

**AMENDMENT NUMBER ONE (NO. 1) TO CONTRACT
BETWEEN
THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA,
AND
ACHIEVE3000, INC.**

WHEREAS, the School Board of Clay County, Florida (“Board” or “District”), and Achieve3000, Inc. (“Achieve3000” or “Contractor”), collectively referred to hereinafter as “the Parties,” entered into a Contract dated June 19, 2014 (“2014 Contract”);

WHEREAS, the June 2014 Contract concerned the licensing and provision of computer-based education programming, assessment, and associated services for a limited number of District students and employees;

WHEREAS, the term of the 2014 Contract expires June 30, 2017;

WHEREAS, ~~WHEREAS~~, the Parties seek to renew and extend the 2014 Contract for a period of three years; and

WHEREAS, the Parties also seek to modify and expand the scope of services provided by the 2014 Contract.

NOW, THEREFORE, in exchange for their mutual promises and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows as of the date upon which this document is fully executed by the Parties (“Effective Date”):

1. The 2014 Contract is amended such that its term is extended up to and including June 30, 2020.
2. The rates, costs, and other terms of service shall be governed by **Attachment A** (“June 2017 Solution Overview & Cost Proposal”), which is hereby incorporated by reference and made part of this Amendment No. 1 to the 2014 Contract.
3. In all other respects, unless expressly modified by or contrary to those hereby made, the terms and conditions of the 2014 Contract shall continue in full force and effect.

WHEREFORE, the Parties, by and through the signatures of their authorized representatives below, agree to be bound by this Amendment No. 1 to the 2014 Contract.

THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA

By: _____ Date: _____
Janice Kerekes
School Board Chair

ACHIEVE3000, INC.

By: Joel Jeselsohn Date: June 21, 2017
Joel Jeselsohn
CFO



Solution Overview & Cost Proposal

Prepared for:

Clay County School District

June 2017

Table of Contents

Achieve3000: Your Partner for Literacy Success	3
Partnership Overview for Clay County School District	3
College & Career Literacy in Language Arts, Social Studies, and Science(Grades 2-12)	4
Milestones for Success	5
Proven Results from the Leader in Differentiated Instruction	7
Solution Overview for Clay County School District	8
Blended Professional Learning Services	9
Cost Proposal	11
Contact Information.....	11
Acceptance	12

Achieve3000: Your Partner for Literacy Success

Achieve3000® is pleased to present Clay County School District with this partnership proposal. As the leading literacy platform in today's blended learning programs, Achieve3000 provides the world's only patented model of online differentiated instruction that reaches *all* students one-on-one, at their individual reading levels, to accelerate their learning, improve high-stakes test performance, and help them reach their educational and lifetime goals.

In order to succeed in college and career, students need to read at the 1300 Lexile® reading level by the time they finish high school. As your partner for literacy success, Achieve3000 will help all Clay County School District students to reach the 1300 Lexile level and graduate college- and career-ready.

Achieve3000 provides:

- **Differentiated Instruction:** Achieve3000's patented model of truly differentiated instruction ensures all students read the same grade-appropriate content automatically tailored to their individual reading levels and learning needs, with 12 levels in English and 7 levels in Spanish – all customized for **Florida's academic standards** and the **FSA assessments**.
- **Blended Learning:** Achieve3000 offers the only patented model that delivers truly blended learning, leveraging innovative technology to extend teachers and provide more time on task for content-area literacy.
- **Embedded Assessments:** Achieve3000 has the only patented model that improves literacy across the content areas and drives college and career readiness by combining summative and embedded formative assessments within instruction.
- **Actionable Data:** Achieve3000 provides educators, administrators, and families with real-time reports and dashboards that allow for data-driven decision-making anytime, anywhere, on any device.
- **Proven Effective:** Achieve3000 is proven effective at accelerating literacy gains for *all* students. Over 15 years of data show that students using the program two or more times per week over a school year can expect to double their expected reading gains.

In fact, Achieve3000 **guarantees** that your students will exceed their expected reading gains when the program is implemented with fidelity. If a student does not exceed their expected Lexile® gains, then Achieve3000 will refund the cost of that student's license.

We look forward to partnering with Clay County School District to support your literacy initiatives!

Partnership Overview for Clay County School District

To succeed with today's more rigorous standards and assessments and with tomorrow's more competitive colleges and careers, students must achieve higher levels of literacy than ever before. Achieve3000 provides effective solutions for every grade level (PreK-12 and adult education) and every instructional need (including general education, Response to Intervention, and English language learner programs) to ensure *all* learners can master the literacy skills required for success in school and beyond.

The Right Start for College & Career Readiness: Foundational Literacy (Grades PreK-1)

The path to college and career literacy begins with **Smarty Ants® (grades PreK-1)**, an effective, research-driven solution that differentiates instruction in foundational reading skills and accelerates student achievement – all in an engaging, interactive, online learning environment.

Smarty Ants’ flexible approach to blended learning is easy to implement in any classroom model, and provides the perfect balance of engagement, motivation, and pedagogy:

- **Differentiated Instruction:** Based on a student’s exact skill level, learning temperament, and learning pace, Smarty Ants’ adaptive content system automatically delivers the “just right” level of skill instruction and practice to keep learners in the zone of proximal development
- **Comprehensive Curriculum:** Smarty Ants’ curriculum is aligned to Florida’s foundational literacy standards, with a systematic and spiraled scope and sequence that’s designed to ensure all children can master essential phonemic awareness, phonics, fluency, vocabulary, and comprehension skills
- **Personalization and Engagement:** With more than 90 unique learning paths, targeted learning scaffolds, and dozens of collectible rewards, Smarty Ants keeps all learners motivated and moving forward on the road to reading success
- **Anywhere, Anytime, Any-Device Access:** Students have 24/7 access to Smarty Ants activities and can build literacy skills offline using their iPad® or Android™ device
- **Actionable Data:** The Teacher, Site Coordinator, and Administrator Dashboards are fueled with real-time student usage and performance data, so Smarty Ants educators can easily monitor student progress, as well as forecast the amount of instructional time needed to meet grade-level goals
- **On-Demand Professional Learning Services:** The Teacher Dashboard provides 24/7 access to professional development resources to support a successful self-launch, quality usage, and an effective implementation with Smarty Ants

College & Career Literacy in Language Arts, Social Studies, and Science (Grades 2-12)

Once students have mastered the foundational reading skills, they are ready to build literacy in the content areas with the **KidBizPro® (grades 2-5)**, **TeenBizPro® (grades 6-8)**, and **EmpowerPro® (grades 9-12) Florida Edition**. Designed for English language arts, science, and social studies classes with a mix of student abilities or diverse student populations, these differentiated literacy solutions accelerate reading gains for *all* students – all in a single classroom.

