

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is made and entered into as of the **17th day of July 2018, and effective as of the 1st day of July 2018** (the “**Effective Date**”), by and between **SARASOTA COUNTY SCHOOLS** (hereinafter referred to as the “**District**”), with an address at 1960 Landings Boulevard, Sarasota, FL 34231 and **CATAPULT LEARNING, LLC** (hereinafter referred to as “**Catapult**”), with its principal place of business at 2 Aquarium Drive, Suite 100, Camden, NJ 08103.

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. TERM

- 1.1 This Agreement shall commence on the Effective Date and terminate on June 30, 2019, unless terminated earlier in accordance with Section 6 hereof (the “**Term**”).

2. DESCRIPTION OF PROFESSIONAL SERVICES

- 2.1 Upon the terms and conditions set forth herein, Catapult shall provide instructional services utilizing Title I funds (hereinafter referred to as the “**Program**”) at eight schools (each, a “**School**” and collectively, the “**Schools**”). Services shall be provided during the Term of this Agreement, by Catapult staff utilizing Catapult’s proprietary programs, systems, teaching techniques, diagnostic tests, diagnostic and academic courses and materials. The Professional Services Deliverables to be provided by Catapult is in Attachment A. The Service Allocation and Fees are in B: Service Allocation (the “**Services**”).
- 2.2 Staff who provide Services in the Program (hereinafter referred to as “**Program Staff**”) shall at all times remain Catapult employees or independent contractors, subject to Catapult’s ultimate control and authority, including on issues of personnel conduct, discipline and termination. All Program Staff providing Services to students shall hold a Florida Department of Education instructional certificate.
- 2.3 The District understands and agrees that Catapult has a substantial interest and role in overseeing and maintaining the quality of the Program. In that regard, the District will consult with Catapult and reasonably consider Catapult’s input and recommendations on the selection of students for participation in the Program. The District will adhere to all District responsibilities set forth herein in order to assist Catapult in ensuring the quality of Services delivered hereunder, which is material to the satisfactory performance of the Agreement.

3. FEES AND PAYMENT

- 3.1 In consideration of the Services, materials and equipment provided by Catapult as described herein, the District shall pay Catapult a fee of Sixty and 00/100 (\$60.00) dollars per instructional hour in an aggregate Program amount of no more than One Hundred Fifty Thousand and 00/100 (**\$150,000.00**) dollars (the “**Fee**”). The contract will not exceed the private school proportionate share of the district Title I allocation.
- 3.2 The Fee shall be paid on a monthly basis as actual Services are rendered by Catapult. Catapult shall submit an invoice to the District for actual Services

provided in the prior month and each invoice shall be due and payable by the District approximately thirty (30) days after receipt of such invoice from Catapult.

- 3.3 In the event that any amount due and payable under this Agreement is not paid to Catapult on or before the due date therefore, District shall pay to Catapult a late charge equal to the lesser of one percent (1%) per month or the maximum rate allowed by law, until all amounts due and payable to Catapult are paid.

4. CONFIDENTIAL AND PROPRIETARY INFORMATION

- 4.1 The District and School acknowledge that Catapult's Program (which includes but is not limited to, Catapult's proprietary systems, teaching techniques, diagnostic tests, diagnostic and academic courses and materials) are proprietary in nature and the confidential and exclusive property of Catapult and that the District/School have no right, by virtue of this Agreement or otherwise, to have access to or to disclose said property, except as may be required for monitoring purposes, in which case, prior written approval of disclosure must be obtained from an officer of Catapult.

- 4.2 In the event that any proprietary or confidential information is disclosed, intentionally or otherwise to the District/School, each of their employees, agents or assigns, the District/School agree to hold same in strictest confidence and not to disclose same to any other person for any reasons nor utilize same within the District without prior written approval by Catapult.

- 4.3 The District/School further agree to use all efforts at its disposal to assure that its employees, agents or assigns are aware of the confidential and proprietary nature of the subject matter, and do not disclose same to any other person for any reasons nor utilize same without prior written approval by Catapult. The District/School acknowledges that unauthorized disclosure of Catapult's proprietary and confidential information may cause Catapult irreparable harm and may entitle Catapult to injunctive relief in a court of competent jurisdiction. Upon expiration or early termination of this Agreement, the District shall return all proprietary and/or confidential information in its possession, custody or control to Catapult, including, but not limited to, any and all originals and/or copies of instructional materials, training materials, curriculum plans and lesson plans provided to the District by Catapult for or in connection with the Program.

