

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed by its authorized officer or representative whose signature appears below, effective as of the Effective Date.

Computerized Facility Integration, LLC (CFI)

By: 
Name: Robert A. Verdun
Title: President
Date: 4/2/07

The School Board of Palm Beach County, Florida

By: _____
Name: _____
Title: _____
Date: _____

Reviewed as to form and legal sufficiency:

By: _____
Name: _____
Title: School Board Attorney
Date: _____



CONSULTING SERVICES AGREEMENT

Between

Computerized Facility Integration, L.L.C.

And

**The School Board
of Palm Beach County, Florida**

Dated _____]

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CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (the "Agreement") between the School Board of Palm Beach County, Florida, a political subdivision of the State of Florida, with a principal office at 3300 Forest Hill Boulevard, West Palm Beach, Florida 33408-5813 (the "Board"), and Computerized Facility Integration, L.L.C.(CFI), having its principal place of business at Suite 550, 18000 W. 9 Mile Rd., Southfield MI, 48075 ("Vendor"), is entered into and made effective as of April 12, 2007 (the "Effective Date"). Vendor and the Board are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

In consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, Vendor and the Board, intending to be legally bound, hereby agree as follows:

ARTICLE 1 ENGAGEMENT

1.1 Requests

The Board desires to obtain certain technical consulting, software configuration, systems integration, training, and other services related to the planning, validation, development, implementation, and support of Tririga.

Vendor has advised the Board that it could fulfill and satisfy the Board's requirements for such a comprehensive, integrated, role-based Tririga and for such related services as are described in Section 1.1, and has set forth various representations as to its credentials, experience, and ability to do so.

1.2 Engagement

The Board hereby engages Vendor to render all of the services described in this Agreement or in, "Statements of Work" executed by the Parties in accordance with this Agreement ("Services") and to provide all the deliverables described in the Statements of Work ("Deliverables"). Vendor hereby accepts such engagement and agrees to perform all such Services and provide all such Deliverables in accordance with this Agreement and the applicable Statements of Work. As used herein, a "Statement of Work" means a document that:

- (i) specifically references this Agreement and declares that it is a Statement of Work under this Agreement;
- (ii) includes a numerical designation (i.e., No. 1, No. 2, etc.);
- (iii) incorporates this Agreement by reference; and
- (iv) has been executed and delivered by an authorized representative of each of Vendor and the Board.

To the extent that any Statement of Work modifies any provision of an earlier Statement of Work, the later Statement of Work shall supersede the earlier one. In accordance with Section 19.4, to the extent that the terms of any Statement of Work conflict with the other portions of this Agreement, the terms of such Statement of Work shall take precedence over the other terms of this Agreement.

ARTICLE 2 THE PROJECT

2.1 The Project

Introduction:

Computerized Facility Integration, L.L.C. (CFI) is being retained by the School District of Palm Beach County, Florida to implement the Tririga 9 Computer-Aided Facilities Management (CAFM) System planned by the School District. CFI will be responsible to install, design, configure,

integrate, interface, test, rollout, and adjust the CAFM software to the District's technology environment. CFI will precede these actions with a Requirements Phase where CFI will learn and assess the School District's business processes, functional requirements, and systems environment and advise the CAFM Steering Committee on best practices for implementing and using Tririga 9.

The contract with CFI will be divided into two phases: (1) a Requirements Phase of not more than 75 calendar days from the date on an agreed-upon Project kick-off meeting (to be scheduled no later than 21 days from the Effective Date of this agreement), and (2) an Implementation Phase to not exceed 18-20 months from completion of the Requirements Phase. At the completion of the contract, all Tririga 9 agreed upon modules will be fully operational.

In the Requirements Phase, CFI will take the actions necessary to understand the District's business processes and preferences as well as assess the readiness of the District's hardware to host the CAFM System. CFI will also understand the requirements for interfacing with District gap applications, ERP and other systems designated to comprise or work with the CAFM System. This phase may be contracted at a firm fixed-price. The key deliverables, but not exclusive requirements, are outlined in section 2.3 below. The scope, deliverables and terms for the Implementation Phase are contained in section 2.4 below.

Vendor shall be the prime contractor hereunder and, subject to the terms and conditions of this Agreement and the Statements of Work executed hereunder, shall possess or obtain all software, hardware, and other equipment and resources necessary and appropriate for Vendor to perform all of the Services. Vendor shall provide the Board with adequate notification, in a timely manner, so that the Board can obtain all necessary software, hardware and other equipment and resources that Vendor will not provide under the applicable Statements of Work. Such Services, in accordance with this Agreement and the Statements of Work, shall include all tasks, activities, and services necessary for the planning, validation, development, implementation, configuration, and tuning of a comprehensive, integrated, real-time, role-based Tririga (the "System") that, in accordance herewith, meets the Board's requirements as specified in the respective Statements of Work and is suitable and appropriate for an organization of the size, nature, and complexity of the Board (all such tasks, activities, and services as described in this sentence or in one or more Statements of Work executed in accordance herewith, collectively, the "Project"). Vendor acknowledges and agrees that TIME IS OF THE ESSENCE in the development and implementation of the System, the performance of the Services, and the provision of the Deliverables as specified in the respective Statements of Work. It is anticipated that the System will include, but may not necessarily be limited to, the proprietary software programs of Tririga that are identified in Schedule 2.1 attached hereto, which the Board has licensed from Tririga pursuant to that certain Software License and Services Agreement dated September 23, 2004 (such agreement, the "Tririga License Agreement," and such programs, as the list thereof may be updated in accordance herewith during the Project, the "Tririga Software"). It is understood and agreed by the Parties that Vendor shall implement the Tririga Software with only those written Board-approved specific custom software programs or customizations or modifications to the Tririga Software that are approved by the Board in advance and in writing. Instead, Vendor shall take advantage of the configuration capabilities and other features of the Tririga Software to appropriately configure and adapt it to the Board's needs, requirements, and business practices as specified in the respective Statements of Work to the fullest extent reasonably possible without writing custom software code, recommending, when necessary, business practice changes that conform to industry best practices.

2.2 Project Phases

As further described in this Section 2.2, the Project shall be structured into the following two (2) phases (each, a "Phase"):

- (i) the "Requirements Phase"; and

(ii) the "Implementation Phase."

Each Phase shall be performed or implemented by Vendor pursuant to a separate Statement of Work (or, with respect to the Implementation Phase, if mutually agreed to by the Parties in writing, multiple Statements of Work) and in accordance with the project plan Vendor shall create, maintain, and store the Project Plan, as defined below, using a current version of Microsoft Project.

2.3 Requirements Phase

The Requirements Phase shall consist of Vendor's performance of the tasks, activities, and other Services, and Vendor's provision of the Deliverables, described in this Section 2.3 and in Statement of Work No. 1 attached hereto as Schedule 2.3. In any event, the Requirements Phase shall include:

- (i).performing and documenting various Project preparation activities, including establishing a Project governance structure, Project standards, Project scope management and change processes, communication and coordination processes and plans to be used by the Parties, both amongst themselves and otherwise in communicating information regarding the Project within the Board's organization and to the Board's intended end-users of the System;
- (ii).determining or identifying, as applicable, and documenting, the Board's business requirements relating to the Project, the Board's business processes to be addressed by the Project, and the Board's business goals and objectives to be achieved through the Project, and associated key performance indicators;
- (iii).determining and documenting the complete list of the Tririga Software (including with regard to specific modules, versions, and releases), any necessary or appropriate third-party software, to be included within the scope of the Project ; and identifying and documenting the gaps (if any) between the Board's relevant business requirements and business processes, and the functionality and capabilities of the Tririga Software to be included in the Project, including identifying any necessary business process re-engineering;
- (iv).developing a high level business case reflecting current baselines and industry expectations as to business benefits arising from the implementation of the Tririga Software;
- (v).developing and documenting the design specifications to be used for various aspects of the System (e.g., for authorizations, reports, interfaces, conversions, and extensions to be incorporated as part of the System); and, identifying and validating the configurations, integrations, interfaces, customizations, extensions, and modifications with respect to the Tririga Software that are to be developed and implemented as part of the Project;
- (vi).developing and documenting the data conversion, cleansing, and migration strategy and approach to be used in the Project;
- (vii).developing and documenting an inventory of required management reports and developing a technical strategy for the implementation of management reporting as part of the Implementation Phase of the Project
- (viii).developing a plan and approach to deploying mobile technology and integrating it with the Tririga Software;
- (ix).assessing whether the existing and planned technical infrastructure is adequate for the System and identifying any upgrades or other changes to such platform that are reasonably necessary to provide sufficient capacity and capabilities for the System to appropriately process the Board's current and future projected workloads; infrastructure is includes an assessment of the District's current and planned network and network in
- (x).determining and implementing within the Board a leadership and staff enrollment and alignment strategy and plan to help ensure success of the Project

- (xi).developing and documenting a training plan for the appropriate transfer of knowledge to the Board's end-users and operations personnel regarding the System;
- (xii).determining system performance metrics that will allow the Board to monitor, on an ongoing basis, the health and performance of the System and whether the System is meeting the Board's needs and objectives;
- (xiii).developing an implementation and deployment strategy for the Tririga software including phasing of modules, a plan for existing applications, and a plan for managing the technical environments for design, development, testing, training and, production;
- (xiv).developing a detailed Project Plan for the Implementation Phase including detailed tasks, activities, services, deliverables, resources needed, and roles and responsibilities of the Vendor and the Board; and
- (xv).developing Implementation Statements of Work for the Implementation Phase of the Project, including fixed price proposals for each SOW.

Vendor's development and delivery to the Board, and achieving of the Board's Acceptance, in accordance herewith, of a Statement of Work for the Implementation Phase of the Project that conforms to the requirements of this Agreement and sets forth in reasonable detail the tasks, activities, Services, and Deliverables to be performed or provided in the Implementation Phase, the respective roles and responsibilities of the Parties with respect thereto, an updated Project Plan therefor, and the Fees to be charged by Vendor therefor.

The Requirements Phase shall be deemed completed upon the completion of all tasks, activities, and Services described herein (the "Project Plan") and the Board's Acceptance of the Project Plan as set forth in the applicable Statement of Work.

2.4 Implementation Phase

2.4.1 General

If the Board authorizes (upon Vendor's recommendation, but in the sole discretion of the Board) the performance of an Implementation Phase, then the Board shall acquire all of the equipment, computer programs, and other technology specified for acquisition by the Board for the Project in the applicable Statements of Work for the Implementation Phase and not already owned by, or licensed to, the Board. Upon completion by the Board of satisfactory arrangements for such acquisitions, the Implementation Phase shall be conducted as described in this Section 2.4 and in the Project Plan. The Implementation Phase shall include Vendor's performance of all of the tasks, activities, and other Services, and Vendor's provision of the Deliverables, described in the Project Plan for the Implementation Phase that Vendor submitted as a Deliverable under the Requirements Phase, and with respect to which the Board has issued its Acceptance. During the Implementation Phase, Vendor shall implement the business processes, functionality, and capabilities described in the applicable Statements of Work according to, the best business practices that are incorporated into the Tririga Software and, to the extent reasonably possible, eliminating the need for customized changes that are unique to the Board. The Implementation Phase may include multiple Statements of Work. Vendor shall implement certain capabilities and functionality of (or business processes related to) specific modules of the Tririga Software, including, but not necessarily limited to, those indicated in Schedule 2.1 (as such schedule of implementation, modules, capabilities, and functionality is supplemented by the applicable Statements of Work), in Board's Tririga environments. Vendor shall develop, using a limited subset of the Board's data and a limited subset of the functionality of the Tririga Software, as further described in Schedule 2.3, of a prototype that serves as a "proof-of-concept" for the Board's requirements regarding the System and demonstrates the look and feel of the System. Each Statement of Work shall be completed upon:

- (i) Vendor's implementation of all of the capabilities and functionality of the Tririga Software that are so specified,

- (ii) Vendor's performance of all of the Services that are described,
- (iii) the Board's Post-live Acceptance of all the portions of the System to be implemented by Vendor, and
- (iv) the Board's Acceptance of all of the other Deliverables to be provided by Vendor.

Included among the Deliverables to be provided by Vendor during each Statement of Work shall be detailed documentation on the portions of the System implemented during such Statement of Work (and, with respect to final Statement of Work, on the System as a whole) that is sufficient to enable the Board to efficiently use, operate, and maintain the System in the Board's environment and that otherwise meets all requirements of this Agreement and the applicable Statement of Work.

2.4.2 Data Conversion

During the Implementation Phase, as specified in the applicable Statement of Work, Vendor, shall extract, transform or convert the legacy data conversion processes, system extensions, and reports, for loading into the System, and validate following such loading, of the Board's data. The Board shall provide Vendor with technical assistance and acknowledges that it is responsible for the integrity of the data prior to conversion.

2.4.3 Training

Vendor shall recommend appropriate Tririga training classes for the Board's Project Team members to attend, and the appropriate timing of such attendance during the Project, so that the Board's Project Team members are sufficiently trained to perform their assigned duties in connection with the Project. Such Tririga training classes for the Board's Project Team members shall be at the Board's cost and expense. As part of the Services provided hereunder, Vendor shall perform, at appropriate times during the Implementation Phase, all other training (whether delivered in classroom sessions or using other appropriate knowledge transfer or training methods) of the Board's personnel that is reasonably necessary for the Board to efficiently use, operate, maintain, and realize the full benefit of, on an ongoing basis, the System, as implemented during the Implementation Phase, and any additional training specified in the applicable Statement of Work. Vendor will be responsible for the delivery of end-user training documentation written specifically the way the Tririga Software will work in the Board's environment and appropriately tailored to the end-users.

2.4.4 Post-Implementation Tuning and Support

The implementation of the System during the Implementation Phase, and the completion of all other activities to be performed with respect to the Implementation Phase, shall be followed by a period, identified in the applicable Statement of Work during which Vendor shall:

- (i) monitor performance and operation of the System as a whole;
- (ii) analyze the impact and efficiency of the System, as implemented in the Board's environment;
- (iii) further configure, tune, and optimize the System appropriately for the Board's environment;
- (iv) implement any further or additional changes or modifications to the System so that the System fulfills all of the Board's requirements, as set forth in this Agreement;

(v) recommend any changes to the Board's business processes that are reasonably expected to increase efficiency or realize cost savings, so that the Board may realize the full functionality and benefit of the System;

(vi) perform any further or additional training of the Board's personnel that is reasonably necessary for the Board to efficiently use, operate, and maintain the System as a whole, on an ongoing basis, and any other training specified in the applicable Statement of Work; and

(vii) perform any other activities reasonably necessary or requested by the Board in order to enable the Board to fully utilize the System for the purposes contemplated by this Agreement.

The Implementation Phase shall be completed upon Vendor's performance of all of the Services described in this Section 2.4 and in the applicable Statements of Work, the Board's Post-live Acceptance of all Software Components and the System, and the Board's Acceptance of all other Deliverables, to be provided by Vendor during such Phase. Vendor will be responsible for the delivery of system administration documentation for the Board's IT staff so that they may support the System and implement upgrades and patches to the System.

2.4.5 Transfer of Knowledge

The Vendor shall develop and document and implement a written training plan for the appropriate transfer of knowledge to the Board's end-users and operations personnel regarding the System. The Board shall provide adequate resources to allow such transfer of knowledge.