KidBizPro, TeenBizPro, and EmpowerPro work in *any* blended learning model – from station rotations to flipped classrooms in the content areas – and can be customized to meet any scope and sequence. They provide:

- **Differentiation:** The same grade-appropriate, nonfiction lesson is differentiated at 12 levels in English, 7 in Spanish, and 12 in English with linguistic supports so every learner works with text at their precise Lexile® reading level
 - Robust learning scaffolds and built-in supports provide every student – including intervention students and English language learners in mixed-ability classrooms – with targeted instruction that’s tailored to their precise needs
 - As students’ reading skills improve, the adaptive content system automatically increases the text complexity, steadily moving learners up level by level

- **Florida Academic Standards:** The KidBizPro, TeenBizPro, and EmpowerPro Florida Edition features a custom strategic curriculum that supports mastery of Florida’s grade-level standards for language arts, science, and social studies
- **FSA Practice:** The Florida Edition features targeted and daily practice for the FSA assessments, as well as brand-new FSA Challenge Courses with technology-enhanced items that prepare all students for the challenges of testing in an online environment
- **Simple Rigor® for Blended Learning:** KidBizPro, TeenBizPro, and EmpowerPro provide every learner with a truly blended learning experience thanks to the Simple Rigor® instructional model, which combines independent student work with teacher-led direct instruction
- **Ongoing and Embedded Assessments:**
 - The LevelSet™ pre-test identifies every student’s initial reading level, while the post-test provides a summative measure of student growth
 - Formative Lexile® assessments are built right into the instructional routine, enabling ongoing progress monitoring without distracting from instructional time or requiring additional planning time
- **Actionable Data:**
 - **Real-time reports** empower teachers to leverage data to drive instruction, pinpoint skill gaps for further practice or intervention, monitor progress towards college and career readiness goals, and even forecast students’ readiness for the FSA assessments
 - The **Leadership Edition** is a data dashboard fueled by real-time student data from Achieve3000 that empowers school and district leaders to monitor the health of their implementation and demonstrate success on a daily basis
- **Anywhere, Anytime, Any-Device Access:** Students can complete Achieve3000 lessons before school, during school, or after school – on any device, with or without internet access – for even more time on task and even greater literacy gains
- **Blended Professional Learning:**
 - **Live onsite and live online training:** Achieve3000’s experts in literacy instruction and implementation will work to ensure a smooth launch and successful implementation
 - **Job-embedded:** Point-of-use teacher recommendations, on-demand videos, pacing plans, and other built-in resources maximize instructional time and reduce planning time
- **Home Edition:** Parents and guardians receive free access to the Achieve3000 Home Edition, with resources in 20 languages to support the home-school connection

Milestones for Success

Prior to Program Start:

- Blended Professional Learning Services (onsite, live online, and/or on-demand) ensure all educators have the knowledge and skills needed to leverage your Achieve3000 solutions for maximum impact

During the Program:

Smarty Ants:

- Students start with the “Swimming Pool” assessment to measure their exact level of reading readiness and place them in the appropriate level of the program

- The system delivers the same skill instruction to all students, while allowing each child to choose from multiple learning activities for a personalized learning experience
- Teachers can further differentiate instruction to reteach, reinforce, or extend skills with built-in resources for whole-class, small-group, or one-on-one instruction
- Ongoing, embedded assessments in each activity track student progress:
 - Student performance and usage data are fed directly into reports on the Teacher, Site Coordinator, and Administrator Dashboards so educators can continually monitor progress and intervene when needed
 - On-demand instructional resources are linked in each report to support classroom instruction that targets identified skill deficits
- At the end of the year, educators can use Smarty Ants reports to measure overall student progress and mastery of Florida standards

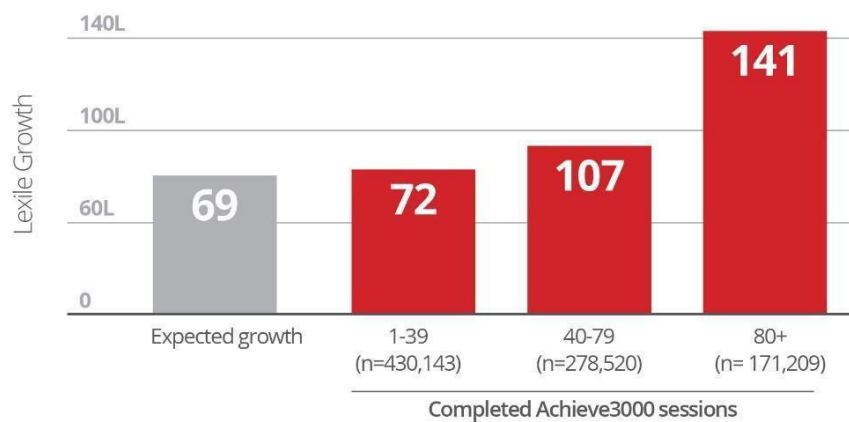
KidBizPro, TeenBizPro, and EmpowerPro:

- Students start by taking the LevelSet pre-test, which quickly establishes their baseline Lexile reading level in English or in Spanish
- The system automatically and immediately matches each student with nonfiction, informational text differentiated at their individual reading level
- Teachers employ the **Simple Rigor® for Blended Learning** instructional framework to accelerate literacy gains for learners of all ability levels:
 - Students complete independent work at their individual Lexile reading levels – inside or outside of the classroom with 24/7 cloud-based access
 - Teachers provide direct instruction around the Stretch Article, a grade-level version of the same lesson, to extend and enrich students' learning
- Ongoing, embedded assessments in each lesson track student progress:
 - Based on this information, the adaptive content system automatically steps up text complexity when it detects a student is ready for greater challenge
 - Student performance and usage data is fed directly into the Leadership Edition, so educators can continually monitor the health of their implementation
- At the end of the school year, students take the LevelSet post-test to measure their overall reading growth – providing educators with an immediate way to measure the impact of their literacy initiative

Proven Results from the Leader in Differentiated Instruction

As the Leader in Differentiated Instruction®, Achieve3000 has partnered with school districts across the nation to close the achievement gap. In a 2014-2015 study, students using Achieve3000 an average of two or more times per week doubled their expected Lexile® reading growth in a single school year. According to MetaMetrics, the average expected gains for students receiving typical instruction would be 69 Lexile points, while the students in the study using Achieve3000 grew by an average of 141 Lexile points!

2014-2015 Lexile Growth with Achieve3000



In an independent, gold-standard randomized control trial published in September 2015, the learning gains of treatment students who used Achieve3000 were statistically significant and substantively important – based on the What Works Clearinghouse threshold of 0.25 – for all areas assessed: the GMRT-4 Vocabulary, Reading Comprehension, and Total Reading tests, as well as the LevelSet™ Lexile reading assessment. This study also found Achieve3000 is significantly more effective at increasing student reading gains than standard English language arts programs.

