmission by telephone, cable, satellite, Internet or interactive television), to another party (including, without limitation, Customer's school districts or schools that are not Licensed Sites), unless such use is specifically authorized under this Agreement, without the prior written consent of PDL. Any attempted sublicense, assignment or transfer of any rights, duties or obligations by Customer in violation of this Agreement shall be void. Customer agrees to maintain records of the number and location of the original and all copies of Licensed Product, and shall be responsible for the use, operation, storage, management and safety of the copies of Licensed Product in its possession or control. All copies of Licensed Product except those made for backup and archive purposes will be retained at the Licensed Site(s). Upon request, Customer shall provide PDL with access to Customer's applicable records and computer systems to enable PDL to audit Customer's compliance with the provisions of this Agreement. Before disposing of any media containing Licensed Product, Customer agrees to take all necessary steps to destroy or erase all Licensed Product codes, programs and other proprietary information of PDL and its licensors contained in such media. Customer shall provide notice to PDL immediately, in writing, of any unauthorized use or distribution of Licensed Product of which Customer becomes aware and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated.

3.3 Modifications. Customer shall not attempt to modify, decompile, disassemble or reverse engineer Licensed Product, or provide any person with the means to do the same, without PDL's and its licensors' express written authorization. Should PDL permit Customer to create any modifications, enhancements or other works that contain complete or partial copies of Licensed Product, incorporate any trade secret information contained in Licensed Product, are created with the benefit of proprietary information or know-how contained in Licensed Product, or constitute translations, conversions, compilations, or updated or derivative works of Licensed Product, then: (a) all right, title, and interest in and to such modifications, enhancements or other works shall be the property of PDL; (b) Customer hereby assigns all rights to same to PDL and agrees to cooperate with PDL and fulfill any reasonable request of PDL with respect to preserving PDL's proprietary rights in such modifications, enhancements or other works; and (c) Customer acknowledges that PDL will not provide any support for any such modifications, enhancements or other works and that such modifications, enhancements or other works may impact the desired operation of the Licensed Product. Should PDL permit Customer to utilize any third party to create any such modifications, enhancements or other works, Customer shall obtain such third party's written agreement to the terms of this Section 3.3 in connection with the creation of same.

4. SUPPORT AND SERVICES. PDL shall provide any support and other professional services ordered by Customer to Customer pursuant to the terms of PDL's Support and Services Policies, a copy of which is attached hereto and incorporated herein by reference, and the other terms of this Agreement.

5. CHARGES AND PAYMENTS.

5.1 Fees and Taxes. Customer agrees to pay PDL the fees set forth on all applicable schedules to this Agreement, together with any other charges made in accordance with this Agreement, and all applicable sales, use or other taxes or duties, however designated, except for taxes based on PDL's net income. If Customer claims tax exempt status, Customer agrees to provide PDL with evidence of such tax exemption upon PDL's request. To the extent that such tax exemption cannot be properly claimed or

does not extend to certain taxes or transactions, Customer shall be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon PDL's net income). All pricing set forth in this Agreement is in United States dollars.

5.2 Payment Terms. All charges set out in this Agreement shall be due and payable according to PDL's invoice terms.

6. THIRD PARTY SOFTWARE LICENSE TERMS. Any Third Party Software is provided to Customer pursuant to separate license agreement(s) between Customer and the third party supplier which will be provided to Customer by the third party supplier. All support, warranties, and services related to Third Party Software are provided by the licensor of the Third Party Software under such third party's terms and conditions, and not by PDL, unless otherwise specifically provided under this Agreement. Only Sections 5, 6, 7.4 and 9 of this Agreement apply to Third Party Software and any related support and services set forth in this Agreement.