2.5 Compatibility and Integration

For purposes of this Agreement, "Provided Resources" means the System, the Services, the Deliverables, and other resources and materials that are provided by Vendor to the Board. For the purposes of this Agreement, "Board Resources" shall mean the hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to the Board as of the Effective Date. To the extent specified in the applicable Statement of Work, Vendor shall develop, modify, or implement any required interfaces that are necessary for the Provided Resources to integrate fully and successfully, and be compatible, with the Board Resources. At all times, Vendor shall cooperate and work as requested with the other service providers of the Board (including, but not limited to, Tririga) to coordinate the development of the System and the provision of Services with the services and systems of such other service providers. Such coordination shall include:

(i) facilitating with such other relevant service providers the timely resolution of all problems that may arise and impact the System or the Services, regardless of the actual or suspected root-cause of such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution;

(ii) providing information concerning any or all of the Provided Resources or the data, computing environment, and technology direction used in implementing the System and providing the Services;

(iii) working with Tririga as necessary to ensure that the System and the Tririga Software, as implemented by Vendor hereunder, meet Tririga's requirements (including, but not limited to, any quality assurance requirements) so that Tririga will provide ongoing support and maintenance for the Tririga Software, as contemplated hereunder;

(iv) working with the Board's other service providers in the implementation and integration of the System and the Services with the Board Resources in the Board's environment and, as provided in the applicable Statement of Work, the integration and interfacing of the services of such other service providers with the System and the Services;

(v) providing reasonable access to and use of the Provided Resources; and

(vi) performing other reasonably necessary tasks in connection with the System and the Services in order to accomplish the foregoing activities described in this sentence.

In the event of any dispute between the Parties as to whether a particular service or function falls within an applicable Statement of Work, such particular service or function shall be considered to be a part of the Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of Vendor's work, as set forth in the applicable Statement of Work.

2.6 Root-Cause Analysis and Resolution

Within forty-eight (48) hours after Vendor's discovery of, or, if earlier, Vendor's receipt of a notice from the Board in respect of, either a failure to meet a Critical Milestone or Vendor's failure to provide any of the Services in accordance with this Agreement, Vendor shall promptly:

(i) perform a root-cause analysis ("Root-Cause Analysis") to identify the cause of such failure;

(ii) correct such failure (regardless of whether caused by Vendor);

(iii) provide the Board with a written report detailing the cause of, and procedure for correcting, such failure; and

(iv) provide the Board with reasonable evidence that such failure will not recur.

The correction of any such failure shall be performed entirely at Vendor's expense unless it has been determined, by mutual agreement of the Parties or through the dispute resolution process (as set forth in ARTICLE 17), that: (a) Vendor was not a contributing cause of the failure and Vendor could not have worked around the material contributing cause of the failure without expending a material amount of additional time and/or resources; or (b) the correction of such failure is under the sole or shared responsibility of the Board or any third-party under the direction or control of the Board, in which event Vendor shall be entitled to relief and fair and reasonable compensation, in accordance herewith.

2.7 Change Management

Throughout each Phase of the Project, Vendor shall utilize a change management approach and methodology, and regularly provide the Board with recommendations, advice, and direction regarding cultural change within the Board's organization, to ensure that the Project is successful and the Board realizes the full potential of the System and the Tririga Software. Such approach, methodology, recommendations, advice, and direction shall be tailored to the Board's unique culture and environment, and the particular organizational and political issues that arise during the Project. During each Phase of the Project, Vendor shall promptly develop (subject to the Board's Project Manager's review and approval, and any necessary modifications by Vendor in connection therewith), and thereafter maintain and regularly share with the Board, a strategic change plan that appropriately addresses risks and barriers that are anticipated or actually encountered with regard to the Project and that is tailored to the unique characteristics of the Board's organization with regard to dealing with change (the "Strategic Change Management Plan"). The Strategic Change Management Plan shall provide direction to the Board and the Board's Project Team regarding actions that need to be taken and communications that should be made in order to drive necessary change throughout the Board's organization. More specifically, the items addressed by the Strategic Change Management Plan with regard to each Phase of the Project shall include, but shall not be limited to, change planning, change leadership training and development, necessary realignment of the Board's organization, effective processes for managing resistance to change, communications planning, change technology transfer, and methodologies for continuous improvement (e.g., assessment and measurement of change that is realized by the Board).

2.8 Related Services

The Parties have attempted to delineate the specific tasks, activities, and Services that shall be performed by Vendor in this Agreement and the applicable Statements of Work. Notwithstanding the foregoing, the Parties agree that the Services to be performed by Vendor with respect to a Statement of Work, shall be deemed to include not only such delineated tasks, activities, and

Services, but also such other tasks, activities, responsibilities, and services as are consistent with and reasonably related to those that are so delineated so as to accomplish the delineated items.

2.9 Non-Exclusivity

Nothing herein shall prevent the Board from providing for itself or obtaining from any third party, at any time during the Term (as defined in Section 16.1) or thereafter, any type of products or services in any way analogous, similar, or comparable to the Services, the Deliverables, or the System, as applicable, or any other products or services. In the event that the Board elects to provide for itself (or engage third parties to provide for it) any similar or related services not covered by this Agreement, Vendor shall provide to the Board, or its chosen service provider, reasonable cooperation, and assistance, and access, as necessary, to the employees of Vendor, to facilitate the integration of interfacing of such other services with the System and the Services. Vendor shall not interfere with, or take any action against, either the Board or any such third party from whom the Board obtains, or seeks to obtain, any such products or services.

ARTICLE 3 BOARD-PROVIDED ASSISTANCE

3.1 Assistance and Cooperation

The Board will assist and cooperate with Vendor by promptly providing such information and access to the personnel as listed in Schedule 5.2, and facilities, as Vendor may reasonably request and require in order to perform its obligations in accordance herewith. Subject to ARTICLE 14 hereof, the Board shall also provide Vendor with such information about the Board's suppliers and customers as is reasonably necessary for Vendor to perform its obligations hereunder.

3.2 Office Space and Furnishings

The Board shall make available to Vendor's Project Team (as defined in Section 5.1.1) such reasonably unencumbered access, and such office space, personal computers with internet access, telephones, furnishings, and storage space, as is reasonably necessary and appropriate for them to perform the Services, and otherwise fulfill Vendor's obligations under this Agreement, at the appropriate facilities and locations of the Board, in a manner similar to that in which the Board makes such access, space, furnishings, and storage space available to its own employees performing similar work. All such office space, furnishings, and storage space, and all assets and facilities installed or operated on the Board's premises, are to be used by Vendor solely as necessary and appropriate for the performance of its obligations under this Agreement.

3.3 Delays

The Board acknowledges and agrees that the timely performance by Vendor of its obligations hereunder is dependent upon the Board performing its obligations under this Agreement and any Statement of Work, and that any delay or failure to perform by the Board shall, if and to the extent that it shall cause a delay in performance by Vendor, extend the time for Vendor to perform the affected activities and Vendor shall be entitled to relief and fair and reasonable compensation, in accordance herewith. Any dispute shall be addressed through the provisions of ARTICLE 17 and, in the event of such a dispute, the Parties shall diligently pursue an expedited resolution thereof. The provisions of this paragraph shall not be construed as requiring the Board to provide Vendor with access to the Board's Affiliates (as defined below) or suppliers, or their respective facilities, except as may be otherwise provided in any Statement of Work.

3.4 Software

The Board shall be responsible for obtaining all necessary licenses to use, and to permit Vendor to use for the limited purpose of performing the Services contemplated hereunder, the Tririga Software, as listed in Schedule 2.1 and as such list is updated in accordance with this Agreement. Unless otherwise expressly provided in writing by the licensor of such Software, the sole and exclusive ownership of all right, title, and interest in and to the Tririga Software shall remain vested in the applicable licensor. The Board hereby grants, and Vendor hereby accepts,

a limited, non-exclusive, non-transferable, royalty-free right to use the Tririga Software, in source code and object code form, during the Term in accordance with the Tririga License Agreement and solely as necessary and appropriate to provide the Services to the Board in accordance with this Agreement.

3.5 Related Activities

The Parties have attempted to delineate the specific tasks, activities, and requirements that shall be performed by the Board in this Agreement and the applicable Statements of Work. Notwithstanding the foregoing, the Parties agree that the tasks, activities, and requirements to be performed by the Board with respect to a Statement of Work, shall be deemed to include not only such delineated tasks, activities, and requirements, but also such other tasks, activities, responsibilities, and services as are consistent with and reasonably related to those that are so delineated so as to accomplish the delineated items.

ARTICLE 4 PRICE AND PAYMENT

4.1 Fees

The Board will pay Vendor the fixed fees set forth in the Requirements Phase Statement of Work Number 1 attached as Schedule 2.3 ("Requirement Phase Fees") on a percentage of completion basis less ten percent (10%) of each payment which shall be held back and retained by the Board and payable only upon Acceptance of the Requirements Phase Deliverables.

The Board will pay Vendor the fixed fees set forth in each Implementation Phase Statement of Work as follows ("Implementation Phase Fees"):

(i) Implementation Phase Fees on a percentage of completion basis through the Go Live Date, less ten percent (10%) of each payment which shall be held back and retained by the Board and payable only in accordance with the following clauses (ii) and (iii);

(ii) Upon the Board's Post Live Acceptance or Acceptance, as applicable, of all of the Services and Deliverables, and all portions of the System, that are to be provided or implemented under any given Statement of Work with respect to the Implementation Phase, the Board shall pay eighty percent (80%) of the retained ten percent (10%) of the Implementation Phase Fees for such Statement of Work;

(iii) The Board shall retain twenty percent (20%) of the retained ten percent (10%) (i.e. two percent (2%) of all Implementation Phase Fees) otherwise payable under each Statement of Work with respect to each Statement of Work shall only be payable to Vendor upon satisfactory completion of a punch list of deficiencies developed relative to the approved System design document set forth in the applicable Statement of Work.

4.2 Excluded Amounts / Out-of-Scope Services

The Requirement Phase Fees and Implementation Phase Fees do not include:

(i) any software license fees with respect to Tririga Software, or any other required third-party software products not provided by Vendor, that may constitute part of the System, which license fees are the responsibility of the Board, except as expressly stated herein; and

(ii) fees for services that are expressly requested by the Board in connection with, but that the Parties agree are outside the scope of, the Project and the Services to be priced hereunder, which out-of-scope services shall be provided by Vendor at the rates set forth in Schedule 2.4 (the "Applicable Hourly Rates") in a fixed fee format.

4.3 Invoices

With respect to Services within each Statement of Work, Vendor shall invoice the Board for the Requirement Phase Fees and the Implementation Phase Fees monthly on a percentage of completion basis (after deducting the applicable hold-back amount, in accordance with Section 4.1). Each invoice shall be of such form, and in such format, as is reasonably requested by the Board. Payment of all undisputed invoiced amounts shall be due and payable by the Board to

Vendor on the date that is thirty (30) days after the Board's acceptance and receipt of the applicable invoice (the "Due Date). In accordance with the provisions of this Section 4.3, the Board may withhold payment of any amount invoiced by Vendor (or any portion thereof) that the Board in good faith disputes as due or owing. In such case, the Board shall, by the applicable due date, pay any undisputed amounts then due and provide Vendor with an explanation, in writing or electronic form, of the basis of the dispute with regard to the disputed amounts. The failure of the Board to pay a disputed invoice, or to pay the disputed portion of an invoice, shall not constitute a breach or default by the Board hereunder, so long as the Board complies with the provisions of this Section 4.3. Any such dispute shall be addressed through the provisions of ARTICLE 17 and, in the event of such a dispute, the Parties shall diligently pursue an expedited resolution thereof.

4.4 Setoff

The Board may set off against any and all amounts otherwise payable to Vendor pursuant to any of the provisions of this Agreement any and all amounts owed by Vendor to the Board under the provisions of Section 5.1.1 or ARTICLE 9..

Within thirty (30) days after receipt of any invoice by the Board, pursuant to this Section 4.4, the Board shall provide Vendor with a written accounting of any set-off and a written statement of the reasons therefor.

4.5 Taxes

The Fees do not include sales, use, excise, occupation, privilege, value-added or similar taxes ("Taxes"). The Board has represented to Vendor that it is a tax exempt entity and the Parties believe that Vendor's performance under this Agreement and the Statements of Work will not be subject to Taxes. In the event that Vendor's performance under this Agreement and the Statements of Work is determined to be subject to an such Taxes, the Parties shall reasonably cooperate to lawfully minimize the imposition of any such taxes and shall negotiate in good faith as to which Party should pay any such Taxes. As between the Parties, Vendor shall be solely responsible for reporting, withholding, and paying all employment-related taxes and related deductions and payments with regard to Vendor's subcontractors and Vendor's and its subcontractors' respective employees, including, but not limited to, federal, state and local income taxes, social security, Medicare, unemployment and disability deductions, withholdings and payments.

ARTICLE 5 PERSONNEL

5.1 Vendor's Personnel

5.1.1 Vendor's Project Team

Vendor shall assign each of the individuals identified in Schedule 5.1.1 attached hereto to the respective positions indicated therein with respect to the Project (all such individuals and any replacements therefor, and any other successors to such positions, collectively, Vendor's "Key Personnel"). Any replacements or successor Key Personnel shall be subject to the Board's interview and approval of the applicable individual and Vendor shall make all such individuals available for interviewing by the Board within fourteen (14) days of assignment and arrival at the Project site. Any such individuals not approved by the Board shall be replaced by Vendor in accordance with Section 5.1.6. Vendor represents that each of the individuals performing Services, or otherwise engaged in fulfilling Vendor's obligations, at any given time, hereunder (collectively, Vendor's "Project Team") shall be appropriately qualified, trained, skilled, knowledgeable, and experienced for the respective positions and duties to which assigned and shall be permitted by Vendor to devote sufficient time to the Project to appropriately fulfill the duties to which respectively assigned in accordance with best industry practices. Vendor shall not, without obtaining the Board's prior written consent at least thirty (30) days in advance (which consent shall be in the Board's sole

discretion): (i) replace or reassign any member of Vendor's Project Team, if doing so would require the alteration or reduction of such individual's contribution to, or involvement with, the Project; or (ii) terminate the employment of any member of Vendor's Project Team, except with regard to termination for "good cause" (which term, as used in this Agreement, shall mean cause for termination as determined in accordance with Vendor's employment policies, consistently applied). If any member of Vendor's Project Team is reassigned, becomes incapacitated, or ceases to be employed by Vendor, and therefor becomes unable to perform the functions or responsibilities that had been assigned to such person, Vendor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced and the Board shall have the right to interview and approve each such replacement, each in accordance with Section 5.1.6. In making any such replacement, Vendor shall ensure that there is a period of overlap during which the person being replaced transfers appropriate knowledge and provides appropriate training to the new holder of the position (except to the extent that such period is made impossible, due to unforeseeable circumstances beyond Vendor's reasonable control), and the Board shall not be charged for time spent by the replacement individual until appropriately trained and knowledgeable with regard to the Project. In the event that Vendor's Project Manager as set forth in Schedule 5.1.1 is no longer available to work on the Project to the extent necessary to fulfill the Project Manager's duties for any reason except military call-up, disability, death or death of an immediate family member, and upon the Board's request, Vendor shall provide a credit to the Board in the amount of \$10,000 on the next invoice. In the event that any of Vendor's Project leaders as set forth in Schedule 5.1.1 are no longer available to work on the Project to the extent necessary to fulfill the respective Project leader's duties for any reason except, termination of employment with CFI, military call-up, disability, death or death of an immediate family member, and upon the Board's request, Vendor shall provide a credit to the Board in the amount of \$5,000 per Project leader on the next invoice.

5.1.2 Minority/Woman Owned Business Enterprise Participation

The Vendor agrees to subcontract a minimum of ten percent (10%) of the total Project Fees to a certified Minority/Woman Owned Business Enterprise for the duration of the Agreement.

5.1.3 Vendor's Project Manager

Vendor represents that the individual designated as Vendor's "Project Manager" in Schedule 5.1.1, and any replacement holder of such position, is an experienced manager who is knowledgeable of the Board and its business operations and related activities, and of the Board's information systems, requirements, and needs. Vendor's Project Manager shall at all times: (a) act as the primary liaison between Vendor and the Board's Project Manager; (b) have overall responsibility for directing all of Vendor's activities hereunder.

5.1.4 Vendor's Engagement Director

Vendor represents that the individual designated as Vendor's "Engagement Director" in Schedule 5.1.1, and any replacement holder of such position, is an experienced executive who is generally knowledgeable of industry best practices with regard to Tririga Software implementations and how such practices apply to the Board, its business operations and related activities, and its information systems, requirements, and needs. Vendor's Engagement Director shall at all times: (i) serve as a member of the Steering Committee (as defined in Section 6.3); (ii) have overall responsibility for managing all of Vendor's resources that are engaged hereunder; (iii) participate in Project activities as necessary and in accordance with the Project Plan; (iv) be vested with the necessary authority to fulfill all of the responsibilities of Vendor's Engagement Director described in this paragraph, including the authority to agree to and execute

Statement of Work and amendments to this Agreement on behalf of Vendor, unless such authority has been previously and specifically limited by Vendor and Vendor has provided the Board with a writing evidencing such specific limitation.

