

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

**BOARD AGENDA ITEM – June 16, 2020**

**DEPARTMENT/SCHOOL INITIATED AGREEMENT**

**20-606-A-HD AVID CENTER**

<input type="checkbox"/> (BW) Bids Waived	<input type="checkbox"/> (CA) Consultant Agreement	<input checked="" type="checkbox"/> (A) Agreement
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**REQUESTOR:** Secondary Leading & Learning

**Legal Review Required:**  Yes  No

**Standard Template Used with No Changes:**  Yes  No

**Standard Template Type:** Agreement

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Advancement Via Individual Determination (AVID)	\$52,457.00	AVID Membership Fees with AVID Weekly
<b>Total</b>	\$52,457.00	

<input type="checkbox"/> <b>Contract Renewal</b>	<b>New Contract Amount</b>	\$52,457.00
<input type="checkbox"/> <b>Recurring Contract</b>	<b>Previous Contract Amount</b>	\$65,812.00
<input checked="" type="checkbox"/> <b>New Contract</b>	<b>Variance</b>	(\$13,355.00)

**PRICE INCREASE / DECREASE EXPLANATION:** The AVID Center Agreement for School Year 2019/2020 included the cost of AVID Summer Institute registration fees. This 2020/2021 agreement is for AVID membership fees and AVID Weekly only.

**DISCUSSION:**

AVID, Advancement Via Individual Determination, is an international program with the mission to close the achievement gap by preparing all students for college readiness and success. AVID Weekly is a subscription of News articles, sample lessons, and a matrix guide designed for use by teachers. It is intended for teaching critical reading as a subject or to assist with teaching students critical reading techniques within their content area (e.g., science, social studies, etc.). Students in thirteen (13) Brevard Public Schools benefit from this program.

The standard agreement template has been used with modifications. Approved by Legal Services on February 26, 2020, April 29, 2020 and District Security on May 20, 2020.

**CONTRACT TERM:**

The initial contract term shall commence July 1, 2020 and continue until June 30, 2021.

**RECOMMENDATION:**

It is the recommendation of Dr. Stephanie Soliven, Assistant Superintendent of Secondary Leading & Learning and, Mollie Vega, Director of Secondary Leading & Learning to approve the attached agreement with AVID Center in the amount of \$52,457.00.

**AUTHORITY FOR ACTION:**

Florida Administrative Code 6A-1.012 (11)(b)



**AGREEMENT  
By and Between  
The School Board of Brevard County, Florida  
and  
AVID CENTER**

This Agreement ("Agreement") is made by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as "BPS") and AVID Center whose business address is 9797 Aero Drive, Suite 100, San Diego, CA. 92123, (hereinafter referred to as "Contractor"), each individual referred to as a "Party" and, collectively, the "Parties."

**WITNESSETH:**

**WHEREAS**, BPS desires to secure a contractual relationship for the purpose of AVID Membership and AVID Materials for school year 2020-2021 for Brevard County Public Schools, as outlined in Exhibit "A," Products and Services Contract/Order ("Services"), and Exhibit "B", AVID Center General Terms and Conditions, and

**WHEREAS**, these Services are exempt from the competitive process pursuant to Rule 6A-1.012.11(b), Florida Administrative Code, which has been assigned to the tracking number indicated above by BPS for tracking purposes.

**NOW THEREFORE**, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

1. **RECITALS.** The above Recitals are true and correct and are incorporated herein.
2. **DEFINITIONS.** The following definitions of terms associated with this Agreement are provided to establish a common understanding between both Parties to this Agreement, as to the intended application, interpretation, and usage of terms in connection with this Agreement.
  - 2.1. **"AGREEMENT"** refers to the executed Agreement by and between BPS and Contractor.
  - 2.2. **"AMENDMENT"** means a written document authorized by the parties to this Agreement which, when executed by both parties, sets forth any changes to that certain scope of services ("Services"), attached hereto as Exhibit "A" and incorporated herein by reference, that contemplates a change in the Services, work, and materials to be provided and performed by Contractor pursuant to this Agreement, sets forth the basis of compensation due to Contractor of, and sets forth the time period and/or schedule for performance and completion thereof.
  - 2.3. **"BPS"** shall mean The School Board of Brevard County, Florida and may be used interchangeably with Brevard Public Schools.
  - 2.4. **"CONFIDENTIALITY"** For purposes hereof, "Confidential Information" shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Confidential Information shall not include any information which: (a) a party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (c) a party has developed independently without reference to any Confidential Information of the other party; (d) a party can demonstrate such information came into its possession from a third-party who had a bona fide right to make such information available; or (e) is subject to the Florida Public Records Law, Chapter 119, F.S., or any other information required to be disclosed by a valid court order or agency of government.

- 2.5. "**CONTRACTOR**" means AVID CENTER, a Party hereto, who is authorized to conduct business in the State of Florida, offering Services hereunder, which has executed this Agreement, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the Services, work, and materials, including services and/or work of any approved sub-contractors, required under the covenants, terms, and provisions contained in this Agreement and any and all Amendments thereto.
- 2.6. "**FUNDS**" shall mean payment made by BPS to Contractor hereunder.
- 2.7. "**PARTIES**" shall mean the parties entering into this Agreement, BPS and Contractor, respectively; individually, a "Party."
- 2.8. "**SERVICES**" shall mean the services as set forth and required, pursuant to the Agreement and described in further detail in Exhibit "A," attached hereto and incorporated herein by reference.
3. **AMENDMENTS AND MODIFICATIONS.** No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the Parties.
4. **TERM AND TERMINATION.**
- 4.1. The term of this Agreement will cover the period beginning July 01, 2020 through June 30, 2021 and may be renewed at the end of the term up to two (2) additional one (1) year renewal periods. The Agreement term recommendation will be that which is determined to be in the best interest of the School Board. The renewal option shall be exercised at the same or substantial similar terms by mutual written agreement of the Parties.
- 4.2. Contractor shall give BPS written notice of any substantial failure to perform under this Agreement through no fault of Contractor. If BPS fails to correct or diligently pursue cure of such failure within ten (10) business days of receipt of notice, this Agreement may be terminated by Contractor, at its option, upon thirty (30) calendar days' prior written notice to BPS.
- 4.3. This Agreement may be terminated by BPS with or without cause upon thirty (30) days' written notice sent by certified mail to Contractor. In the event of a material breach by Contractor hereunder through no fault of BPS, BPS may, at its option, terminate this Agreement immediately.
5. **PAYMENT.**
- 5.1. BPS agrees to provide funds for the Agreement in the amount not to exceed fifty two thousand four hundred fifty seven dollars and no cents. \$52,457.00 as outlined in Exhibit "A," Products and Services Contract/Order, which is attached hereto and incorporated herein. In accordance with the Local Government Prompt Payment Act, payments shall be made within forty-five (45) days after BPS's receipt of invoice. BPS shall pay these fees to Contractor for services rendered as outlined in Exhibit "A" which includes all direct charges, indirect charges, and reimbursable expenses, if any. **BPS shall incur no obligation for payment until issuance of a purchase order to Contractor.**
- 5.2. Expenses shall only be incurred as authorized by BPS and as provided for in Section 112.061, F.S.
- 5.3. If the Services are divided into phases, completion of a phase is defined by an appropriate signoff by BPS's and Contractor's project manager that all activities of that phase have been satisfactorily completed according to the project schedule, as agreed upon by both parties attached Exhibit "A". Contractor and BPS will agree upon planned completion dates for each phase and work in good faith to meet the planned schedule. BPS reserves the right throughout each phase to conduct a quality assurance check to ensure accuracy, quality, and delivery of work.
- 5.4. Subject to Contractor's right to cure under Section 4 herein, should the Services not be completed as scheduled, Contractor and BPS will jointly plan a revised completion date for the Services. Failure on the part of Contractor to complete its work in an accurate and quality manner shall be considered a default of this Agreement.