Solution Overview for Clay County School District

Based on decades of scientific research, Achieve3000's award-winning solutions for grades PreK-12 are designed to support a wide variety of instructional needs and diverse student populations. As part of this proposal, Achieve3000 recommends the following solutions for the unique needs and specific academic goals of Clay County School District:

<i>Included</i>	Solution	Description
LevelSet™ Reading Assessment for Grades 2-12		
✓	LevelSet English	The only universal screener of nonfiction text in English
✓	LevelSet Spanish	The only universal screener of nonfiction text in Spanish
Smarty Ants® for Grades PreK-1		
✓	Smarty Ants	Build strong foundational literacy skills in the early grades
KidBiz3000® Florida Edition for Grades 2-5		
✓	KidBizPro®	Accelerate gains for all students in the same classroom
TeenBiz3000® Florida Edition for Grades 6-8		
✓	TeenBizPro®	Accelerate gains for all students in the same classroom
Empower3000® Florida Edition for Grades 9-12		
✓	EmpowerPro®	Accelerate gains for all students in one classroom
24/7/365 Access for Achieve3000 Users		
✓	Leadership Edition	Monitor fidelity of implementation in real time
✓	Home Edition	Connect parents/guardians with support in 20 languages
✓	iPad®, Android™ and Chrome™ Apps	24/7 learning anytime, anywhere, and on any device, with or without an internet connection

Blended Professional Learning Services

Implementing with fidelity will maximize the impact of Achieve3000 in Clay County School District. Achieve3000's blended Professional Learning Services (PLS) are designed to build the capacity of teaching staff as well as district and school leadership to ensure a smooth launch and successful implementation.

Achieve3000's blended approach to PLS offers maximum flexibility, with sessions delivered in a number of modalities. These sessions expand on each other so that educators' instructional capacity is built and supported, and long-term achievement can be sustained.

Building Capacity through Blended Learning Offerings

Modality	Details
Live Onsite/ Consulting Sessions	<ul style="list-style-type: none"> Choose from a wide variety of highly targeted sessions, including classroom modeling options Tailored to meet customer's needs and goals Delivered by highly qualified and experienced trainers Hands-on, interactive session; teachers are active participants Customer's choice of location and scheduled day*
Live Online	<ul style="list-style-type: none"> Extensive catalog of sessions, each customized for the customer Delivered by Virtual Account Manager Interactive session that engages teachers, 1:1 computer Teachers all participate from one room, one speaker phone, WebEx projected on large screen, customer has identified facilitator or teachers are in multiple locations, individual phones Flexible scheduling to meet customer needs*
On Demand	<ul style="list-style-type: none"> Included in purchase of every Achieve3000 literacy solution Point-of-use best-practice recommendations with every lesson Self-paced, 24/7 professional development resources on the Achieve3000 Hub, all designed to support the implementation Weekly messages in Teacher's and Administrator's Editions that target the most impactful resources for each stage of the year
Monthly Webinars	<ul style="list-style-type: none"> Informational webinars focused on timely topics Delivered by expert company personnel or guest speaker Recorded for reuse; archives available to all customers No customer obligation

*Expires within year purchased.

Achieve3000 will select a group of highly experienced educational professionals to serve as the Achieve3000 Implementation Team for Clay County School District. This committed team will partner with you to support your implementation at every stage and ensure you benefit from the full range of Achieve3000 services.

Guaranteeing a Successful Launch and Ongoing Implementation Support	
Service Type	Details
Implementation Planning	<ul style="list-style-type: none"> • Help with selecting the professional learning topics and modalities that best match your educators' needs: workshops, classroom modeling, or consultative sessions on a variety of subjects • Assistance with setting implementation goals and expectations that align with school or district goals • Guidance with determining who should conduct classroom observations and individuals responsible for data monitoring
Data Solutions and Services	<ul style="list-style-type: none"> • Support for importing student rosters and integrating with your Student Information System (SIS) • 24/7 access to real-time student usage and performance data through the Teacher Dashboard and Leadership Edition • Dedicated Achieve3000 expert provides continual monitoring and analysis of your implementation data to ensure key usage and performance goals are being met • Custom data reports (such as the Implementation Highlights Report, monthly Achieve3000 Performance Report, bi-yearly Performance Report Highlights) for school and district leadership
Incentives and Motivation	<ul style="list-style-type: none"> • Ongoing motivational contests designed to increase student usage and promote implementation fidelity • Resources for recognizing student success and hosting celebrations
Collaboration and Partnership	<ul style="list-style-type: none"> • Support for district-led professional development events and conferences • Opportunities to consult with select members of Achieve3000's Educational Leadership Cabinet and leadership team • Industry Trends Reports: articles by nationally recognized thought leaders sharing their experiences and insights on today's trends in education – exclusively for Achieve3000 customers • Opportunities to attend Lunch-and-Learn Sessions, School of the Future Symposia, Roundtable Discussions, Leadership Institutes, and other Achieve3000 events (please contact Achieve3000 for more information about the events available in your area)
Customer Support	<ul style="list-style-type: none"> • Top-rated customer support provided via toll-free phone and email • Prompt responses from a dedicated team of Achieve3000 experts

Cost Proposal

The proposal below includes:

- Licenses to Achieve3000 Pro Florida at 39 Schools
- Spring 2017 Semester Grant, valued at **\$337,275.00**

Product	Unit Cost per Year	Qty	3 Year Cost 9/1/17-6/30/20
Achieve3000 Pro Florida Site125	\$7,200.00	20	\$432,000.00
Achieve3000 Pro Florida Site250	\$14,250.00	6	\$256,500.00
Achieve3000 Pro Florida Site675	\$28,100.00	8	\$674,400.00
Achieve3000 Pro Florida Site850	\$33,100.00	4	\$397,200.00
Achieve3000 Pro Florida Site1175	\$36,800.00	1	\$110,400.00
Subtotal			\$1,870,500.00
Implementation Materials Fees			\$47,925.00
<i>Achieve3000 Partnership Savings</i>			(\$467,625.00)
Total Cost			\$1,450,800.00
Also included: Grant for Spring 2017 Implementation Launch (fully covered)			Total Value of \$337,275.00
<i>Purchase Order by July 14th, 2017 for Spring Semester LevelSet</i>			\$100,000.00
<i>Purchase Order by July 14th, 2017 for 2017-2018 Professional Development</i>			\$56,000.00
<i>Purchase Order by July 14th, 2017 for 2017-2018 Licenses</i>			\$394,266.66
<i>Purchase Order by July 14th, 2018 for 2018-2019 Professional Development</i>			\$65,000.00
<i>Purchase Order by July 14th, 2018 for 2018-2019 Licenses</i>			\$385,266.67
<i>Purchase Order by July 14th, 2019 for 2019-2020 Professional Development</i>			\$65,000.00
<i>Purchase Order by July 14th, 2019 for 2019-2020 Licenses</i>			\$385,266.67

Contact Information

Kathleen Rolison, Regional Director
 Phone: 904.422.2100
 Email: kathleen.rolison@achieve3000.com

Ken Brown, Regional Vice President
 Phone: 904-477-5931
 Email: Kenneth.brown@achieve3000.com

Acceptance**Clay County School District***Account Name***Achieve3000, Inc.***Customer Signature**Achieve3000 Signature**Name and Title**Name and Title**Date**Date*

The complete signed Proposal and Purchase Orders can be sent to:

Achieve3000, Inc.
1985 Cedar Bridge Avenue, Suite 3
Lakewood, New Jersey 08701

Fax: 316-221-0718 | Email: orders@achieve3000.com

For terms and conditions, please refer to www.achieve3000.com/terms.

