



INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES OF \$5,000 OR MORE

WHEREAS, **Adams 12 Five Star Schools** in the County of Adams and State of Colorado (the “**District**”) has the statutory authority to contract with persons, firms, consultants, and/or entities for the provision of services to the District; and

WHEREAS, the District has determined that a need exists to retain a Contractor to provide the service hereinafter specified; and

WHEREAS, **ACHIEVE 3000, INC.** (the “**Contractor**”) having a principal place of business at **331 Newman Springs Road, Suite 304, Red Bank, NJ 07701 USA** is qualified to provide the services required by the District.

WHEREAS, the District maintains certain confidential information including trade secrets, student records, and all other information not clearly known to the public and/or confidential pursuant to law. The District’s trade secrets and other proprietary and confidential information includes the whole or any portion or phase of any of the following: student records, employee records, scientific or technical information, designs, processes, procedures, improvements, confidential business or financial information, other information relating to any of the District’s business bids, techniques, operations, services, contracts, forms, and all other trade secret information not clearly known to the public (“**Confidential Information**”). Due to the value of the District’s Confidential Information and the consequences if it is disclosed, taken or misused for any reason, the District seeks by this Agreement to protect the District’s Confidential Information and any other confidential information the Contractor acquires as a result of the Contractor’s provision of services to the District. The Contractor recognizes and respects the value of the District’s Confidential Information.

NOW, THEREFORE, the parties desire to enter into this Agreement subject to the following terms and conditions:

1. Scope of Services. The Contractor shall perform services as follows: **Active Learn Professional Services and Curriculum (Including ELA, Science and Social Studies) with 18,255 District Wide Licenses** to be provided in accordance with the Contractor’s Master Subscription Agreement and Proposal dated **November 30, 2020** attached hereto and marked as **Exhibit A**.

Option Three - Five Year Payment Plan			
Product/Service	Qty	Unit Price	Annual Price
Actively Learn Unlimited Licenses Multi-Year Volume Discount applied \$5.56 Per Student	18,255	\$ 14.44	\$ 263,602.20
Professional Learning: In-Person days per year or the equivalent in person virtual learning (Professional Learning Discount)	6	\$ 2,695.00	\$16,170 (\$1,617) \$14,553.00

The Contractor will provide the services consistent with generally accepted industry standards for the Contractor’s customary services. On the effective date of this Agreement, and during the term of this Agreement, the Contractor will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement. Services will only be performed as scheduled by the District.

2. Schedule. The District and the Contractor agree that the services shall be provided at the following mutually agreed locations and times, or as agreed to in writing by the parties after the approval of this Agreement: **Project location: Adams 12 Five Star Schools [DISTRICT WIDE].**

3. **Term.** The provision of services under this Agreement shall commence on **Full Execution of this Agreement**, and will terminate on **December 31, 2025**, subject to any termination rights. The Contractor understands and agrees that the District has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise. **Restrictions may be imposed due to COVID-19, in accordance with District policies, procedures, or any other health/safety protocols required by the District.**

4. **Remuneration.** The Contractor's fee the District is obligated to pay for the services rendered under this Agreement is as follows: **An Average of Two Hundred Seventy Eight Thousand One Hundred Nine and 56/100 Dollars (\$278,109.56) per year** and under no circumstances whatsoever shall the fee exceed, **One Million Three Hundred Ninety Thousand Five Hundred Forty Seven and 80/100 Dollars (\$1,390,547.80) as shown in the following breakdown:**

Five -Year Payment Summary		
Payment Due Upfront	\$	347,636.95
Payment Due December 2021	\$	347,636.95
Payment Due December 2022	\$	278,109.56
Payment Due December 2023	\$	278,109.56
Payment Due December 2024	\$	139,054.78
Total One Year Average	\$	278,109.56
Total Five Year	\$	1,390,547.80

The District shall process the Contractor's payment within thirty (30) days from the receipt of a valid invoice to the District's Accounts Payable office.

5. **Invoicing Requirements.** The Contractor shall furnish the following information within invoices that are submitted for request for payment to the District:

- Dates of which services were rendered
- Detailed description of the services or activities performed
- If services were on a "fixed price" basis, a summary of provided milestones as per the scope of work shall be furnished
- All 'Other Direct Expenditures' shall include-vendor name, expense type, expense description, and date of expense.

6. **Independent Contractor.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the District. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the District and the District shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this agreement. The parties agree that the District will not:

- Require the Contractor to work exclusively for the District; and
- Establish a quality standard for the Contractor, or oversee the actual work or instruct the Contractor as to how the work is to be performed, except the Parties agree as stated in Paragraph 1 that the Contractor's services will be consistent with generally accepted industry standards for the Contractor's customary services and products; and
- Pay the Contractor a salary or hourly wage, but rather will pay only the compensation stated in Paragraph 4; and
- Terminate the Contractor's current services for particular work the Contractor accepts from the District unless the Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement; and
- Provide more than minimal training for the Contractor; and

- f. Provide tools or benefits to the Contractor; and
 - g. Dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established through a written agreement mutually acceptable to both Parties for particular work the Contractor accepts from the District; and
 - h. Pay the Contractor individually if the Contractor is an individual; instead, the District will make all compensation checks payable to the trade or business name under which the Contractor does business; or
 - i. Combine its business operations in any way with the Contractor's business, but instead both Parties will maintain their own operations as separate and distinct.
- 7. No Agency Created.** The Contractor agrees and understands that no authority exists through this Agreement permitting the Contractor to enter into any third party contract, assume any obligation, or makes any representation to third parties on behalf of, or which may bind the District.
- 8. Conflict of Interest.** The signatories aver that to their knowledge, no employee of the District has any personal or beneficial interest whatsoever in the service or property described in this agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- 9. No Unauthorized Use of Names.** Neither party will use the other's name in any advertisement, promotion, business card, or similar circumstance, without the other party's prior written consent.
- 10. Assignment Prohibited.** The Contractor shall not assign any of the services that require performance under the Agreement.
- 11. Compliance with Law and District Policies.** Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. Contractor shall also comply with all applicable District policies.
- 12. Modification/Entire Agreement/No Prior Agreement.** This Agreement, along with the Contractor's Master Subscription Agreement and Proposal dated November 30, 2020, attached hereto as Exhibit A, constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties.
- 13. Termination/Revocation.** Either party may revoke or otherwise terminate this Agreement, with or without cause, by notifying the other party in writing of its intention to take such action. Any such writing shall be sent to the other party by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of mailing. In the event of termination, the District shall be obligated to pay the Contractor only for services rendered up to the effective date of termination. The District's obligations under this Agreement shall automatically terminate in the event of the insolvency, receivership, bankruptcy filing, or dissolution of Contractor. In addition, the District may terminate this Agreement immediately without prior notice if the Contractor commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District, or if any contract by the District with any third party on which this Agreement substantially depends is terminated or the District is unable for any other reason to provide services for to the party/parties to that contract.
- 14. Fund Availability.** This Agreement is not intended to create a multiple fiscal year debt or other obligation and the District's obligations hereunder shall be interpreted and limited in such a manner as to avoid creation of a multiple fiscal year debt or other obligation under the terms of Article X, Section 20, Paragraph 4(b) of the Colorado Constitution. Financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 15. Indemnification.** The Contractor agrees to indemnify, and hold the District harmless from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the District or its employees, representatives, or agents, which arises directly or indirectly from any *negligent* act or omission of the Contractor,