5.1.5 Additional Vendor Personnel

In addition to the individuals identified by name in Schedule 5.1.1, Vendor shall also assign such additional personnel to the Project, and engage such third-party consultants and subject matter experts, as are necessary and appropriate to fulfill Vendor's obligations in accordance with this Agreement and to provide the Board with a System meeting the requirements of this Agreement. The Board shall have the right to interview and approve each such additional person and, once assigned, each such person shall constitute a member of Vendor's Project Team.

5.1.6 Employee Qualification and Verification Process

Subject to and in accordance with applicable law, prior to assigning an individual as a member of Vendor's Project Team, Vendor shall have appropriately verified the qualifications of such individual, including verifying employment history and performance, conducting reference checks, verifying technical training or education completed or degrees awarded. All of Vendor's Project Team shall consent to submit to a background check, and including fingerprinting by the Board's Police Department, at the sole cost of Vendor (rate charged is the same throughout the District; current rate is \$84). Vendor shall not begin providing services contemplated by this Agreement until Vendor receives notice of clearance by the Board. The Board, nor its members, officers, employees, or agents, shall not be liable under any legal theory for any kind of claim whatsoever for the rejection of Vendor (or discontinuation of Vendor's services) on the basis of these compliance obligations. Vendor agrees that neither the Vendor, nor any employee, agent or representative of Vendor who has been convicted or who is currently under investigation for a crime delineated in Florida Statutes § 435.04, Florida Statutes will be assigned to the Project Team.

5.1.7 Training

Vendor shall provide all technical and interpersonal training to the members of Vendor's Project Team as may be necessary and appropriate for them to collectively perform, on behalf of Vendor, all of Vendor's duties under this Agreement.

5.1.8 Replacement of Personnel

Notwithstanding anything to the contrary elsewhere in this Agreement, if the Board believes that the performance or conduct of any member of Vendor's Project Team, or any subcontractor of Vendor's, is unsatisfactory for any reason, or does not comply with the requirements of this Agreement, the Board shall so notify Vendor and Vendor shall promptly (within no more than two (2) business days) and appropriately address the performance or conduct of such person, or, at the Board's request, immediately remove and replace such person with another person acceptable to the Board and meeting all of the applicable requirements described in this Section 5.1. If the Board requests that Vendor remove and replace a member of Vendor's Project Team, the credits set forth in Section 5.1.1 shall not apply.

5.2 The Board's Personnel

The Board shall initially assign each of the individuals identified in Schedule 5.2 attached hereto to the respective positions indicated therein with respect to the Project (collectively, the Board's "Project Team"), including, but not limited to, the Board's "Project Manager" identified therein. The Board's Project Manager shall at all times:

- (i) act as the primary liaison between the Board and Vendor's Project Manager;
- (ii) have overall responsibility for directing all of the Board's activities hereunder; and

(iii) be vested with the necessary authority to fulfill all of the responsibilities of the Board's Project Manager described in this paragraph, including the authority to coordinate and arrange for the execution Statements of Work and amendments to this Agreement on behalf of the Board.

In the event of the unavailability of the Board's Project Manager, the Board's Chief of Facilities Management shall have the same powers and authority as the Board's Project Manager. In addition to the individuals identified by name in Schedule 5.2, the Board shall also assign such additional personnel to the Project as are necessary and appropriate to fulfill the Board's obligations in accordance with this Agreement, including any necessary or appropriate "Subject Matter Experts." If any member of the Board's Project Team is reassigned, becomes incapacitated, or ceases to be employed by the Board, and therefore becomes unable to perform the functions or responsibilities that had been assigned to such person, the Board shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced.

5.3 The Board's Policies and Procedures

Vendor covenants that it, the members of Vendor's Project Team, any subcontractors of Vendor, and all other agents and representatives of Vendor, shall at all times comply with and abide by all policies and procedures of the Board (as such may exist or be revised or established from time to time) that reasonably pertain to Vendor in connection with Vendor's performance hereunder, including all such policies that pertain to conduct on or around the Board's premises, use or possession of contraband, or the access to, and security and confidentiality of, the Board's information technology, data, or resources, or related systems, networks, equipment, property, or facilities. Written copies of such policies and procedures shall be provided to Vendor via www.palmbeach.k12.fl.us. Prior to performing Services hereunder, any members of Vendor's Project Team who will have access to the Board's data, software, or Confidential Information shall execute the Board's standard form confidentiality agreements. Vendor shall issue to each member of its Project Team appropriate access mechanisms (e.g., access IDs, passwords, and access cards), which shall be used only by the specific individuals to whom they are issued. Vendor shall provide each member of its Project Team with only the level of access as is required to perform the tasks and functions for which such person is responsible. Vendor shall, from time to time, provide the Board with an updated list of those members of Vendor's Project Team who have the highest level of access to the Board's systems, software and data. Vendor shall maintain and ensure the confidentiality and security of the Board's information systems, networks, software and data in accordance with the terms of this Agreement, and shall, in any event, treat all such materials with a level of security at least equivalent to that then being maintained by: (i) the Board with respect to such materials; and (ii) Vendor with respect to its own similar systems and data. Vendor shall cooperate with the Board in ensuring Vendor's compliance with the policies and procedures described in this Section 5.3, and any violations or disregard of such policies or procedures shall, in addition to all other available rights and remedies of the Board, be cause for denial of access or use by the applicable members of Vendor's Project Team to the Board's information systems, networks, equipment, property, or facilities.

5.4 Conduct on the Board's Premises

Vendor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the Board's premises. The operation of vehicles by any of the members of Vendor's Project Team on the Board's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the Board's property and involving any of the members of Vendor's Project Team shall be reported promptly to the Board's Police Department. Vendor covenants that, at all times, it, its employees and agents (including, but not limited to, all members of Vendor's Project Team), and its subcontractors shall comply with, and take no action that results in the Board being in violation of, any federal, state or local law, ordinance, regulation or rule, including those regarding use or possession of contraband, confidential, privacy, security, or exportation.

5.5 Use of Affiliates and Subcontractors

Vendor shall not subcontract all or any part of the Services to be performed hereunder (including subcontracting to an Affiliate (as defined below) of Vendor) without the prior written consent of the Board, which consent may be withheld in the Board's sole discretion, except that the Board hereby approves the use of the subcontractors identified on Schedule 5.5. Notwithstanding the foregoing, Vendor shall not be relieved of its obligations under this Agreement by use of any Affiliates or subcontractors, and all such performance of such Services by each such Affiliate or subcontractor shall at all times be in accordance with the terms and conditions of this Agreement. Vendor shall be and remain fully responsible and liable for the performance of any such Affiliate or subcontractor and their respective employees and agents (and for all acts and omissions thereof, regardless of time, place, or whether within the scope of employment or engagement) and for fulfilling all of Vendor's obligations under this Agreement. Prior to performing any Services, each subcontractor to which the Board consents shall execute a confidentiality agreement with Vendor that imposes obligations with respect to Confidential Information of or about the Board and its Affiliates that are at least as restrictive as those set forth in this Agreement. If the Board determines, in its sole discretion, that the performance or conduct of any of Vendor's subcontractors hereunder is unsatisfactory, the Board may notify Vendor of such determination in writing, indicating the reasons therefor, and Vendor shall promptly take all necessary actions to immediately remedy the performance or conduct of such subcontractor and, if so requested by the Board, to promptly cease using such subcontractor hereunder. If the Board requests that Vendor remove and replace a subcontractor, the credits set forth in Section 5.1.1 shall not apply. As used in this Agreement, the term "Affiliate" means: (i) with respect to Vendor, any person or entity that, directly or indirectly, is owned or controlled by Vendor, owns or controls Vendor, or is under common ownership or control with Vendor, where "control" means the legal, beneficial, or equitable ownership, direct or indirect, of more than fifty percent (50%) of the aggregate of all outstanding voting securities or other equity interests in an entity; and (ii) with respect to the Board, those entities for which the Board provides information technology services, support, or operation, including all schools with students in grades from kindergarten through the twelfth grade, and any other schools, entities, or organizations, the information technology needs of which are served or supported by the Board, now or hereafter.

ARTICLE 6 PROJECT ADMINISTRATION

6.1 Project Status Reports

At least once each week throughout the Term, Vendor shall deliver to the Board's Project Manager a written report summarizing the status and progress of the Project during the previous week, including problems that have occurred and could delay Vendor's performance of anticipated activities and expected problems during the upcoming month (each such report, a "Status Report"). At a minimum, each Status Report shall include:

- (i) the current status and progress of the performance of the Project and the development of the System, the Project Plan, and any schedules or deadlines set forth in the applicable Statement of Work;
- (ii) any actual delays;
- (iii) any reasonably anticipated delays;
- (iv) any failures, or correction of any failures, with regard to the Project, the Services, or the System; and
- (v) such other information as the Board may reasonably request from time to time.

Each Status Report and all other documents submitted to the Board by Vendor in connection with Vendor's performance under this Agreement shall be created and stored using a current version of a Microsoft Office product (e.g., Word, Excel, Access, or PowerPoint) for the Microsoft operating system platforms used by the Board Resources.

6.2 Project Status Meetings

Each month during the Term, at the time and location reasonably designated by the Board, Vendor's Project Manager and other appropriate members of Vendor's Project Team shall meet in person (or, if approved by the Board, via teleconference) with the Board's Project Manager and any other appropriate members of the Board's Project Team for the purpose of reviewing and discussing the status and progress of the Project, and the development and implementation of the System, during the preceding month, including with regard to any problems that have occurred and could delay or impact performance of anticipated activities, and any problems reasonably anticipated in the future.

6.3 Executive Steering Committee

Within ten (10) days after the Effective Date, the Parties shall establish a committee (the "Steering Committee"), whose membership shall be composed of the appropriate representatives of both Vendor and the Board (as determined by the Parties' Project Managers) and that shall address matters of governance and administration of the relationship of the Parties in connection with this Agreement, including: (i) monitoring the general progress of the Project, the performance of the Services, the provision of the Deliverables, and the development and implementation of the System, as described in this Agreement and the Statements of Work executed hereunder; and (ii) analyzing and attempting, in a timely manner, to resolve problems referred or escalated to it by either of the Party's Project Managers. Each Party may replace any of its Steering Committee members, at any time, at the discretion of such Party. The Steering Committee shall meet monthly, via teleconference or in person, and at such place and time as determined by the Parties' Project Managers, and proxy representation of Vendor's Steering Committee members at such meetings shall not be allowed. As requested by the Board's Project Manager, Vendor's members on the Steering Committee shall meet with the Board's Sponsor Committee and the Board periodically to report on Project progress and status.

6.4 Project Modification Procedure

If the Board requires a change to the scope of the Services being provided under this Agreement and the applicable Statement of Work (a "Project Modification"), the Board's Project Manager shall deliver to Vendor's Project Manager a written request for a proposal to implement such Project Modification, specifying the proposed change with sufficient detail to enable Vendor to evaluate it. Within five (5) business days (or, if the requested change cannot reasonably be evaluated within such time period, then such longer period of time as mutually agreed by the Parties) after the date of such request, Vendor shall provide the Board with a written evaluation of such requested Project Modification and a written proposal (a "Proposal") containing, at a minimum, the following:

- (i) a detailed description of the impact of the requested change upon Vendor's Project Team required to perform the Services, as modified by the requested Project Modification;
- (ii) reasonably detailed specifications, implementation plans (with implementation to commence not later than thirty (30) days after the Board's approval (if any) of such Project Modification, unless otherwise mutually agreed by the Parties), work schedules, timeframes for performance, and acceptance criteria; and
- (iii) a firm price quote, if any cost variance occurs, of the cost to implement such Project Modification, based on the Applicable Hourly Rates and any other applicable fees that would be associated with such Project Modification, which price quote shall constitute Vendor's firm offer, irrevocable for ten (10) business days (or such longer period as stated in such Proposal, the "Response Period"), to perform such services as described in such Proposal upon the terms set forth therein.

Prior to the expiration of the Response Period, the Board's Project Manager shall notify Vendor in writing if the Board elects to accept such Proposal and proceed with implementation of the Project Modification upon the terms and conditions set forth therein (any such notice, a "Notice to Proceed"). If, within the Response Period, the Board gives notice to Vendor not to proceed, or fails to give any notice to Vendor, then the Proposal shall be deemed rejected and the request for

such Project Modification shall be deemed withdrawn, and Vendor shall take no further action with respect to either. Upon the Board's issuance of a Notice to Proceed during the Response Period, as described above, the Proposal shall be deemed accepted by the Board and the terms thereof (as modified by written mutual agreement of the Parties in negotiations prior to issuance of such written Notice to Proceed) shall be deemed to constitute such Project Modification. All Project Modifications shall be governed by the terms and conditions of this Agreement except as expressly specified otherwise by the terms of such Project Modification, and any services or deliverables provided pursuant to any Project Modification shall be deemed Services and Deliverables hereunder, respectively.

If Vendor requests a change to the scope of the Services, or notifies the Board that it considers any service requested by client to be outside the scope of Services, Vendor shall submit a Proposal to the Board and pursue the process set forth in the preceding paragraph, except that, if the Board notifies Vendor that the Board considers the requested services to be already within the scope of the Services to be provided by Vendor under this Agreement, and if the Parties fail to reach agreement on the matter, the Parties shall follow the Dispute Resolution procedures outlined in ARTICLE 17.

ARTICLE 7 PROPRIETARY RIGHTS AND OWNERSHIP

7.1 Work Product

The Board shall be the sole and exclusive owner of all Work Product (as defined below) created or produced in connection with performance under this Agreement, and all intellectual property and propriety rights in or pertaining to such Work Product, effective upon delivery of such Work Product to the Board. Vendor agrees that all copyrightable aspects of the Work Product shall be considered "work made for hire" within the meaning of the Copyright Act of 1976, as amended (the "Copyright Act"), that the Parties do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act, and that in no event shall Vendor be deemed a joint author of the Work Product. To the extent that any rights to any of the Work Product arise or vest in Vendor, or the Work Product is held not to constitute "work made for hire" under the Copyright Act, Vendor hereby assigns, effective upon the delivery of such Work Product to the Board, all such rights, and the sole right, title and interest in and to the Work Product, to the Board, and Vendor hereby represents and warrants that it has the legal right, power, and authority to effectively and validly accomplish said assignment and hereby agrees to indemnify the Board against any losses, damages, and expenses resulting from any alleged invalidity of any such assignment. As used in this Agreement, "Work Product" means information and developments, and intermediate or partial versions thereof, including source code and object code with respect thereto, configurations, configuration files, setup and initialization files, templates, other customized formats, customized reports, processes, methods, apparatus, programs, and materials related to the Services, the Deliverables, or the System, or the access to, or the use or operation of, the System, lists, compilations, and descriptions of the aggregate setup and configuration steps and choices made by the Board or Vendor in the process of installing, implementing, and integrating the System and the Tririga Software, and designs, specifications, inventions, discoveries, improvements, ideas, know-how, techniques, materials, program materials, computer software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, other creations, and the like, regardless of whether patented or patentable, subject to copyright, constituting a trade secret, or otherwise protectable by law, that are created, invented, or conceived by Vendor in its performance under this Agreement, or by any third party engaged by Vendor in the performance of Vendor's obligations or the exercise of Vendor's rights under this Agreement, and the intellectual property and proprietary rights in or pertaining to any of the foregoing, except for and with regard to any Pre-Existing materials (as defined below). The Board hereby grants to Vendor a personal, limited, non-exclusive, and non-transferable license, without the right to sublicense, to use the Work Product during the Term solely and exclusively as necessary and appropriate for Vendor to fulfill its obligations under this Agreement.

