

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between

**THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA**  
(hereinafter referred to as "SBCC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
900 Walnut Street, Green Cove Springs, Florida 32043

and

**WILSON EDUCATION CENTER**  
(hereinafter referred to as "Wilson Education Center"),  
whose principal place of business is  
2101 Grace Ave., P.O Box 217  
Charlestown, IN 47111.

**WHEREAS**, The School Board of Clay County will partner with Wilson Education Center to promote the usage of EdusourceOne.com to Florida School Districts; and

**WHEREAS**, The School Board of Clay County will publish and award bids to be made available on EdusourceOne.com for usage in the State of Florida.

**WHEREAS**, Wilson Education Center to pay to The School Board of Clay County an administrative fee of 0.1% or \$1,000 per \$1,000,000 in annual sales generated from all revenue from Clay County Contracts offered through EdusourceOne.com; and

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July, 1, 2016 and conclude on June, 30, 2018. The contract will automatically renew annually year unless terminated by either party.

2.02 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

First: This Agreement, then;  
Second: Attachment "A"

- 2.03 **Marketing Agreement.** Wilson Education Center will:
- a. Promote usage of EdusourceOne.com to Florida School Districts,
  - b. Establish continuity in marketing efforts while increasing vendor contract, system knowledge and usage statewide;
  - c. Assist in problem resolution as a single point of contact for the school district, accounting package representative and vendor;
  - d. Collect user feedback regarding system enhancements and product offerings;
  - e. Promote and encourage usage of the EdusourceOne.com.

2.04 **Revenue.** In return for support of this marketing plan Wilson Education Center will pay The School Board of Clay County an administrative fee of 0.1 % or \$1,000 per \$1,000,000 in annual sales generated from all revenue from contracts awarded by the School Board of Clay County offered through EdusourceOne.com.

2.05 **Publish and Award of Bids.** The School Board of Clay County will publish and award bids to be made available on EdusourceOne.com for usage in the State of Florida. The Wilson Education Center shall develop, draft, tabulate, and evaluate all bids issued for usage on EdusourceOne.com. The School Board of Clay County reserves the right to review, accept or reject bid document, item specification or any contract terms and conditions of bids issued. The Purchasing staff of The School Board of Clay County shall post all approved bids for solicitation on its website and post all recommendations for award on its website prior to preparing a School Board Agenda Item to award the bid. Any actual or prospective bidder who disputes the reasonableness, or competitiveness of the terms and conditions of the invitation to bid or contract award recommendation, shall file a written Notice of Protest with the Superintendent of Schools within 72 hours of the posting of bid solicitation or posting of the bid tabulation with recommendation and shall file a formal written protest within ten days working days following the filing of Notice of Protest. Failure to observe such timeliness shall constitute a waiver of proceedings and of right to protest as set forth in Chapter 120, Florida Statutes. Bid Tabulation / Recommendation of Award shall be posted online at <http://www.oneclay.net/purchasing.html>.

2.06 **Protest Defense.** Wilson Education Center agrees to defend and reimburse any and all cost including attorney fees to The Clay County School Board for any protest which may arise as a result from the publishing and award recommendations of bids to be made available on EdusourceOne.com for usage in the State of Florida.

2.07 **ERP Integration.** The School Board of Clay County has contracted with SunGard K-12 Education for the "Business Plus" Enterprise Resource Planning System. The Wilson Education Center will integrate the EdusourceOne.com e-procurement system with SunGard K-12 Business Plus to enable all punch-out, online-bidding, and contract management enhancements. The Wilson Education Center will provide any custom modification necessary to

enable enhanced procurement functionality between the SunGard K-12 Business Plus ERP system and EdusourceOne.com and perpetually maintain working integration throughout the life of this agreement.

2.08 **Use of Other Contracts.** SBCC reserves the right to utilize any other SBCC contract, any State of Florida Contract, any contract awarded by any other city or county governmental agencies, other schools, other community college/state university system cooperative bid agreement, or to directly negotiate/purchase per SBCC and/or Rule 6A-1.012, Florida Administration Code as currently enacted or as amended from time to time, in lieu of any offer received or award made if it is in its best interest to do so.

2.09 **Inspection of Wilson Education Center's Records by SBCC.** *Wilson Education Center* shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBCC under this Agreement. All *Wilson Education Center's* Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBCC's agent or its authorized representative to permit SBCC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by *Wilson Education Center* or any of *Wilson Education Center's* payees pursuant to this Agreement. *Wilson Education Center's* Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. *Wilson Education Center's* Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **Wilson Education Center's Records Defined.** For the purposes of this Agreement, the term "*Wilson Education Center's* Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBCC's agent or authorized representative shall have access to *Wilson Education Center's* Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBCC to *Wilson Education Center* pursuant to this Agreement.