including but not limited to any misconduct or neglect by the Contractor and/or its employees, subcontractors, or agents. Furthermore, to the maximum extent permitted by law, the Contractor indemnify the District against any liability for any Employee Benefits for the Contractor and/or any of its employees, subcontractors, or agents, imposed on the District; and the Contractor will reimburse the District for any award, judgment or fine against the District based on the position the Contractor and/or any of its employees, subcontractors or agents, who provides any services to the District related to this Agreement was ever the District's employee, and all attorneys' fees and costs the District reasonably incurs defending itself against any such liability.

16. Governing Law. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations or which purports to negate this or any other provision of this Agreement in whole or in part shall be null and void.

17. Severability. If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

18. Governmental Immunity. No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

19. Binding Arbitration Prohibited. The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

20. Insurance. The District will not include the Contractor as an insured under any policy the District has for itself, including, without limitation, any liability, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance policy. The Contractor shall provide the insurance as the service requires and no later than seven days after execution of this Agreement, the Contractor shall provide the District with certificates of insurance evidencing each of the types and amounts specified below:

- a. Standard Workers' Compensation coverage as required by Colorado law.
- b. Comprehensive General Liability Insurance for operations and contractual liability adequate to cover the liability assumed hereunder and with limits of not less than \$1,000,000 for each occurrence and \$500,000 for bodily injury or property damage, and \$5,000 for medical expenses for any one person.
- c. Automobile Liability Insurance in those instances where the Contractor uses an automobile, regardless of ownership, for the performance of Services.

Insurance coverage shall not be reduced below the limits described above or canceled without the District's written approval of such reduction or cancellation. The Contractor shall require that any of its agents and subcontractors who enter upon the District's premises shall maintain like insurance. Certificates of such insurance shall be provided to the District upon request. With regard to all insurance, such insurance shall (i) be primary insurance to the full limits of liability herein before stated; and (ii) should the District have other valid insurance covering the loss, the District insurance shall be excess insurance only; and (iii) not be canceled without thirty (30) days prior written notice to the District; and (iv) the District shall be named as an additional insured.

21. No Waiver. No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Contractor shall be construed as a waiver of any subsequent or other breach by the Contractor. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, unless it is in a written document executed by the party against whom the waiver is sought to be enforced.

22. Public Contracts for Services. Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this

agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this agreement is being performed, (b) shall notify the subcontractor and the District within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the District a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the District may terminate this agreement for breach and, if so terminated, Contractor shall be liable for damages.

23. Public Contracts with Natural Persons. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this agreement

24. Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

25. Conflict. In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail.

26. Relief the District May Seek. The Contractor further agrees that, if the Contractor violates Paragraph 27 of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates Paragraphs 27 of this Agreement, the District will be entitled to an Order for injunction relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

27. Confidential Information Belongs Solely to the District. The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a. All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting and of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to the District;
- b. At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services;
- c. At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business in any way adverse to the District's interests;
- d. The Contractor will cause each of its Employees who may gain access to any of the District's Confidential Information, to execute a confidentiality agreement ~~reasonably acceptable to the District~~ before disclosing any Confidential Information to that Employee or permitting that Employee to have access to any Confidential Information.

- e. On the District's request or on termination of this Agreement, the Contractor will promptly return to the District all its property, specifically including all documents, disks or other computer media or other materials in the Contractor's possession or control that contain any of the District's Confidential Information.
- f. After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information; and
- g. The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractor's duties to the District under the Colorado Uniform Trade Secrets Act, C.R.S. 7-74-101, et seq., and other applicable law. Additionally, the Contractor's obligation regarding the preservation and return of the District's Confidential Information will continue indefinitely, both during and after the time during which the Contractor may provide services and products to the District.

28. Non-solicitation. The Contractor shall not solicit directly or indirectly any of the District's employees for a period of two (2) years following the termination of this Agreement without prior written consent of the District.

29. Attorneys' Fees, Experts' Fees, Costs. In any litigation of any dispute between the parties, in addition to any relief, order or award that enters, if the District is the prevailing party, it will be awarded and the Contractor shall be liable for reasonable attorneys' fees, expert witness fees and costs.

30. Notices, Process. Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address provided in this Agreement, while the District's Notice address is as follows: Adams 12 Five Star Schools, Chief Operating Officer, 1500 East 128th Avenue, Thornton, CO 80241; or at such other address that either party may provide later to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

31. Work for Hire. To the extent that this Agreement expressly or impliedly requires the Contractor to produce deliverable items which may be subject to patent, copyright, trade secret, or proprietary rights of any kind:

- a. The Contractor warrants and represents that the deliverable items are original and have not heretofore been published; that the items do not infringe upon any statutory copyright, common law right, proprietary right, or any other right whatsoever; and that Contractor agrees to indemnify and hold harmless the District against any claim of infringement of the deliverable items or any portion thereof or for any patent, copyright, trade secret or other proprietary rights of third parties.
- b. Contractor agrees to secure permission in writing from any third parties whose works are utilized in whole or in part by Contractor in the preparation of the items, to notify the District of the extent of copying from third party works as well as to notify the District of any limitations placed on the use of those materials copied from third parties.
- c. All of the items prepared for ~~or submitted to~~ the District by the Contractor under this Agreement shall belong exclusively to the District and with respect to the copyrightable materials shall be deemed to be works made for hire; and with respect to other ideas or inventions agrees to assign all right, title and interest to the District. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, the Contractor hereby assigns to the District the ownership of copyright in the deliverable items and the District shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in the deliverable items. The Contractor agrees to give the District or its designees all assistance reasonably required to perfect such rights.
- d. To the extent that any pre-existing materials are contained in the deliverable items, the Contractor grants to the District an irrevocable, non-exclusive, worldwide, royalty-free license to (i) use, execute, reproduce, display, perform, distribute (internally or externally) copies of and prepare derivative works based upon, such pre-existing materials and derivative works thereof, and (ii) authorize other to do any, some or all of the foregoing.
- e. No license or right is granted to the Contractor either expressly or by implication, estoppel or otherwise to publish, reproduce, prepare derivative works based upon, distribute copies of, publicly display, or perform,

any of such items, except pre-existing materials of the Contractor, either during or after the term of this Agreement.