7.2 Pre-Existing Materials

Vendor hereby grants to the Board and its Affiliates, and to their respective designees (including third party service-providers, consultants, and outsourcers), a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free, world-wide license and right to copy, transmit, display, perform, create derivative works, and otherwise use the Pre-Existing Materials (as defined below) for the Board's and its Affiliates' respective internal business purposes, in object code and source code form, in whole or in part and including but not limited to, the right to add to, subtract from, arrange, rearrange, revise, modify, change and adapt the Pre-Existing Materials, and any part or element thereof, for such purposes. As used herein, "Pre-Existing Materials" means computer programs, programming code, and operating instructions, and other similar or related materials developed or acquired by Vendor prior to the Effective Date and used to create or incorporated into, or used to operate or maintain, any portion of the Work Product developed by Vendor or otherwise provided to the Board hereunder.

7.3 Residual Rights

The Board acknowledges that Vendor is in the business of providing similar products and services to a variety of customers and that nothing in this Agreement shall prevent Vendor from using in subsequent engagements for other customers the general knowledge, concepts, know-how, techniques, methods, models, and improvements developed or produced (alone or jointly with the Board) in connection with the performance of the Services, or the provision of the Deliverables, hereunder that are retained in the memories of Vendor's personnel (excluding information intentionally memorized for the express purpose of permitting its subsequent use or disclosure) and related to Vendor's business or business practices, to the extent that such retained information and materials do not contain any Confidential Information of or about the Board or any Work Product. Similarly, nothing contained in this Agreement shall be construed as limiting Vendor's rights to use or market any Pre-Existing materials and derivative works of Pre-Existing materials of Vendor that were created prior to the Effective Date without obligation of any kind to the Board.

7.4 Further Assurances

At the request of the Board, Vendor shall make, execute and deliver such documents as may be needed or reasonably requested by the Board in protecting its rights in any Work Product or to give effect to the provisions of this ARTICLE 7.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

8.1 Preparation for Performance

Vendor has represented to the Board and hereby reaffirms that:

(i) Vendor possesses superior skills and expertise in implementing Tririga Enterprise suite of software applications or products (or a successor suite of products) made available by Tririga , Inc. ("Tririga") in large K-12 environments;

(ii) Vendor is presently designated by Tririga and covenants to maintain throughout the Term of this Agreement its Tririga designation as a Silver Services Consulting Partner;

(iii) Vendor has sufficient highly qualified personnel available that it shall assign to performance under this Agreement so that such performance will be completed within the applicable timeframe set forth in each applicable Statement of Work;

(iv) Vendor will, during the Requirements Phase, avail itself of the Board-provided opportunity to inspect all material components, workings, capabilities, procedures, and capacities of the Board's networks, equipment, hardware, and software associated with the provision of the Services and the Deliverables and the development and implementation of the System, and to review the Board's related business processes, as necessary for full and complete analysis of the Board's requirements in connection therewith; and

(v) Vendor understands the nature, location, and Services to be performed hereunder and is not relying on any representations or promises of the Board except those, if any, contained in this Agreement and the applicable Statements of Work.

8.2 Necessary Rights

Subject to the Board's licensing of the Tririga Software from Tririga as contemplated hereby, and the Board's licensing or acquisition of any other software or hardware specified in an applicable Statement of Work, Vendor warrants that Vendor shall at all times during the Term possess all necessary and appropriate rights and authority to access, install, implement, and integrate the Tririga Software, to perform all of the other Services, and to grant any rights it purports to grant in this Agreement, as contemplated by this Agreement.

8.3 Services

Vendor warrants that the Services shall be performed and completed, and the Deliverables and Work Product prepared and provided, by Vendor for the Board in accordance with this Agreement by competent, qualified personnel, in a timely, professional, workperson-like manner, in compliance with all applicable laws, rules, regulations, and ordinances, and in accordance with the highest recognized professional practices and standards in the industry.

8.4 Documentation

Vendor warrants that all documentation and related materials produced or provided by Vendor to the Board concerning the Services, the Deliverables, the Work Product, or the System shall be complete and shall accurately describe such Services, Deliverables, Work Product, or System in accordance with the applicable Statements of Work and appropriately tailored to the end users.

8.5 Disabling Devices

For purposes of this Agreement, "Disabling Device" shall mean creation or insertion of, any virus, timer, clock, counter, time lock, time bomb, or other limiting design, instruction, or routine that would erase data or programming or cause any of the foregoing materials, any portion thereof, or any other software, hardware, equipment, or data to become inoperable or otherwise become incapable of being used in the full manner for which designed, intended and created. Vendor warrants:

(i) that it shall routinely employ industry best practices to identify, screen, and prevent any Disabling Device in materials and resources utilized by Vendor in connection with this Agreement;

(ii) that it shall not knowingly or intentionally install any Disabling Device in materials and resources utilized by Vendor or the Board in connection herewith; and

(iii) that it shall assist the Board in reducing and mitigating the effects of any Disabling Device discovered in any materials or resources related to the System, the Services, the Deliverables, or the Work Product.

8.6 Proprietary Rights Infringement

Vendor warrants that, to its knowledge, at no time during the Term shall any services, techniques, materials or products provided or used by Vendor in performing the Services, providing the Deliverables or the Work Product, or planning, developing, implementing, or integrating the System (excluding the Tririga Software and any materials or resources provided by the Board), or shall the use thereof by the Board or its Affiliates, infringe upon any third party's patent, trademark, copyright, or other intellectual property or proprietary right, and that Vendor shall at no time misappropriate any trade secrets, or make use of any misappropriated trade secrets, in connection with performance of Services hereunder. In the event that Vendor becomes aware that any of such services, techniques, materials or products, or the use thereof, infringes, or is alleged to infringe, upon any third party's patent, trademark, copyright, or other intellectual property or proprietary right, or contains or makes use of any misappropriated trade secret, then Vendor shall promptly notify and cooperate with the Board, and shall take in a timely manner such further actions as are reasonably requested by the Board, in accordance with ARTICLE 9. Vendor shall have no responsibility with respect to any infringement resulting from compliance

with the Board's specifications or requirements, provided that Vendor has no actual knowledge that compliance with such specifications or requirements would result in such infringement and proceeded without notifying the Board of such potential infringement.

8.7 Recommended Hardware

Vendor warrants that any specific hardware platform and related technological components that Vendor recommends to the Board (whether in a Statement of Work or otherwise) shall, if acquired and installed by the Board and used as the platform upon which Vendor implements the System, be of sufficient capacity and capabilities so that the System, as implemented by Vendor hereunder, and when operated and used by the Board in accordance with the applicable documentation consistently and reliably provides application initialization (or load) times and response times that are no longer than the common and prevalent standards of the industry for similar software applications, provided that the Board's workload, and the Board's business and information technology environment at current and future projected workload, in a manner that has a measurable, material, and adverse impact upon the System or such initialization or response times, from the objective factors and considerations expressly set forth or identified as conditions of such recommendations. Notwithstanding anything to the contrary, in no event shall the warranty set forth in this Section 8.7 apply, nor shall Vendor be responsible, with regard to degraded performance of the System that is caused by: (i) any technical failures of third-party hardware or software that are covered by warranties, or support or maintenance obligations, of the applicable vendors or manufacturers thereof; or (ii) errors or failures in the operation of the hardware platform utilized by the System that are caused by the Board or the Board's third-party service-providers.

8.8 Loss of Data

Vendor warrants that, prior to the Board's Acceptance as defined in the applicable Statement of Work, the Services, the Deliverables, and the Work Product provided to the Board by Vendor, and the System as implemented by Vendor hereunder, and all use of any of the foregoing in accordance with applicable documentation and specifications, shall not result in the direct or indirect loss, destruction, deletion, or alteration of any of the Board's data ("Data Loss"). Vendor shall promptly restore any of the Board's data to the extent that the Board shall have met reasonable backup requirements and such Data Loss shall have been caused by or resulted from the Services, the Deliverables, or the Work Product, or any use thereof in accordance with the applicable documentation and specifications. If Vendor fails to promptly restore such data, the Board, in its sole discretion, may perform such restoration or have such restoration performed for it by a third party, and Vendor shall promptly reimburse the Board for the reasonable cost thereof. The risk of loss for the Deliverables and Work Product shall remain with Vendor until the Board approves and/or accepts the respective Deliverables and Work Product as set forth in Section 13.

8.9 Authorizations and Approvals

Vendor represents that: (i) it is a corporation duly formed and in good standing under the laws of the State of Texas; (ii) it is qualified and registered to transact business in the State of Florida and all other locations where the performance of its obligations hereunder would require such qualification; (iii) it has all necessary rights, powers, and authority to enter into and perform under this Agreement, (iv) the execution, delivery, and performance of this Agreement by Vendor have been duly authorized by all necessary corporate action; (v) the execution and performance of this Agreement by Vendor shall not violate any domestic or foreign law, statute, or regulation and shall not breach any agreement, covenant, court order, judgment, or decree to which Vendor is a party or by which it is bound; (vi) it has, and covenants that it shall maintain in effect, all governmental licenses and permits necessary for it to provide the Services and the Deliverables, and to develop and implement the System, as contemplated by this Agreement; and (vii) that Vendor owns or leases, and covenants that it shall own or lease, or have the right to use, free and clear of all liens and encumbrances, other than lessors' interests, or security interests of Vendor's lenders, appropriate right, title, or interest in and to the tangible property that Vendor intends to use or uses to provide the Services and the Deliverables, and develop and implement

the System in accordance herewith (except with regard to the Tririga Software and any other resources provided by the Board).

8.10 Pending Litigation

Vendor represents that, as of the Effective Date, there is no outstanding or currently pending or threatened litigation, arbitrated matter, or other dispute to which Vendor is a party that, if decided unfavorably to Vendor, would reasonably be expected to have a potential or actual material adverse effect on the Project or on Vendor's ability to fulfill its obligations hereunder, and that Vendor knows of no basis that might give rise to any such litigation, arbitration, or other dispute in the foreseeable future.

8.11 Compliance with Laws

Vendor warrants that, in performing the Services, preparing and providing the Deliverables and the Work Product, and planning, developing, integrating, and implementing the System, Vendor shall comply, and shall not prevent the Board or its Affiliates from complying, with all applicable laws, regulations, and ordinances of any relevant jurisdiction, and all applicable policies of the Board or its Affiliates.

8.12 Third-Party Products

Vendor hereby assigns to the Board all warranties, indemnities, and other commitments which Vendor has obtained or shall obtain from the vendors and manufacturers of, and which are applicable to, any third-party software or hardware used by Vendor in the performance of the Services hereunder, or included by Vendor in, or necessary for the operation of, the System or any Deliverable, Work Product, or other materials provided to the Board hereunder. Vendor warrants that it shall exercise commercially reasonable efforts to enforce on the Board's behalf any such warranties, indemnities, and other commitments to the extent that they cannot be so assigned, and that Vendor shall work with and coordinate the efforts of such vendors and manufacturers to ensure that the Board obtains any required warranty service.

8.13 Disclaimer of Warranties

VENDOR DOES NOT MAKE ANY WARRANTIES OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT. VENDOR SPECIFICALLY DOES NOT MAKE ANY IMPLIED WARRANTIES WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 9 INDEMNIFICATION

9.1 Bodily Injury and Property Damage

Vendor shall, in addition to any other obligation to indemnify the Board and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the Board, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), and costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of Vendor, or anyone directly or indirectly employed by them, or of anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work; claims or actions made by Vendor or other party performing work on the Project. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Vendor under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost or expenses, including attorney's fees, incurred by the Board to enforce this agreement shall be borne by Vendor. Vendor recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Agreement.

9.2 Infringement

In accordance with Section 9.5, Vendor shall defend or, at its option, settle, and shall indemnify, and hold the Board's Indemnitees harmless from and against all Losses arising out of any claim or demand brought by any third party against any of them for actual or alleged infringement of any patent, trademark, copyright, or other intellectual property or proprietary right (including, but not limited to, misappropriation of trade secrets) to the extent based upon the Services, the Deliverables, or any hardware, software, or other technology or materials used by Vendor (excluding the Tririga Software and technology or materials owned or provided by the Board) in providing the Services or the Deliverables, or developing and implementing the System, hereunder (an "Infringement Claim"). In the event of an Infringement Claim, Vendor may, in its reasonable discretion, either procure a license to enable the Board to continue to use such Services, Deliverables, or other technology or materials, or develop or obtain, and provide the Board with, a non-infringing substitute reasonably acceptable to the Board. Notwithstanding anything to the contrary in this Section 9.2, Vendor shall have no obligation with respect to indemnification of the Board's Indemnitees regarding any claim or action to the extent that it is based upon: (i) a modification by the Board of the Services, the Deliverables, or other technology or materials provided by Vendor hereunder that was not intended or otherwise approved by Vendor; (ii) the Board's operation or use of the Services, the Deliverables, or other technology or materials provided by Vendor hereunder in combination with apparatus, data or programs neither furnished nor approved by Vendor; (iii) the use by the Board of the Services, the Deliverables, or other technology or materials provided by Vendor hereunder other than in accordance with the Board's applicable licenses or rights, as set forth in this Agreement; (iv) Vendor's use, in accordance with this Agreement, of the Tririga Software, (v) or any Infringement Claims resulting from Vendor's compliance with the Board's specifications or requirements, provided that Vendor has no actual knowledge that compliance with such specifications or requirements would result in such infringement and failed to notify the Board of such potential infringement.

9.3 Third-Party Services

In accordance with Section 9.5, Vendor shall defend, indemnify, and hold the Board's Indemnitees harmless from and against all Losses related to claims by third parties (including, but not limited to, members of Vendor's Project Team any of Vendor's subcontractors) based upon an alleged breach by Vendor of any agreement with such third party (e.g., an employment agreement).

9.4 Subrogation

If an indemnifying Party shall be obligated to indemnify an Indemnitee pursuant to this ARTICLE 9, the indemnifying Party shall, upon payment of such indemnity in full, be subrogated to all rights of the Indemnitee with respect to the claims and defenses to which such indemnification relates.

9.5 Procedures

If any legal action governed by this ARTICLE 9 is commenced against an Indemnitee, prompt written notice thereof shall be given to the indemnifying Party, except that failure to give prompt notice shall reduce the indemnifying Party's obligations under this ARTICLE 9 only in the event and to the extent it is prejudiced thereby. After such notice, if the indemnifying Party shall acknowledge in writing to such Indemnitee that the right of indemnification under this Agreement applies with respect to such claim, then the indemnifying Party shall be entitled, if it so elects, in a written notice delivered to the Indemnitee no later than ten (10) days prior to the date on which a response to such claim is due, to take control of the defense and investigation of such claim and to employ and engage attorneys of its sole choice, and reasonably satisfactory to the indemnified Party, to handle and defend same, at the indemnifying Party's expense. The Indemnitee shall cooperate in all reasonable respects with the indemnifying Party and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, except that the Indemnitee may, at its own expense, participate, through its attorneys or otherwise, in such investigation, trial, and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money (or the issuance of credits) by the indemnifying Party shall be entered into by the indemnifying Party without the prior written

consent of the Indemnitee, which consent may be given or withheld in the Indemnitee's sole discretion, to the extent that it concerns equitable remedies or the Indemnitee's Confidential Information or proprietary technology. After notice by the indemnifying Party of its election to assume full control of the defense of any such claim, the Indemnitee shall not be liable to the indemnifying Party for any legal expenses incurred thereafter by such indemnifying Party in connection with the defense of that claim. If the indemnifying Party does not assume full control over the defense of a claim subject to such defense as provided in this Section, the indemnifying Party may participate in such defense, at its expense, and the Indemnitee shall have the right to defend and settle the claim in such manner as it may deem appropriate, at the expense of the indemnifying Party.

ARTICLE 10 INSURANCE

10.1 General Requirements

Without limiting Vendor's undertaking to defend, hold harmless, and indemnify the Board's Indemnitees, as provided in ARTICLE 9 hereof, Vendor shall purchase and maintain insurance to protect Vendor from claims of the type set forth below that arise out of or result from Vendor's operations, services, or performance under this Agreement and for which Vendor may be liable, whether such operations, services, or performance are provided by Vendor or by any of Vendor's agents, consultants, suppliers, or subcontractors or by anyone directly employed by any of them, or by anyone else for whose acts Vendor may be liable.

