

**CONTRACT BY AND BETWEEN THE
CLAY COUNTY SCHOOL DISTRICT AND
ACHIEVE3000, INC.**

THIS AGREEMENT, made May 28, 2014 by and between the Clay County School District (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 within thirty (30) days of its receipt of all invoices provided 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 subparagraph 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, 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 and therefore shall be interpreted under the laws of the State of New Jersey, 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, contains the parties' entire agreement and understanding, and supersedes all prior oral and written agreements and understandings regarding its subject matter.

Clay County School District

Achieve3000, Inc.

By: _____

By: _____

[Name]

Peter Saretsky

Title

Chief Financial Officer

Date

Date

Appendix A: Users, Solutions and Cost for Clay County School District

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			\$441,078.75
<i>Payment Due July, 2014</i>			<i>\$147,026.25</i>
<i>Payment Due July, 2015</i>			<i>\$147,026.25</i>
<i>Payment Due July, 2016</i>			<i>\$147,026.25</i>