- 5.5. **Final Notice.** The final invoice for payment shall be submitted to BPS no more than forty-five days (45) after the Agreement term ends or the Agreement is terminated. Any payment due under the terms of this Agreement may be withheld until all reports due from Contractor, and necessary adjustments thereto, have been approved by BPS.
6. **AVAILABILITY OF FUNDS.** The obligations of BPS under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and BPS.
7. **TRUTH-IN-NEGOTIATION CERTIFICATE.** If applicable to the Services contained herein, signature of this Agreement by Contractor shall be deemed an acknowledgement and certification by Contractor that the wage rates and costs used to determine the funds provided for in this Agreement are accurate, complete, and current as of the date of this Agreement. The said rates and costs shall be adjusted to exclude any significant sums should BPS determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to Contractor. BPS shall exercise its rights under this provision within one (1) year following final payment of the funds.
8. **PERSONNEL.**
- 8.1. All of the Services herein shall be performed by Contractor or under its supervision, and all personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services.
- 8.2. **Jessica Lunsford Act (Background Check).**
- 8.2.1. Contractor shall comply with the Jessica Lunsford Act, effective September 1, 2005, as same may be amended from time to time and with all requirements of Sections 1012.32 and 1012.465, F.S.
- 8.2.2. Contractor shall bear the cost of acquiring the background screening required by Section 1012.32, F.S., and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Contractor and its personnel.
- 8.2.3. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling BPS to terminate immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death, or property damage resulting from Contractor's failure to comply with requirements of this section or with Sections 1012.32 and 1012.465, F.S.
- 8.3. **Key Personnel.** Contractor shall notify BPS as soon as possible, but no later than five (5) working days, after any changes in address or key personnel positions of Contractor. Changes in key personnel may include resignations, approved leaves of absence of six (6) weeks or more, or terminations. Such notification shall be in writing and shall include information related to replacement staff assigned. Contractor agrees to work closely with BPS to ensure that the work and cooperation between the Parties is efficient and mutually productive to both Parties.
- 8.4. **Background Screening.** To the extent applicable to the Services hereunder, Contractor and all Contractor staff under this Agreement shall meet and comply with all federal, state, county, and city laws, ordinances, rules, and regulations that relate to the background screening process of those applying for work with children, seniors, or the disabled, including those contained in Chapter 408 (Health Care Administration) and Chapter 435 (Employment Screening).
- 8.5. **Conduct while on BPS Property.** Contractor acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any BPS facility and shall, at all times, conduct themselves in a manner consistent with BPS policies and within the discretion of the premises administrator or designee. It is a breach of this Agreement for any agent or employee of Contractor to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that

will disrupt the educational program or constitute any level of threat to the safety, health, and well-being of any student or employee of BPS. Contractor agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee.

## **9. FEDERAL AND STATE TAX.**

- 9.1. BPS is exempt from federal and state taxes for tangible personal property. Contractor shall not be exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with BPS, nor shall Contractor be authorized to use BPS's tax exemption number in securing such materials.
- 9.2. In the event Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to BPS an appropriate exemption certificate. BPS will sign an exemption certificate submitted to it by Contractor.
- 9.3. Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

## **10. DOCUMENTATION AND REPORTING.**

- 10.1. In the performance of this Agreement, Contractor shall maintain books, records, and accounts of all activities in compliance with standard accounting procedures.
- 10.2. **Documentation.** Documentation in connection with the description of the Services as set forth in Exhibit "A" attached hereto shall be provided upon request.
- 10.3. **Reporting.** Contractor shall provide report containing requested data in the requested format in a timely manner as defined by BPS.

## **11. INSURANCE.** At its sole expense, Contractor will provide, before commencement of the Services, and submit to BPS along with this Agreement, a certificate(s) evidencing such insurance coverage to the extent listed in 11.1.1 to 11.5.5 below. The following applies to the insurance requirements below for products or services from contractors when all products, services, or work performed, when totaled together, will result in BPS paying to Contractor \$25,000.00 or more during the fiscal year. The insurance requirements are as follows:

- 11.1. **Insurance listed in 11.1.1 below is required of all contractors.** "The School Board of Brevard County, Florida" shall be named as an additional insured to the insurance policy. If the School Board is not named as an additional insured, then the School Board reserves the right to terminate this Agreement.
- 11.2. **Insurance listed in 11.1.2 below.** All contractors whose work for BPS includes products or services, and the value of these products or services are in excess of \$25,000.00, are required to carry this insurance to the limit listed below.
- 11.3. **Insurance listed in 11.1.3 below.** Any contractor transporting district employees, delivering or transporting district owned equipment or property, or providing services or equipment where a reasonable person would believe that BPS is responsible for the work of the Contractor from portal to portal is required to carry this insurance to the limit listed below.
- 11.4. **Insurance as listed in 11.1.4 below.** All contractors that have one (1) or more employees or that subcontract any portion of their work to another individual or company is required to have workers' compensation insurance to the limits listed below. For contracts of \$25,000.00 or more, no State of Florida, Division of Workers' Compensation, Exemption forms will be accepted. All entities and individuals are required to purchase a commercial workers' compensation insurance policy.
- 11.5. **Insurance as listed in 11.1.5 below.** All contractors providing professional services such as architects, engineers, attorneys, auditors, accountants, etc. are required to have this insurance to the limits listed below.

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All Contractors will carry and maintain policies as described in numbers 11.1 to 11.5 above and as checked off in the box to the left of each section 11.1.1 to 11.1.5 below as specifically marked by representatives of the BPS Office of Procurement Services. All required insurance required must be from insurance carriers that have a rating of "A" or better and a financial size category of "VII" or higher according to the A. M. Best Company. Such certificates must contain a provision for notification to BPS thirty (30) days in advance of any material change in coverage or cancellation. This is applicable to the procurement and delivery of products, goods, or services furnished to BPS.