10.2 Coverages

The insurance required hereunder shall be: (i) maintained by Vendor at all times during the Term and for at least three (3) years after the last date on which Vendor provides Services pursuant to this Agreement; and (ii) written for not less than the limits of coverage specified herein, or as required by law in any jurisdiction with authority over Vendor's operations, services or performance, whichever is greater. Coverage shall be written on an occurrence basis and shall include at least the following:

- A. **WORKERS' COMPENSATION:** Vendor must comply with Florida Statutes Chapter 440, Workers' Compensation and Employees' Liability Insurance with minimum statutory limits.

- B. **COMMERCIAL GENERAL LIABILITY:** Vendor shall procure and maintain, for the life of this Agreement, Commercial General Liability Insurance. This policy shall provide coverage for death, bodily injury, personal injury, products and completed operations liability and property damage that could arise directly or indirectly from the performance of this Agreement. It must be an occurrence form policy. **THE SCHOOL BOARD OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR COMMERCIAL GENERAL LIABILITY INSURANCE.** The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined, Single Limit for Bodily Injury Liability and Property Damage Liability.

- C. **BUSINESS AUTOMOBILE LIABILITY:** Vendor shall procure and maintain, for the life of the Agreement, Business Automobile Liability Insurance. **THE SCHOOL BOARD OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR BUSINESS AUTOMOBILE LIABILITY INSURANCE.**

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" form policy. The insurance must be an occurrence form policy.

In the event Vendor does not own any vehicles, Vendor shall provide hired and non-owned coverage in the amounts listed above. In addition, Vendor shall provide to the Board an affidavit signed by Vendor indicating the following:

Vendor does not own any vehicles. In the event Vendor acquires any vehicles throughout the term of this Agreement, Vendor agrees to purchase "Any Auto" coverage as of the date of acquisition.

- D. **PROFESSIONAL LIABILITY:** Vendor shall procure and maintain Professional Liability Insurance for the life of this Agreement, plus two years after completion. This insurance shall provide coverage against such liability resulting from this Agreement. The minimum limits of coverage shall be \$1,000,000 with a deductible not to exceed \$5,000. The deductible shall be the responsibility of the insured. Professional liability policies shall include an endorsement whereby Vendor holds harmless the Board and each officer, agent and employee of the Palm Beach County School District against all claims, against any of them, for personal injury or wrongful death or property damage arising out of the negligent performance of professional services or caused by an error, omission or negligent act of Vendor or anyone employed by Vendor.
- E. Fidelity Bond coverage with limits of not less than One Hundred Fifty Thousand Dollars (\$150,000.00) per occurrence.

- 10.3 Umbrella **OR EXCESS LIABILITY:** Vendor shall procure and maintain Umbrella or Excess Liability Insurance at all times during the Term, with limits not less than \$1,000,000 per occurrence with a deductible not to exceed **\$10,000**.

Whenever insurance policies are renewed or replaced, Vendor shall cause the policy retroactive date to coincide with, or precede, the Effective Date of this Agreement.

10.4 Other Insurance Requirements

Vendor shall abide by and comply with the following terms for all insurance coverage required by this ARTICLE 10:

- (a) Vendor shall provide insurance coverage by insurance companies acceptable to the Board having policy holder ratings no lower than "A" and financial ratings not lower than "XII" in the latest edition of Best's Insurance Guide in effect as of the Effective Date. Such insurance shall be written with insurers of good standing and licensed to do business in the State of Florida;
- (b) Vendor shall verify that all of Vendor's agents, consultants, suppliers, and subcontractors are insured, in accordance with this ARTICLE 10, against claims arising out of or relating to their performance related to this Agreement;
- (c) The insurance policies described in Section 10.2 shall each name the Board as an additional insured on a primary basis with respect to liability arising out of or in any way connected with Vendor's performance under this Agreement;
- (d) Each Party hereby waives and shall cause its insurers to waive their rights of subrogation against the other Party, and all of its subsidiaries, affiliates, directors, officers, and employees under the insurance policies described in clauses (a), (b), (c), and (d) of Section 10.2;
- (e) The insurance policy requirements set forth in this ARTICLE 10 shall be subject to the laws of the United States and the State of Florida;
- (f) The insurance coverages described in this ARTICLE 10 shall be primary to and non-contributory with respect to any other insurance or self-insurance that may be maintained by the Board, and shall contain a cross-liability or severability-of-interest clause, where applicable. The fact that Vendor has obtained the insurance required in this ARTICLE 10 shall in no manner lessen nor affect Vendor's other obligations or

liabilities set forth in this Agreement. Within thirty (30) days after the Effective Date, and from time to time during the Term, at the Board's reasonable request (but not more frequently than annually), Vendor shall supply the Board with a copy of the endorsement that adds the Board as an additional insured to the applicable policy demonstrating that all of the insurance required by this ARTICLE 10 is in force, that not less than thirty (30) days' written notice shall be given to the Board (via certified mail) prior to any cancellation, suspension, or restrictive modification of such insurance policies, and that the required waivers of subrogation are in force. At the request of the Board, Vendor shall promptly provide a certified copy of any insurance policy required under this Agreement;

- (g) Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies required by this ARTICLE 10 shall be reasonable in amount or scope and shall be assumed by, for the account of, and at the sole risk of, Vendor, and in no event shall Vendor's liability be limited to the extent of the minimum limits of insurance required above; and
- (h) Vendor shall, at Vendor's expense, carry and maintain at all times, and for as long as any item of Vendor's property is in transit, or in the care, custody, or control of the Board, an insurance policy or policies covering loss, or destruction of, or damage to any item of Vendor's property in the amount of the full replacement value thereof providing protection against all perils normally covered in an "all risk" physical damage insurance policy. Vendor shall cause its "all risk" physical damage insurers to waive all rights of subrogation against the Board and its directors, officers, agents, and employees for any loss, or destruction of, or damage to any item of Vendor's property that is covered by insurance pursuant to this clause (h) of Section 10.3.

ARTICLE 11 LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES

11.1 Maximum Liability of Vendor

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE 11, VENDOR'S MAXIMUM, CUMULATIVE, AND AGGREGATE MONETARY LIABILITY FOR ALL CLAIMS OF ANY KIND OF THE BOARD ARISING OUT OF VENDOR'S PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR OF ANY OTHER WORK OR OBLIGATIONS SET FORTH IN THIS AGREEMENT, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE GREATER OF: (i) FIVE HUNDRED THOUSAND DOLLARS \$500,000, (ii) AN AMOUNT, CALCULATED AT THE TIME OF PRESENTATION OF ANY CLAIM (AND THEREAFTER FIXED WITH REGARD TO SUCH CLAIM, REGARDLESS OF HOW FEES MAY LATER CHANGE), EQUAL TO THE SUM OF THE TOTAL, CUMULATIVE, AND AGGREGATE AMOUNT OF FEES THAT HAVE THEN BEEN PAID HEREUNDER BY THE BOARD AND THE AMOUNT OF FEES THAT ARE THEN PAYABLE HEREUNDER BY THE BOARD; AND (ii) THE AMOUNT OF VENDOR'S INSURANCE, AS REQUIRED UNDER ARTICLE 10, TO THE EXTENT THAT SUCH INSURANCE COVERS ANY APPLICABLE CLAIM.

11.2 Maximum Liability of the Board

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE 11, AND SUBJECT TO CHAPTER 768.28, FLORIDA STATUTES, THE BOARD'S MAXIMUM, CUMULATIVE, AND AGGREGATE MONETARY LIABILITY FOR ALL CLAIMS AND ACTIONS ARISING UNDER OR RELATING TO THIS AGREEMENT AT ANY TIME OR TIMES, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT OF MONEY THEN PAYABLE AND UNPAID FOR SERVICES RENDERED, AND DELIVERABLES PROVIDED, BY VENDOR HEREUNDER FOR WHICH THE BOARD HAS ISSUED ITS ACCEPTANCE.

11.3 Exclusion of Indirect Damages

EXCEPT FOR CLAIMS OF THE TYPES DESCRIBED IN SECTION 11.4, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR, SPECIAL, INCIDENTAL, EXEMPLARY, OR

CONSEQUENTIAL DAMAGES. THE LIMITATION ON THE TYPES OF RECOVERABLE DAMAGES SET FORTH IN THIS SECTION 11.3 SHALL APPLY IRRESPECTIVE OF WHETHER THE POSSIBILITY OF ANY SUCH DAMAGES WAS KNOWN OR HAD BEEN DISCLOSED TO A PARTY IN ADVANCE, OR COULD HAVE REASONABLY BEEN FORESEEN BY SUCH PARTY, AND NOTWITHSTANDING THE FORM IN WHICH ANY CLAIM OR ACTION IS BROUGHT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS 11.3 OR ELSEWHERE IN THIS AGREEMENT OR IN ANY STATEMENT OF WORK, THE FOLLOWING SHALL ALL BE CONSTRUED AS DIRECT DAMAGES, AND NOT AS INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HEREUNDER: (i) THE REASONABLE COSTS THAT THE BOARD IS REQUIRED TO EXPEND TO PROCURE SERVICES FROM AN ALTERNATIVE SOURCE AS A RESULT OF A DEFAULT, BREACH, OR REPUDIATION OF THIS AGREEMENT BY VENDOR, TO THE EXTENT IN EXCESS OF THE FEES SET FORTH IN THIS AGREEMENT; (ii) THE BOARD'S INTERNAL LOSSES AND COSTS RESULTING FROM A DEFAULT OR BREACH OR REPUDIATION HEREOF BY VENDOR; AND (iii) ANY AMOUNT OF MONEY THEN PAYABLE AND UNPAID BY THE BOARD TO VENDOR FOR SERVICES RENDERED.

11.4 Exceptions

THE LIMITATIONS SET FORTH ABOVE IN THIS ARTICLE 11 UPON THE TYPES OF EACH PARTY'S LIABILITY, AND THE EXCLUSIONS IN THIS ARTICLE 11 OF CERTAIN TYPES OF DAMAGES, SHALL NOT APPLY TO: (i) CLAIMS SUBJECT TO (OR AMOUNTS PAYABLE PURSUANT TO) INDEMNIFICATION, AS PROVIDED IN ARTICLE 9 OR ELSEWHERE IN THIS AGREEMENT; (ii) CLAIMS WITH RESPECT TO A BREACH OF ANY CONFIDENTIALITY OBLIGATIONS SET FORTH IN ARTICLE 14; (iii) CLAIMS FOR DAMAGES FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR TORTIOUS CONDUCT OF SUCH PARTY; (iv) CLAIMS FOR THE BOARD'S DAMAGES BASED UPON A REPUDIATION OF THIS AGREEMENT BY VENDOR OR VENDOR'S REFUSAL TO PERFORM HEREUNDER; AND (v) CLAIMS FOR LOSSES ARISING OUT OF THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUCH PARTY.

ARTICLE 12 FORCE MAJEURE

Except for the Board's timely payment obligations under this Agreement, neither Party shall be liable for any delay in performance or inability to perform due to Force Majeure. As used herein, "Force Majeure" means any acts of God (i.e., fires, floods, hurricanes, tornadoes, and the like), acts or omissions of the other Party other than in accordance with this Agreement, non-availability of electrical power, heat, light, air-conditioning, or telecommunications equipment, or any other act, omission, or occurrence beyond such Party's reasonable control, to the extent that the results or consequences of the foregoing could not reasonably have been foreseen, prevented, avoided, or mitigated through the use of practices or technology common and prevalent in the industry. Except for the Board's timely payment obligations under this Agreement, if a Party's performance hereunder is materially delayed by Force Majeure, the time for performance of any materially affected services shall be extended to the extent of the delay caused by the applicable Force Majeure event, plus a reasonable amount of time to resume the performance of such affected services hereunder, provided that such Party shall have provided the other Party with written notice of the nature and anticipated duration of such delay promptly upon first being affected by such Force Majeure.

ARTICLE 13 ACCEPTANCE TESTING

All Deliverables and Work Product shall be provided to the Board by Vendor in conformance with all requirements, specifications, acceptance criteria, and time schedules set forth or referenced in this Agreement or in the applicable Statement of Work. Vendor and the Board shall at all times utilize complete and thorough acceptance testing procedures, and appropriate acceptance criteria, all of which shall be subject to review and approval by the Board, and no such activities shall be deemed completed until all applicable acceptance criteria, whether set forth in this Agreement or in any Statement of Work executed hereunder, or otherwise mutually agreed upon by the Parties in writing, have been successfully

met. In addition, the Board shall have the right to review, test, and either accept or reject, in accordance with the provisions of this ARTICLE 13, any Deliverable (or any particular or separable product, output or result of the Services, including the System or any portion or component thereof, and all Work Product) provided by Vendor to the Board, upon receiving written notification from Vendor that such Deliverable is ready for review and testing by the Board. For the avoidance of doubt, any references to the Board's "Acceptance" of any particular item in this Agreement or in any Schedules, Exhibits, or Statements of Work incorporated herein, without further qualification or clarification, shall be deemed to refer, as applicable, to either: (a) the Board's "Pre-live Acceptance" of Software Components, in accordance with Section 13.1; (b) the Board's "Post-live Acceptance" of Software Components, in accordance with Section 13.2; or (c) the Board's "Acceptance" of Deliverables that do not constitute Software Components, in accordance with Section 13.3.

13.1 Pre-Live Acceptance

Upon the Board's receipt of written notification that Vendor has completed the installation of any Deliverable or group of Deliverables that constitute computer software (each such Deliverable or group, a "Software Component") and that such Software Component is ready for testing and that Vendor requests the commencement of testing, the Board shall begin testing such Software Components in a test environment using the applicable test procedures and standards set forth or referenced in this Agreement and the applicable Statement of Work, or such other procedures and standards mutually agreed upon by the Parties in writing (collectively, the "Acceptance Test Procedures"), to determine whether each such Software Component performs in accordance with the applicable specifications and acceptance criteria for such Software Component set forth or referenced in this Agreement, or in the applicable Statement of Work, and as warranted in ARTICLE 8 hereof (collectively, the "Acceptance Criteria"). After the Board has completed such testing for a Software Component and has operated such Software Component for the period of time set forth in the applicable Statement of Work (the "Pre-live Testing Period") in accordance with the Acceptance Criteria, the Board shall notify Vendor in writing that the Board has issued its "Pre-live Acceptance" of such Software Component. If the Board reasonably determines that such Software Component does not perform in accordance with the Acceptance Criteria, the Board shall deliver to Vendor, within seven (7) calendar days after the end of the Pre-live Testing Period, a written report describing the deficiencies in reasonable detail. Vendor shall correct any such deficiencies within seven (7) calendar days after receiving any such report and shall notify the Board in writing when such corrections are completed. The Board may then re-test the Software Component for an additional Pre-live Testing Period as set forth in the applicable Statement of Work, at the end of which period the determination, notification, and correction process described above in this 13.1 shall be repeated. If the Board fails to either notify Vendor in writing of the Board's Pre-live Acceptance of such Software Component, or to deliver such a written report of deficiencies to Vendor, within the seven (7) calendar day period provided above in which the Board is to respond, then the Board shall be deemed to have issued its Pre-live Acceptance of such Software Component upon the expiration of such seven (7) calendar day period, except that no issuance, or deemed issuance, of the Board's Pre-live Acceptance of any Software Component shall be deemed to waive any right or remedy of the Board under this Agreement, at law, or in equity.

13.2 Post-Live Acceptance

Once the Board has issued its Pre-live Acceptance of all of the Software Components that constitute the System, the Board shall begin using such portions of the System in a live, operational environment (each respective date that such use commences, the "Go Live Date"). Once the Board has used such portions of the System in such live, operational environment using the Board's production data for a sufficient time to test all functions of such portions of the System (including, but not limited to, testing with regard to integration of such portions of the System with all applicable other software and systems of the Board), a period of time set forth in the applicable Statement of Work after the Go Live Date ("Live Testing"), and has reasonably determined that:

- (i) there have been no material errors,

- (ii) such portions of the System perform in accordance with the Acceptance Criteria, and
- (iii) all training Services required hereunder, and other Services required by this Agreement to have been completed by such time or occurrence, have been completed, then the Board shall notify Vendor in writing that the Board has issued its "Post-live Acceptance" of such portions of the System.