**CONTRACT BY AND BETWEEN THE
SCHOOL BOARD OF CLAY COUNTY, FLORIDA AND
ACHIEVE3000, INC.**

THIS AGREEMENT, made June 19, 2014 by and between The School Board of Clay County, Florida (hereinafter called "District") and, Achieve3000, Inc., 1985 Cedar Bridge Avenue, Suite 3, Lakewood, New Jersey 08701 (hereinafter called "Contractor").

NOW, THEREFORE, it is mutually covenanted and agreed between the District and Contractor as follows:

1. **Products/Services Provided.** Contractor grants the number of District schools (and their associated students, parents, teachers and administrators) indicated in Appendix A (collectively "Users") the right to access and use the educational solutions identified in Appendix A in the manner specified below.

2. **Term of Agreement.** The term of this Agreement shall be from August 1, 2014 until June 30, 2017.

3. **Compensation.** The District shall pay the total amount indicated in Appendix A of \$441,078.75 in accordance with the Governmental Prompt Payment Act to the District. Contractor shall have the right to deny the Users access to Contractor's educational solutions if any payment is not timely received.

4. **Set-up.**

- a. In order to enable Contractor to provide the solutions purchased hereunder, the District shall provide Contractor the following data in electronic form regarding each student User (in either comma delimited, Excel, or ASCII format): student first name, student last name, teacher name, grade level, and student reading level (either a Lexile level, or a grade-equivalent reading level). At the District's request Contractor will also accept, and include in its reports to teachers and administrators, data provided by the District regarding students' student ID number, class code or room number, race/ethnicity, socioeconomic status, disability and LEP.
- b. The District will require the teacher of each class of student Users to be familiar with the use of the Products before the teacher permits students, parents and administrators to access and use the educational solutions.

5. **Licensing Terms.** Access to and use of Contractor's websites shall be subject to the following terms:

- a. Contractor hereby grants students enrolled in the District's school(s), the parents of such students, and teachers and school administrators employed by the District a limited, non-transferable, non-sublicensable, non-exclusive, revocable in the event of breach right during the term of this Contract to access and use Contractor's websites solely for educational purposes.

- b. All of the rights, title and interest in the Contractor's websites (including all underlying concepts, methodologies, processes, formats, specifications, other know-how, and works derived from the websites, and all copyright, trademark and other associated intellectual property rights) other than the rights granted District in the previous sub-paragraph are reserved to Contractor and its licensors. The websites may not be used for the benefit of any third party who has not been provided a personal user identification and password by Contractor. The foregoing prohibition includes use of the websites by any unauthorized third party through the sharing of the user identification of an authorized user, reproduction or duplication of any portion of the websites and resale of access to the websites.
- c. All use of Contractor's websites by Users shall be subject to the Terms of Use which are set forth at www.achieve3000.com/terms including, but not limited to, the restrictions on use set forth therein. In the event of conflict between such Terms of Use and this contract, this contract shall prevail.

6. **Use of Student Information.** Contractor's privacy policy (including its policy regarding use and management of individually identifiable personal information of students under the age of 13) is set forth at www.achieve3000.com/privacy.

7. **Confidentiality.**

- a. "Confidential Information" consists of non-public business or technical information that the party disclosing it indicates to the party receiving it is to be treated as confidential or proprietary. The District and Contractor each agree to secure and protect the Confidential Information that each receives from the other in a manner consistent with the maintenance of the disclosing party's rights therein, using at least as great the same degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event less than reasonable efforts. Each party agrees to hold the Confidential Information of the other party in confidence, not to disclose it to others or use it in any way, commercially or otherwise, except as authorized in writing by the disclosing party or in performance of its obligations under these terms and conditions.
- b. Notwithstanding Paragraph 7(a), Confidential Information of a party shall not include information which: (i) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than the receiving party; (ii) was rightfully known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (v) is required to be disclosed pursuant to a duly authorized subpoena, court order, public records statute or government authority, whereupon the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy.

8. **Infringement.**

Contractor agrees to indemnify and defend the District from and against any action, claim, demand, or liability, including reasonable attorney's fees and costs, arising from or relating to a claim that an educational service provided hereunder during the term of this Agreement infringes upon the copyright of a third party. If any such educational service is held to infringe, or if in Contractor's opinion, such a claim is likely to occur, Contractor may, at its sole option and expense, either: (i) procure for the District the right to continue using the materials in question; or (ii) replace or modify the infringing materials so that they become non-infringing as long as functionality is not materially and adversely affected. If neither alternative (i) nor (ii) is reasonably available, then Contractor may terminate the license to access the infringing educational solutions and Contractor shall return the District's advance payment(s) for unconsumed educational solutions, calculated in accordance with Paragraph 9(a) below. The foregoing remedy shall be the sole and exclusive remedy provided to the Indemnified Party with respect to the subject of this indemnity.

9. **Termination**

- a. Contractor shall be considered in breach of its obligations hereunder only if it fails to cure material defaults in its performance within ten (10) days of its receipt of a written communication from the District identifying such default(s).
- b. Immediately upon any termination or expiration of any transaction under these terms and conditions, the District and its Users shall immediately cease use of the educational solutions and, except in the event of termination of Contractor for cause by the District, the District shall pay all amounts owed to Contractor for use of the educational service through the date that the termination or expiration takes effect. In the event that the District terminates this contract for cause, the District shall remain responsible for fees due for educational solutions provided prior to the event(s) that constitute(s) the cause.

10. **Independent Contractor.** Contractor is an independent contractor and as such shall be solely responsible for all payroll taxes, including FICA, Federal and State income tax withholding or quarterly payments and such other taxes and obligations imposed upon independent contractors. Neither this Agreement nor the performance or any obligations or duties hereunder shall ever result in anyone employed by one party being deemed an employee, agent, servant or representative of the other party.

11. **Warranty.** Contractor warrants that it has the full authority to grant the rights granted herein to the District. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, CONTRACTOR DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE PRODUCTS/SERVICES PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, AND ANY WARRANTY THAT THE PRODUCTS/SERVICES WILL BE AVAILABLE AT ALL TIMES OR WITHOUT INTERRUPTION OR THAT THEY WILL OPERATE IN AN ERROR-FREE MANNER. THE PRODUCTS/SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS.

12. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CONTRACTOR BE RESPONSIBLE OR LIABLE FOR ANY INJURY THAT MAY BE ATTRIBUTED TO THE CONTENT OF COMMUNICATIONS TRANSMITTED BY MEANS OF THE SERVICE BY ANY PERSON OTHER THAN EMPLOYEES OR AGENTS OF CONTRACTOR. EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY ARISING FROM OR RELATED TO THIS ORDER FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF FEES PAID HEREUNDER DURING THE TERM OF THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

13. **Assignment.** This Agreement is not assignable or otherwise conveyable without the express written consent of the other party, which consent shall not be unreasonably withheld except Contractor may assign this Agreement without any consent pursuant to a Change of Control or to any entity controlling, controlled by or under common control with Contractor. For purposes of this Agreement, "Change of Control" means, with respect to Contractor, any direct or indirect ownership change, or series of ownership changes, of such that the result of which is that a person or group of persons that does not currently control Contractor shall beneficially own securities giving such person the right to vote a majority of the voting securities or elect a majority of the board of directors of Contractor or a sale or transfer of all or substantially all of the assets of Contractor to an entity other than Contractor's ultimate parent or an entity controlled by such ultimate parent. Any attempted assignment in breach of this Section shall be null and void. In the event that Contractor assigns the Agreement in accordance with this Section, the entity controlling, controlled by or under common control with Contractor shall assume Contractor's responsibilities under the Agreement.

14. **No Waiver.** None of the provisions of this Agreement shall be considered waived by either party thereto, unless such waiver is reduced to writing and signed by the party to be charged. No waiver shall be construed as a modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in such waiver.

15. **Severability.** If any one (1) or more of the provisions contained in the Agreement, for any reason are held to be invalid or unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this

Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. **Construction of this Agreement.** These parties acknowledge that this Agreement was prepared under New Jersey Law however shall be interpreted under the laws of the State of Florida, with venue in the state courts located in Clay County, Florida, without regard to its conflict of law provisions.

17. **Amendments.** This Agreement may not be amended, altered or modified in any manner, except in writing, signed by the parties hereto.

18. **No Intended Third Party Beneficiaries.** The rights and obligations of each party established herein are intended for the sole use and benefit of the District and Contractor and no one else. Accordingly, these terms and conditions confer no rights upon any third party, including any of the District's students, parents, teachers or administrators.

19. **Force Majeure.** Neither party shall be responsible for any delay or failure in performance to the extent such delay or failure is caused by causes beyond the party's reasonable control.

20. **Survival.** Paragraphs 5(b), 7-9, 12, 15, 16, 18 and 21 will survive the expiration or termination of this Agreement.

21. **Entire Agreement.** This Agreement, including Appendix A and Appendix B, contains the parties' entire agreement and understanding, and supersedes all prior oral and written agreements and understandings regarding its subject matter.

The School Board of Clay County, Florida

By: Carol Studdard

Carol Studdard

Chairman of the Board

June 19, 2014

Date

Achieve3000, Inc.

By: Peter Saretsky

Peter Saretsky

Chief Financial Officer

June 17, 2014

Date

Product	Cost	Qty	Three Year Term
Achieve3000 Differentiated Literacy Solution - Platform access for up to 125 students	\$10,460.00	4	\$125,520.00
Achieve3000 Differentiated Literacy Solution - Platform access for up to 250 students	\$15,700.00	3	\$141,300.00
Achieve3000 Differentiated Literacy Solution - Platform access for up to 375 students	\$19,180.00	1	\$57,540.00
Achieve3000 Differentiated Literacy Solution - Platform access for up to 500 students	\$24,995.00	2	\$149,970.00
Achieve3000 Differentiated Literacy Solution; Per Student Pricing (Teacher Licenses included)	\$84.30	250	\$63,225.00
Assessment and Reporting Setup Fees	\$715.00	4	\$8,580.00
Professional Development Services: Initial Launch (includes Implementation Planning)	\$2,510.00	4	\$30,120.00
<i>Fees</i>	<i>\$3,950.00</i>	<i>1</i>	<i>\$11,850.00</i>
Subtotal			\$588,105.00
Savings: Multi-School Enrollment			-\$20,168.93
Savings: Achieve3000 Partnership Discount			-\$126,857.33
TOTAL COST FOR 3 YEAR TERM			\$441,078.74
<i>*Payment</i>			<i>\$147,026.25</i>
<i>*Payment</i>			<i>\$147,026.25</i>
<i>*Payment</i>			<i>\$147,026.24</i>

*Denotes payments are due in accordance with Governmental Prompt Payment Act and that invoicing shall not occur before July 1 of the term year.

APPENDIX B - PURCHASING CONDITIONS

1. The School Board of Clay County (SBCC) purchase order number shall appear on each invoice, delivery papers, bills of lading, packages and/or correspondence.
2. Original invoices shall serve as the SBCC basis for payment.
3. All deliveries are to be F.O.B. destination unless otherwise specified.
4. Do not back order without prior approval.
5. C.O.D. orders shall not be accepted – including freight charges.
6. Equipment, materials, supplies and/or services delivered on this order shall be subject to inspection and test upon receipt and if rejected, shall remain the property of the vendor.
7. The SBCC issues payments in accordance with the "Florida Prompt Payment Act", Florida Statutes, Chapter 218.
8. **BACKGROUND INVESTIGATION:** Any employee, principle, or agent of the contractor, vendor, entity or service provider which is a party to this agreement shall, prior to being permitted access to school grounds when students are present or being allowed direct contact with students or being granted access to or control of school funds, submit to and pass a Level II background screening requirements or otherwise meet the requirements of and be bound by the terms of Florida Statutes 1012.465, 1012.467 or 1012.468. The cost of screening shall be the responsibility of the vendor, contractor, service provider and not the SBCC
9. All transactions contemplated by this purchase order shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws. Venue for any action arising in regards to this purchase order shall be in the state courts located in Clay County, Florida.

NOTICE: REQUIREMENTS WHEN USING FEDERAL FUNDING:

This purchase order constitutes a contract. Upon acceptance of a purchase order, the vendor certifies that their firm meets and agrees to the following provisions which shall become a part of the contract:

PARTIES RECEIVING PAYMENT VIA PURCHASE ORDER ISSUED BY THE SBCC FOR GOODS AND/OR SERVICES SHALL BE SUBJECT TO ALL REMEDIES ALLOWED BY LAW FOR ANY DEFAULTS, BREACHES, VIOLATIONS OR OTHER FAILURES TO PERFORM AS AGREED WHETHER OR NOT AN EXPRESS WRITTEN AGREEMENT EXISTS FOR THE PROVISION OF SUCH GOODS AND/OR SERVICES.

FISCAL NON-APPROPRIATIONS CLAUSE: In the event sufficient budgeted funds are not available for a new fiscal period, the purchasing department shall notify the vendor of such an occurrence and this contract shall terminate on the last day of the current fiscal period without penalty or expense to the SBCC.

ACCESS TO RECORDS: (34 CFR 80.36 (i)(10)): All vendors, contractors and subcontractors shall give access to the SBCC, the appropriate Federal agency, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records of the vendor which is directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions.

RECORDS RETENTION: (34 CFR 80.36(i)(11)): All vendors, contractors and subcontractors must retain all records pertaining to this contract for three (3) years after the SBCC makes final payments and all other pending matters are closed.

CLEAR AIR ACT (34 CFR 80.36(i)(12)): All vendors, contractors and subcontractors must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 11857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Applies to contracts, subcontracts and sub-grants of amounts in excess of \$100,000).