- 11.1.1. **Commercial General Liability Insurance:**  
 Negligence including Bodily Injury and Property Damage  
 Per Occurrence - \$1,000,000  
 General Aggregate - \$2,000,000
- 11.1.2. **Product Liability and/or Completed Operations Insurance:**  
 Negligence Including Bodily Injury and Property Damage - \$1,000,000  
 Products – Completed Operations Aggregate - \$2,000,000
- 11.1.3. **Automobile Liability:**  
 Negligence Including Bodily Injury and Property Damage:  
 Per Claim - \$ 500,000  
 Combined Single Limit (each accident) - \$1,000,000
- 11.1.4. **Workers' Compensation/Employer's Liability:**  
 W.C. Limit Required\* - Statutory Limits  
 E.L. Each Accident - \$ 100,000  
 E.L. Disease – Each Employee \$ 100,000  
 E.L. Disease – Policy Limit \$ 500,000
- 11.1.5. **Professional Liability Insurance (Errors and Omissions):**  
*For services, goods, or projects that will exceed \$1,000,000 in value over a year.*  
 Each Claim - \$1,000,000  
 Annual Aggregate - \$2,000,000  
  
*For services, goods, or projects that will not exceed \$1,000,000 in value over a year.*  
 Each Claim - \$ 250,000  
 Annual Aggregate - \$ 500,000

- 11.6. All insurance shall be primary and not contributory to any other insurance carried by The School Board of Brevard County, Florida. This shall also apply to any self-insurance maintained by The School Board of Brevard County, Florida.
- 11.7. Contractor shall notify BPS's Risk Management Department within thirty (30) days of any material changes or notice of cancellation Contractor received from its insurer on above required insurance.
- 11.8. Contractor shall provide evidence of all insurance in the form of a Certificate of Insurance (Acord) and specify any deductible or retention applicable to above required insurance.
- 11.9. Contractor agrees that proof of insurance shall be provided prior to execution of this Agreement and that no Services shall begin until proof of insurance is received by BPS. Receipt of proof of insurance shall not be construed as an approval of Contractor's insurance or a release or waiver of Contractor's obligation to provide insurance required in this Agreement.
- 11.10. To the extent permitted by law, Contractor's insurance shall contain a waiver of rights to recover from BPS or its insurance.

11.11. Any required insurance that Contractor self-insures or carries retentions in excess of Ten Thousand Dollars (\$10,000.00) shall be pre-approved by BPS's Risk Management Department and referenced in an addendum to this Agreement.

**12. TIME OF ESSENCE.** Time is of the essence concerning the performance of all terms and conditions of this Agreement.

**13. STANDARD OF CARE.** In providing Services under this Agreement, Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by BPS, Contractor will correct those Services not meeting such a standard.

**14. INDEMNIFICATION.**

14.1. Contractor shall indemnify, defend, and hold harmless BPS, its board members, employees, agents, and representatives from and against any and all third-party claims, suits, actions, damages, losses, expenses, and/or causes of action, including but not limited to, economic loss, reasonable attorneys' fees, reasonable investigative and discovery costs, court costs, expenses, and all other sums which BPS, its board members, employees, agents, and representatives may pay or become obligated to pay arising out of or in connection with this Agreement, provided that any such claims, suits, actions, damages, losses, expenses, and/or a cause of action, (i) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death; or damage to tangible property of a third party including the loss of use, (ii) loss of Contractor's tools and equipment used in connection with this Agreement, and (iii) is caused or incurred in whole or in part by Contractor or any of its subcontractors, agents, or anyone directly or indirectly employed by Contractor, its employees, subcontractor, or agents, or the negligence of the Contractor or the negligence of the Contractor's employees, subcontractors, or agents when acting within the scope of their employment, regardless if caused in part by BPS. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of "solely negligent" should arise, a court agreeable to both Parties may be engaged to settle this dispute.

14.2. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS's sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS's rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

**15. SUCCESSORS AND ASSIGNS.** BPS and Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other Party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither BPS nor Contractor shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of BPS, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than BPS and Contractor.

**16. GOVERNING LAW AND REMEDIES.**

16.1. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in Brevard County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or 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 further exercise thereof.

16.2. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court

costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

**17. CONFLICT OF INTEREST.** Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, F.S. Contractor further represents that no person having any interest shall be employed for said performance of services. Contractor shall promptly notify BPS in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances that may influence or appear to influence Contractor's judgment or quality of Services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstances and the nature of work that Contractor may undertake. Contractor shall request an opinion by BPS as to whether the association, interest, or circumstance would, in the opinion of BPS, constitute a conflict of interest if entered into by Contractor. BPS agrees to notify Contractor of its opinion by certified mail within thirty (30) calendar days of receipt of notification by Contractor. If, in the opinion of BPS, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Contractor, BPS shall so state in its response, and Contractor may, at its option, enter into said association, interest, or circumstance and it shall be deemed not a conflict of interest with respect to the Services provided to BPS by Contractor under the terms of this Agreement. If BPS, in its sole discretion, determines that there is a conflict, Contractor shall not enter into or if already entered into, will immediately terminate such arrangement or Agreement with the subject business associate.

**18. INDEPENDENT CONTRACTOR RELATIONSHIP.**

18.1. Contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of BPS. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Contractor's relationship and the relationship of its employees to BPS shall be that of an independent contractor and not as employees or agents of BPS. Contractor does not have the power or authority to bind BPS in any promise, agreement, or representation.

18.2. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other Party.

**19. ARREARS.** Contractor shall not pledge BPS's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**20. CONFIDENTIAL INFORMATION AND DISCLOSURE OF DOCUMENTS.**

20.1. Contractor shall deliver to BPS for approval and acceptance, and before eligible for final payment of any amounts due, all documents and materials prepared by Contractor for BPS under this Agreement.

20.2. All BPS written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by BPS at its expense will be kept as Confidential Information by Contractor and will not be disclosed to any other party, directly or indirectly, without BPS's prior written consent unless required by a lawful order of court. As requested, BPS shall comply with the provisions of Chapter 119, F.S.

20.3. The Party receiving Confidential Information will not at any time disclose to any person or entity (including, without limitation, any member of the media) or use for its own benefit or the benefit of anyone, Confidential Information of the other Party without the prior written consent of said Party. Neither Party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court, authorized agency of government, or in compliance with Chapter 119, F.S.