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Contractor have executed this Agreement on the date(s) indicated below:

Acknowledged Before Me

ACHIEVE 3000, INC

By Nicholas Bates


Signature

This 8th day of December, 2020

Nicholas Bates, Chief Financial Officer
Name and Title


Witness My Hand and Official Seal

331 Newman Springs Rd, Suite 304
Address

My Commission Expires: March 1, 2022

Red Bank, NJ 07701

City, State, Zip
22-3772922

By: 
Notary Public

Tax ID

12/8/2020

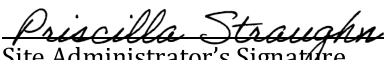
Date



I hereby certify that the individuals requested in this Agreement are not school district employees, and are not family members of mine. Any finding to the contrary may require repayment and/or further disciplinary action up to and including termination.

**ADAMS 12 FIVE STAR SCHOOLS
IN THE CITY OF THORNTON, COUNTY OF ADAMS
STATE OF COLORADO**

RECOMMENDED BY:

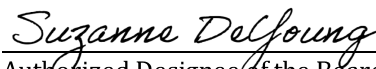

Site Administrator's Signature

Priscilla Straughn, Chief Academic Officer
Name and Title

Learning Services
School or Department

12/16/2020
Date

APPROVED BY:


Authorized Designee of the Board of Education

Suzanne DeYoung, Chief Financial Officer
Name and Title

12/16/2020
Date

This form must be completed in full, submitted to the District's Purchasing Department, and approved and executed by the duly authorized designee of the Board of Education prior to the commencement of the Contractor's provision of services. THE DISTRICT SHALL NOT BE LIABLE FOR PAYMENT FOR ANY SERVICES PERFORMED BY THE CONTRACTOR PRIOR TO SAID APPROVAL.



MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this "**Agreement**") is effective December 1, 2020 ("**Effective Date**") by and between Achieve3000, Inc. ("**Achieve3000**"), and Adams 12 Five Star Schools ("**Customer**"), for Customer's use of the Achieve3000 services to which Customer has subscribed ("**Services**") as specified in one or more Achieve3000 order form(s) (each, an "**Order Form**"). The initial Order Form may be attached hereto as Exhibit A.

1. ENTIRE AGREEMENT

The agreement under which Customer is subscribing for the right to permit a certain number of Customer's students, parents, teachers and/or school administrators (up to the licensed number to whom Achieve3000 has provided a user ID and password to access and utilize particular Services (as applicable, the "**Authorized Users**")) consists of (a) the applicable Order Form(s) in which the specific Service(s) to be provided (including related professional development training ("**Professional Development**")), the school(s) to whom the Services are to be provided, the period during which the Authorized Users shall have the right to access and utilize the identified Service(s), pricing, invoicing schedule and other implementation-specific details and terms are specified; and (b) this Agreement. Customer's Order Forms and this Agreement contain the entire agreement and understanding regarding Achieve3000's provision of the specified Service(s) to Customer and Customer's Authorized Users and supersede all prior oral and written agreements the parties regarding the subject of this Agreement, if any. In the event of a conflict between an Order Form and this Agreement, the conflicting term(s) of this Agreement shall prevail, unless the parties expressly state in a subsequent written document that they intend that the conflicting terms of that Order Form prevail over the conflicting terms of this Agreement. In the event that any of the terms set forth in this Agreement are held invalid, illegal or unenforceable, all of the remaining terms of this Agreement will remain in effect.

2. TERM OF THIS AGREEMENT

Except as provided in the following sentence and unless stated otherwise in an Order Form, this Agreement shall commence on the date in which Customer executes an Order Form (the "**Subscription Start Date**"), and shall conclude on the "**Subscription End Date**", and such period between the Subscription Start Date and Subscription End Date constituting the "**Term**"). The Subscription End Date and Term of all multi-year agreements shall be as indicated in the applicable Order Form.

3. DESCRIPTION OF SERVICES

The elements of each Service subscribed for hereunder (each a "**Service Element**"), and the first date on which the appropriate Authorized Users may access and utilize each such Service Element (in each case, a "**Service Element Activation Date**") shall be as set forth in the applicable Order Form.

4. LICENSE GRANT

Effective as of the Service Element Activation Date applicable to each Service Element, Customer's appropriate Authorized Users are granted a limited, non-transferable, non-sub-licensable, non-exclusive, personal license (revocable in the event of breach) to access and utilize the applicable Service Element that Customer has subscribed for the right to access and utilize, solely for educational purposes and solely as permitted by this Agreement, during the Term. The term "appropriate" here means that Service Elements intended for use by students may be accessed and utilized by any Authorized User, and that Service Elements intended for use by teachers and school administrators may only be accessed and used by Authorized Users functioning in those roles.

The foregoing notwithstanding, Achieve3000 will not be obligated to provide any Service to any user who has not agreed (i) to Achieve3000's Terms of Use and Privacy Policy and (ii) to comply with this Agreement. Achieve3000 reserve the right to change Achieve3000's Terms of Use and/or Privacy Policy (subject to Section 10 of this Agreement).

Achieve3000 will charge Customer for each Service it subscribes for based on the number of permitted users or "**Licensed Seats**" Customer elects for that Service and the applicable license pricing for the Service.

To allow Customer additional flexibility in Customer's use of the Services for appropriate purposes, Achieve3000 may permit Authorized Users in excess of the then-current number of Licensed Seats Customer has already subscribed for that Service ("**Additional Users**").

From time to time during the Term, Achieve3000 will compare the number of Authorized Users Customer has provided with access to a Service with the number of Licensed Seats Customer has subscribed for that Service. If the number of Authorized Users exceeds the number of Licensed Seats Customer has subscribed for the Service, Achieve3000 will notify Customer in writing and invoice Customer for the Additional Users Achieve3000 has identified through its comparison. Achieve3000 will work with Customer to resolve promptly any question or issue Customer may have regarding the number of Additional Users Achieve3000 has identified or the associated additional Service fees Achieve3000 has invoiced for those Additional Users. Customer is responsible for all activities conducted under its Authorized User logins and for its personnel's compliance with this Agreement.