ENERGY EFFICIENCY (34 CFR 80.36(i)(13)): All vendors, contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (pub. L. 94-163, 89 Stat.871).

SUSPENSION AND DEBARMENT: In accordance with the United States Office of Management and Budget (OMB) Circular A-133 regarding procurements contracts equal to or exceeding \$25,000 vendors, contractors and subcontractors certify they are not listed on the Excluded Parties Listing System (EPLS) issued by the General Services Administration (GSA).

EQUAL EMPLOYMENT OPPORTUNITY (34 CFR 80.36(i)(3)): All vendors, contractors and subcontractors must comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (Applied to all construction contracts awarded in excess of \$10,000 by the district and their contractors or sub-grantees).

COPELAND "ANTI-KICKBACK" ACT (34 CFR 80.36(i)(4)): All vendors, contractors and subcontractors must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to all contracts and sub-grants for construction or repair).

DAVIS-BACON ACT (34 CFR 80.36(i)(5)): All vendors, contractors and subcontractors must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub-grantees when required by Federal grant program legislation). (Applies to construction contracts in excess of \$2000 awarded by the district and sub-grantees when required by Federal grant program legislation).

CONTRACT WORK HOURS & SAFETY STANDARDS ACT (34 CFR 80.36(i)(6)): All vendors, contractors and subcontractors must comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Applies to all construction contracts awarded by the district and sub-grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

CANCELLATION/TERMINATION (34 CFR 80.36(i)) For all purchases involving Federal funds in excess of \$10,000, the SBCC reserves the right to terminate this contract for cause, as well as for convenience, by issuing a certified notice to the vendor. If terminated, the SBCC shall be responsible only for goods and services already delivered to it on the date of such termination and shall not be responsible for any consequential damage, future damages or damages caused by lost profits, inconvenience or overhead expense to the vendor.

Note the following changes for The Achieve3000 TERMS OF SERVICE (TOS):

Opening paragraph on page 1 of 4. We request that that the Terms and Conditions of Appendix B shall prevail over the contract and the TOS.

Section 4 – The District request prior notification of changes to your privacy policy and end user terms.

Section 16 – The District request prior notification of changes to the form and nature of Services, along with any feature you may stop (permanently or temporarily) or new features added.

Section 18 – Add to the end of the last sentence “to the extent allowed by law”.

Section 20 – Last Paragraph change to – “This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida, USA, without regard to its principles of conflict of laws. Achieve3000 and Client each agree that sole and exclusive jurisdiction and venue for any action or litigation relating to the TOS shall reside with a federal or state court located in the State of Florida in Clay County.



The Leader in Differentiated Instruction Solutions for Grade K-12

Achieve3000® TERMS OF SERVICE

The following Terms of Service ("TOS") are incorporated by reference into the order or contract under which you, a school district, public or private school or other entity ("You"), have agreed to purchase the right to permit your students, parents, teachers and school administrators ("Authorized Users") to access and utilize one or more educational services provided by Achieve3000 (each such service, "Service", and Achieve3000, "Us" or "We"). In the event of a conflict between the order or contract under which You have agreed to make your purchase and these TOS, the conflicting term(s) of these TOS shall prevail, unless You and We expressly state in a subsequent written document that You and We intend that the conflicting terms of that document prevail over the conflicting terms of these TOS.

1. CONTENT OF YOUR PURCHASE AGREEMENT

The agreement under which You are purchasing the right to permit your Authorized Users to access and utilize particular Services ("this Agreement") consists of (a) the written order or purchase agreement in which the specific Service(s) to be provided (including related professional development training), the school(s) to whom the Services are to be provided, the period during which the Authorized Users shall have the right to access and utilize the identified Service(s), pricing, invoicing schedule and other implementation-specific details and terms are specified ("Your Written Order or Agreement"), (b) these TOS, and (c) the Achieve3000 Privacy Policy, which is set forth at www.achieve3000.com/privacy. The foregoing items (a) through (c) contain the parties' entire agreement and understanding regarding our provision of the specified Service(s) to You and your Authorized Users, and supersede all prior oral and written agreements between You and Us regarding the subject of this Agreement, if any. In the event that any of terms set forth in items (a) through (c) are held invalid, illegal or unenforceable, all of the remaining terms set forth in items (a) through (c) will remain in effect.

Achieve3000 reserves the right to amend, remove or add to these TOS at any time. Please check this page periodically for any modifications. Your continued use of Services provided by Achieve3000 shall signify your acceptance of the then-current TOS.

2. TERM OF THIS AGREEMENT

Except as provided in the following sentence and unless stated otherwise in Your Written Order or Agreement, this Agreement shall commence on August 1 of the year in which You execute Your Written Order or Agreement and conclude on June 30 of the following year (such period, "the Term"). The previous sentence notwithstanding, (a) when You execute Your Written Order or Agreement subsequent to August 1, the Term shall commence on such date and conclude on June 30 of the following year, and (b) the Term of all multi-school year agreements shall be as indicated in Your Written Order or Agreement.

3. DESCRIPTION OF SERVICES

The elements of each Service purchased hereunder (each a "Service Element"), and the date on which the appropriate Authorized Users may access and utilize each element are as follows:

Service Element	Date on Which the Appropriate Authorized User May First Access and Utilize This Service Element
The specified subscription Service(s) to the KidBiz3000®, TeenBiz3000®, Empower3000™, Coach3000®, and Spark3000® service, including Student, Teacher and Home edition, and standards alignment services,	Thirty days before Subscription Start Date (unless order date is less than thirty days before subscription start date)
LevelSet® Placement Test, an online assessment which measures students' reading abilities for accurate placement in the content.	Subscription start date
Interim Test, an online assessment which refines the data about students' reading abilities partway through the implementation period.	<ul style="list-style-type: none"> During December for full-year implementations and for partial year implementations that span the <i>first</i> school semester During April for partial year implementations that span the <i>second</i> school semester
Post Test, a final assessment of students' reading levels at the culmination of the program.	Sixty (60) days prior to the Subscription End Date.
Email3000® email service.	Subscription Start Date
Online Professional Development materials for educators delivering differentiated reading instruction.	Subscription Start Date
On-Site Professional Development sessions.	As indicated in this Agreement
Online Professional Development sessions.	As indicated in this Agreement

4. LICENSE GRANT

Effective as of the Service Element Activation Date applicable to each Service Element, your appropriate Authorized Users are granted a limited,

non-transferable, non-sub-licensable, non-exclusive, personal, revocable in the event of breach license to access and utilize the Service Elements of each Service that You have purchased the right to access and utilize, solely for educational purposes during the Term. The term "appropriate" here means that Service Elements intended for use by students may be accessed and utilized by any Authorized User, and that Service Elements intended for use by teachers and school administrators may only be accessed and used by individuals functioning in those roles.

The foregoing notwithstanding, We will not be obligated to provide any Service to any user who has not (i) agreed to our privacy policy and (ii) agreed to comply with our end user terms of use. We reserve the right to change our privacy policy and end user terms of use at any time without prior notice.

