

AGREEMENT BETWEEN
THE SCHOOL BOARD OF CITRUS COUNTY, FLORIDA
AND
EDUCATION ADVANCED, INC
FOR ONLINE EDUCATION SERVICES

THIS AGREEMENT ("Agreement") is entered into by and between The School Board of Citrus County, Florida, a political subdivision of the State of Florida and a body corporate pursuant to §1001.40, Florida Statutes, whose address is 1007 W. Main Street, Inverness, Florida 34450, hereinafter referred to as "CCSB" or "School Board" and EDUCATION ADVANCED INC, a Texas Corporation registered to do business in the State of Florida, whose principal address is 2702 E 5th Street #372, Tyler, Texas 75701, hereinafter referred to as "Contractor" or "Provider" (each a "Party" and collectively referred to as the "Parties").

WHEREAS, CCSB is interested in utilizing the Contractor's Testhound software-as-a-service offering, implementation, and training services to track standardized tests; and

WHEREAS, Florida Administrative Code 6A-1.0102(14) authorizes district school boards to acquire information technology as defined in Florida Statute §282.0041(14) by direct negotiation and contract with the Contractor as best fits the needs of the school district as determined by the district school board; and

WHEREAS, Contractor desires to provide their software license, hosting, implementation, and training services for Citrus County School District.

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:

1. **Incorporation of Recitals.** The forgoing recitals (WHEREAS CLAUSES) are true and correct and are incorporated herein by reference.
2. **Terms of Agreement.** The term of this Agreement shall commence on 07/01/2023 and continue until 6/30/24. Notwithstanding any other termination referenced herein

or attached hereto, either party reserves the right to terminate this Agreement within 30 days prior to the start of each fiscal year (July 1) during the term of this Agreement without cause or subject to any penalties or additional obligations.

3. Statement of Work. The Contractor shall provide access to its Testhound software-as-a-service offering and implementation, and training services ("Products" and "Services") as outlined in Attachment B, Sales Order EAI-999120, which is incorporated in the Agreement by reference. Additional services and products may be offered through separate sales orders or proposals, all of which are subject to the terms and conditions of this Agreement and all Exhibits. In the event of a conflict of interest between the terms and conditions of this Agreement and any exhibits or attachments, the terms and conditions of this Agreement shall prevail, and the following order of precedence shall be observed:

3.1. This Service Agreement.

3.2. Attachment A – Student Data Privacy Agreement.

3.3. Attachment B – Sales Order EAI-999120

3.4. Attachment C – Privacy Policy

3.5. Attachment D – EAI Terms of Service, which is hereby incorporated into this Agreement and, notwithstanding anything to the contract in this Agreement, shall govern the Products and Services provided for herein. In the event of a conflict between the Agreement and the Terms of Service, the Agreement shall prevail.

For purposes of this Agreement, subcontractor, sub subcontractor, or contractor of Contractor (collectively, "Subcontractor") shall exclude Contractor's subprocessors and subcontractors or any vendor who provides hosting services to Contractor or other services that Contractor uses to provide its software products through a software-as-a-service delivery model.

4. Payment & Compensation. The Contractor shall provide services in accordance with Attachment B, Sales Order EAI-999120, at a fixed fee. The total compensation under this Agreement shall not exceed **FIVE THOUSAND AND 00/100 DOLLARS \$5,000.00**. Payment will be made in accordance with Section 218.70, Florida Statutes, et. seq., the Local Government Prompt Payment Act.

5. CCSB Administrator. The CCSB Administrator assigned to act on behalf of CCSB in all matters pertaining to this Agreement and to authorize services, accept and approve all reports, drafts, products or invoices is Sean Furniss, Director of Federal Programs.