5. RESERVATION OF RIGHTS; RESTRICTIONS ON USE; CONTENT DISCLAIMER

Every aspect of each Service, including its underlying concepts, methodologies, processes, formats, specifications, other know-how, site layout, design, images, programs, text, forms and other information (collectively its "**Content**"), is solely Achieve3000's property or, where applicable, the property of Achieve3000's licensors. Customer receives no rights to or interest in any Content other than the rights conferred upon Customer by Section 4 of this Agreement. All Content is protected by copyright and other intellectual property laws, and nothing herein grants Customer any ownership interest in any Content or any right with respect to any Content other than those rights expressly granted in Section 4 of this Agreement. Customer and its Authorized Users may not:

- (a) permit any third party whom Achieve3000 has not provided a user ID and password to access or utilize any Service;
- (b) copy, modify, translate, decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code of any software used to provide any Service or permit any other party to do so; Content may not be merged with any other service or software, or be adapted or modified in any way, by anyone;
- (c) (i) copy, reproduce, publish, distribute, modify, transfer or in any way commercially exploit any part of the Content, (ii) mirror the Content on any other server, (iii) create any derivative works, (iv) attempt to avoid, circumvent, or disable any security device, procedure, protocol, or mechanism that may be established with respect to the Content, or (v) delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed on or in the Content;
- (d) use any Service in a manner that includes any service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single Authorized User login, or time-sharing of such Service;
- (e) use any Service in a manner that is contrary to applicable law or in violation of any third-party rights of privacy or intellectual property rights;
- (f) use unauthorized modified versions of any Service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to such Service;
- (g) engage in systematic retrieval of Content from the Services to create or compile, directly or indirectly, a collection, compilation, database or directory of any kind without Achieve3000's written permission; Customer may not use any robots, spiders, crawlers or other automated downloading programs or devices to search any Content, harvest personal information, or cause disruption to the Service;
- (h) publish, post, upload or otherwise transmit any Content that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or
- (i) print or download Content for Customer's own personal educational use unless it keeps intact all copyright and other proprietary notices.

Achieve3000 shall have the right, but not the obligation, to remove any Content at any time.

6. COMMENTS

During the Term, Customer, through Customer's employees and agents, may contribute certain ideas, comments, criticisms, and suggestions for improvements, modifications, and other changes to the Services (including with respect to associated Content) (collectively, "**Comments**"). Customer agrees that Achieve3000 may use, modify, and incorporate these Comments as Achieve3000 sees fit and will own all rights to such Comments as incorporated into the Services.

7. PAYMENT TERMS

Unless the parties agree otherwise in Customer's Order Form, Achieve3000 may invoice Customer for Services and other items subscribed for hereunder in the case of one-year agreements, on the day that Customer executes an Order Form, and in the case of multiple-year agreements, on the day that Customer executes the Order Form and each anniversary thereof. Payment of the undisputed amounts set forth on each invoice shall be due within thirty (30) days of the date of the invoice. Should Customer dispute any portion of an invoice, Customer will communicate to Achieve3000 in writing (email to suffice) the basis of Customer's belief that a portion of the invoice is incorrect no later than the date on which the invoice is to be paid in full, and shall engage with Achieve3000 in good faith to resolve such dispute as expeditiously as reasonably possible. Absent a good-faith payment dispute, if Customer fails to pay on time, Achieve3000 shall be entitled to claim interest on any overdue amount at the rate of 1% per month or the maximum amount allowed by law, whichever is greater and Achieve3000 may suspend the applicable Services, without limitation or waiver of any other right or remedy available under this Agreement or at law. If Achieve3000 is required to retain a collection agency or attorney to collect overdue payment of undisputed invoices, all reasonable collection costs, including attorney fees, will be payable by Customer.

8. TAXES AND TAX-RELATED OBLIGATIONS

The rates and charges for Services do not include and Customer acknowledges that it is responsible for any sales, use, excise, gross receipts, personal property, privilege, and value added tax liabilities and any other duties or other transaction taxes or charges imposed by any governmental entity for products and Services provided under this Agreement, excluding only taxes based solely on Achieve3000's net income. Customer shall hold Achieve3000 harmless from all claims and liabilities arising from the failure to pay any such taxes, including penalties, interest, duties, tariffs or charges. Customer will promptly reimburse Achieve3000 for any and all taxes, assessment, permits and fees that Achieve3000 may be required to pay in connection with this Agreement or its performance.



Customer acknowledges that contemporaneous documentation (e.g., exemption certificate, etc.) is critical to ensure that appropriate tax treatment is afforded and Customer agrees to provide Achieve3000 with the required documentation in a timely manner.

9. OUR GUARANTEE

Achieve3000 will (a) refund to Customer a pro-rated portion of any prepaid and unused fees for any Service provided hereunder corresponding to the period after termination, other than fees received for Professional Development, (b) waive Achieve3000's right to future payment, and (c) consider this Agreement revoked if, after Customer has provided Achieve3000 the data described in Section 10 and has certified that the teacher of each class of students utilizing the Service(s) has completed the preparation described in Section 11, the Service(s) is/are not accessible and usable for extended periods of time by substantially all of Customer's Authorized Users.

10. STUDENT DATA

In order to enable Achieve3000 to provide the Services to Customer and Customer's Authorized Users, Customer shall provide Achieve3000 the following data in electronic form (in .CSV (comma separated values) or .XLS (Excel) format) regarding each student whom Customer wants to enable to use a Service: name of the student's school and school district, student ID number, student first name, student last name and student grade level (collectively, "**Student Data**"). Additional demographics are optional for Customer to provide (gender, race, ethnicity, English language status, special education status and free lunch status). Alternatively, Customer can upload the data itself. Visit the Achieve3000 Hub at hub.achieve3000.com for secure data upload instructions. Alternative methods for providing Student Data electronically include transferring Student Data through a standards-based API or through on-demand electronic transfer through Authorized User login using standards-based SSO.

At Customer's request, Achieve3000 will also accept, include in Achieve3000's reports to teachers and administrators, and treat as Student Data the following additional information: class code or room number, student race/ethnicity, gender, socio-economic or demographic information, familial background, student disabilities, student test scores, test dates, English language status and information related to English language learners, special education status, free lunch status, language spoken at home, and such other information that Customer may request and that Achieve3000 can feasibly track in the course of delivering applicable Services.

Student Data can be transferred to Achieve3000 using a secure file sharing service, SFTP, or any other method required by Customer. All Student Data received from Customer will be stored on a secure server and accessible only to Achieve3000's personnel on a need-to-know basis. The Student Data received from Customer will be matched to Achieve3000's usage records using student IDs or student names (provided by Customer during the rostering process). Customer agrees that Student Data may be shared with an external contractor who is under contract with Achieve3000 to protect the confidentiality of shared information and meet all standards of confidentiality described in this Agreement. All Student Data collected by Achieve3000 will be kept strictly confidential, consistent with the terms of this Agreement. Student Data received from Customer will only be used for the purposes described in this Agreement or as otherwise agreed to in writing by the parties. At such time as Customer requires by written notice, Achieve3000 will purge Student Data from all storage media. Achieve3000 may collect usage data, query data and other aggregated or de-identified data in connection with Customer's use of the Services. Achieve3000 may use such data for purposes of improving the Services (e.g., corroborating the data in Achieve3000's databases). Provided that none of Customer's Authorized Users or students is individually identifiable and none of Customer's Confidential Information is disclosed, Achieve3000 may also collect, retain, disclose, distribute and otherwise utilize such aggregated or de-identified data.