5. RESERVATION OF RIGHTS; RESTRICTIONS ON USE; CONTENT DISCLAIMER

Every aspect of each Service, including its underlying concepts, methodologies, processes, formats, specifications, other know-how, site layout, design, images, programs, text, forms and other information (collectively its "Content"), is solely our property and the property of our licensors. You receive no rights to or interest in any Content other than the rights conferred upon You by Section 4. All Content is protected by copyright and other intellectual property laws, and nothing herein grants You any ownership interest in any Content or any right with respect to any Content other than those rights expressly granted in Section 4.

- a. You and your Authorized Users may not permit any third party whom We have not provided a userID and password to access and utilize any Service.
- b. You and your Authorized Users may not copy, modify, translate, decompile, disassemble, reverse engineer or otherwise attempt to discover the source code of any software used to provide any Service or permit any other party to do so. Content may not be merged with any other service or software, or be adapted or modified in any way by anyone.
- c. You and your Authorized Users may not a) copy, reproduce, publish, distribute, modify, transfer or in any way commercially exploit any part of the Content, b) mirror the Content on any other server, c) create any derivative works, d) attempt to avoid, circumvent, or disable any security device, procedure, protocol, or mechanism that may be established with respect to the Content or e) delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed on or in the Content.
- d. You and your Authorized Users may not engage in systematic retrieval of Content from the Services to create, compile, directly or indirectly a collection, compilation, database or directory of any kind without our written permission. You may not use any robots, spiders, crawlers or other automated downloading programs or devices to search any Content, harvest personal information or cause disruption to the Service.
- e. You and your Authorized Users may print or download Content for your own personal educational use, provided You keep intact all copyright and other proprietary notices.

Achieve3000 shall have the right, but not the obligation, to remove any Content at any time.

6. CONTRIBUTIONS

During the Term, You, through your employees and agents, may contribute certain ideas, comments, criticisms, and suggestions for improvements, modifications, and other changes to the Services (including with respect to their content) (collectively, "Contributions"). You agree that We may use, modify, and incorporate these Contributions as We see fit. Upon our acceptance of a Contribution, You and We shall be considered joint owners of the Contribution, such that either may use, modify, and exploit the Contribution without obligation to the other.

7. PAYMENT TERMS

Unless You and We agree otherwise in Your Written Order or Agreement, We may invoice You for Services and other items purchased hereunder in the case of one year agreements, on the day that you execute Your Written Order or Agreement, and in the case of multiple year agreements, on the day that you execute Your Written Order or Agreement and each anniversary thereof. Payment of the undisputed amounts set forth on each invoice shall be due within 30 days of the date of the invoice. Should You dispute any portion of an Invoice, You will communicate to Us in writing the basis of your belief that a portion of the invoice is incorrect no later than the date on which the invoice is to be paid in full, and shall engage with Us in good faith to resolve such dispute as expeditiously as reasonably possible. In the event that timely payment is not received, We shall have the right to deny You and Your Authorized Users access to the Services until payment in full is received.

8. OUR GUARANTEE

We will refund all payments received on a prorated basis for any Service provided hereunder other than fees received for Professional Development training, waive our right to future payment and consider this Agreement revoked if, after You have provided Us the data described in Section 9 and the teacher of each class of students utilizing the Service(s) has completed the preparation described in Section 10, the Service(s) is/are not accessible and useable by all of Your Authorized Users for extended periods of time.

9. STUDENT DATA

In order to enable Us to provide the Services, You shall provide Us the following data in electronic form (in .CSV comma separated values or .XLS Excel format) regarding each student who will utilize each Service: name of the student's school, student ID number, student first name, student last name and student grade level. Alternatively, you can upload the data yourself. Visit our Learning Center at www.achieve3000.com/learningcenter for secure data upload instructions.

At your request We will also accept, and include in our reports to teachers and administrators, the following additional student data: class code or room number, race/ethnicity, socioeconomic status, disability, and other information. We will only use Student Data in a manner that complies with our Privacy Policy (which is set forth at www.achieve3000.com/privacy). You will treat our staff as authorized school recipients of education records under the Family Educational Rights and Privacy Act (FERPA).

10. TEACHER AND ADMINISTRATOR PREPARATION

You will require the teacher of each class of students utilizing any Service to be familiar with its use before the teacher permits students, parents and administrators to access and utilize the Services.

Implementation planning and initial training Professional Development sessions, whether online or on-site, must be completed no later than sixty (60) days after the Subscription Start Date. All subsequent Professional Development sessions purchased hereunder, whether online or on-site, must be completed before the end of the period indicated in Your Written Order or Agreement, failing which your right to have Us provide any such session(s) shall not roll over to a subsequent period and You will not be entitled to a refund. All Professional Development sessions, whether online or on-site, not scheduled within the appropriate time frame as described in this paragraph shall be treated as having been provided by Us. Confirmed Professional Development sessions may be postponed and rescheduled without charge only upon 48 hours prior notice. Professional Development sessions canceled or postponed on less than 48 hours notice shall be treated as having been provided by Us.

11. INVALID LEVELSET ♦ ASSESSMENTS

All invalid LevelSet assessments are excluded from reports and portfolios.

12. EMAIL COMMUNICATIONS

You hereby authorize Us to send electronic mail to your teachers and school administrators for the purposes of:

- a. delivering professional development materials to your teachers and administrators; and
- b. advising You of changes or additions to our Services, or about any of our Services.

If You do not want your teachers and/or school administrators to receive such emails, please notify Us at support@achieve3000.com.

13. SERVICE RELIABILITY

We seek to have our Services available twenty-four (24) hours a day, seven (7) days a week, and to maintain all saved information. However, technical failures, acts of God and routine maintenance may render our Service unavailable at times, and/or may result in the loss of information. We shall not be liable to You or anyone else for any loss of information or for the non-availability of any Service, unless such loss of information or non-availability of a Service has resulted from our gross negligence.

14. USER CONDUCT

You agree that our End User Terms of Use set forth at www.achieve3000.com/terms/use are reasonable and appropriate, and shall undertake reasonable measures to assist Us in enforcing those terms of use. Derogatory, harmful or unlawful conduct is not permitted on any Services. Your Authorized Users are not permitted to upload, distribute through, or otherwise publish any content which is libelous, defamatory, obscene, pornographic, threatening, invasive of privacy or publicity rights, abusive, illegal or otherwise objectionable that would constitute or encourage a criminal offense, violate the rights of any party or otherwise violate any law.

15. TERMINATION

- a. You or We may terminate this Agreement immediately for default if the other party fails to cure all material defaults in its performance within (10) days of its receipt of written notice of its default(s) from the other party.
- b. Immediately upon the termination or expiration of any of Your Written Order or Agreement You and Your Authorized Users shall immediately cease use of all Service(s) purchased under that order or agreement. Should any Written Order or Agreement be terminated prior to its natural expiration, You shall pay Us all amounts owed for Services provided to You and Your Authorized Users under that order or agreement up to the effective date of such termination.