7. LIMITED WARRANTIES; EXCLUSIONS.

7.1 Conformity to Specifications. PDL cannot assure that the performance of Licensed Product will be uninterrupted or error-free, or that all Licensed Product problems will be corrected, despite PDL's reasonable efforts to do so. PDL does, however, warrant for a period of ninety (90) days after the original shipment of Licensed Product hereunder that such Licensed Product, as originally delivered under this Agreement, will substantially conform to the applicable description and specifications contained in the Documentation delivered with such Licensed Product. The foregoing warranty shall not apply to Licensed Product that has been modified in any way by Customer, damaged, or used in a manner that does not conform to the instructions and specifications contained in the Documentation for such Licensed Product or to PDL's hardware specifications for the applicable Licensed Product, which are available upon request. In the event that Licensed Product does not meet the requirements of this warranty, Customer shall be responsible to so notify PDL in writing during the warranty period and provide PDL with sufficient detail to allow PDL to reproduce the problem. After receiving such notification, PDL will undertake to correct the problem, either itself or through its licensors, by programming corrections, reasonable "work-around" solutions and/or Documentation corrections. If PDL is unable to correct the problem after a reasonable opportunity, PDL will refund the license fees paid for such Licensed Product and Customer's license to use such Licensed Product will terminate. The foregoing states the complete and entire remedies that Customer has under this warranty. PDL shall have no responsibility for any warranty claims made outside of the warranty period. This warranty does not apply to updates, enhancements, or other new releases of Licensed Product, if any, that may be supplied to Customer pursuant to PDL's Support and Services Policies.

7.2 Media. In the event that any CD-ROMs, DVD's or other physical media through which Licensed Product is provided to Customer are damaged or defective upon receipt by Customer, PDL will replace such physical media at Customer's request.

7.3 Hardware Warranties. If, in conjunction with Customer's licensure of Licensed Product and purchase of associated support and services from PDL, Customer is purchasing any hardware through PDL, Customer acknowledges that such hardware purchase is being facilitated by PDL as an accommodation to Customer only. The warranties on any hardware not manufactured by PDL will be limited to those provided by the manufacturers of such hardware and/or the vendors through which such hardware is being supplied. PDL will pass through any manufacturer's or other vendor's warranty to the extent permitted by the manufacturer or other vendor, as applicable. Customer agrees to look solely to the applicable manufacturer or other vendor, and not to PDL, to fulfill any such warranties and any maintenance, repair, or other service obligations related to such hardware; provided, however, that for hardware purchased through a PDL-approved vendor or for which Customer purchases a Hardware Certification (as described in Section 2.3 of the Support and Services Policies attached hereto), PDL will provide limited support services to attempt to resolve hardware-related issues that are impacting Customer's use of Licensed Product, as set forth in the Support and Services Policies. Customer further agrees that any claims related to any such hardware, whether for breach of warranty or otherwise, must be made directly against the applicable manufacturer or other vendor, and not against PDL, and that PDL shall have no liability whatsoever in connection with such claims.

7.4 DISCLAIMER OF OTHER WARRANTIES AND CONDITIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE PRODUCTS, SUPPORT OR SERVICES THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES OR CONDITIONS OTHERWISE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. THE LIMITED WARRANTIES SET FORTH IN SECTIONS 7.1 AND 7.2 GIVE CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

8. REMEDIES AND TERMINATION.

8.1 Termination. PDL shall have the right to suspend performance under this Agreement in the event that Customer is in breach of any of its obligations under this Agreement or threatens to breach any of its obligations under Section 3. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period, provided that PDL shall have the right to terminate this Agreement immediately upon written notice in the event that Customer breaches, or threatens to breach, any of its obligations under Section 3.

8.2 Effects of Termination. In the event of any termination of all or any portion of this Agreement, Customer shall not be relieved of any obligation to pay any sums of money that have accrued prior to the date of termination. PDL's remedies for Customer's breach of this Agreement, together with the provisions of Sections 3, 5, 6, 7.4, 8, 9 and 10, shall survive termination of this Agreement. If partially terminated with respect to a particular product or service, this Agreement will remain in effect for all other products and services that have been provided hereunder to Customer.

8.3 Return of Licensed Product. Immediately upon any termination of a license for any Licensed Product under this Agreement, Customer shall, at its own expense, either return to PDL or destroy all copies of such Licensed Product in its possession or control, and shall forward written certification to PDL that all such copies of such Licensed Product have either been destroyed or returned to PDL. If Customer fails to submit such certification to PDL within ten (10) days after the date of termination, PDL shall have the right, to the extent permitted by law, to enter on Customer's premises to remove or repossess all copies of such Licensed Product that Customer has in its possession or under its control.