**21. PUBLIC RECORDS.**

- 21.1. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, [recordsrequest@brevardschools.org](mailto:recordsrequest@brevardschools.org), BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**
- 21.2. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.
- 21.3. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.
- 21.4. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.
- 21.5. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this Article. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.
- 22. CONTINGENT FEES.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 23. ACCESS AND AUDITS.** Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least seven (7) years after completion of this Agreement. BPS or its duly authorized representatives shall have access to such books, records, and documents as required in this section

for the purpose of inspection, audit, excerpts, and transcription during normal business hours, at BPS's cost, upon five (5) days' written notice.

- 24. NON-DISCRIMINATION.** Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.
- 25. SURVIVAL.** All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.
- 26. AUTHORITY.** Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.
- 27. COMPLIANCE WITH LAWS.** Contractor agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations as well as applicable BPS policies and regulations, rules, and guidelines in connection with the Services to be provided hereunder, including, without limitation, BPS Policy 6460 Vendor Relations. BPS agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services to be provided hereunder.
- 28. SEVERABILITY.** If any terms or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 29. NAMES; TRADEMARKS.** Contractor shall acquire no rights under the Agreement to, and shall not use, the name of The School Board of Brevard County, Florida or the name of "Brevard County Schools" or "BPS" either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, "BPS Marks") in any of Contractor's advertising, publicity, or promotion; to express or imply any endorsement by BPS or Brevard County Schools of its Services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by BPS, except as expressly permitted herein. No advertisement, publication, or other use of BPS Marks shall be published or otherwise promulgated by Contractor without BPS's prior inspection and written approval. This clause shall survive the expiration or sooner termination of this Agreement.
- 30. COPYRIGHTS.** Contractor is hereby notified that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use for federal government purposes: the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and, any rights of copyright to which a grantee, subgrantee or a **Contractor** purchases ownership with grant support. Furthermore, the parties agree that the **School Board** has the right to make copies through in-house printer or other non-commercial means, of any materials, whether in tangible or electronic means or media, that are delivered under the provisions of this agreement for use within the School District for purposes related to **School Board** business, operations, the delivery of the educational program or to comply with the requirements of law, rule, policy or regulation. The parties acknowledge and agree that Contractor shall own all right, title and interest in and to the Intellectual Property Rights in and to all documents, work product, and all other materials and media in any form or format that are delivered to School Board under this Agreement or prepared by or on behalf of Contractor in the course of performing Services ("Deliverables").

30.1. **School Board** acknowledges and agrees that:

1. any all **Contractor's** Intellectual Property Rights are the sole and exclusive property of **Contractor**.
2. **School Board** shall not acquire any ownership interest in any of **Contractor's** Intellectual Property Rights under this Agreement;

3. any goodwill derived from the use by **School Board** of **Contractor's** Intellectual Property Rights inures to the benefit of **Contractor** .
4. **School Board** shall use **Contractor's** Intellectual Property Rights solely for purposes of using the Products in accordance with the AVID Center General Terms and Conditions.

30.2 **School Board** shall not:

1. take any action that might interfere with any of **Contractor's** rights in or to **Contractor's** Intellectual Property Rights, including **Contractor's** ownership or exercise thereof;
2. challenge any right, title or interest of **Contractor** in or to **Contractor's** Intellectual Property Rights;
3. make any claim or take any action adverse to **Contractor's** ownership of **Contractor's** Intellectual Property Rights;
4. engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Products, Services or any **Contractor's** trademarks;
5. alter, obscure or remove any **Contractor's** trademarks, or trademark or copyright notices or any other proprietary rights notices placed on the Products, Deliverables, marketing materials or other materials that **Contractor** may provide;
6. modify, alter, or otherwise change the materials subject of **Contractor's** Intellectual Property Rights.

**31. PROTECTION AND HANDLING OF DATA.**

- 31.1. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to BPS or an individual identified with the data or information in Contractor's custody.
- 31.2. **Compliance with Laws and BPS Policies and Procedures.** Contractor will not knowingly permit any Contractor's personnel to have access to any BPS facility or any records or data of BPS if the person has been convicted of a crime in connection with (1) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. §1829(a); or (2) a felony. Contractor must, to the extent permitted by law, conduct a check of public records in all of the employee's states of residence and employment for at least the last five (5) years in order to verify the above. Contractor shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations.
- 31.3. **FERPA.** To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in Sections 1002.22 and 1002.221, F.S. (the Protection of Pupil Privacy Acts), 20 U.S.C. §1232g - the Family Educational Rights and Privacy Act (FERPA), the federal regulations issued pursuant thereto (34 CFR Part 99), and/or any other applicable state or federal law or regulation regarding the confidentiality of student information and records. Further, Contractor, and its officers, employees, agents, and representatives, shall fully indemnify and hold BPS harmless for any violation of this provision including, but not limited to, defending BPS and its officers, employees, agents, and representatives against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon BPS, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon BPS arising out of the breach of this provision by Contractor, its officers, employees, agents, or representatives, to the extent that the Contractor, or its officers, employees, agents, or representatives, shall either intentionally or negligently violate this provision, Sections 1002.22 and 1002.221, F.S., or other applicable state, local, or federal laws, rules, or regulations. This provision shall survive the termination of or completion of all performance obligations under this Agreement, and shall remain fully binding upon Contractor. A separate Non-Disclosure Agreement may be required.

- 31.4. **HIPAA, CIPA, and GLBA.** Contractor also agrees to comply with all applicable state and federal laws, regulations, and BPS policies including Privacy Rights of Students, Computer Users' Responsibilities, Security of Computing Resources, Security of Data, Privacy of Computing Resources, Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).
- 31.5. **Data Security.** Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, etc.). Likewise, BPS agrees to conform to the following measures to protect and secure data:
- 31.5.1. **Data Transmission.** Contractor agrees that any and all transmission or exchange of system application data with BPS and/or any other parties shall take place via secure means, e.g. HTTPS, FTPS, SFTP, or equivalent.
- 31.5.2. **Data Storage and Backup.** Contractor agrees that any and all BPS data will be stored, processed, and maintained solely on designated servers and that no BPS data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by BPS with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by BPS for any general or specific case.
- 31.5.3. Contractor agrees to store all BPS backup data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key.
- 31.5.4. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no BPS data of any kind shall be revealed, transmitted, exchanged, or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by an BPS officer with designated data, security, or signature authority.
- 31.6. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall return all data to BPS in a useable electronic form, and erase, destroy, and render unreadable all BPS data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within thirty (30) days of the termination of this Agreement or within seven (7) days of the request of an agent of BPS, whichever shall come first.
- 31.7. **Data Breach.** Contractor agrees to comply with the State of Florida Database Breach Notification process and all applicable laws, including, but not limited to, Section 501.171, F.S., that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to notify BPS immediately and assume responsibility for informing all such individuals in accordance with the applicable law and to indemnify, hold harmless, and defend BPS, its board members, employees, and representatives from and against any claims, damages, or other harm related to such Notification Event.
- 31.8. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities laws) to disclose any Protected Information, Contractor will provide BPS with prompt written notice so that BPS may seek an appropriate protective order or other remedy. If a remedy acceptable to BPS is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish,

and Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.