In Achieve3000's receipt and handling of Student Data, Achieve3000 will act as Customer's contractor and provider of institutional or assessment services, as applicable, and will comply with associated provisions of the Department of Education's regulations under the federal Family Educational Rights and Privacy Act or "**FERPA**". Achieve3000 will only use Student Data in a manner that complies with Sections 99.33(a) of the Department of Education's FERPA regulations and is consistent with Achieve3000's Privacy Policy (which is set forth at <http://www.achieve3000.com/privacy-policy/>). Customer will treat Achieve3000's staff as authorized school recipients of education records under FERPA.

In addition, Achieve3000 does and will comply with the provisions of the Children's Online Privacy Protection Act ("**COPPA**") in the operation of the Achieve3000 website through which Customer's Authorized Users will access and use Services.

Notwithstanding Achieve3000's reservation of rights to revise this Agreement and Achieve3000's Privacy Policy, no change to this Agreement or Achieve3000's Privacy Policy that materially diminishes protections afforded Student Data will become effective with respect to Customer or Customer's Authorized Users unless and until Achieve3000 has advised Customer of such change and received Customer's written consent (email to suffice) to such change.

11. TEACHER AND ADMINISTRATOR PREPARATION

Customer will require the teacher of each class of students utilizing a Service to be familiar with its use before the teacher permits students, parents, and administrators to access and utilize the Service.

Implementation planning and initial training Professional Development sessions, whether online or on-site, must be completed no later than sixty (60) days after the Subscription Start Date. All subsequent Professional Development sessions subscribed for hereunder, whether online or on-site, must be completed before the end of the period indicated in Customer's Order Form. Such session(s) shall not "roll over" to a subsequent period and Customer will not be entitled to a refund for such unused sessions. All Professional Development sessions, whether online or on-site, not scheduled by Customer within the appropriate time frame as described in this paragraph shall be treated as having been duly provided by Achieve3000. Confirmed Professional Development sessions may be postponed and rescheduled without charge only upon seventy-two (72) hours' prior notice. Professional Development sessions canceled or postponed on less than seventy-two (72) hours' prior notice shall be treated as having been duly provided by Achieve3000.



Achieve3000 may make additional Professional Development opportunities available from time to time, on a selective basis, such as participation in a School of the Future® event. The reasonable and verifiable costs of participation in such events, as well as any associated travel costs, are included in the cost of the Services.

12. INVALID LEVELSET ASSESSMENTS

For licensed users of **Achieve Literacy LevelSet**, all potentially invalid LevelSet assessments are flagged in a report for Customer's teachers and it is up to those teachers to have the individual student retake the relevant LevelSet assessment.

13. EMAIL COMMUNICATIONS

Customer hereby authorizes Achieve3000 to send electronic mail to Customer's teachers and school administrators for the following purposes:

1. delivering Professional Development and similar materials to Customer's teachers and administrators; and
2. advising Customer of changes or additions to Achieve3000's Services or about any of Achieve3000's Services.

If Customer does not want its teachers and/or school administrators to receive such emails, please notify Achieve3000 at support@achieve3000.com.

14. SERVICE RELIABILITY

Subject to Achieve3000's need to perform periodic and routine maintenance, Achieve3000 takes reasonable measures to make its Services available 24 hours a day, seven days a week, and to maintain saved information. However, technical failures, acts of God and routine and unscheduled maintenance may render one or more Services unavailable at times (including during normal business or school hours), and/or may result in the loss of information. Achieve3000 shall not be liable to Customer or anyone else for any loss of information or for the non-availability of any Service, unless such loss of information or non-availability of a Service has resulted from Achieve3000's gross negligence or willful misconduct.

15. USER CONDUCT

Customer agrees that Achieve3000's Terms of Use set forth at <http://www.achieve3000.com/terms-of-use/> are reasonable and appropriate, and shall undertake reasonable measures to assist Achieve3000 in enforcing such Terms of Use. Derogatory, harmful or unlawful conduct is not permitted on any Services. Customer's Authorized Users are not permitted to upload, distribute through, or otherwise publish any content which is libelous, defamatory, obscene, pornographic, threatening, invasive of privacy or publicity rights, abusive, illegal or otherwise objectionable that would constitute or encourage a criminal offense, violate the rights of any party violate any law, or otherwise violate Section 8 (Code of Conduct) or any other provisions of the Terms of Use.

16. TERMINATION

- Either party may terminate this Agreement immediately for default if the other party fails to cure all material defaults in its performance within ten (10) days of its receipt of written notice of its default(s) from the terminating party.
- Immediately upon the termination or expiration of any of Customer's Order Forms, Customer and Customer's Authorized Users shall immediately cease use of all Service(s) subscribed for under that Order Form. Should any Order Form be terminated prior to its natural expiration, Customer shall pay Achieve3000 all amounts owed for Services provided to Customer and Customer's Authorized Users under that Order Form up to the effective date of such termination.

17. CHANGES TO SERVICES

Achieve3000 is constantly innovating in order to provide the best possible instructional solutions to its customers' Authorized Users. Customer acknowledges and agrees that the form and nature of the Services may change from time to time without prior notice to Customer without reducing the overall level of benefit received by Customer. Customer further acknowledges that Achieve3000 may stop (permanently or temporarily) providing any features or may add new features within any Service at Achieve3000's sole discretion without prior notice to Customer.

18. LINKS TO OTHER SITES

Our Services may contain hyperlinks to other sites or resources that are provided solely for the convenience and information of Customer's Authorized Users. Achieve3000 is not responsible for the availability of external sites or resources linked and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from, or policies employed by, such sites or resources. Achieve3000 makes no representations as to the quality, suitability, functionality, or legality of any sites to which links may be provided. Accordingly, Customer should review the terms and conditions and privacy policies of each linked site, as its policies may differ from Achieve3000's. If Customer's Authorized Users decide to access linked third-party content and sites, they do so at their and Customer's own risk.

19. CONFIDENTIALITY

"**Confidential Information**" shall mean any and all non-public proprietary business, technical, and operational information disclosed by one party to the Agreement to the other party, including by or through its respective employee, agent, contractor, or representative, during the Term of this Agreement or in connection with correspondence or negotiations culminating in this Agreement, provided such information is clearly marked as "proprietary" or "confidential" or is of such nature that a person would reasonably understand the information to be of a confidential or proprietary nature. The terms of Customer's Order Form which are unique to Customer shall be deemed to be the Confidential Information of each party.