9. LIMITATION OF LIABILITY. PDL AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR COMMERCIAL OR ECONOMIC LOSS; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, LICENSED PRODUCT, THIRD PARTY SOFTWARE, EQUIPMENT, SUPPORT, SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF PDL OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT AGAINST PDL OR ITS LICENSORS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, INCLUDING A BREACH BY PDL OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER OR NOT A FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM), CUSTOMER SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CUSTOMER TO PDL HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED. IN ADDITION, IN NO EVENT WILL THE LIABILITY OF PDL AND ITS LICENSORS RELATING TO SUPPORT OR OTHER SERVICES FOR LICENSED PRODUCT EXCEED THE TOTAL AMOUNT OF MONEY PAID BY CUSTOMER TO PDL DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD WITH RESPECT TO THE PARTICULAR SUPPORT OR OTHER SERVICES ON WHICH THE CLAIM IS BASED.

10. GENERAL.

10.1 Governing Law. THIS AGREEMENT SHALL BE IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, with venue in Palm Beach County, Florida. Each party shall be responsible for its own attorney's fees and costs incurred as a result of any action or proceeding under this Agreement.

10.2 General Provisions. Neither party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that party's control, including acts of God, civil disturbance, strikes, labor disputes, or the other party's failure to perform its obligations hereunder. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, this Agreement shall be enforced to the maximum extent possible to effectuate the original express intent of the parties. Customer acknowledges that breach of the provisions of Section 3 could result in irreparable injury to PDL; accordingly, PDL shall have the right to seek equitable relief against any actual or threatened breach of any provisions of Section 3, without proving actual damages. Any and all notices required or permitted under this Agreement shall be sent by United States First Class or Certified Mail or by a courier service furnishing proof of delivery (postage and delivery prepaid) to the addresses for the parties set forth above. Either party may change its notice address by notifying the other in like manner.

10.3 Entire Agreement; Execution. This Agreement, inclusive of the Order Schedule, the Supplemental License Terms and Conditions, PDL's Support and Services Policies, and any other attachment or schedule attached hereto and incorporated herein, constitutes the complete and entire agreement between the parties with respect to its subject matter, and supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Customer with respect to Licensed Product or any related products, support or services provided. In the event of a conflict among the Supplemental License Terms and Conditions, the Support and Services Policies, the Order Schedule, any other schedule or attachment to this Agreement, and the other terms of this Agreement, the order of precedence shall be: the Order Schedule; the other schedule(s) or attachment(s) to this Agreement; the Supplemental License Terms and Conditions; the Support and Services Policies; and the other terms of this Agreement. Except as otherwise expressly provided in this Agreement, this Agreement shall not be modified, amended, rescinded, canceled or waived in whole or in part without the written agreement of both parties. Customer agrees that the terms of this Agreement, including all pricing for PDL products and services, shall be kept confidential and not disclosed to any third party without the prior written consent of PDL. Headings used in this Agreement are for reference only and are not interpretive. The person executing this Agreement on behalf of Customer represents that he/she is authorized to sign this Agreement on behalf of Customer and warrants that he/she has full power to enter into this Agreement on behalf of Customer. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which all together shall be deemed to constitute one and the same instrument. Transmission and receipt of this Agreement via facsimile or other electronic means shall be treated as original signatures for all purposes hereof and shall have the same legal effect as receipt of the original executed document by mail or any other acceptable means of delivery. This Agreement shall be subject to acceptance by a duly authorized representative of PDL at its offices, indicated by the execution hereof.

The School District of Palm Beach County, Florida

NCS PEARSON, INC., through its
PEARSON DIGITAL LEARNING business unit

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**THE FOLLOWING ATTACHMENTS AND SCHEDULES ARE INCORPORATED HEREIN:
SUPPLEMENTAL LICENSE TERMS AND CONDITIONS; SUPPORT AND SERVICES POLICIES; ORDER
SCHEDULE**

"Reviewed & Approved As To
Legal Form and Sufficiency"

Imber 160011/22/04

SUPPLEMENTAL LICENSE TERMS AND CONDITIONS

These Supplemental License Terms and Conditions ("Supplement") supplement the terms of the Licensed Product Agreement to which they are attached between PDL and Customer (the "Agreement"). Capitalized terms not defined in this Supplement shall have the same meanings ascribed to them elsewhere in the Agreement.