6. Background Screening: In the event the requirements include the need for Contractor to visit schools with students present, Contractor 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 CCSB in advance of Contractor or its personnel providing any services under the conditions described in the previous sentence. Contractor 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 Contractor and its personnel. 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 CCSB to terminate this Agreement immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless CCSB, its officers and employees resulting from liability or claims made by any person who may suffer physical or mental injury, death or property damage resulting in the Contractor's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

7. **Child Neglect.** The Contractor and its employees shall be subject to the requirements of §39.201, Florida Statute that requires the reporting of child abuse or child neglect to the State of Florida, Department of Children and Families via the Florida Abuse Hotline: 1-800-962-2873.
8. **Reserved.** (Contractor provides indemnification for IP infringement – please see the terms of service document)
9. **Insurance.** Contractors will provide a certificate(s) evidencing such insurance coverage to the extent listed in Sections 1-6 below before commencement of work.

Insurance listed in Section 1 below is required of all Contractors: CCSB shall be named as an additional insured to the Commercial General Liability insurance policy on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). If CCSB is not named as additional insureds then CCSB reserves the right to terminate this Agreement.

Insurance listed in Section 2 below: All Contractors engaging in construction-related activities, as defined by 440.02(8) Florida Statutes, on behalf of CCSB are required to carry this insurance to the limit listed below. All non-construction Contractors whose work for CCSB includes products or services, and the value of these products or services in excess of \$25,000 are required to carry this insurance to the limit listed below.

Insurance listed in Section 4 below: All non-construction Contractors and vendors that have one or more employees or subcontracts any portion of their work to another individual or company are required to have workers' compensation insurance. For contracts of \$25,000 or more, no State of Florida, Division of Workers' Compensation, Exemption forms will be accepted. All entities and individuals required to have workers compensation insurance must purchase a commercial workers' compensation insurance policy to the limits listed below. The Workers' Compensation policy must be endorsed to waive the insurer's right to subrogate against CCSB, and its board members, officers and employees in the manner which would result from the attachment of the NCCI Waiver of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13).

Insurance as listed in Section 5 below: All Contractors providing professional services including but not limited to architects, engineers, attorneys, auditors, accountants, etc. are required to have this insurance to the limits listed below.

Insurance as listed in Section 6 below: All Contractors or vendors providing software shall cover, at a minimum, the following:

- Data Loss and System Damage Liability
- Security Liability
- Privacy Liability
- Privacy/Security Breach Response Coverage, including Notification Expenses

Such Cyber Liability coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of the Agreement and such claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

All Contractors will carry and maintain policies as described in Sections 1 to 6 above and as checked off in the box to the left of Section 1 to 6 below. All required insurance 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. All required insurance policies must be endorsed to provide for notification to CCSB 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 the School Board of Citrus County, Florida.

The Contractor shall, within thirty (30) days after receipt of a written request from CCSB, provide CCSB with a certified copy or certified copies of the policy or policies providing the coverage required by this provision. The Contractor may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to insurance required by provision 2.4.

<input type="checkbox"/>	1. Commercial General Liability Insurance:	
	Bodily Injury and Property Damage Per Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
<input type="checkbox"/>	2. Product Liability and/or Completed Operations Insurance:	
	Bodily Injury and Property Damage Per Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
<input type="checkbox"/>	3. Automotive Liability:	
	Bodily Injury and Property Damage: Combined Single Limit (each accident)	\$1,000,000
<input type="checkbox"/>	4. Workers' Compensation/Employer's Liability:	
	W.C. Limit Required*	Statutory Limits
	E.L. Each Accident	\$500,000
	E.L. Disease – Each Employee	\$500,000
	E.L. Disease – Policy Limit	\$500,000
<input checked="" type="checkbox"/>	5. Professional Liability Insurance (Errors and Omissions):	
	For services, goods or projects that will exceed \$1,000,000 in values over a year.	
	Each Claim	\$1,000,000
	Annual Aggregate	\$2,000,000
<input checked="" type="checkbox"/>	6. Cyber Liability and Data Storage:	
	Each Claim	\$1,000,000
	Annual Aggregate	\$1,000,000

Except as otherwise specifically authorized in this Agreement, no deductible or self-insured retention for any required insurance provided by the Contractor pursuant to this Agreement will be allowed. To the extent any required insurance is subject to any deductible or self-insured retention (whether with or without approval of CCSB), the Contractor shall be responsible for paying on behalf of CCSB (and any other person or organization that the Contractor has, in this Agreement, agreed to include as an insured for the required insurance) any such deductible or self-insured retention.

The Contractor shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Work.