Each party agrees to secure and protect the Confidential Information of the other in a manner consistent with the maintenance of the other party's rights therein, using at least as great a degree of care as it uses to maintain the



confidentiality of its own confidential information of a similar nature, but in no event less than reasonable efforts. Each party agrees to hold the Confidential Information of the other party in confidence, not to disclose it to others or use it in any way, commercially or otherwise, except as authorized in writing by the disclosing party or in performance of its obligations under this Agreement.

Notwithstanding Achieve3000's Privacy Policy, Confidential Information of a party shall not include information which: (i) is as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the receiving party and without claim or challenge by the disclosing party to such public disclosure; (ii) was rightfully known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party without reference to or reliance on Confidential Information of the disclosing party; or (iv) was received by the receiving party from a third party without any confidentiality obligation owed to the disclosing party. Notwithstanding a party's obligations hereunder, it may disclose the other party's Confidential Information if it the party is required to disclose such Confidential Information pursuant to a duly authorized subpoena, court order, or government authority, whereupon the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such other party may seek a protective order or other appropriate remedy.

20. DATA OWNERSHIP AND LOCATION OF SERVICES

Customer will own data on Customer's Authorized Users' use of Achieve3000's Services ("**Program Data**") and the Student Data Customer provides to Achieve3000. At Customer's request, at the end of the Term of this Agreement or if and when Customer otherwise requires, Achieve3000 will return or destroy in a verifiable manner Student Data in Achieve3000's possession and provide Customer with copies of associated Program Data. Achieve3000 has not previously provided to Customer. To comply with applicable laws, Achieve3000 reserves the right to destroy or otherwise dispose of Student Data and Program Data. Customer has not directed Achieve3000 to return or destroy following this Agreement's Term. Customer agrees that Achieve3000 may use Student Data and Program Data to provide the Services, and that Achieve3000 may use Program Data for Achieve3000's internal purposes; for example, development and assessment of Services and Content.

The Services and Content are provided from, and Student Data and Program Data are stored on, servers located in the United States. Customer acknowledges and agrees that Achieve3000 may provide the Services and Content, and store Program Data and Student Data, in this manner. Customer further confirms that, as applicable, Customer's transfer of Student Data from outside the United States and Achieve3000's use and processing of such data in connection with delivery of Services to Customer and Authorized Users shall be consistent with laws applicable to Customer's transfer and Achieve3000's processing of such data.

21. WARRANTIES AND DISCLAIMER; LIMITATION OF LIABILITY; INDEMNIFICATION

- Achieve3000 warrants that it has the full authority to grant the rights granted to Customer herein. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, ACHIEVE3000 DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OR UTILITY OF CONTENT, EFFECTIVENESS OF ANY SERVICE IN IMPROVING ANY STUDENT SKILL OR CAPABILITY, OR NONINFRINGEMENT, AND ANY WARRANTY THAT ANY SERVICE WILL BE AVAILABLE AT ALL TIMES OR WITHOUT INTERRUPTION. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, EACH SERVICE IS PROVIDED "AS IS" AND WITH ALL FAULTS, AND CUSTOMER UNDERSTANDS THAT IT IS ASSUMING ALL RISKS OF SUCH SERVICE'S USE, QUALITY, AND PERFORMANCE.
- EXCEPT IN CONNECTION WITH A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR ITS INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL (A) EITHER PARTY, INCLUDING ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, EVEN IF SUCH PARTY, AS THE CASE MAY BE, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR, IN ACHIEVE3000'S CASE, BE RESPONSIBLE OR LIABLE FOR ANY INJURY THAT MAY BE ATTRIBUTED TO THE CONTENT OF COMMUNICATIONS TRANSMITTED BY MEANS OF A SERVICE BY ANY PERSON OTHER THAN ACHIEVE3000'S EMPLOYEES OR AGENTS; OR (B) EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON EXCEED DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO ACHIEVE3000 DURING THE 12 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS. IN NO EVENT SHALL ACHIEVE3000, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND ITS LICENSORS, BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH THE USE OF OR RELIANCE ON ANY SERVICE OR CONTENT PROVIDED HEREUNDER TO CUSTOMER OR TO ANY AUTHORIZED USER.
- Achieve3000 agrees to indemnify and defend Customer and its employees and agents from and against any action, claim, demand, or liability, including reasonable attorney's fees and costs, arising from or relating to a claim that a Service provided to Customer hereunder infringes upon the intellectual property rights of a third party. If any such Service is held to infringe, or if in Achieve3000's opinion, such a claim is likely to occur, Achieve3000 may, at Achieve3000's sole option and expense, either: (i) procure for Customer and Customer's Authorized Users the right to continue using the Service in question; or (ii) replace or modify the infringing Service Elements so that they



become non-infringing as long as functionality is not materially and adversely affected. If neither alternative (i) nor (ii) is reasonably available, then Achieve3000 may terminate Customer's license to access and utilize the allegedly infringing Service and Achieve3000 shall refund to Customer a pro-rated portion of any prepaid and unused fees for such Service corresponding to the period after termination. The preceding sentences in this bullet states Achieve3000's entire liability and obligation, and Customer's exclusive remedy, for infringement.

22. GENERAL

Nothing in this Agreement shall cause the relationship between Customer and Achieve3000 to be anything other than that of independent contractors. None of Customer's and Achieve3000's actions under this Agreement shall be joint, and Customer and Achieve3000 has not formed, and shall not form, a joint venture to perform any of their respective obligations hereunder. The failure of either party to require performance of any part of this Agreement shall not be deemed a waiver of any present or future right. Modifications of this Agreement shall be binding only if in writing and signed by an authorized representative of each party. The rights and obligations of each party established herein are intended for the sole use and benefit of each of the parties and no one else. Accordingly, this Agreement confers no rights upon any third party. Except for payment obligations, neither party shall be responsible for any delay or failure in its performance to the extent such delay or failure is caused by causes beyond a party's reasonable control. Customer may not assign this Agreement without Achieve3000's prior written consent, and any attempted assignment of this Agreement without such consent shall be null and void. Achieve3000 may assign this Agreement to any entity that purchases all or substantially all of Achieve3000's assets or that obtains control of it by purchase, merger or other means so long as such assignee agrees to assume all of Achieve3000's material obligations hereunder. All notices, including notices of address changes, required to be sent hereunder shall be in writing and shall be deemed to have been given when sent by email or mailed by registered or certified mail, postage prepaid to Customer at the address set forth in Customer's Order Form, and to Achieve3000 at Achieve3000, Inc., 331 Newman Springs Rd, Suite 304, Red Bank, NJ 07701, Attn: Chief Executive Officer, or to Customer or Achieve3000 at such other address (or email address) as Customer or Achieve3000 may designate in writing from time to time. The following Sections shall survive the termination or expiration of this Agreement: 1, 5 – 10, 16, and 19 – 22.