- 31.9. **Remedies for Disclosure of Confidential Information.** Contractor and BPS acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage BPS in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give BPS the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants BPS the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
- 31.10. **Safekeeping and Security.** As part of the Services, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, passwords, and similar security codes and identifiers issued to Contractor's employees, agents, or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information.
- 31.11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Contractor and BPS.
- 31.12. **Request for Additional Protection.** From time to time, BPS may reasonably request that Contractor protect the confidentiality of certain Protected Information in particular ways to ensure that confidentiality is maintained. Contractor has the right to reasonably decline BPS's request.
32. **NON-EXCLUSIVE AGREEMENT.** The Parties understand and agree this Agreement is a non-exclusive agreement and the Parties hereto may participate in other comparable services to and from any other person or entity.
33. **ENTIRETY OF AGREEMENT.** BPS and Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto.
34. **CONFLICTS.** If there is a conflict between this Agreement and the documentation attached as Exhibit A and/or Exhibit "B", this Agreement governs.
35. **CONSTRUCTION OF AGREEMENT.** Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.
36. **OTHER CONDITIONS.**
- 36.1. **Legal Authority.** It is understood that those signing this Agreement have the legal authority to enter into binding Agreements.
- 36.2. **Terms and Conditions.** This Agreement contains all the terms and conditions agreed upon by the Parties. Items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the Parties hereto.

- 36.3. **License and Permits.** Contractor shall obtain and possess throughout the term of this Agreement all licenses and permits required for its operations under Federal, Florida, and local laws and shall comply with all fire, health, and other applicable regulatory codes.
- 36.4. **Location.** All Services shall be performed and located in appropriate settings that are convenient, safe, clean, and well-maintained.
- 36.5. **Access.** BPS agrees to provide full accessibility to property owned or leased by BPS for Contractor's employees to perform Services as agreed upon herein. For software support, BPS agrees to allow for secure, remote access to the system via internet-based tools such as WebEx or PCAnywhere or as outlined and agreed upon herein.
- 36.6. **Covenant Not-to-Hire.** Each Party agrees not to hire or attempt to hire employees of the other Party during the term and for a period of one (1) year after the term (including any renewal term) of this Agreement, without the express written consent of the other Party.
- 36.7. **Public Entity Crime.** Pursuant to Section 287.133, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with BPS: when a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, it may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted contractor list.
- 37. DEBARMENT.** By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- 37.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- 37.2. Have not, within the preceding five (5) year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- 37.3. Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph.
- 37.4. Have not within the preceding five (5) year period had one (1) or more public transactions (federal, state, or local) terminated for cause or default.
- 37.5. Contractor agrees to notify BPS within thirty (30) days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described above, with respect to Contractor or its principals.
- 38. NON-WAIVER.** The failure of either Party to exercise or delay in exercising any right, power, or privilege provided for hereunder shall not be deemed a waiver thereof; nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege under this Agreement. No Party shall be deemed to have waived a right, power, or privilege provided for herein, unless such waiver is in writing and signed by the waiving Party. 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.

- 39. FORCE MAJEURE.** Except as otherwise provided herein, none of the Parties shall be obligated to perform, and no Party shall be deemed to be in default of its performance, if prevented by: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; or (c) labor dispute that results in a strike or work stoppage affecting the performance of this Agreement.
- 40. NOTICE.** All formal notices, proposed changes, and determinations between the Parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by United States mail, postage prepaid, to the parties at the contact information listed below:

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

Attention: Procurement and Distribution Services  
2700 Judge Fran Jamieson Way  
Viera, Florida 32940

**AVID CENTER**

Attention: Karen Thomas  
9797 Aero Drive, Ste. 100  
San Diego, CA 92123

- 41. COUNTERPARTS.** This Agreement may be executed in counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one (1) original document.
- 42. E-Verify.** Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, BPS has made and executed this Agreement and Contractor has made and executed this Agreement on the day and year written below.

**AVID CENTER**

DocuSigned by:  
*David S. Greulich*  
ECA8539C068844D

By: \_\_\_\_\_  
Authorized Representative Signature

Date: 5/21/2020 | 12:22 PM PDT

Print Name: David S. Greulich

Title: Controller

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
Misty Belford, Board Chairperson

Date: \_\_\_\_\_

Department/School Approval:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: Dr. Stephanie Soliven

Title: \_\_\_\_\_

YEAR	FND	CNTR	PROJECT	FUNC	OBJT	PRG	S	AMOUNT
20-21	100	9810	000484	5100	737	102 & 103		52,457.00

Send required insurance certificates to the Procurement and Distribution Services Department.  
New Contractors: Send all completed Forms to the Procurement and Distribution Services Department.

Contractor Contact Name: Karen Thomas  
Email Address: kthomas@avid.org  
Phone Number: 858.380.4800  
Fax Number: \_\_\_\_\_



## EXHIBIT "A"

**AVID Center****Products and Services Contract/Order**

Contract/Order #: Q-78283  
 Client: The School Board of Brevard County  
 Address: 2700 Judge Fran Jamieson Way  
 Viera, FL 32940

AVID Center Representative: Karen Thomas  
 Phone: (407) 450-7009  
 Email: kthomas@avid.org

Effective Date: July 01, 2020

Expiration Date: June 30, 2021

Astronaut High School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
Astronaut High School SUBTOTAL:				<b>\$4,354.00</b>

Central Middle School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
Central Middle School SUBTOTAL:				<b>\$4,354.00</b>

Cocoa Jr Sr High School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
Cocoa Jr Sr High School SUBTOTAL:				<b>\$4,354.00</b>

Eau Gallie High School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$545.00	\$0.00
Eau Gallie High School SUBTOTAL:				<b>\$3,809.00</b>

Golfview Elementary School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Elementary School	\$3,125.00	\$0.00	\$3,099.00
1	AVID Weekly Elementary	\$595.00	\$0.00	\$0.00
Golfview Elementary School SUBTOTAL:				<b>\$3,099.00</b>

James Madison Middle School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
1	Secondary Digital Library Set - 8 Licenses - Year 2	\$0.00	\$0.00	\$0.00
James Madison Middle School SUBTOTAL:				<b>\$4,354.00</b>

John F Kennedy Middle School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$545.00	\$0.00
John F Kennedy Middle School SUBTOTAL:				<b>\$3,809.00</b>

Lyndon B Johnson Middle School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
Lyndon B Johnson Middle School SUBTOTAL:				<b>\$4,354.00</b>

McNair Magnet School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
McNair Magnet School SUBTOTAL:				<b>\$4,354.00</b>