Professional Liability coverage must be maintained in the amounts stated above for a two-year period following completion of the contract.

Compliance with these insurance requirements shall not limit the liability of the Contractor, its Subcontractors, employees or agents. Any remedy provided to CCSB or CCSB's board members, officers or employees by the insurance provided by the Contractor shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Contractor) available to CCSB under this Agreement or otherwise.

Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from the responsibility to provide insurance as required by this Agreement.

- 10. 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.
- 11. No Third-Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights to or obligations 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 for any matter arising out of this or any other contract.
- 12. Access to and Retention of Documentation.** The CCSB, the United States Department of Education, the Comptroller General of the United States, the Florida Department of Education or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to work and services to be performed under this Agreement for the purpose of audit, examination, excerpting and transcribing for the sole purpose of Contractor's compliance with this Agreement. The Parties will retain all such required records, and records required under any state or federal rules, regulations or laws respecting audit, for a period of four years after the CCSB has made final payment and all services have been performed under this Agreement.

13. Contractor's Public Records. Public Records Act/Chapter 119 Requirements. Contractor agrees to comply with the Florida Public Records Act (Chapter 119, Florida Statutes) to the fullest extent applicable, and shall, if this engagement is one for which services are provided, by doing the following:

- 13.1. Contractor and its Subcontractors shall keep and maintain public records required by the CCSB to perform the service.
- 13.2. Contractor and its Subcontractors shall upon request from the CCSB's custodian of public records, provide the CCSB with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed that provided in chapter 119, Florida Statutes or as otherwise provided by law;
- 13.3. Contractor and its Subcontractors shall ensure that public records that are exempt or that are confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the CCSB;
- 13.4. Contractor and its Subcontractors upon completion of the contract shall transfer to the CCSB, at no cost, all public records in possession of the Contractor and its Subcontractors or keep and maintain the public records required by the CCSB to perform the service. If the Contractor and its Subcontractors transfer all public records to the CCSB upon completion of the contract, the Contractor and its Subcontractors shall destroy any duplicate public records that are exempt or that are confidential and exempt from the public records disclosure requirements. If the Contractor and its Subcontractors keep and maintain public records, upon completion of the contract, the Contractor and its Subcontractors shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CCSB, upon request from the CCSB's custodian of public records, in a format that is compatible with the information technology systems of the CCSB.
- 13.5. The Parties agree that if the Contractor and its Subcontractors fail to comply with a public records request, then the CCSB must enforce the Agreement provisions in accordance with the Agreement and as required by Section 119.0701, Florida Statutes.
- 13.6. The failure of the Contractor to comply with the provisions set forth herein shall constitute a default and material breach of this Agreement, which may result in immediate termination, with no penalty to CCSB.

13.7. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE PUBLIC INFORMATION AND COMMUNICATIONS OFFICER, EMAIL ADDRESS: BLAIRL@CITRUSSCHOOLS.ORG AND PUBLICRECORD@CITRUSSCHOOLS.ORG; TELEPHONE NUMBER: 352-726-1931 ext. 2211, 1007 W. MAIN STREET, INVERNESS, FLORIDA 34450.

14. **Non-Discrimination.** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities, and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

15. **Reserved.**

16. **Records.** 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.

17. **Entire 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.

18. **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.

19. **Preparation of Agreement.** The Parties acknowledge that they have sought and obtained 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 express

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.

20. 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 herein. 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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

21. 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.

22. Governing Law & 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 State courts of Citrus County, Florida.

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

24. Assignment. Neither this Agreement nor 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 CCSB. This contract may not be assigned by the Contractor in any fashion, whether by operation of law, or by conveyance of any type without the prior written consent of the CCSB which consent the CCSB may withhold in its sole discretion, which shall not be unreasonably withheld. Notwithstanding the foregoing, Contractor may assign its rights or obligations to a Third Party in connection with the merger, consolidation, reorganization or acquisition of stock or assets affecting all or substantially all of the assets or actual voting control of the Contractor and that any such assignment shall be made in a manner such that the assignee expressly undertakes in writing to be liable and responsible for the performance and observance of all Contractor's duties and obligations hereunder. This Agreement shall be binding upon the successors and permitted assigns of the Parties. Any attempted delegation or assignment not in accordance with this paragraph shall be of no force or effect, shall be a material breach of the Agreement and CCSB shall have the right to terminate this Agreement upon thirty (30) days written notice to the other party notwithstanding any other termination clause in this Agreement.