This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey, USA, without regard to its principles of conflict of laws. Each party agrees that sole and exclusive jurisdiction and venue for any action or litigation relating to this Agreement shall reside with a federal or state court located in the State of New Jersey.

23. CONTACT INFORMATION

Achieve3000, Inc.
331 Newman Springs Road, Suite 304
Red Bank, NJ 07701
732-367-5505
info@achieve3000.com

Adams12 Five Star Schools
1500 E. 128th Avenue
Thornton, CO 80241
720-972-4000

ACHIEVE3000, INC.

By: 
Name: Nicholas Bates

Title: Chief Financial Officer

Date: 12/8/2020

CUSTOMER: Adams 12 Five Star Schools

By: 
Name: Suzi DeYoung

Title: Chief Financial Officer

Date: 12/16/2020

ADDITIONAL RESOURCES

[Achieve3000 Technical and Organizational Measures](#)

[Data Processing Addendum to Achieve3000 Terms of Service and Master Subscription Agreement](#)



Exhibit A to the Master Subscription Agreement dated 11-30-20

ORDER FORM (attached on following page)



Adams 12 Five Star Schools

Date: 11/30/2020

Achieve3000

**PARTNERSHIP OVERVIEW
& INVESTMENT PROPOSAL**

Overview

Adams 12 Five Star Schools is focused on delivering curricular materials with a rich learning experience that builds critical thinking and knowledge in various learning modes (in-person, blended, and remote).

At Achieve3000, we share in your commitment to measuring reading proficiency and growth to align with literature and information reading standards.

Together, we will work to meet the student growth goals you envision by providing rich content in a flexible learning platform, with professional learning support for continuous improvement in practice to drive student achievement.

Achieve3000 looks forward to being your partner in education. We are invested in your district's success and we understand now, more than ever, collaboration and continuity are essential in supporting the needs of your students and teachers.

Achieve3000 Learning Solutions



Flexible
Curriculum Platform

Actively Learn is a highly flexible, pedagogically sound cross curricular platform for grades 3-12. It is designed to drive student and teacher engagement with digital content across grade levels and subject areas. Teachers can upload texts and videos that align to their scope and sequence, share digital resources, and monitor student progress across standards with real-time data.

In addition to being a collaborative online learning platform, Actively Learn

2020-2021 Scope of Work

- 18,255 Licenses District wide.
- Actively Learn ELA, Actively Learn Science, Actively Learn Social Studies
- A wealth of content including novels, paired readings, short stories, videos, news and high-interest articles
- 12 critical practices to activate, support, and reveal student thinking and ensure deep learning
- Scaffolds to support instruction for all learners including annotation and translation tools
- Higher-order questions to promote more rigor in the classroom
- A full year of sequenced curriculum
- Thousands of copyrighted texts and e-books
- Customization tools, including the ability to import from Google Docs, PDFs, or Internet articles
- Teacher Dashboard with Gradebook and Proficiency Reports including real-time data at the student, and class level
- District Collection that enables school and district leaders to curate their own digital resources aligned to your scope and sequence and share it easily with teachers

Achieve3000 Professional Services include strategies for both onsite and remote learning in a variety of modes and environments. Our curriculum and implementation experts will work with you to assess your professional learning needs and craft experiences specific to your goals.



2020-2021 Scope of Work

- Planning Meeting to set implementation goals and outcomes, map out and schedule professional development days
- 6 Onsite Professional Development days per year
- Virtual sessions, office hours, and PLC opportunities
- Online Teacher Resource Center
- Job-Embedded/Virtual Coaching and Instructional Modeling Support
- Data Team Reviews
- Thought Leadership Webinars
- Customer Advocacy Support Team
- Project Management Services
- Technical and Rostering Support

Investment Summary

Five (5) Options are shown on the following pages:

Option One – Three Year Payment Plan

Product / Service	Qty	Unit Price	Annual Price
Actively Learn Unlimited Licenses Multi-Year Volume discount applied \$5.15 per student	18,255	\$14.85	\$271,087
Professional Learning: In-person days per year or the equivalent in personal virtual learning (Professional Learning Discount)	6	\$2,695	\$16,170 <i>(\$1,213)</i> \$14,957
Total One Year			\$286,044
Total Three-Year			\$858,132

Payment Summary	
Payment Due Upfront	\$343,252.80
Payment Due October 2021	\$257,439.60
Payment Due October 2022	\$257,439.60

Option Two – Three Year Payment upfront

Product / Service	Qty	Unit Price	Annual Price
Actively Learn Unlimited Licenses Multi-Year Volume discount applied \$5.56 per student	18,255	\$14.44	\$263,602
Professional Development: In-person days per year or the equivalent in personal virtual learning (Professional Learning Discount)	6	\$2,695	\$16,170 <i>(\$1,617)</i> \$14,553
Total One Year			\$278,155
Total Three-Year			\$834,465

Option Three – Five Year Payment Plan

Approved By: Adams 12 - District Wide

Product / Service	Qty	Unit Price	Annual Price
Actively Learn Unlimited Licenses Multi-Year Volume discount applied \$5.56 per student	18,255	\$14.44	\$263,557
Professional Learning: In-person days per year or the equivalent in personal virtual learning (Professional Learning Discount)	6	\$2,695	\$16,170 <i>(\$1,617)</i> \$14,553
Total One Year			\$278,110
Total Five-Year			\$1,390,548

Five-year Payment Summary	
Payment Due Upfront	\$347,636.95
Payment Due December 2021	\$347,636.95
Payment Due December 2022	\$278,109.56
Payment Due December 2023	\$278,109.56
Payment Due December 2024	\$139,054.78

Option Four – Five Year Payment Upfront

Product / Service	Qty	Unit Price	Annual Price
Actively Learn Unlimited Licenses Multi-Year Volume discount applied \$5.97 per student	18,255	\$14.03	\$263,602
Professional Development: In-person days per year or the equivalent in personal virtual learning (Professional Learning Discount)	6	\$2,695	\$16,170 <i>(\$2,021)</i> \$14,149
Total One Year			\$270,175
Total Five-Year			\$1,350,877

Option Five – Annual Term

Product / Service	Qty	Unit Price	Annual Price
Actively Learn Unlimited Licenses Volume discount applied \$3.50 per student	18,255	\$16.50	\$301,208
Professional Learning: In-person days per year or the equivalent in personal virtual learning	6	\$2,695	\$16,170
	Total One Year		\$317,378

This proposal is valid until December 18, 2020.