Palm Bay Elementary School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Elementary School	\$3,125.00	\$0.00	\$3,099.00
1	AVID Weekly Elementary	\$595.00	\$0.00	\$0.00
Palm Bay Elementary School SUBTOTAL:				<b>\$3,099.00</b>

Palm Bay Magnet High School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
Palm Bay Magnet High School SUBTOTAL:				<b>\$4,354.00</b>

Rockledge High School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$0.00	\$545.00
Rockledge High School SUBTOTAL:				<b>\$4,354.00</b>

Stone Middle School				
QTY	PRODUCT NAME	UNIT PRICE	DISCOUNT	EXTENDED PRICE
1	AVID Membership Fees Secondary	\$4,099.00	\$0.00	\$3,809.00
1	AVID Weekly Secondary	\$595.00	\$545.00	\$0.00
Stone Middle School SUBTOTAL:				<b>\$3,809.00</b>

**TOTAL: \$52,457.00**

*plus all applicable taxes*

This AVID Products and Services Contract/Order ("Contract/Order"), together with the General Terms and Conditions ("Ts&Cs") attached hereto as Exhibit "B" (collectively, this "Agreement" or "AVID Agreement") and the Agreement Document No. 20-606-A-HD, constitutes a binding agreement between AVID Center and the "Client" identified above with respect to the AVID Products and Services (as defined in the Ts&Cs) specified in this Contract/Order. The Ts&Cs attached to this Contract/Order will apply to any Subsequent Contract/Order that is placed by Client. Each party agrees to be bound by the terms of this Agreement and has caused this Agreement to be signed by its duly authorized representative.

**Additional Comments:**

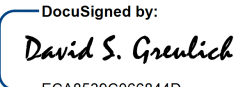
N/A

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below their signatures, but such dates shall not alter the Term of this Agreement as specified herein:

AVID Center,  
a California Non-Profit Corporation  
501(c)(3)

The School Board of Brevard County

Signature:   
Print Name: David S. Greulich

Signature: \_\_\_\_\_  
Print Name: Misty Belford  
Email Address: \_\_\_\_\_

Title: Controller

Title: Board Chairperson

Date: 5/21/2020 | 12:21 PM PDT

Date: \_\_\_\_\_

AVID Center  
9797 Aero Drive, Suite 100  
San Diego, CA 92123  
Employer ID # 33-0522594

Signature: \_\_\_\_\_  
Print Name: Dr. Stephanie Soliven  
Email Address: \_\_\_\_\_

Title: Assistant Superintendent  
~~Secondary Leading & Learning~~  
Date: \_\_\_\_\_

**Exhibit "B"****AVID Center General Terms and Conditions**

These General Terms and Conditions (these "Ts&Cs") set forth an agreement by and between AVID Center, a California nonprofit corporation ("AVID Center"), and The School Board of Brevard County Florida ("Client"). Client agrees to these Ts&Cs by entering into the Contract/Order or a Subsequent Contract/Order regardless of whether these Ts&Cs are attached to such Contract/Order or Subsequent Contract/Order. If an individual enters into the Contract/Order or a Subsequent Contract/Order on behalf of his/her employer, then such individual hereby represents and warrants that he/she has the authority to bind such entity to this Agreement.

**Article I. Definitions.** Capitalized terms in these Ts&Cs not defined in the Contract/Order or a Subsequent Contract/Order or elsewhere in these Ts&Cs shall have the meanings set forth below:

1.1. "AVID Materials" shall mean any materials, in any medium, printed or electronic, provided by AVID Center relating to the AVID Products and Services.

1.2. "AVID Member Site" shall mean each Client facility identified in the Contract/Order or a Subsequent Contract/Order where the AVID Products and Services will be implemented.

1.3. "AVID Methodologies" shall mean AVID Center's proprietary methodologies incorporated within the AVID Products and Services.

1.4. "AVID Products and Services" shall mean the descriptions and requirements related to the products and services specified in the Contract/Order or a Subsequent Contract/Order, as described on the area of AVID Center's website located at <https://www.avid.org/Page/3290>. Such descriptions and requirements may change from time to time at AVID Center's sole discretion without prior notice to Client and are hereby incorporated herein by this reference.

1.5. "Proprietary Information" shall mean confidential or proprietary information pertaining to AVID Center's business, products or services, including without limitation AVID Methodologies, techniques, processes, designs, and research, and the terms of this Agreement.

1.6. "Subsequent Contract/Order" shall mean an order signed by AVID Center and Client to renew a subscription of the AVID Products and Services or any Amendment to a Contract/Order.

1.7. "Site Data" shall mean data collected from an AVID Member Site pertaining to student demographics, course enrollment, site characteristics and related outcomes.

1.8. "Student Data" shall mean individual student academic and disciplinary data.

**Article II. Term.**

2.1. **Term.** The term of this Agreement shall commence on the date specified in the Contract/Order or Subsequent Contract/Order and, unless earlier terminated as provided herein, shall continue until the expiration date specified in the Contract/Order, unless renewed pursuant to a Subsequent Contract/Order ("Term").

**Article III. Licenses.****3.1. AVID Products and Services.**

(a) Subject to all of the terms and conditions of this Agreement, AVID Center hereby grants to Client during the Term a limited, non-exclusive, non-transferable license, without the right to sublicense, to (i) use, and permit AVID Member Sites to use (a) the AVID Products and Services corresponding to such AVID Member Sites as specified in the

Contract/Order or a Subsequent Contract/Order, and (b) the AVID Methodologies solely to implement the AVID Products and Services and for no other purpose, and (ii) reproduce the AVID Materials and distribute and display copies of such AVID Materials to staff and students of AVID Member Sites where such AVID Products and Services are implemented.

(b) This Agreement grants Client only the rights to use the AVID Products and Services and AVID Materials as set forth herein and does not convey or transfer title or ownership of any AVID Products and Services or AVID Materials to Client. All rights not expressly granted herein are reserved by AVID Center, and no other licenses are granted herein by implication, estoppel or otherwise.

3.2 **Restrictions.** Except as permitted in this Agreement, Client shall not, nor permit any third party to, engage in any of the following conduct:

(a) Provide, sell, sublicense, transfer, or lease any AVID Products and Services or AVID Materials;

(b) Distribute, broadcast or transmit in any medium whatsoever any AVID Products and Services or AVID Materials, except to AVID Member Sites solely via a password-protected website that is accessible only to staff and students of such AVID Member Site;

(c) Reproduce any AVID Products and Services or AVID Materials, except for classroom or school use;

(d) Distribute or transmit through the Internet any AVID Materials or AVID Methodologies to AVID Member Sites, except to a password-protected website that is accessible only to staff and students of such AVID Member Site;

(e) Enable AVID Member Sites to download electronic versions of any AVID Products and Services or AVID Materials, other than downloads by staff and students of AVID Member Sites who are required to agree prior to downloading (via clicking an "Accept" button or other form of electronic acknowledgement) not to distribute, reproduce, display, or transfer such AVID Products and Services or AVID Materials to anyone other than staff and students of their AVID Member Site;

(f) Modify or create derivative works of any AVID Products and Services or AVID Materials;

(g) Use or integrate any AVID Products and Services or AVID Materials with any product or service other than the AVID Products and Services or to develop any other product or service;

(h) Use any AVID Products and Services or AVID Materials in connection with any timesharing service, service bureau, network or any other services for revenue-generating purposes; or

(i) Obscure, remove, alter or fail to reproduce any copyright notice and other proprietary legends contained on or in any AVID Products and Services or AVID Materials.