16. CHANGES TO SERVICES

We are constantly innovating in order to provide the best possible instructional solutions to for our customers' Authorized Users. You acknowledge and agree that the form and nature of the Services may change from time to time without prior notice to You. You further acknowledge that We may stop (permanently or temporarily) providing any features or may add new features within any Service at our sole discretion without prior notice to You.

17. LINKS TO OTHER SITES

Our Services may contain hyperlinks to other sites or resources that are provided solely for the convenience and information of your Authorized Users. We are not responsible for the availability of external sites or resources linked, and do not endorse and are not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. We make no representations as to the quality, suitability, functionality or legality of any sites to which links may be provided. Accordingly, You should review the terms and conditions and privacy policies of each linked site as its policies may differ from ours. If your Authorized Users decide to access linked third-party content and sites, they do so at their own risk.

18. CONFIDENTIALITY

Each party agrees to secure and protect the Confidential Information of the other in a manner consistent with the maintenance of the other party's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event less than reasonable efforts. Each party agrees to hold the Confidential Information of the other party in confidence, not to disclose it to others or use it in any way, commercially or otherwise, except as authorized in writing by Client or in performance of its obligations under this Order.

Notwithstanding Achieve3000's Privacy Policy, Confidential Information of a party shall not include information which: (i) is, as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the receiving party; (ii) was rightfully known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (v) is required to be disclosed pursuant to a duly authorized subpoena, court order, or

government authority, whereupon the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy.

19. WARRANTIES AND DISCLAIMER; LIMITATION OF LIABILITY; INDEMNIFICATION

- a. We warrant that We have the full authority to grant the rights granted to You herein. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, WE DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OR UTILITY OF CONTENT, EFFECTIVENESS OF ANY SERVICE IN IMPROVING ANY STUDENT SKILL OR CAPABILITY, OR NONINFRINGEMENT, AND ANY WARRANTY THAT ANY SERVICE WILL BE AVAILABLE AT ALL TIMES OR WITHOUT INTERRUPTION. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, EACH SERVICE IS PROVIDED "AS IS" AND WITH ALL FAULTS, AND YOU UNDERSTAND THAT YOU ASSUME ALL RISKS OF THE SERVICE'S USE, QUALITY, AND PERFORMANCE.
- b. IN NO EVENT SHALL EITHER YOU OR WE, INCLUDING EITHER OF OUR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER YOU OR US OR ANY THIRD PARTY, EVEN IF YOU OR WE, AS THE CASE MAY BE, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WE BE RESPONSIBLE OR LIABLE FOR ANY INJURY THAT MAY BE ATTRIBUTED TO THE CONTENT OF COMMUNICATIONS TRANSMITTED BY MEANS OF A SERVICE BY ANY PERSON OTHER THAN OUR EMPLOYEES OR AGENTS. OUR TOTAL LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF FEES YOU PAID HEREUNDER DURING THE TERM OF THE ORDER. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS. In no event shall We, including our directors, officers, employees, representatives, agents and our licensors be responsible or liable, directly or indirectly for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any Content or any Service.
- c. FURTHER, IN NO EVENT SHALL WE, INCLUDING ANY OF OUR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OR LICENSORS BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH THE USE OF OR RELIANCE ON ANY SERVICE OR CONTENT PROVIDED HEREUNDER TO YOU OR TO ANY AUTHORIZED USER
- d. We agree to indemnify and defend You and your employees and agents from and against any action, claim, demand, or liability, including reasonable attorney's fees and costs, arising from or relating to a claim that a Service provided to You hereunder infringes upon the copyright of a third party. If any such Service is held to infringe, or if in our opinion, such a claim is likely to occur, We may, at our sole option and expense, either: (i) procure for You and your Authorized Users the right to continue using the Service in question; or (ii) replace or modify the infringing Service Elements so that they become non-infringing as long as functionality is not materially and adversely affected. If neither alternative (i) nor (ii) is reasonably available, then We may terminate the license to access and utilize the allegedly the infringing Service and We shall return Client's advance payment(s) for unconsumed Services. This Section 19(d) states our entire liability and obligation, and your exclusive remedy, for infringement.

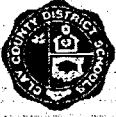
20. GENERAL

Nothing in this Agreement shall cause the relationship between You and Us to be anything other than that of independent contractors. None of your and our actions under this Agreement shall be joint, and You and We have not formed, and shall not form, a joint venture to perform either of our obligations hereunder. The failure of either party to require performance of any part of this TOS shall not be deemed a waiver of any present or future right. Modifications of this Agreement shall be binding only if in writing and signed by an authorized representative of both You and Us. The rights and obligations of each party established herein are intended for the sole use and benefit of each of the parties and no one else. Accordingly, this TOS confers no rights upon any third party. Except for payment obligations, neither party shall be responsible for any delay or failure in performance to the extent such delay or failure is caused by causes beyond a Party's reasonable control. You may not assign this Agreement without our prior written consent, and any attempted assignment of this Agreement without such consent shall be null and void. We may assign this Agreement to any entity that purchases all or substantially all of our assets or that obtains control of Us by purchase, merger or other means. All notices, including notices of address changes, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by registered or certified mail, postage prepaid to You at the address set forth in Your Written Order or Agreement, and to Us at Achieve3000, Inc., 1985 Cedar Bridge Ave, Lakewood NJ 08701, Attn: Chief Executive Officer, or to You or Us at such other address as You or We may designate in writing from time to time. The following Sections shall survive the termination or expiration of this Agreement: 1, 5 - 7, 15(b) and 18 - 20.

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey, USA, without regard to its principles of conflict of laws. Achieve3000 and Client each agree that sole and exclusive jurisdiction and venue for any action or litigation relating to this TOS shall reside with a federal or state court located in the State of New Jersey.

21. OUR CONTACT INFORMATION

Achieve3000, Inc.
1985 Cedar Bridge Ave
Lakewood, NJ 08701
732-367-5505
info@achieve3000.com



School District of Clay County e-agenda



**School District of Clay County
Green Cove Springs, Florida**

**Teacher Inservice Center - Fleming Island High School 2233 Village Square
Parkway TIME: 7:00 p.m.**

**June 19, 2014 - Regular Meeting
Agenda Item #65**

Item Title

C-17 Instructional Materials Contracts (Mr. Bickner)

Issue/Rationale

Clay County Schools, following state statutes, contracts with vendors such as Achieve3000 to purchase instructional materials content and licensing for student use. The Director of Purchase and School Board Attorney submit minor wording changes to such vendors for finalization. The Director of Purchasing needs authorization to contract for purchase when language has been finalized.

Recommended Action

Authorize Director of Purchasing to negotiate parameters, purchase and sign instructional materials contracts (such as the attached Achieve3000 contract) once parameters are finalized for instructional materials and licensing.

Financial Impact

Fees per student and contractor vary depending on products, courses and contracts.

Submitted By

Alisa B. Jones, Supervisor of Instructional Resources

Attachment: Clay County School District 3 Year Contract 5 28 14 (SY 14-15).pdf