Tyler TX 75701

With a Copy to:

Education Advanced, Inc.
Atten: Legal
2702 E 5th St #372
Tyler TX 75701

- 28. Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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.
- 29. Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal authority 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.
- 30. Excess Funds.** Any party receiving funds paid by CCSB under this Agreement agrees to promptly notify CCSB of any funds erroneously received from CCSB upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to CCSB 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 CCSB.
- 31. Independent Contractor.** The Contractor certifies that it is an independent Contractor and shall not employ, contract with, or otherwise use the services of any officer or employee of CCSB. The Contractor certifies that its owner(s), officers, directors or agents, or members of their immediate family, do not have an employee relationship or other material interest with the CCSB.
- 32. Conduct While on School Property.** The Contractor acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with CCSB policies and within the discretion of the premises administrator (or designee). It is a breach of this Agreement for any agent or employee of the 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 wellbeing of any student or employee of the

CCSB. The Contractor agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee.

33. Reserved.

34. Debarment. By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- 34.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- 34.2. Have not, within the preceding five-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.
- 34.3. 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 (b).
- 34.4. Have not within the preceding five-year period had one or more public transactions (federal, state or local) terminated for cause or default.
- 34.5. Contractor agrees to notify CCSB within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, information, or terminations as described in paragraphs 34.1 through 34.4 above, with respect to Contractor or its principals.

35. Confidential Student Information. Notwithstanding any provision to the contrary contained in this Agreement between the Contractor and CCSB; Contractor and its officers, employees, agents, representatives, Contractors, and Subcontractors shall fully comply with the requirements of Section 1002.22 and Section 1002.221, Florida Statutes, or any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records. Further, Contractor for itself and its officers, employees, agents, representatives, Contractors, or sub-Contractors, shall fully indemnify and hold the CCSB and its officers and employees harmless for any violation of this covenant, including but not limited to defending the CCSB and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the CCSB or payment of any and all costs(s),

damages (s), judgment(s), or loss(es) incurred by or imposed upon the CCSB arising out of the breach of this covenant by the Contractor, or an officer, employee, agent, representative, Contractor, or sub-Contractor of the Contractor to the extent and only to the extent that the Contractor or an officer, employee, agent, representative, Contractor, or sub-Contractors of the Contractor shall either intentionally or negligently violate the provisions of this covenant, or Sections 1002.22 or 1002.221, Florida Statutes. This provision shall survive the termination of or completion of all performance or obligations under this Agreement and shall be fully binding upon Contractor until such time as any proceeding brought on account of this covenant is barred by any applicable statute of limitations.

36. Confidentiality of Data/Information Provided. CCSB will allow the Contractor access to limited data/information as identified in the Statement of Work as necessary to perform the Services and pursuant to the terms of this Agreement in compliance with FERPA, COPPA, PPRA, 34 CFR 99.31(b) and Florida Statutes sections 1001.41 and 1002.22 all other privacy statutes as it relates to data privacy and security. The Contractor shall only use the data and information provided by CCSB for the purpose specified in the Statement of Work, and shall not disclose, copy, reproduce or transmit such data/information obtained under this Agreement and/or any portion thereof, except as necessary to fulfill the Agreement or as may be required by law.

37. Protection and Handling of Data.

37.1. Data Confidentiality and Security - Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information as required in the Student Data Privacy Agreement attached hereto as Attachment A.

37.2. Compliance - Contractor will not knowingly permit any Contractor's personnel to have access to any CCSB facility or any records or data of CCSB if the person has been convicted of a crime in connection with (i) 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 (ii) a felony. Contractor shall assure that all contracts with subcontractors impose these obligations on the Subcontractors and shall monitor the Subcontractors' compliance with such obligations. No subcontractors may be used without prior written consent of CCSB.

37.3. FERPA - To the extent services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other