1. DEFINITIONS. For purposes of this Supplement, the following additional definitions shall apply:

1.1 **Site License** shall mean a license granted to Customer by PDL for use of Licensed Product whereby such Licensed Product may be used on an unlimited number of workstations at a given Licensed Site.

1.2 **Station License** shall mean a license granted to Customer by PDL for use of Licensed Product on a single workstation by employees and students at a given Licensed Site. Licensed Product that is licensed under a Station License may not be installed or used on more than the number of workstations for which a license has been purchased.

1.3 **Waterford Products** shall mean the Waterford™ Early Reading Program software and the Waterford Early Math and Science software offered by PDL.

2. **LICENSE TYPE.** To the extent that Customer is granted a license under the Agreement to one or more Waterford Products, these products may be licensed to Customer on either a Station License or a Site License basis. The type of license granted, along with other details relating to Customer's order, shall be as set forth on the Order Schedule.

SUPPORT AND SERVICES POLICIES

These Support and Services Policies ("Policies") supplement the terms of the Licensed Product Agreement to which they are attached between PDL and Customer (the "Agreement"). Capitalized terms not defined in these Policies shall have the same meanings ascribed to them elsewhere in the Agreement.

1. DEFINITIONS. For purposes of these Policies, the following additional definitions shall apply:

1.1 **Error** shall mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet PDL's minimum requirements, which will change over the life of this Agreement. User mistakes are not Errors as defined herein. Errors may be due to problems in Licensed Product, the Documentation, or both.

1.2 **Update** shall mean a patch, service pack or corrective update of Licensed Product that PDL or its licensors prepare, in their discretion, and that PDL deems ready for distribution and makes generally available to its customers to correct programming Errors that prevent or obstruct normal operation of Licensed Product in accordance with the applicable then-current Documentation. An Update will generally have a new number to the right of the decimal point in the product number. For example, a change of the product numbering from version 2.2 to version 2.3 or a release of a service pack known as version 2.2.1 to update the current version 2.2 would constitute an Update.

1.3 **Upgrade** shall mean a modified or enhanced version of Licensed Product that PDL or its licensors prepare, in their discretion, and that PDL deems ready for distribution and makes generally available to those customers that pay an additional license fee for such version. An Upgrade will generally have a new number to the left of the decimal point in the product number. For example, a change of the product numbering from version 2.3 to version 3.0 would constitute an Upgrade.

2. PROVISION OF SUPPORT AND OTHER SERVICES.

2.1 **Scope of Services.** PDL agrees to perform the support services and/or other professional services specified on the Order Schedule, or subsequently requested by Customer and agreed to be performed by PDL, provided that PDL may, at its option, arrange for any such services to be performed by another entity on behalf of PDL. Customer agrees to pay for such services at the rates and charges specified on the Order Schedule or, for work subsequently requested, at the rates agreed upon by Customer and PDL. PDL reserves the right to require a purchase order or equivalent documentation from Customer prior to performing any services, or to require prepayment of certain services. Unless otherwise specified, all rates quoted are for services to be performed during PDL's normal business hours; additional charges may apply for evenings, weekends or

holidays. The rates and charges specified in the Order Schedule shall apply to those services originally ordered; however, PDL reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement.