In no event shall any other action or inaction by the Board (including, but not limited to, the Board's use of the System, or any portion thereof, in such a live, operational environment) constitute issuance by the Board of its Post-live Acceptance of the System or any portion thereof. Notwithstanding anything to the contrary elsewhere in the Agreement, in no event shall the Board's issuance of its Post-live Acceptance of the System or any portion thereof be deemed a waiver of any right or remedy available to the Board under this Agreement, at law, or in equity with regard to any defect in any Software Component or Deliverable not discovered by the Board during Pre-live Testing or Live Testing.

13.3 Non-Software Acceptance

The Board shall also have the right to review, validate and test each material Deliverable (including each of the Deliverables to be provided under the Requirements Phase) that is to be provided by Vendor to the Board hereunder and that is not a Software Component, to determine whether such Deliverable conforms to the applicable Acceptance Criteria and whether the Board shall accept or reject such Deliverable. Such right shall be exercisable by the Board upon receiving written notification from Vendor that such Deliverable is ready for review, validation and testing, in accordance with the procedures set forth in this Section 13.3. Unless otherwise provided, such review, validation and testing shall continue for a period of time as set forth in the applicable Statement of Work. If the Board determines during such period that:

- (i) such Deliverable contains no material errors or defects,
- (ii) such Deliverable meets or fulfills the Acceptance Criteria and otherwise conforms to the requirements of this Agreement, and
- (iii) all training and other Services required by this Agreement in connection with the provision of such Deliverable have been completed, then the Board shall notify Vendor in writing that the Board has issued its "Acceptance" of such Deliverable.

If, during such period, the Board determines that such Deliverable contains material errors or defects or does not conform to such Acceptance Criteria, the Board shall deliver to Vendor a written report describing the deficiencies, or the portions to which it is not willing to agree, in reasonable detail. Vendor shall correct any such deficiencies as can reasonably be corrected within seven (7) business days, within seven (7) business days after receiving any such report and shall notify the Board in writing corrections and/or resolutions are completed; or, if such corrections shall reasonably take more than 7 business days to correct, Vendor shall provide a plan for review and acceptance by the Board. Vendor shall then proceed with corrections based on a plan and schedule that is acceptable to the Board.

The Board may then re-test the Deliverable (or consider the contents of the revised Deliverable, as the case may be) for up to seven (7) additional consecutive calendar days, at the end of which period the determination, notification and correction process described above in this Section 13.3 shall be repeated.

13.4 Failure to Achieve Acceptance

In the event that Pre-live Acceptance or Post-live Acceptance, as applicable, of a Software Component, or of all of the Software Components that constitute the System, is not achieved within a reasonable period of time after commencement of Pre-live Testing (with respect to Pre-live Acceptance) or the Go Live Date (with respect to Post-live Acceptance), which periods of time shall not exceed ninety (90) and one hundred twenty (120) consecutive calendar days, respectively, or in the event that the process described in Section 13.3 with respect to any material Deliverable is not completed within ninety (90) consecutive calendar days, the Board

shall have the right to terminate this Agreement pursuant to Section 16.2.2 and seek the rights and remedies available to the Board under ARTICLE 16 hereof.

13.5 Test Criteria

Unless otherwise specifically provided in the Acceptance Test Procedures, the test for each Software Component shall include testing in each of the following regards:

- (i) unit testing (i.e., individual testing of each field, screen, screen-related action, and module or program);
- (ii) system testing (i.e., testing of the applicable portion of the System, or the System as a whole, and its integration with the Board's other applicable software and systems); and
- (iii) volume/stress testing (i.e., testing of the applicable portion of the System, or the System as a whole, under peak conditions to measure response time and the System's reaction to load).

ARTICLE 14 CONFIDENTIAL INFORMATION

14.1 Definition of Confidential Information

Certain "Confidential Information" of or about each Party may be furnished or disclosed to, or created or used by, the other Party the other in connection with the Parties' performance of their respective obligations under this Agreement. As used in this Agreement, the Confidential Information of Vendor means information or materials of Vendor that are reasonably considered by Vendor to constitute or include confidential information and are so marked or identified as such by Vendor at the time of disclosure by it to the Board. The Confidential Information of the Board means:

- (i) technical information, formulas, materials, data, reports, programs, documentation, diagrams, ideas, concepts, techniques, processes, inventions, knowledge, know-how, and trade secrets that are developed, created, or acquired by the Board or its Affiliates, whether in tangible or intangible form, in any specific form or media, or disclosed orally;
- (ii) information and data relating to or describing the Board's or it's Affiliates' practices, personnel, administration, faculty, students (e.g., grades, transcripts, test scores, disciplinary reports, attendance records, faculty recommendations or reviews, etc.), parents of students, agents, subcontractors, suppliers, products, services, business, financials, costs, or margins that is not generally known or public information;
- (iii) subject to applicable law, this Agreement and the terms and conditions hereof;
- (iv) the Work Product; and
- (v) records, data, information and other materials in the possession or control of Vendor, or created, collected, processed, handled, stored, transmitted, or received, in any form or media, in connection with this Agreement, the disclosure of which is prohibited, whether by law, statute, governmental regulation, or ordinance, including all student records protected by the Family Educational Rights and Privacy Act (FERPA) and all records of or pertaining to employees of the Board or any of its Affiliates.

14.2 Exclusions and Exceptions

The obligations of confidentiality and non-disclosure imposed under this ARTICLE 14 shall not apply to, and Confidential Information shall not include, information that a Party can demonstrate:

- (i) was published or otherwise made a part of the public domain after disclosure to such Party, through no fault of such Party and no breach of this Agreement;
- (ii) was in the public domain at the time of disclosure to such Party, through no fault of such Party;
- (iii) was already in the possession of such Party, without such Party being under any obligations of confidentiality with respect thereto, at the time of disclosure by the other Party;

(iv) was received or obtained by such Party, without such Party assuming any obligations of confidentiality with respect thereto, from a third party who had a lawful right to disclose such information to such Party;

(v) was independently developed by such Party without reference to Confidential Information of the other Party and not in connection with the provision or use of the Services, the Deliverables, or the System; or

(vi) constitutes public records pursuant to Chapter 119, Florida Statutes.

14.3 Protection of Confidential Information

Each Party shall, at all times:

(i) maintain the confidentiality, security, and integrity of the Confidential Information of the other Party;

(ii) take reasonable and appropriate steps to prevent the use, disclosure, dissemination, copying, alteration, modification, or loss of integrity of the Confidential Information of the other Party other than as necessary for such Party to perform its obligations under this Agreement;

(iii) use the same care to prevent disclosure of the Confidential Information of the other Party to third parties as it employs to avoid disclosure, publication, or dissemination of its own Confidential Information of a similar nature, but in no event less than a reasonable standard of care;

(iv) use, alter, and modify the Confidential Information of the other Party solely as necessary and appropriate for the purpose of performing its obligations under this Agreement;

(v) not acquire any express or implied right or license to any intellectual property or other proprietary right in or to, or assert any lien against, the Confidential Information of the other Party;

(vi) use all commercially reasonable efforts to inform its employees, agents, and subcontractors who perform duties with respect to this Agreement about the restrictions with regard to Confidential Information set forth in this ARTICLE 14; and

(viii) notify the other Party as soon as possible in the event of any use, disclosure, alteration, modification, or loss of Confidential Information of or about such other Party other than as permitted by this Agreement.

14.4 Permitted Disclosures

Notwithstanding the restrictions of this Section 14.3, each Party may disclose Confidential Information of the other Party to its employees, agents, and subcontractors who have:

(i) a bona fide need to know such Confidential Information in order to perform their assigned duties; and

(ii) a legal duty to protect the Confidential Information that is substantially equivalent to the obligations of confidentiality imposed upon such Party hereunder.

A Party receiving Confidential Information of the other Party assumes full responsibility for the acts or omissions of its subcontractors and employees with respect to such Confidential Information, regardless of time, place, or whether within the scope of employment or engagement. Vendor and the Board may each disclose the existence of this Agreement (but not the terms thereof) in promotional and advertising materials or in general publications. Notwithstanding anything to the contrary contained elsewhere in this Agreement, either Party may disclose the existence of this Agreement, or the terms of this Agreement, to the extent such disclosure is required to enforce the terms of this Agreement or the rights of such Party hereunder, and to the extent that such Party deems it necessary or appropriate, in its sole discretion, to enable, permit, or facilitate filings with governmental agencies, including the Securities and Exchange Commission, that such Party is required or deems it appropriate to make.

14.5 Required Disclosures

Either Party may disclose Confidential Information of the other Party to the extent disclosure is required by law or by order of a court or governmental agency. The Party that is subject to such law or order shall use all commercially reasonable efforts to:

(i) maintain the confidentiality of the Confidential Information by giving the Party who owns such Confidential Information (or to whom such Confidential Information otherwise pertains) prompt notice in order that it have every opportunity to intercede in such process to contest such disclosure; and

(ii) cooperate with such other Party to protect the confidentiality of such Confidential Information. The Party who owns such Confidential Information (or to whom such Confidential Information otherwise pertains) shall have the right to obtain, with the other Party's assistance and cooperation, a protective order or otherwise protect the confidentiality of such Confidential Information.

Vendor acknowledges that by contracting with the Board, Vendor is subject to the provisions of Chapter 119, Florida Statutes, to the extent applicable or required by law.

14.6 Injunctive Relief

Vendor acknowledges and agrees that any breach of any provision of this ARTICLE 14 by Vendor, or by its personnel, agents, or subcontractors, may cause immediate and irreparable injury to the Board that cannot be adequately compensated for in damages, and that, in the event of any such breach and in addition to all other remedies available at law or in equity, the Board shall be entitled to injunctive relief from any court of competent jurisdiction, without bond or other security.

14.7 Return of Confidential Information

Upon either termination or expiration of this Agreement or the request of the other Party, and, with respect to the Board, to the extent permitted by Chapter 119, Florida Statutes, each Party shall promptly return or destroy, at the other Party's option, the other Party's Confidential Information and all copies thereof. Notwithstanding anything to the contrary in Section ARTICLE 14, to the extent and for so long as such return or destruction is infeasible (e.g., with regard to Confidential Information of the other Party retained in the memories of a Party's employees), the protections of this ARTICLE 14 shall continue to apply to such Confidential Information.

14.8 Confidentiality Agreements

Each Party shall require each of its employees, agents, and subcontractors to whom Confidential Information of or about the other Party is disclosed under this Agreement to be subject to the terms of a confidentiality agreement that provides no less degree of protection for the Confidential Information of or about Customer than is provided for under this Agreement.

14.9 Duration

The obligations of the Parties with respect to Confidential Information, as are set forth in this ARTICLE 14, shall remain in force and effect at all times during the Term and (i) with respect to Confidential Information that constitutes a trade secret under applicable law, for so long as such trade secret status is maintained; and (ii) with respect to Confidential Information that does not constitute a trade secret, for seven (7) years after termination or expiration of the Term (or for the maximum amount of time permitted under applicable law, if shorter than seven (7) years).

ARTICLE 15 EMPLOYEE SOLICITATION

During the period beginning with Effective Date and ending twelve (12) months after any termination or expiration of the Term, both Parties, for themselves and their Affiliates and subcontractors, agree that they respectively shall not, except with the prior written consent of the other Party, in its sole discretion, offer employment to, solicit, or otherwise interfere with the employment of:

(i) any employee of the other Party or its Affiliates and subcontractors who is or was engaged in the performance of work in connection with this Agreement;

(ii) any former employee or its Affiliates and subcontractors who was engaged in the performance of work in connection with this Agreement, unless such employment has been terminated for at least six (6) months prior to when such offer, solicitation, or interference is first made or otherwise occurs; and

[In the event of a breach of this ARTICLE 15 the breaching Party, agrees to pay to the non-breaching Party liquidated damages equal to the annual compensation that the non-breaching Party offers or pays, as applicable, to each such employee, former employee, technology consultant, or service-provider of the Board or its Affiliates.

ARTICLE 16 TERM & TERMINATION

16.1 Term

The term of this Agreement (the "Term") shall commence on the Effective Date and, unless terminated earlier in accordance with Section 16.2, shall continue until Vendor's completion of the entire Project and the Board's Post-live Acceptance of the System and all Software Components, and the Board's Acceptance of all Deliverables, to be provided as part of the Project hereunder.

16.2 Termination

16.2.1 Termination for Material Breach

Either Party may immediately terminate this Agreement, and all Statements of Work then incorporated herein and with regard to which performance has not yet been completed, in the event that the other Party breaches a material term of this Agreement, or of any such Statement of Work, and such other Party fails to cure such breach within thirty (30) days after receiving written notice from the non-breaching Party reasonably identifying and describing such breach. Such termination shall require a written notice of termination, delivered to the breaching party after expiration of such thirty (30) day period and before such breach has been cured, and specifying a termination date that is not less than ten (10), nor more than thirty (30) days after the date of delivery of the notice. Notwithstanding the immediately preceding sentence, Vendor may terminate this Agreement, and any such Statements of Work, for nonpayment of Fees by the Board only in the event that the Board fails to pay any valid and undisputed invoice within sixty (60) days after receipt thereof and then only after Vendor provides the Board with written notice of such overdue invoice (any such termination as is described in this Section 16.2.1, a "Termination for Cause"). A Party terminating this Agreement pursuant to a Termination for Cause shall be also entitled to pursue any other available legal and equitable remedies.

16.2.3 Termination for Force Majeure

Either Party, in its sole discretion, may terminate this Agreement and any applicable Statement of Work immediately upon providing written notice thereof to the other Party, and (except as provided in Section 19.9) shall have no further obligations to the other Party under this Agreement other than payment for Services actually rendered and Deliverables actually provided as of the effective date of such termination (appropriately prorating any partially completed Services and Deliverables provided to the Board according to the portion of work usefully completed), in the event of a delay or failure by either Party to perform its obligations hereunder that continues for thirty (30) or more consecutive calendar days as a result of a Force Majeure, as contemplated by ARTICLE 12.

16.2.4 Termination by the Board for Convenience

The Board may also terminate this Agreement and any applicable Statement of Work, for no reason at any time during performance under this Agreement, by providing Vendor with written notice of termination, specifying a termination date that is no less than thirty (30) days after the date of delivery of the notice. After receiving a notice of

termination pursuant to this Section 16.2.4, Vendor shall promptly confer with the Board, providing the Board with an up-to-date status of its performance hereunder, and the Board shall direct Vendor whether to complete or wind-down the Services and Deliverables that are then in progress and that are to be provided by Vendor with regard to each Statement of Work that has not yet occurred for the then-current Phase and that are scheduled to occur prior to such termination date. If the Board directs Vendor to complete the Services and Deliverables with respect to such a Statement of Work, then Vendor shall use commercially reasonable efforts to achieve such completion, and the Board's Acceptance of such Services and Deliverables, prior to the termination date. If the Board directs Vendor to wind-down the Services and Deliverables with respect to such a Statement of Work, then Vendor shall use commercially reasonable efforts to wind-down, and transition to the Board, the performance of such Services, and the preparation of such Deliverables, in a reasonable, efficient, and timely manner. Unless directed otherwise by the Board pursuant to this Section 16.2.4, and notwithstanding anything to the contrary elsewhere in this Agreement, Vendor shall not begin work on any portions of the Services or the Deliverables that are not already in progress as of Vendor's receipt of a notice of termination pursuant to this Section 16.2.4.