Please see next page for acceptance of your Investment Proposal.

Acceptance

Please send your completed, signed proposal and purchase order(s) to:

ACHIEVE3000, Inc.



331 Newman Springs Road, Suite 304

Red Bank, NJ 07701

Fax: 316-221-0718; Email: orders@achieve3000.com

Option (select one):

One _____ Two _____ Three X Four _____ Five _____

Account Name	Achieve3000
	
Customer Signature	Achieve3000 Signature
Suzi DeYoung, CFO	Nicholas Bates, Chief Financial Officer
Name and Title	Name and Title
12/16/2020	12/8/2020
Date	Date

This proposal is governed by and subject to the Achieve3000 terms and conditions at <https://www.achieve3000.com/about/terms-of-service/>. By signing this proposal, you are agreeing to such terms and conditions.

Contact Information:

Steve Goodfriend

Regional Director

Phone: 719-510-0082

Email: steve.goodfriend@achieve3000.com

Paul Schiffman

Senior RVP West Region

Phone: 916-293-2629

Email: paul.schiffman@achieve3000.com

Adams 12 Five Star Schools Data Privacy Addendum

The provisions of this Data Privacy Addendum are a part of the Independent Contractor Agreement and apply to all Contractors that will or may have access to student information.

1. Covered Data

As used in this addendum, student personally identifiable information (PII) means any and all data or information collected, maintained, generated or inferred that alone or in combination personally identifies an individual student or the student's parent or family, in accordance with C.R.S. § 22-16-103(13) & 34 C.F.R. § 99.3.

2. Compliance with State and Federal Law

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and the Colorado Student Data Transparency and Security Act, C.R.S. § 22-16-101, *et seq.*

3. Contractor Obligations:

- 3.1 *Uses and Disclosures as Provided in the Agreement.* Contractor may use and disclose the student PII provided by the District only for the purposes described in the Agreement and only in a manner that does not violate local or federal privacy regulations. Only the individuals or classes of individuals will have access to the data that need access to the student PII to do the work described in the Agreement. Contractor shall ensure that any subcontractors who may have access to student PII are contractually bound to follow the provisions of the Agreement.
- 3.2 *Nondisclosure Except as Provided in the Agreement.* Contractor shall not use or further disclose the student PII except as stated in and explicitly allowed by the Agreement and state and federal law. Contractor does not have permission to re-disclose student PII to a third party.
- 3.3 *Safeguards.* Contractor agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of student PII. Contractor shall ensure that student PII is secured and encrypted to the greatest extent practicable during use, storage and/or transmission. Contractor agrees that student PII will be stored on equipment or systems located domestically.
- 3.4 *Reasonable Methods.* Contractor agrees to use "reasonable methods" to ensure to the greatest extent practicable that Contractor and all parties accessing student PII are compliant with state and federal law. Specifically, this means that only de-identified student PII may be used for the purposes of educational research and Contractor must protect student PII from re-identification, further disclosures, or other uses, except as authorized by the District in accordance with state and federal law. Approval to use student PII for one purpose does not confer approval to use it for another.
- 3.5 *Data Destruction.* Student PII must be destroyed in a secure manner or returned to the District at the end of the work described in the Agreement. Contractor agrees to send a

written certificate that the data was properly destroyed or returned within 30 days of the end of the work as described in the proposal. Additionally, during the term of the Agreement, Contractor shall destroy student PII upon request of the District as soon as practicable. Contractor shall destroy student PII in such a manner that it is permanently irretrievable in the normal course of business.

- 3.6 *Minimum Necessary.* Contractor attests that the student PII requested represents the minimum necessary data for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by this addendum will have access to the student PII in order to perform the work.
- 3.7 *Authorizations.* When necessary, Contractor agrees to secure individual authorizations to maintain or use the student PII in any manner beyond the scope or after the termination of the Agreement.
- 3.8 *Data Ownership.* The District is the data owner. Contractor does not obtain any right, title, or interest in any of the data furnished by the District.
- 3.9 *Misuse or Unauthorized Release.* Contractor shall notify the District as soon as possible upon discovering the misuse or unauthorized release of student PII held by Contractor or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
- 3.10 *Data Breach.* In the event of a data breach, Contractor will be responsible for contacting and informing any parties, including students, which may have been affected by the security incident. Contractor will promptly notify the District upon the discovery of any data breach.

4. Prohibited Uses


- 4.1 Contractor shall not sell student PII; use or share student PII for purposes of targeted advertising; or use student PII to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.
- 4.2 Notwithstanding the previous paragraph, Contractor may use student PII to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on Contractor's website, online service, or application; or investigate a matter related to public safety. Contractor shall notify the District as soon as possible of any use described in this paragraph.

5. School Service Contract Provider Additional Provisions

If Contractor is a School Service Contract Provider – defined in C.R.S. § 22-16-103 as an entity that enters into a contract with the District to provide a website, online service, or application that is designed and marketed primarily for using in a school and collects, maintains or uses student PII – the following provisions shall apply:

- 5.1 *Data Collection Transparency and Privacy Policy.* Contractor shall provide clear information that is understandable by a layperson explaining the data elements of student PII that Contractor collects, the learning purpose for which it collects the student PII, and how Contractor uses and shares the student PII. The information must include all student PII

that Contractor collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. Contractor shall provide the District with a link to the information on a webpage maintained and updated by Contractor so that the District may post the link on its website.

-  5.2 *Notice Before Making Changes to Privacy Policy.* Contractor shall provide notice to the District before making material changes to Contractor's privacy policy that affects student PII **and are binding on the District.**
- 5.3 *Access to Student PII.* Upon request by the District, Contractor agrees to provide in a readable electronic format a copy of all student PII maintained by the Contractor for individual students.
- 5.4 *Correction of Inaccurate Student PII.* Contractor shall facilitate access to and correction of any factually inaccurate student PII in response to a request for correction that the District receives.
- 5.5 *Grounds for Termination.* Contractor understands that any breach by Contractor or any subcontractor of this addendum, state or federal law regarding student PII, or the Contractor's privacy policy described above, may be grounds for termination of the Agreement in accordance with C.R.S. § 22-16-107(2)(a).

Achieve3000, Inc

Vendor Name



Signature

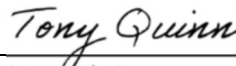
Nicholas Bates, Chief Finanacial Officer

Name and Title

9/30/2020

Date

**ADAMS 12 FIVE STAR SCHOOLS
IN THE CITY OF THORNTON, COUNTY OF ADAMS
STATE OF COLORADO**



Site Administrator's Signature

Tony Quinn - Purchasing Manager

Name and Title

10/7/2020

Date