- 4.4 Notwithstanding the foregoing, the Parties recognize this Agreement is subject to and governed by the laws of the State of Florida, including, without limitation, Chapter 119, Florida Statutes, Florida's Public Records Act. Catapult shall comply with Florida's Public Records Law including:

a) keeping and maintaining public records that ordinarily and necessarily would be required by the District in order to perform the service;

b) providing the public with access to public records on the same terms and conditions that the District would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

c) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

d) meeting all requirements for retaining public records and transfer, at no cost, to the District all public records in possession of Catapult upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with the information technology systems of the District.

IF CATAPULT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 941-927-4009, publicrecordrequest@sarasotacountyschools.net, THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA, 1960 LANDINGS BLVD., SARASOTA, FL 34231.

5. STUDENT RECORDS AND PRIVACY

5.1 “Catapult Student Records” for the purpose of this Agreement, shall constitute if applicable, all Catapult tests, attendance records and student diagnostic summaries. Access to student education records is subject to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g, et seq.; and Catapult agrees to comply with in all materials respects with such laws and regulations. Catapult agrees that the confidentiality of student data shall be maintained in accordance with state and federal laws, including FERPA, and the policies on data security and privacy that protect the confidentiality of a student’s personally identifiable information as defined by FERPA (“PII”). Catapult shall insure that to the extent that it comes into possession of PII, it will only share such PII with additional third parties if those third parties have an educational purpose in knowing such PII and are contractually bound to adhere to the data protection set forth herein. If access to education records is sought by any third party that is not contractually bound with Catapult, whether in accordance with FERPA or other federal or state laws or regulations, Catapult will immediately notify the District in writing, unless expressly prohibited by judicial and/or administrative order. Should Catapult receive a court order or lawfully-issued subpoena seeking the release of such data or information, Catapult shall provide a copy of the order or subpoena to the District before releasing the requested data or information, unless prohibited by law or judicial/administrative order. Catapult will hold student records for a period of three (3) years or until the Program ends, whichever is longer. At the end such period, prior to destruction of such student records, Catapult will return the student records to the District at the District’s written request.

6. BREACH AND TERMINATION

6.1 This Agreement may be terminated by either party if the other party is in breach

of any material provision of this Agreement, but only after written notice of default and an opportunity to cure has been given to the breaching party. The notice of default must give the breaching party an opportunity to cure of at least thirty (30) days in the case of a non-monetary default and at least ten (10) days in the case of a monetary default. If the breaching party has not cured the breach before the cure date stated in the notice of default, the party giving notice may terminate this Agreement by giving the breaching party written notice of termination stating the date on which the termination is to be effective. Notwithstanding the delivery of a notice of default or notice of termination under this Section, the parties shall continue to observe and perform their respective obligations under this Agreement until the effective date of termination. Further, either party may terminate this Agreement, without cause, upon giving the other party thirty (30) days written notice.

6.2 In the event either party elects to terminate this Agreement pursuant to Section 6.1, Catapult shall be paid for services performed and completed under this Agreement up to the date of termination only.

6.3 Notwithstanding the foregoing, Sections 4, 5, and 7 and the obligations of the parties there under, shall survive termination of this Agreement.

7. INDEMNIFICATION

7.1 Catapult shall defend, indemnify and hold harmless the District against and from all direct costs, expenses, damages, injury or loss (specifically excluding any incidental, consequential, special, punitive or indirect damages or lost profits of any kind) to which the District may be subjected by reason of any wrongdoing, misconduct, want of care, skill, negligence, or default by Catapult, its agents, employees, or assigns, in the execution or performance of this Agreement.

8. INSURANCE

8.1 Catapult maintains and keeps in force such insurance as Commercial General Liability and Property Damage, as will protect it from claims under Workman's Compensation Acts and also such insurance as will protect it and the District from any other claims for damages for personal injury, including death, and claims for damages to any property of the District or of the public, which may arise from operations under this Agreement, whether such operations be by Catapult or by any subcontractor or anyone directly or indirectly employed by any of them.

8.2 Catapult shall maintain and keep in force liability insurance which shall under no circumstances be less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The amount of property damage insurance shall not be less than One Million Dollars (\$1,000,000.00) and which shall name the District as an additional insured.

9. STATUS CHANGE

9.1 Catapult shall inform the District of any and all circumstances which may impede the progress of the services or performance under this Agreement. In the event of such change in circumstances by Catapult that renders Catapult unable to reasonably perform its obligations hereunder, Catapult may terminate this Agreement without penalty with thirty (30) days prior written notice to the District.