2.2 Support and Service Packages. PDL offers a variety of support and service options for the Waterford Products. If Customer purchases any support and/or service package offered by PDL, Customer shall be entitled to the then-current benefits of such support or services package, subject to the terms of these Policies. Specific descriptions for any such support or services package are available upon request. Additional terms and/or restrictions may apply. In addition, the following terms apply to all support and services packages:

2.2.1 Telephone Support. For any support package that includes telephone technical support services for Licensed Product (whether or not in addition to other services, such as training), such telephone technical support services are limited to Monday through Friday during PDL's normal business hours, exclusive of PDL holidays. Telephone technical support services for Licensed Product are limited to teachers and administrative staff at the Licensed Sites. If Customer purchases hardware through a PDL-approved vendor with the Licensed Product pre-installed on such hardware, or if Customer purchases a Hardware Certification (as described in Section 2.3 below), telephone technical support services will include reasonable assistance by PDL to attempt to resolve hardware-related issues that are impacting Customer's use of Licensed Product, and/or assistance in coordination of hardware support issues through the appropriate hardware vendor if requested by Customer. If Customer does not purchase hardware through a PDL-approved vendor and does not purchase a Hardware Certification, then support services for hardware-related issues are not included in any support package offered by PDL, but rather will be available only on a time-and-materials basis at PDL's then-current prices for same. Information on PDL-approved hardware vendors is available upon request.

2.2.2 Term. For a support package that includes telephone support only, or telephone support in conjunction with other services, (a) the term of that support package will begin upon shipment of the Licensed Product, if the support package is included with or being purchased simultaneously with the license of Licensed Product; otherwise the support term will begin upon PDL's processing of Customer's order for such support package, and (b) the term of that support package will terminate one (1) year thereafter, unless either (i) a different term is specified in the applicable Order Schedule, or (ii) the support term is terminated earlier in accordance with the terms of the Agreement or these Policies. If any professional services such as training workshops are included in a support package, such services must be scheduled during the support term for that package. For services that Customer orders but that are not part of a telephone support package, unless otherwise specifically provided in the Order Schedule, all services must be scheduled and delivered within twelve (12) months of shipment of Licensed Product (or within twelve (12) months after the placement of the order for services, for services packages not sold concurrently with the license of Licensed Product). Any unused services expire at the end of such twelve (12) month period.

2.2.3 Package Renewals. If PDL offers to renew any support and/or services package and Customer agrees to renew such package, the support and/or other services that will be provided for the renewal period shall be consistent with PDL's then-current description of such support package. The other terms of these Policies shall continue to apply, unless PDL provides new terms and conditions to Customer at the time of renewal, in which case such new terms and conditions shall apply. Renewals shall be at PDL's then-current rates.

2.2.4 Update Eligibility. PDL customers that are currently maintaining a support package for the Waterford Product(s) are eligible to receive Updates upon request for the applicable Waterford Product(s). Therefore, for periods during which Customer maintains a current support package, Customer will be entitled to receive Updates to address programming Errors that Customer is experiencing in using the Waterford Product(s). All Updates are limited to those portions of the Waterford Product(s) licensed by Customer (e.g., customers licensing only Level 1 of the Waterford Early Reading Program would be entitled to an Update only of Level 1 of such software). Customer is not entitled to Upgrades under these Policies or the Agreement; Upgrades are available only upon payment of PDL's then-current prices for such Upgrades. Customer is responsible for any associated hardware upgrades that may be required as well as acquisition of any revised print and other materials in connection with any Update provided hereunder or any Upgrade which Customer chooses to license. Nothing in these Policies or the Agreement shall require or be deemed to impose any obligation on PDL to continue offering Upgrades to the Waterford Products, nor shall anything in these Policies or the Agreement require or be deemed to impose any obligation on PDL to continue offering Updates, program fixes or other code maintenance of a given version of a Waterford Product if PDL has announced that code maintenance has ceased for that version or if PDL has released a subsequent Upgrade of the applicable Waterford Product.

2.3 Hardware Certification. If Customer is not purchasing hardware with pre-installed Licensed Product through a PDL-approved hardware vendor, Customer may purchase a Hardware Certification at PDL's standard rates for same. If a Hardware

Certification is purchased, PDL will install the Licensed Product on up to two (2) computers or eight (8) additional hard drives shipped by Customer to PDL for such purpose (but not to exceed the number of stations for which the Licensed Product is licensed under the Agreement). If the Licensed Product is successfully installed by PDL on such computers or hard drives, then (a) Customer may use these computers or hard drives as masters to reproduce other hard drives for the remaining computers (if any) on which Licensed Product will be used by Customer, subject to the license terms of the Agreement; and (b) for any period for which Customer purchases a support package that includes telephone technical support services, Customer will be entitled to receive support for hardware-related issues as described in Section 2.2.1. If the hardware supplied by Customer is not compatible with the Licensed Product, PDL will make recommendations to Customer and, if requested, Customer's hardware vendor regarding the modifications that should be made to the hardware in order to be compatible with the Licensed Product. Customer will be responsible for acquiring and providing any such modified hardware to PDL in order to allow PDL to complete the installation of the Licensed Product on the computers that are the subject of the Hardware Certification.