(c) Notice of Inspection. SBCC's agent or its authorized representative shall provide *Wilson Education Center* reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBCC's agent or its authorized representative shall have access to *Wilson Education Center's* facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by *Wilson Education Center* to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBCC for cause and shall be grounds for the denial of some or all of any *Wilson Education Center's* claims for payment by SBCC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBCC by *Wilson Education Center* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBCC's audit shall be paid by *Wilson Education Center*. If the audit discloses billings or charges to which *Wilson Education Center* is not contractually entitled, *Wilson Education Center* shall pay said sum to SBCC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. *Wilson Education Center* shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by *Wilson Education Center* to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBCC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBCC to *Wilson Education Center* pursuant to this Agreement and such excluded costs shall become the liability of *Wilson Education Center*.

(h) Inspector General Audits. *Wilson Education Center* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.10 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBCC: Superintendent of Schools  
The School Board of Clay County, Florida  
900 Walnut Street  
Green Cove Springs, Florida 32043

To

Dr. Phil Partenheimer  
Wilson Education Center  
2101 Grace Ave., P.O. Box 217  
Charlestown, IN 47111

2.11 **Background Screening.** *Wilson Education Center* agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBCC in advance of *Wilson Education Center* or its personnel providing any services under the conditions described in the previous sentence. *Wilson Education Center* shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to *Wilson Education Center* and its personnel. The parties agree that the failure of *Wilson Education Center* to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBCC to terminate immediately with no further responsibilities or duties to perform under this Agreement. *Wilson Education Center* agrees to indemnify and hold harmless SBCC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from *Wilson Education Center's* failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBCC retirement, leave benefits or any other benefits of SBCC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBCC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBCC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBCC shall have no liability for any property left on SBCC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBCC under this Agreement agrees that any of its property placed upon SBCC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBCC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBCC, and SBCC may use or dispose of such property as SBCC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting

party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBCC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBCC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBCC at the end of the period for which funds have been allocated. SBCC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBCC in the event this provision is exercised, and SBCC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBCC under this Agreement agrees to promptly notify SBCC of any funds erroneously received from SBCC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBCC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBCC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBCC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBCC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBCC, all public records in that party's possession upon termination of its Agreement with SBCC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBCC in a format that is compatible with SBCC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records**: Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBCC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBCC and its officers and employees for any violation of this section, including, without limitation, defending SBCC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBCC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBCC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws**. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance**. All obligations of SBCC under the terms of this Agreement are reasonably susceptible of being performed in Clay County, Florida and shall be payable and performable in Clay County, Florida.

3.13 **Governing Law and Venue**. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the courts of Clay County, Florida.

3.14 **Entirety of Agreement**. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment**. Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBCC.

3.17 **Incorporation by Reference**. Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.



3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBCC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBCC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26. **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBCC: SBCC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By *Wilson Education Center*: *Wilson Education Center* agrees to indemnify, hold harmless and defend SBCC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBCC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by *Wilson Education Center*, its agents, servants or employees; the equipment of *Wilson Education Center*, its agents, servants or employees while such equipment is on premises owned or controlled by SBCC; or the negligence of *Wilson Education Center* or the negligence of *Wilson Education Center's* agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBCC's property, and injury or death of any person whether employed by *Wilson Education Center*, SBCC or otherwise.

3.27 **Travel.** Local travel shall not be billed as a reimbursable expense. Out of county travel and per diem may be allowable at the sole discretion of SBCC. SBCC has delegated authority to the Superintendent of Schools or his/her designee to provide prior approval to VENDOR for any and all travel and per diem. Should any out of county travel and/or per diem be allowed, then it shall be billed and reimbursed in compliance with the current or updated School Board Policy.

3.28 **School Board Policies.** *Wilson Education Center* agrees to comply with all School Board Policies, local, state and federal laws.

3.29 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBCC**

(Corporate Seal)

THE SCHOOL BOARD OF CLAY  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Johnna McKinnon, Chair

\_\_\_\_\_  
Charlie Van Zant Jr., Superintendent of Schools

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel

**FOR Wilson Education Center**

(Corporate Seal)

Wilson Education Center  
2101 Grace Ave., P.O. Box 217  
Charlestown, IN 47111

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_  
Dr. Phil Partenheimer, Executive Director

-or-

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ of \_\_\_\_\_, on behalf of the corporation/agency.

\_\_\_\_\_  
Name of Corporation or Agency  
He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. \_\_\_\_\_ Type of Identification

My Commission Expires:

\_\_\_\_\_  
Signature – Notary Public

(SEAL)

\_\_\_\_\_  
Printed Name of Notary

\_\_\_\_\_  
Notary's Commission No.