16.3 Effects of Termination

16.3.1 Transition Assistance

Unless requested otherwise in writing by the Board, Vendor shall not discontinue or suspend its performance under this Agreement, or under any Statement of Work, until this Agreement has been terminated in accordance with Section 16.2. Vendor shall continue to provide Services hereunder until the effective date of any such termination, whereupon, in the event of a termination by the Board pursuant to Section 16.2, Vendor shall immediately deliver to the Board all Work Product and Deliverables, to the extent then completed. Vendor shall cooperate with the Board to provide for an orderly transition of the Services to the Board or its designee following any termination of this Agreement and, upon the Board's written request, Vendor shall document in reasonable detail the status of the performance of the Services, and the preparation of the Work Product and Deliverables, that were to have been provided hereunder, to the extent not completed.

16.3.2 Amounts Payable in the Event of Termination for Force Majeure and/or Convenience

If the Board terminates this Agreement pursuant to Sections 16.2.3 and 16.2.4, then within thirty (30) days after the applicable termination date, the Board shall pay to Vendor:

- (i) any outstanding amounts that are payable on a percentage of completion basis under this Agreement and the applicable Statements of Work;
- (ii) all amounts then being retained and held back by the Board pursuant to Section 4.1 with respect to Services and Deliverables for which the Board has issued its Acceptance in accordance herewith on or prior to such termination date; and
- (iii) an amount that reasonably and fairly represents, on a proportionate basis, the extent of completion of Services and Deliverables that were in-progress as of the date of Vendor's receipt of the Board's notice of termination but that the Board directed Vendor to wind-down and transition to the Board, rather than complete, in accordance with Section 16.2.4..

ARTICLE 17 DISPUTE RESOLUTION

17.1 Dispute

If, during the Term, any issue, dispute, or controversy ("Dispute") arises hereunder, then the designated representatives of Vendor and the Board (Vendor's Project Manager and the Board's Project Manager, unless otherwise designated) shall promptly confer and exert commercially reasonable efforts to attempt to reach a reasonable and equitable resolution of such Dispute. If the respective Project Managers fail to resolve such Dispute within five (5) business days after such Dispute arises, the Dispute shall be referred promptly to the responsible senior management of each Party. If such Dispute is not resolved within five (5) business days after such referral to senior management, Vendor shall promptly make an appropriate member of its senior management team available on-site at the location designated by the Board, and the Parties shall exert all commercially reasonable efforts to resolve such Dispute in good faith during such meeting. Except with regard to any breach or alleged breach of ARTICLE 7 or of ARTICLE 14, or any other claim for which injunctive or other equitable relief is sought, neither Party shall seek any means of resolving any Dispute arising in connection with this Agreement other than as described in this ARTICLE 17 until at least five (5) business days after the date that such Dispute was referred to such responsible senior management of each Party. Each Party shall have the right to include or involve in any discussions between or among the Parties' responsible senior management regarding such Dispute any third party having an interest in such Dispute. If the Parties' responsible senior management representatives fail to resolve the Dispute in accordance with the foregoing procedure within the period of time specified above, either Party may, at any time after the expiration of such time period, deliver notice to the other Party of its intent to submit the Dispute to mediation, which notice shall describe in detail the specific issues concerning the Dispute that are to be addressed (a "Mediation Notice").

17.2 Mediation

If a given Dispute cannot be resolved by the Parties through the exercise of the foregoing provisions of this ARTICLE 17, then upon the written request of either Party, the Parties shall endeavor in good faith to resolve such Dispute by mediation, subject to the Commercial Mediation Rules of the American Arbitration Association ("AAA"), before recourse to any other dispute resolution procedures, except as expressly allowed hereunder. The mediation shall be conducted in Palm Beach County, FL, utilizing a single, neutral, and impartial mediator of reasonable knowledge and experience (i.e., at least five (5) years of experience) in the information technology industry and mutually agreed upon by the Parties, or in the absence of such agreement, a mediator chosen by the AAA. The mediator shall not have performed services for either Party within the two (2) years prior to the date that the applicable Dispute arose. The mediator shall be selected, and the mediation commenced, no later than fourteen (14) days after the delivery of the written demand for mediation. The mediation shall be concluded, regardless of whether such Dispute has been resolved, within sixty (60) days after delivery of the written demand for mediation. Either Party may terminate the mediation at any time after the conclusion of the first mediation session, but notice of any such termination must be delivered in person by the authorized representative of such Party to both the mediator and the authorized representative of the other Party.

17.3 Legal Action

If either Party believes in good faith that the timeframes set forth in this ARTICLE 17 will have a material adverse impact on such Party, or if the Parties fail to resolve any Dispute through mediation, in accordance with Section 17.2 within sixty (60) days after delivery of the demand for such mediation, the limitations of Sections 17.1 and 17.2 shall be deemed to no longer apply to such Dispute and either Party shall be permitted to pursue any legal action in a court of law or equity to assert or enforce any claim that it wishes to assert against the other Party, provided that all necessary parties be made party to any proceeding resulting from such legal action.

17.4 Exceptions

Neither Party shall be obligated to comply with the procedures set forth in the foregoing provisions of this ARTICLE 17 with regard to breaches, or alleged breaches, of ARTICLE 7 or of ARTICLE 14 hereof, with regard to any other breach, alleged breach or violation as to which injunctive relief is sought, with regard to any third-party claims, or with regard to disputed matters for which less than thirty (30) days remain before the period provided by the applicable statute of limitations governing the claim or cause of action underlying the disputed matter shall expire. Notwithstanding anything to the contrary in this Agreement, the Steering Committee shall have the authority to stay any of the time periods set forth in the foregoing provisions of this ARTICLE 17 upon the unanimous vote of its members.

17.5 Remedies

The procedures described and remedies provided in this ARTICLE 17 shall not be deemed to limit either Party's rights under ARTICLE 11 or ARTICLE 16. Each Party acknowledges that any breach of such Party's obligations under ARTICLE 7 or ARTICLE 14 may cause immediate and irreparable injury to the other Party that cannot be adequately compensated for in damages, and that, in the event of any such breach, and in addition to all other remedies available to it, the other Party shall be entitled to seek injunctive or other equitable relief from any court of competent jurisdiction, without bond or other security.

17.6 No Termination or Suspension of Services

Notwithstanding anything to the contrary contained in this Agreement, and regardless of whether a Dispute arises between the Parties and whether either Party at any time avails itself of the dispute resolution procedures set forth in this ARTICLE 17, in no event nor for any reason shall Vendor interrupt the provision of Services to the Board or its Affiliates, disable any Deliverable, any Work Product, or any hardware used to provide the Services or that constitutes part of the System, or perform any other action that prevents, slows down, or reduces in any way the provision of Services or the Board's or its Affiliates' ability to conduct its business and business and school activities, unless: (a) expressly provided for in a resolution to the Dispute that is mutually agreed upon by the Parties in writing; (b) authority to do so is granted by the Board or conferred by a court of competent jurisdiction; or (c) the Term of this Agreement has been terminated or expired pursuant to ARTICLE 16 hereof and Vendor has completed its obligations to provide termination assistance in accordance with Section 16.3.1 hereof.

ARTICLE 18 RECORDKEEPING AND AUDIT RIGHTS

18.1 Recordkeeping

Vendor shall maintain complete and accurate records and books of account with respect to this Agreement utilizing generally accepted accounting principles ("GAAP"), consistently applied and complying in all respects with all applicable laws. Such records and books of account of Vendor's business shall be maintained by Vendor at a principal business office and the Board, upon prior written notice, may examine and make extracts of information and copy parts thereof to the extent necessary for the Board to verify the accuracy of Vendor's invoices or Vendor's performance under this Agreement, at any reasonable time during normal business hours.

18.2 Retention / Audits

Vendor shall retain for a period of seven (7) years after the end of the Term, or such longer period as may be required by applicable law or regulation, all records and information required to verify amounts invoiced under this Agreement or Vendor's compliance with the terms of this Agreement, and applicable laws and regulations, in its performance hereunder. The Board, or, subject to the execution of appropriate confidentiality agreements, the third-party auditors designated by the Board, shall be granted access to the aforesaid records for the purpose of verifying the accuracy of Vendor's invoicing and legal compliance, during normal business hours upon reasonable notice to Vendor. All such verifications shall be conducted during business hours, with reasonable advance notice and, notwithstanding anything to the contrary elsewhere in this Agreement, shall not include access to proprietary or Confidential Information except to the

extent necessary to confirm the accuracy of Vendor's invoices or the extent of Vendor's legal compliance. Nevertheless, subject to such limitations, during such hours and with such advance notice, Vendor shall grant the Board and its representatives full and complete access to all of the Vendor Personnel and to the relevant portion of Vendor's books, records, documents, data, or information, as they relate to amounts invoiced, invoices submitted, or the extent of Vendor's compliance with the terms this Agreement and applicable laws and regulations, or as such access to personnel, books, records, documents, data or information may be required in order for the Board to ascertain any facts relative to the accuracy of Vendor's invoicing hereunder, including facts with regard to verification of all Fees (and all components and calculations thereof). In the event that any such verification reveals an overcharge (net of any undercharges) to the Board with respect to the Fees or other charges hereunder, then Vendor shall promptly refund such overcharge and, if such overcharge represents more than three percent (3%) of the amounts that the Board should have been charged, then Vendor shall promptly refund to the Board, or at the Board's option, issue to the Board a credit for, the cost of such audit. In the event that any such verification reveals a failure by Vendor to comply with the terms hereof, or with applicable laws or regulations, and performance hereunder is ongoing, then Vendor shall promptly and fully correct such failure to comply and any effects thereof.

ARTICLE 19 MISCELLANEOUS

19.1 Board Action

With respect to use of the defined term "Board" in any provision of this Agreement or of any Statement of Work incorporated herein, only in the event and to the extent that the duly authorized, formal and official action of the School Board Members (as defined below) is required by applicable law, regulations, policies, or procedures, or sought by the District (as defined below) in its sole discretion, to effectuate the intent of such provision shall such formal and official action of the School Board Members be deemed to be required hereunder. In all other instances, with respect to use of the defined term "Board" in any provision of this Agreement or of any Statement of Work incorporated herein, the intent of such provision shall be deemed capable of being effectuated by the District. As used herein, the "District" means the appropriate, authorized directors, administrators, attorneys, employees, and agents of the Board, acting in their respective, appropriate, and authorized capacities for and on behalf of the Board. As used herein, "School Board Members" means, collectively, such individuals as are serving, at the applicable and appropriate time, as the authorized, duly elected or appointed school board members of the Board, in accordance with applicable laws, regulations, policies and procedures.

19.2 Governing Law

The construction, formation, and interpretation of this Agreement, and all performance hereunder, shall be governed by and construed in accordance with the laws of the State of Florida, as if all acts or omissions related hereto occurred in such State and without regard to conflicts of laws provisions thereof. The exclusive forum and venue for all actions or proceedings arising out of, or related to, this Agreement shall be in either a state court located in Palm Beach County, Florida or a federal court located in the Southern District of Florida, and each Party hereby expressly consents to the jurisdiction of such courts over themselves and the subject matter of such actions or proceedings.

19.3 Integration and Amendment

This Agreement, including the Schedules and Exhibits attached hereto and the Statements of Work executed in accordance herewith (each of which Schedules, Exhibits, and Statements of Work is incorporated herein by this reference), contains the complete agreement between the Parties. All other previous and collateral agreements (including letters of intent or purchase orders prepared by Vendor or the Board), representations, warranties, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement. Any understanding, promise, representation, warranty, or condition not incorporated into this Agreement shall not be binding on either Party. This Agreement may only be modified, amended, or otherwise altered by a written agreement: (i) signed by an authorized representative of Vendor;

and (ii) approved by all necessary and appropriate action of the Board and signed by and an authorized representative of the Board. As used herein, this Agreement consists of ARTICLE 1 through ARTICLE 19 of the Agreement, all Schedules and Exhibits attached hereto, and all Statements of Work and Project Modifications executed hereunder, together with any appendices or exhibits expressly referenced herein or therein.

19.4 Order of Precedence

In the event of any conflict or inconsistency of terms among the various documents that, at any given time, constitute this Agreement, the order of precedence that shall apply is as follows, with each listed document or type of document superseding and prevailing over any subsequently listed document or type of document, and with later-executed documents prevailing over earlier documents of the same type, each solely to the extent of any irreconcilable conflict or inconsistency of the terms and conditions thereof:

- (i) Project Modifications executed in accordance with Section 6.4;
- (ii) Statements of Work;
- (iii) the terms of ARTICLE 1 through ARTICLE 9 of this Agreement;
- (iv) any Schedules and Exhibits to this Agreement other than those that constitute the Requests, the Responses, or any Statements of Work;
- (v) the Responses; and
- (vi) the Requests.

19.5 Counterparts

This Agreement may be executed in duplicate counterparts. Each such counterpart, if executed by both Parties, shall be an original and all such counterparts together shall constitute but one and the same document. This Agreement shall not be deemed executed unless and until at least one counterpart bears the signature of each Party's designated signatory.

19.6 No Waiver

Waiver by a Party of any term or condition of this Agreement, or any breach or default by the other Party hereunder, shall only be made in writing and shall be valid and enforceable only if: (i) signed by an authorized representative of Vendor; and (ii) approved by all necessary and appropriate action of the Board and signed by and an authorized representative of the Board. Any such waiver so signed shall be effective only in the specific instance, and for the specific purpose, stated in such writing and no waiver shall be deemed a waiver of any other term, condition, breach, or default, irrespective of whether similar to that waived. No failure to exercise, and no delay in exercising, on the part of either Party, any right, power, or privilege hereunder shall constitute a waiver thereof, nor will any Party's exercise of any right, power, or privilege hereunder preclude further exercise of the same right or the exercise of any other right hereunder.

19.7 Non-Exclusive Remedies

Unless expressly provided otherwise in this Agreement, no remedy set forth in this Agreement is intended to be, nor shall be, exclusive of, or mutually exclusive with regard to, any other remedy and each such remedy shall be in addition to every other remedy given hereunder, or now or hereafter existing or available at law, in equity, by statute, or otherwise, individually or in any combination thereof.

19.8 Severability

If any provision of this Agreement is determined to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of this Agreement shall continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the Parties, as evidenced herein; the Parties shall replace the severed provision with the provision that will come closest to reflecting the intention of the Parties underlying the severed provision but that will be valid, legal, and enforceable.

19.9 Survival

Any provisions of this Agreement that impose continuing obligations upon a Party or, by their nature or terms, would be reasonably understood to have been intended to survive and continue in force and effect after expiration or termination of this Agreement, shall remain in force and effect after such expiration or termination for so long as intended, including, but not limited to, the provisions of ARTICLE 4, ARTICLE 7, ARTICLE 8, ARTICLE 9, ARTICLE 10, ARTICLE 11, ARTICLE 14, ARTICLE 15, ARTICLE 16, ARTICLE 17, ARTICLE 18, and ARTICLE 19.

19.10 Risk of Loss

Vendor shall bear all risk of loss or damage to the System, Services, Deliverables, materials, documents, hardware, software, equipment, parts, and any data (in any form or media) created, designed, produced, or otherwise obtained by Vendor in connection with this Agreement until such have been delivered to the Board, whereupon such risk shall pass to the Board, except that neither Party shall bear the risk of loss or damage caused by the gross negligence or willful misconduct of the other Party, its employees, agents, and representatives.

19.11 Assignment

Neither this Agreement, nor any interest herein, nor any of the rights, duties, and obligations of Vendor hereunder, may be directly or indirectly assigned, sold, delegated, or otherwise disposed of by Vendor, in whole or in part, without the prior written consent of the Board, which consent may not be unreasonably withheld. For purposes of this Section, an "assignment" shall also be deemed to have occurred upon a change in control of Vendor. Any assignment made by Vendor in violation of this Section 19.11 shall be null and void and of no force and effect.

19.12 Notices

All notices, consents, and approvals given by a Party under this Agreement shall be in writing and shall be delivered in person, or by first class or express mail, overnight carrier, or receipted facsimile, addressed as follows:

If to Vendor:

Robert Verdun
Computerized Facility Integration, LLC (CFI)
Suite 550
18000 W. 9 Mile Rd.
Southfield MI, 48075

Phone: (248) 557-4234 x201
Fax: (248) 443-7910

If to the Board:

3300 Forest Hill Boulevard
West Palm Beach, Florida 33406

Facsimile: 561-357-7585

Either Party may designate a different or additional address or addressee for the purposes of this Section by providing the other Party with notice in accordance with this Section. Notice given in accordance with this Section shall be deemed given when received, in the case of personal delivery or delivery by mail or overnight carrier, or when sent in the case of transmission by

facsimile with a confirmation, if confirmed by copy sent by overnight courier within one (1) day after sending the facsimile.