2.4 Expenses. In most cases, travel expenses are included in the fees for services provided by PDL. However, for services rendered in certain geographic areas, or if otherwise specified by PDL in writing to Customer, these expenses are an additional charge, and in those situations, Customer shall, in addition to the fees charged for performance of services hereunder, pay PDL for travel expenses, lodging, meals and other related expenses incurred in the performance of such services. All such additional charges will be due and payable concurrently with payment for services. Any such expenses shall be paid in accordance with Chapter 112, Florida Statutes.

2.5 Support of Prior Releases. After the distribution of an Update or Upgrade of Licensed Product, support or other services will be available for the prior release only until the service "end-of-life" of such prior release, as determined by PDL in its sole discretion; provided, however, that, at a minimum, PDL will continue to offer telephone support services for the prior release for a minimum of one (1) year after PDL makes the Update or Upgrade available. Program fixes and code maintenance for prior releases will be available only at PDL's discretion.

2.6 Out-of-Scope Services. Any support or services requested by Customer that are outside the scope of any support or other services package to which Customer is entitled, or that are required as a result of Customer's failure to fulfill its responsibilities set forth in these Policies, will be subject to PDL's standard time and materials or other rates for such services.

3. CUSTOMER RESPONSIBILITIES FOR SUPPORT SERVICES. For any package that includes support services for Licensed Product, to be eligible for such support services, Customer shall: (a) supply PDL with sufficient information and data to reproduce any Error or problem that is the subject of a support request; (b) procure, install, operate and maintain computer systems and operating systems that are compatible with the version of Licensed Product to be supported; (c) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Licensed Product as supplied by PDL; (d) maintain hardware and system software consistent with PDL's minimum requirements (including an anti-virus software package that Customer keeps up-to-date throughout the support period); and (e) have the most current release of Licensed Product, or a prior release supported under Section 2.5, as well as any Updates made available to Customer by PDL, installed. Customer acknowledges that Updates may be made available electronically, via PDL's support center or otherwise. In addition, in some cases, PDL may maintain e-mail distribution lists that are used to notify Customers of the availability of Updates and to provide other information to customers that are maintaining a current support subscription. Customer shall be responsible for including the appropriate Customer personnel on any such e-mail distribution lists of PDL so that Customer receives such notifications and other information.

4. ACCESS/FACILITIES. For any services that are to be performed at Customer's location, Customer agrees to provide all equipment, telecommunications, utilities, work space and other on-site accommodations reasonably necessary to enable PDL to perform such work, and shall provide free, clear, unencumbered access to all servers, workstations and other equipment with respect to which such work is to be performed.

5. CONFIDENTIALITY. To the extent that, in performing any services hereunder, PDL comes into contact with or has access to any Customer confidential information, PDL agrees to use commercially reasonable efforts to maintain the confidentiality of such Customer confidential information, and to use such Customer confidential information solely for purposes of performing services hereunder. PDL shall require its employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Customer confidential information" shall mean any student data or records, and any other Customer information or data labeled or identified as confidential at the time of disclosure; provided, however, that this definition and the obligations of this Section shall not extend to any information that (a) is or becomes publicly known through no fault or negligence of PDL, its employees, agents or subcontractors; (b) is or becomes lawfully

available from a third party without restriction; (c) is independently developed by PDL, its employees, agents or subcontractors at any time; or (d) is disclosed without restriction by Customer to any third party at any time. The obligations of this Section will survive any termination of the Agreement for as long as any information or data disclosed to PDL in connection with its performance of services hereunder fits the definition of "Customer confidential information."

6. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE SUPPORT OR SERVICES THAT ARE THE SUBJECT MATTER OF THESE POLICIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES OR CONDITIONS OTHERWISE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

7. LIMITATION OF LIABILITY. PDL SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR COMMERCIAL OR ECONOMIC LOSS; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THESE POLICIES OR PDL'S PROVISION OF ANY SUPPORT OR SERVICES HEREUNDER, EVEN IF PDL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION AGAINST PDL ARISING OUT OF THESE POLICIES OR PDL'S PROVISION OF SUPPORT OR OTHER SERVICES UNDER THE AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, INCLUDING A BREACH BY PDL OF ANY OF ITS OBLIGATIONS UNDER THESE POLICIES (WHETHER OR NOT A FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM), CUSTOMER SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CUSTOMER TO PDL HEREUNDER DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD WITH RESPECT TO THE APPLICABLE SUPPORT OR OTHER SERVICES ON WHICH THE CLAIM IS BASED.

*

*

Waterford Order Schedule

The School District of Palm Beach County, Florida

Highland Elementary School

Waterford
Early Reading Program

Waterford
Early Math & Science

# of Stations:	6	Software:	Early Reading Level 1
# of Schools:	1	Type of License:	Station
Students Served in Year One: 60			

NET PRICE

Software			
Waterford Early Reading Program software license version 3.x - Level 1		\$	16,200.00
*Software Includes the following:			
Student management and assessment software			
Teacher management software			
Software Total		\$	16,200.00

Qty	Materials			
12	5-Pack of Student Materials (choice of level)	Student 5 Packs	TRC	\$ 8,400.00
2	Teacher Resource Center (choice of level)	Level 1	12	\$ 2,600.00
	Supplemental Manuals			
	Getting Started Guide			
	Overview Guide			
15% Materials Discount				\$ (1,650.00)
Materials Total				\$ 9,350.00

Qty	Services			
2	Course Day - Onsite		\$	3,000.00
	Course Day - Remote			
1	Follow-up Consultation - Onsite		\$	1,500.00
	Follow-up Consultation - Remote			
Services Total				\$ 4,500.00

Qty	Support			
1	Classroom Support Plus		\$	2,000.00
Basic Support plus field technician when required for peer to peer deployment. Includes 15% discount on print materials				
Support Total				\$ 2,000.00

Qty	Hardware			
Pearson NCS Dell 17" 5 Year Warranty				
2	Teacher/student station with curriculum and classroom management software			
	> Teacher Peripherals: keyboard, mouse, speakers, microphone, headphones, network cabling and printer			
4	Student Station with curriculum software loaded			
	> Student peripherals: keyboard, mouse and cables			
Hardware Total				\$ 14,682.00
Subtotal :				\$ 46,732.00
Shipping				\$ 748.00
Total				\$ 47,480.00



CONTRACT REVIEW CHECKLIST**Consistency with Law and School Board Policy:**

Comments

Consistent with School Board Policy	√
Consistent with Florida, federal and local laws	√

Contract Terms:

Comments

Term (Duration of Contract)	1 year
Termination Clause	Yes, upon breach only
Insurance /Liability Issues/ Indemnification	Risk Management should review and approve all insurance clauses.
Regulatory issues	None
Confidentiality Provision	Yes
Warranties	Limited (Paragraph 7)
Labor Issues	The Labor Relations Department should review any issues.
Disclaimers	Yes
Governing Law & Venue	Florida; Palm Beach County

Business Principles:

Comments

Sound Business Principles	
Reasonableness of Fees	See Order Schedule
Payment Terms --Lump sum, installments --Payment Due dates --Late fees	See Order Schedule

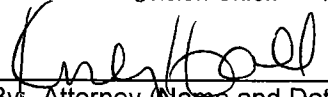
Other Issues:

Comments

Conflict of Interest Disclosures	None
Non-Negotiable Issues	None
Miscellaneous Issues	None
Appropriate Departmental Sign-off	Yes

Special Considerations: Company would not agree to mention Florida's Public Records Laws specifically, but would agree to stating that Licensed product could be reproduced as required "by law or court order".

The issues noted above were explained to the appropriate District staff and/or Division Chief. YES ☐ NO ☐

 11/22/04
By: Attorney (Name and Date)