### 3.3 AVID Trademarks.

(a) Subject to all of the terms and conditions of this Agreement, AVID Center grants to Client during the Term a limited, nonexclusive, non-transferable, indivisible license, without the right to sublicense, to use the "AVID" trademarks, service marks and logos (collectively, "AVID Trademarks") only (i) as they are incorporated within the AVID Materials; and (ii) on advertising and promotional materials created by Client or AVID Member Sites to promote the AVID Products and Services implemented at such AVID Member Sites.

(b) Client shall at all times use the AVID Trademarks in a professional manner in order to preserve and enhance AVID Center's substantial goodwill associated with the AVID Trademarks.

(c) Client shall not, and shall ensure that AVID Member Sites do not, (i) use any AVID Trademarks as a business name or trade name; (ii) adopt any trademark that is confusingly similar to any AVID Trademarks; (iii) submit any application or otherwise attempt to register for itself or others any AVID Trademarks; (iv) modify or otherwise alter any AVID Trademarks or use any other designs or logos in conjunction with the AVID Trademarks; or (v) use any AVID Trademarks in connection with any product or service other than the AVID Products and Services in accordance with this Agreement.

(d) All use of the AVID Trademarks by Client or an AVID Member Site will include the appropriate trademark symbol and will be in the following form, as appropriate: [AVID Trademark]<sup>®</sup> or [AVID Trademark]<sup>™</sup>. All literature and materials printed, distributed or electronically transmitted by Client or an AVID Member Site and containing any AVID Trademarks will include the following notice, as appropriate: "[AVID Trademark] is a [registered] trademark of AVID Center."

(e) Use by Client or any AVID Member Site of any AVID Trademarks on any product or other item in order to promote the AVID Products and Services shall be subject to AVID Center's prior written approval. Any such uses of AVID Trademarks approved by AVID Center shall be subject to the terms and conditions of this Agreement.

3.4 Ownership. As between the parties, AVID Center shall solely own all right, title and interest, except as licensed to Client hereunder, in and to the AVID Products and Services, AVID Trademarks, and AVID Materials, and any and all modifications, enhancements and derivative works thereof, and all intellectual and proprietary rights related thereto ("Intellectual Property Rights"). In addition, AVID Center shall own any and all suggestions, comments and feedback provided by Client concerning improvements or modifications of any AVID Products and Services (collectively, "Feedback") and AVID Center shall have the right to use, in any manner and for any purpose whatsoever, any and all Feedback. Client agrees to assign and does hereby irrevocably assign to AVID Center all right, title and interest that Client may acquire in and to any and all AVID Products and Services, AVID Trademarks, AVID Materials, and Feedback and all Intellectual Property Rights therein.

3.5 Equitable Relief. Client acknowledges and agrees that AVID Center will be irreparably harmed and money damages would be an inadequate remedy in the event of a breach of this Article III. Client therefore agrees that, in the event of such a breach, in addition to all other available remedies, AVID Center shall be entitled to equitable relief, including without limitation an order of specific performance and/or temporary, preliminary and permanent injunctive relief.

### Article IV. Client's Obligations.

4.1. Infringement by Third Parties. Client shall notify AVID Center of any infringement of any of AVID Center's Intellectual Property Rights of which Client becomes aware. AVID Center shall have the sole right, but not any obligation, to take legal action to enforce such rights and Client agrees to cooperate with AVID Center in any such action and provide all information and assistance reasonably requested by AVID Center at AVID Center's expense.

4.2. Compliance with Laws. Client shall at all times comply with all applicable laws and regulations in its use of the AVID Products and Services.

4.3. Data Collection. During the Term, Client shall provide to AVID Center via a designated secure web portal Site Data and Student Data (collectively, "Data") specified by AVID Center. Client shall collect Data in accordance with applicable privacy laws, including without limitation the federal Family Educational Rights and Privacy Act (FERPA). AVID Center shall maintain in confidence all personally identifiable student information or information that is included in Data that it receives from Client. Client may withhold, revise, and/or edit confidential data, such as student names, Social Security Numbers and any other information the disclosure of which would violate state or federal law. AVID Center agrees not to use any Data in a manner that would violate, or cause Client to violate, any applicable provision of FERPA.

#### 4.4. Proprietary Information.

(a) Confidentiality. Client shall hold and maintain all Proprietary Information provided by, or otherwise obtained from, AVID Center in strict confidence and not use or disclose such information to any third party other than to its employees and contractors who have a need to know such information, except to the extent necessary to exercise the rights granted, and perform its obligations, under this Agreement. Client will safeguard all Proprietary Information using the same precautions it uses to protect its own confidential information, but shall in no event exercise less than a reasonable degree of care. Client shall ensure compliance of AVID Member Sites with the obligations in this Section 4.4 and shall be responsible for any AVID Member Site's breach of such obligations.

(b) Exceptions. The restrictions set forth in Section 4.4(a) shall not apply with respect to information which: (i) is already known by Client at time of disclosure; (ii) becomes, through no act or fault of Client or any AVID Member Site, publicly available; (iii) is rightfully received by Client from a third party on a non-confidential basis; or (iv) is independently developed by Client without reference to any Proprietary Information. Notwithstanding Section 4.4(a), Client may disclose Proprietary Information pursuant to a lawful requirement or request of a governmental entity or agency to the minimum extent required, provided that, to the extent permitted by applicable law, Client first notifies AVID Center of such requirement or request and Client cooperates with AVID Center in seeking a protective order or contesting such required disclosure.

### Article V. Compensation.

5.1. Invoicing and Payment. AVID Center will invoice Client the amount stated in the Contract/Order or Subsequent Contract/Order, as the case may be, upon execution of the Contract/Order or Subsequent Contract/Order, and Client shall

pay to AVID Center the full invoiced amount within forty-five (45) days following Client's receipt of the invoice.

5.2. Taxes. Client shall be responsible for the payment of any applicable sales or use taxes or any value added or similar taxes payable with respect to the AVID Products and Services provided by AVID Center or arising out of or in connection with this Agreement.