10. NOTICES

- 10.1 All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given to the party to whom intended if (i) delivered (with an acknowledgment) by hand, (ii) sent by facsimile machine or (iii) sent by certified or registered mail postage pre-paid, return receipt requested. Any notice so delivered or sent shall be deemed to have been duly given on the date of receipt.
- 10.2 Until changed by notice in the manner specified above, the addresses and telephone numbers of the parties to this Agreement for purposes of this Paragraph shall be:

FOR THE DISTRICT:

Jane Mahler, Supervisor of State and
Federal Projects
Sarasota County Schools
1960 Landings Blvd.
Sarasota FL 34231
Telephone: (941) 927-9000 ext. 34641

FOR CATAPULT:

Contracts Department
Catapult Learning, LLC
Two Aquarium Drive, Suite 100
Camden, NJ 08103
Telephone: (856) 831-7909

11. MISCELLANEOUS

- 11.1 Force Majeure. Neither party will be liable to the other party hereunder or in default under this Agreement for failures of performance resulting from acts or events beyond the reasonable control of such party, including, by way of example and not limitation, acts of God, civil disturbances, war, and strikes.
- 11.2 No Agency. Nothing in this Agreement shall be deemed to create or give rise to a partnership or joint venture between the parties. Neither party shall have the authority to, or shall attempt to, bind or commit the other party for any purpose except as expressly provided herein.
- 11.3 Assignment. No assignment of this Agreement or of any duty or obligation or performance or payment hereunder, shall be made by either party, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Catapult may assign this Agreement or any duty or obligation or performance or payment hereunder to a subsidiary or affiliate of Contractor or its successor or any entity acquiring all or substantially all of the assets of Catapult.
- 11.4 Applicable Law. In providing all Services under this Agreement, Catapult shall abide by all applicable federal, state and local statutes, ordinances, rules, regulations, and standards, as well as the standards and requirements imposed upon the District by federal and/or state agencies providing funding to the District for the purchase of Catapult Services.
- 11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The sole and exclusive jurisdiction for any litigation arising under, or related to, this Agreement shall be in the Twelfth Judicial Circuit Court in and for Sarasota County, Florida.

- 11.6 Non-discrimination. Catapult is an equal opportunity employer. It conducts all business activities, including hiring, without regard to age, race, color, sex, disability, marital status, national origin, citizenship status, or other legally protected category.
- 11.7 Background Checks. Catapult agrees that before any of its employees or agents will be permitted on school grounds while students are present, such employees or agents will be fingerprinted and their backgrounds checked as provided by Florida law. Catapult's employees and agents will coordinate with the District to arrange a mutually convenient time for the District to conduct the fingerprinting. Catapult will pay the cost of the fingerprinting/background checks. The District has the right to refuse entry onto school grounds to any individual whose background check does not meet the requirements established by the District pursuant to Florida law.
- 11.8 No Waiver. No failure on the part of either party to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as 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.
- 11.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and all previous agreements or discussions between the parties relating to the subject matter hereof, written or oral, are hereby terminated and/or superseded by this Agreement. This Agreement may be amended or modified only by a written instrument signed by both parties. If any provision of this Agreement is held invalid, the validity of the remainder of this Agreement shall not be affected. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 11.10 Publicity. Each party may disclose the existence, subject matter, size, and/or value of this Agreement in press releases and public announcements and in such connection may refer by name to the other party, subject to the other party's consent which consent shall not be unreasonably withheld.
- 11.11 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neutral genders.
- 11.12 Binding Effect. This Agreement will be binding upon the parties hereto and their respective successors and assigns.

[THE SPACE BELOW IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date first above written.

SARASOTA COUNTY SCHOOLS

CATAPULT LEARNING, LLC

By: _____

By: _____

Steve Quattrociocchi

Title: Board Chair
Sarasota County School Board

Title: President, Education Solutions

Date: _____

Date: _____

Approved for Legal Content
June 20, 2018, by Matthews Eastmoore,
General Counsel for the School Board of
Sarasota County, Florida
Signed: ASH

**ATTACHMENT B
Service Allocation and Fees**

Schools	Total Fee Not to Exceed	Curriculum	Session Timing (while School is in session)	Maximum Number of Students per Group	Maximum Number of Groups	Program Start Date to Program End Date
Agape Ascension BTS Englewood Epiphany Incarnation St. Martha St. Mary	\$150,000.00 Instruction Fee: \$55.56 per hour Admin Fee: \$4.44 per hour Total instruction fee: \$60.00 per hour	Instructional Services in reading and math, Professional Development for eligible private school staff and Parent and Family Engagement activities	Up to 45 minutes per session Up to 3 sessions per week	Up to 6 per group.	Up to 10 groups. Up to 200 students total	On or about August 1, 2018 To On or about June 30, 2019

Standard Local PD/PFE Pricing	
3-hour workshop for up to 40 participants	\$2,095 per workshop
6-hour workshop for up to 40 participants	\$3,095 per workshop
Full-day Teacher Coaching	\$1,250 per day
Full-day Leadership Coaching	\$1,750 per day
1-hour PFE workshop	\$599 per workshop