19.13 Independent Contractor

Each Party to this Agreement shall be deemed an independent contractor with respect to the other and to performance hereunder and no provision of this Agreement, or any act of the Parties pursuant to this Agreement, shall be construed to express or imply a joint venture, partnership, or other, similar relationship. Neither Party shall have the authority to enter into any agreement, nor to assume any liability, on behalf of the other, nor to bind or commit the other in any manner, except as provided hereunder. No employee, agent, or other representative of either Party shall at any time be deemed to be under the control or authority of the other Party, or under the joint control of both Parties. Each Party shall be fully liable for all Worker's Compensation premiums and liability, and all federal, state and local withholding taxes and charges, with respect to its respective employees, and each Party agrees to save the other Party harmless from any claims brought against the other Party in respect thereto.

19.14 Third-Party Beneficiaries

This Agreement is an agreement between the Parties, and neither: (i) confers any rights upon any of the Parties' respective employees, agents, or contractors, or upon any other Person; or (ii) precludes any actions or claims against, or rights of recovery from, any person or entity not a Party hereto.

19.15 Further Assurances

Each Party agrees to execute and deliver any and all additional documents and instruments, and take all other actions that may be necessary to give effect to this Agreement and the activities contemplated hereby.

19.16 Publicity

Each Party shall submit to the other all advertising, written promotional materials, press releases, and other publicity matters relating to this Agreement, or the execution hereof, that mention or contain the other Party's name or mark, or that contain language from which said name or mark may be inferred or implied, and neither Party shall publish or disclose any such advertising, promotional materials, press releases, or publicity matters without the prior written approval of the other Party. Nevertheless, a Party may disclose the other Party's name and the fact of the existence of this Agreement whenever required by applicable laws or regulations.

19.17 Inclusive Reference

As used herein, the word "including" herein shall be interpreted as meaning "including, but not limited to," and the word "include" shall be interpreted as meaning "include, but are not limited to."

19.18 Neither Party Considered Drafter

Despite the possibility that one Party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, the Parties agree that neither of them shall be deemed the drafter of this Agreement and that, in construing this Agreement, in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by the other. Rather, this Agreement shall be construed as if both Parties jointly participated in preparing all of its provisions.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed by its authorized officer or representative whose signature appears below, effective as of the Effective Date.

Computerized Facility Integration, LLC (CFI)

By: _____
Name: __Robert A. Verdun_____
Title: ____President_____
Date: _____

The School Board of Palm Beach County, Florida

By: _____
Name: _ _____
Title: _ _____
Date: _____

Reviewed as to form and legal sufficiency:

By: _____
Name: _____
Title: School Board Attorney
Date: _____

SCHEDULE 2.1
TRIRIGA SOFTWARE

The Project shall include implementation of modules of the Tririga Version 9 Software and the Momentum Platform.

1. Real Estate Management, including Portfolio Management, Real Estate Project Management and Real Estate Contract Management
2. Project Management
3. Facility Management, including Facility Management and Contact Center
4. Operations and Maintenance including Service Management, Asset Management, Inventory Management, and Security Management
5. Additional Capabilities, including Reservation Management, Condition Assessment, and Mobil Solutions
6. Momentum Platform, including Content and Document Management, Workflow Management, Decision Support, Financial Management, and Systems Administration.

SCHEDULE 2.3
STATEMENT OF WORK NO. 1

REQUIREMENTS PHASE

I. Description:

Vendor shall perform for and provide the Board as part of the Requirements Phase of the Project, the following tasks, activities, services and deliverables. Vendor shall conduct a "Requirements Assessment" that shall define and document the Board's overall business requirements for the Computer-Aided Facilities Management ("CAFM") System, appropriate deployment strategies, duration timelines, and personnel, hardware and technical environment requirements for the Implementation Phase of the Project, and the fixed fees that shall be payable by the Board for the completion of the Implementation Phase. As a deliverable to be provided as part of this Requirements Assessment, Vendor shall also establish the project management guidelines and procedures and a detailed Project Plan for the Implementation Phase of the Project. The Deliverables in this Requirements Phase shall be completed within 75 days of an agreed-upon Project kick-off meeting, and with sufficient time for the Board to review and accept those Deliverables within that same time period.

II. Deliverables.

The Deliverables that the Vendor shall develop and provide to the Board during the Requirements Phase of the Project, subject to the Board's acceptance, in accordance with the Agreement, and related Services that Vendor shall perform during the Requirements Phase include those described below.

1. Project Charter, Governance, and Standards. In conjunction with the Board's Staff, Vendor shall perform and document various Project preparation activities including establishing a Project governance structure and Project standards for the all Phases of the Project. This will include Vendor providing the Board the flowing Deliverables which shall each constitute part of the Project Charter
 - a. Documented critical Project goals, objectives, and success factors:
 - b. A "Risk Management Plan" for the Project that identifies how risks relating to the Project shall be appropriately managed, minimized, and mitigated:
 - c. A "Communications Plan" for the Project that Identifies and documents the communication and coordination processes and plans to be used by the Parties, both in communicating amongst themselves and otherwise communicating information regarding the Project within the Board's organization and to the Board's intended end-users of the System:
 - d. A "Scope Management Plan" that documents the Project scope management processes to be used by the Parties:
 - e. A "Change Management Plan" that documents the Project change management processes to be used by the Parties
 - f. A "Training Management Plan" as further described below: and
 - g. Project documentation standards that all shall apply to all documentation produced for of the Project.
2. District Business Requirements and Processes. Vendor shall determine and identify, as applicable, and document the Board's business requirements relating to the Project, the Board's business processes to be addressed by the Project, the Board's business goals and objectives to

be achieved through the Project, and related key performance indicators (“KPIs”). This shall include identification of critical codependences between business processes of the Facilities Management Division and those of other District Departments, and critical requirements associated with disaster recovery. Vendor shall also utilize its best practice knowledge to assess the extent to which business process changes are reasonable and necessary to achieve the Board’s goals and objectives for the implementation of the CAFM System.

3. Association of District Business Requirements to Tririga Out-of the Box Software. Vendor shall determine and document the complete list of the Tririga Software (including specific modules, versions and releases thereof) and necessary and appropriate third party software (including the Facilities Management “Gap” Applications), and hardware to be included within the scope of the Project. Vendor shall also identify and document any gaps (if any) between the Board’s relevant business requirements and business processes and the functionality and capabilities of the Tririga Software to be included in the Project. Using the Vendor’s “Tririga Requirements Specification Matrix” and supporting documentation, Vendor shall provide an inventory of each of the business processes of the Board that shall be addressed by the Tririga Software during the Implementation Phase, including identifying any necessary business process re-engineering that may be needed.

Using the results of the actions described in subsections 2 and 3 of this section of this Statement of Work, Vendor’s Project Team with the cooperation and reasonable assistance of the Board’s Project Team, shall document the gaps between the capabilities of the identified Tririga modules to be included in the Project and the final list of the Board’s business requirements. This shall be a list of major functional and technical gaps of the Tririga Software, as listed by functional module. This list is not intended to replace the fit/gap process that shall be conducted by the Vendor as part of the Implementation Phase and will not address anything other than at the business process level.

4. High Level Business Case. Using the Board’s KPI’s and business goals and objectives developed above, the Vendor will assist the Board staff in building a high-level business case and “Return on Investment” (“ROI”) analysis for the Implementation of the Tririga Software. Vendor will use best efforts to provide industry benchmarks the assist in development of the Business Case.
5. System Architecture and Interfaces. Vendor, with the cooperation and reasonable assistance of Board staff, will develop and document the design specifications to be used for various aspects of the System (e.g. for authorization, reports, interfaces, conversions, and extensions to be incorporated as part of the System).
 - a. Vendor shall use the inventory of business processes and gaps produced during the Requirements Phase to determine the effect and reliance of the Tririga Software on external systems of, or accessed by the Board, determining the extent of the conversion effort. Vendor shall create an inventory of these items and shall produce a high level conversion plan and interface map. These items shall then be used to predict the effect of the Implementation of the System and the Board’s business processes and gaps, external systems, and interfaces, on systems and people not directly involved in the Project and to form the basis of the Project Plan for the Implementation Phase.
 - b. Vendor shall identify and validate the nature of the configuration, integrations, customizations, and modifications with respect to the Tririga Software that are to be developed and implemented as part of the Project. To this end, Vendor shall quantify and document the effects that major changes with regard to the Tririga Software and the System, and the Implementation thereof, will have on aspects of the Board’s operations and employees that are not directly involved in the Project.
6. Data Migration. Vendor shall develop and document a data conversion, cleansing, and migration strategy and approach to be used in the Implementation Phase of the Project. In developing this Deliverable, Vendor shall document existing data sources, interfaces and policies, create a

tactical plan for migrating appropriate existing data, and develop a recommended data change management strategy.

7. Reporting. Vendor shall develop and document an inventory of key management reports and a strategy and plan for development and implementation of management reporting based on the Board's business requirements and related key performance indicators ("KPIs"). Vendor shall also develop a technical strategy for implementation of management reporting as part of the Implementation Phase of the Project.
8. Mobile Technology. Vendor shall develop a system architecture and plan for the deployment of mobile technology and integration of that mobile technology with the Tririga Software, including maintaining mobile operations during disaster recovery. Vendor shall also develop a plan for implementation of a mobility pilot during the Implementation Phase of the Project. This plan will also address alternative means of supporting mobile computing needs through various types of mobile devices. In cooperation with Board staff, the Vendor will assist in and make recommendations on the District's choice of a preferred combination of mobile devices.
9. Technical Infrastructure. Vendor shall assess whether the Board's existing and planned hardware platform is adequate for the System and identify any upgrades or other changes to such platform that are reasonable and necessary to provide sufficient capacity and capabilities for the System to appropriately process the Board's current and anticipated future workloads. The resulting Deliverables will provide the guidance and detail necessary for the Board to procure any additional hardware and additional third-party software (if needed) that will be required to implement or support the System, and recommendations on the database platform to be used with respect to the System. In such Deliverable, Vendor shall also review the Board's current and planned network and network infrastructure in respect to the Implementation of the Tririga Software and the System, including provisions for disaster recovery. Vendor shall promptly make recommendations as to the configuration of each of the planned Tririga environments (i.e.; test, development, and production) relating to the System.
10. District Leadership and Staff Alignment. Vendor shall determine and implement during the Requirements Phase of the Project, within the Board's environment, a leadership and staff enrollment and alignment strategy and plan to help ensure the success of the Project.
11. Training. Vendor shall assist the Board with the development of a Training Management Plan for the necessary Tririga training for members of the Board's staff. Vendor will provide high-level recommendations for training by Tririga module and implementation phase, to include definition of alternative and preferred training methods, required training documentation, training roles and resource requirements.
12. System Performance Metrics. In the Requirements Phase, Vendor shall determine metrics that will appropriately measure, and allow the Board to monitor, on an ongoing basis, the health and performance of the System and whether the System is meeting the Board's needs and fulfilling the Board's objectives. In the Implementation Phase, vendor will use these metrics to document performance of the system and compare against available benchmarks.
13. Implementation and Deployment Strategy. In cooperation with Board staff, Vendor shall develop an implementation strategy and approach for the deployment of the Tririga Software., to include:
 - a. A Phasing Plan for the various Tririga Software modules:
 - b. An Plan for how the Implementation will address future upgrades and releases of the Tririga Software and other third-party software that is included in the Implementation Phase of the Project:
 - c. A Plan for on-going management, transition from, and/or retirement of existing applications:
 - d. Provisions for disaster recovery; and
 - e. A Plan for the management and transitioning between technical environments for design, development, testing and production.

14. Implementation Project Plan. Vendor shall develop a detailed Project Plan for the Implementation Phase of the Project that will:
 - a. Provide in reasonable detail, the tasks, activities, services, and deliverables to be performed or provided in the Implementation Phase, including definition of respective roles and responsibilities of the Vendor and the Board:
 - b. Reflect the implementation and deployment strategy and timeframe for the Implementation Phase (as outlined in subsection 12 above):
 - c. Reflect all other tasks, activities, services, and Deliverables to be performed as part of the Implementation Phase of the Project:
 - d. Identify the affected personnel, systems and resources of the Board and the period of time for which the Project and the Implementation of the System will respectively affect them: and
 - e. Identify staffing requirements for the Implementation Phase of the Project with regard to both Vendor and the Board, including a reasonably detailed assessment of resource loading and resource constraints such that sufficient resources are deployed to ensure that the Project is a success.
15. Implementation Statements of Work. Vendor shall develop, as necessary and appropriate, high-level Statements of Work ("SOWs") to implement the agreed-upon District-purchased modules of the Tririga Software during the Implementation Phase. These SOWs will be refined and detail added prior to their execution, including development of a fixed price proposal, as mutually agreed upon in writing by the Parties.

III. Resources Requirements.

1. The Key Personal that Vendor shall assign to the Requirements Phase of the Project, and their respective areas of responsibility, shall include the following individuals"
 - a. Sal Tuazon, Program Management and Business Process Lead
 - b. Streve Stum, Project Manager and Application Development Support
 - c. Greg Thompson – Technical Lead.
 - d. Technical and Functional Consultants and Project Administrator - TBD
2. The Board shall make available to Vendor, as reasonably necessary and appropriate during the Requirements Phase, a reasonable portion of the working time of a number of the Board's personnel, so that Vendor may complete the Deliverables on time, in accordance with the Project Plan. To that end, the Board shall use commercially reasonable efforts to make the following personnel available in connection with the Requirements Phase of the Project for the number of hours respectively indicated below:
 - a. The Board's Project Manager – at least 30 hours per week
 - b. The Board's Project Sponsors, including the Board's CFMO – 2 hours per week
 - c. The Board's specified strategic technical staff, database administrators, and information technology staff – 30 hours per week
 - d. Functional experts of the Board, as access to these personnel is reasonable and appropriate for each Tririga Software module included in the scope of the Project – 4 hours per week.

IV. Acceptance Criteria

The Requirements Phase shall be deemed completed upon the completion of all tasks, activities, and Services described within this Statement of Work, or elsewhere in the Agreement, with respect to the applicable Phase and the Board's acceptance of the Deliverables to be provided or otherwise developed during the Requirements Phase.

V. Cost.

The fixed fee cost, inclusive of expenses, for completion of the Requirements Phase to include all deliverables as described in this Statement of Work is \$213,000. The fixed-fee cost includes a significant discount granted by Vendor to Board, representing Vendor's investment in the Project as a whole.

VI. Schedule

Vendor shall complete and deliver to Board Project Team all Deliverables contained in this Statement of Work on a timely basis such that Board review and acceptance of such Deliverables can occur within 75 calendar days of an agreed upon Project kick-off meeting to be scheduled not later than 21 days from the Effective Date of this Agreement.

SCHEDULE 2.2
APPLICABLE HOURLY RATES, INCLUSIVE OF EXPENSES

The following hourly rates apply to the team members involved in the Requirements Phase of the Project, inclusive of expenses:

Role or Position	Hourly Rate
Sal Tuazon	\$205
Steve Stum	\$195
Greg Thompson	\$195
Senior Application Developer	\$190
Senior Consultant	\$205
Project Administrator	\$110

**SCHEDULE 5.1.1
PROJECT PERSONNEL**

SCHEDULE 5.1.1

POSITION TITLE ON ORGANIZATION CHART	INDIVIDUAL	BOARD CREDIT	CONTRACT TITLE CROSS-REFERENCE
Project Manager	Steve Stum	\$10,000	Project Manager
Technical Strategy	Greg Thompson	\$5,000	Technical Lead
Strategic Planning/ Change Management	Sal Tuazon	\$5,000	Engagement Manager