5.3. No Right of Offset. Client shall have no right to offset any amount or claim against amounts payable to AVID Center hereunder.

**Article VI. Representations and Warranties; Warranty Disclaimer.**

6.1. Representations and Warranties. Each party represents and warrants to the other party that its execution and delivery of this Agreement, and its performance of this Agreement, (i) are within its power and authority; (ii) do not require any consent or other action by and in respect of or filing with any third party or governmental body or agency; and (iii) do not, and will not, violate or conflict with or constitute a default under any applicable law, regulation, or published interpretive guidance or ruling.

6.2. Warranty Disclaimer.

(a) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1., NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND EACH PARTY DISCLAIMS ALL OTHER WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(b) AVID CENTER DOES NOT WARRANT THAT THE AVID PRODUCTS AND SERVICES WILL MEET CLIENT'S OR ANY AVID MEMBER SITE'S REQUIREMENTS AND AVID CENTER DOES NOT MAKE ANY WARRANTY WITH RESPECT TO CLIENT'S OR ANY AVID MEMBER SITE'S USE OR INABILITY TO USE ANY OF THE AVID PRODUCTS AND SERVICES OR THE RESULTS GENERATED FROM THE USE OF ANY OF THE AVID PRODUCTS AND SERVICES.

**Article VII. Limitation of Liability.**

7.1. Exclusion of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY ARISING OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, INCLUDING TORT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF WARRANTY, FOR (a) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; OR (b) THE COST OF PROCURING SUBSTITUTE GOODS, SERVICES, TECHNOLOGY OR RIGHTS.

7.2. Maximum Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, AVID CENTER SHALL HAVE NO LIABILITY FOR DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT PAID BY CLIENT HEREUNDER AND CLIENT SHALL HAVE NO LIABILITY FOR DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT PAID OR PAYABLE BY CLIENT HEREUNDER WITH RESPECT TO THE CONTRACT/ORDER OR SUBSEQUENT CONTRACT/ORDER GIVING RISE TO LIABILITY.

7.3. Exceptions. THE EXCLUSIONS OF DAMAGES AND LIABILITY LIMITATIONS IN SECTIONS 7.1 AND 7.2 SHALL NOT APPLY TO ANY BREACH OF CLIENT'S OBLIGATIONS UNDER

ARTICLE III OR SECTION 4.4 OR ANY VIOLATION OR INFRINGEMENT OF AVID CENTER'S INTELLECTUAL PROPERTY RIGHTS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**Article VIII. Termination.**

8.1. By AVID Center. AVID Center may terminate this Agreement in its entirety or with respect to one or more AVID Member Sites in the event of Client's material breach of this Agreement, which is not fully cured within thirty (30) days following AVID Center's notice of the breach. In the event Client's breach is not cured, AVID Center shall notify Client of its election to terminate this Agreement or, if termination is limited to one or more AVID Member Sites, AVID Center shall notify Client of the AVID Member Sites so terminated.

8.2. By Client. Client may terminate this Agreement for any reason, or no reason, upon thirty (30) days' prior written notice to AVID Center.

8.3. Effect of Termination. Upon termination or expiration of this Agreement or with respect to termination of one or more AVID Member Sites, (a) the licenses granted to Client hereunder, or the rights granted hereunder with respect to the terminated AVID Member Sites, shall automatically terminate and all rights shall revert to AVID Center; (b) Client shall immediately discontinue use of the AVID Products and Services and cease using the AVID Materials, AVID Methodologies, and AVID Trademarks in all AVID Member Sites following termination or expiration of this Agreement, or, in the case of termination of one or more AVID Member Sites, in the terminated AVID Member Sites; (c) Client shall pay to AVID Center all unpaid amounts that are due and payable hereunder and shall remain liable for its obligations or other actions that accrued or occurred prior to the date of termination or expiration; and (d) Client shall promptly return to AVID Center all AVID Materials and Proprietary Information (including copies) in its possession or control following termination or expiration of this Agreement.

8.4. Survival. All accrued rights to payment and the parties' respective rights, obligations and duties under Articles I, VI, VII, and VIII and Sections 3.4, 3.5, 4.1, 4.4, and 5.1 shall survive expiration or any termination of this Agreement.

**Article IX. General Provisions**

9.1. Independent Contractors. The relationship between the parties is that of independent contractors and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

9.2. Cumulative Remedies. All rights and remedies conferred herein shall be cumulative and in addition to all of the rights and remedies available to each party at law, equity or otherwise.

9.3. Governing Law/Venue. This Agreement shall be governed by and interpreted under Florida law, without regard to its conflict of laws provisions, and the state and federal courts located within the State of Florida, County of Brevard shall have the exclusive jurisdiction over all disputes and causes of action relating to this Agreement.

9.4. Dispute Resolution. Before initiating any legal action, the parties will endeavor to settle any dispute, controversy or claim arising out of or relating to this Agreement or a party's performance or lack of performance hereunder (a "Dispute") through mediation according to the laws of the State of Florida.



9.5. Attorneys' Fees. The prevailing party in any legal action or proceeding related to this Agreement shall, in addition to all other remedies, be entitled to an award of its attorneys' fees.

9.6. Force Majeure. Neither party shall be liable for nonperformance or any delay caused by an event reasonably beyond its control including, but not limited to, wars, acts of terrorism, compliance with laws or regulation (including, without limitation, those related to infringement), fires, floods, earthquakes or any Act of God or any law, proclamation, regulation, ordinance or other act or order of any court, government or governmental agency.

9.7. Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and be enforceable.

9.8. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one business day following delivery by a nationally recognized overnight courier with tracking capabilities, or three business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested, to the address of the party to be notified set forth in the Contract/Order or a Subsequent Contract/Order. Notice of change of address shall be given by written notice in the manner set forth in this Section 9.8.

9.9. Waiver. The waiver by either party of any breach or failure to require performance by the other party shall not constitute the waiver of any other or subsequent breach or diminish the right to require such performance in the future.

9.10. No Third-Party Beneficiaries. Nothing in this Agreement shall confer upon any person or entity other than the parties and their respective successors or permitted assigns, any rights, obligations, or remedies hereunder (whether as a third-party beneficiary or otherwise).

9.11. No Assignment. Client may not assign any of its rights or delegate any of its obligations under this Agreement without AVID Center's prior written consent and any purported assignment in the absence of such consent shall be null and void.

9.12. Amendment. No amendment or modification of this Agreement shall be binding, unless it is in writing and signed by both parties.

9.13. Headings; Construction. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement. Each party agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

9.14. Entire Agreement. This Agreement is the entire agreement between the parties relating to the subject matter hereof, and all Contracts, communications, understandings and agreements relating to the same subject matter are merged into, and superseded by, this Agreement.

9.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing a signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.