



## EXECUTIVE SUMMARY

**Recommendation that the Broward College District Board of Trustees authorize a standard contract for services with MindEdge, Inc., for online training for workforce skills and maintain industry certifications for Broward College students by utilizing a bid waiver (professional services). Fiscal Impact: Estimated \$75,000.00 (Net Revenue: Estimated \$75,000.00)**

**Presenter(s):** Steven Tinsley,

**What is the purpose of this contract and why is it needed?** This agreement provides students with access to flexible training options for in-demand careers. Programs offered through MindEdge prepare students to learn workforce skills and are pre-approved by industry-certifying bodies for Professional Development Units (PDUs) required to maintain industry certifications. MindEdge offers professional development courses including the following areas: Business, IT, Six Sigma, etc.

**What procurement process or bid waiver was used and why?** A bid waiver exception for professional services (instructional services) per FLDOE 6A-14.0734 and per College Procedure A6Hx2-6.34. was used. Training is required to be delivered promptly to corporations/businesses/professionals using various learning options to ensure workforce skills are quickly accessible. Fluctuations in enrollment are expected based on funding availability and economic factors.

**Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting?** Yes, this expenditure was budgeted.

**What fund, cost center and line item(s) were used?** Fund: FD107, Cost Center: CC0073, Line Item: 64500: Other Services.

**Has Broward College used this vendor before for these products or services?** Yes, the College has used MindEdge since 2020.

**Was the product or service acceptable in the past?** Yes, MindEdge products/services were acceptable.

**Was there a return on investment anticipated when entering this contract?** Yes, there was a return on investment.

**Was that return on investment not met, met, or exceeded and how?** Yes, the return on investment was met. Students completing Continuing Education specialized online learning trainings through Learning Tools Interoperability (LTIs) linking to our Learning Management System.

The CEUs and PDUs provided to students allow them to maintain their industry certifications Over the past three years, use of these short online, flexible learning courses has allowed 345 students to complete training in 100+ course options.

**Does this directly or indirectly feed one of the Social Enterprise tactics and how?** This directly feeds into the Social Enterprise strategy:

**1. Empower Student Development**, as it provides the learner with a customized learning experience that was designed based on student and community (partners) needs.

**2.The fuel for our strategy:** Financial Innovation (revenue generation program).

**Did the vendor amend Broward College’s legal terms and conditions if the College’s standard contract was used and was this acceptable to the Legal Office?** The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

**FISCAL IMPACT:**

Description: Estimated expenses \$75,000.00 and estimated revenue \$75,000.00 over two years for Cost Center 0073, BU060, FD107, PG000513.


























<b>08/20/24</b>	<b>CC0073 · Continuing Ed / Economic Development</b> CC0073, BU060, FD107, PG000513	<b>\$150,000.00</b>
<b>08/20/24</b>	<b>CC0073 · Continuing Ed / Economic Development</b> CC008, BU060, FD107, PG000513	<b>(\$75,000.00)</b>
		<b>TOTAL: \$75,000.00</b>

APPROVAL PATH: 12319 MindEdge, Inc. - Online Services 2024-2026

 **Workflow**

 Edit View

 Add Work Item

Stage	Reviewer	Description	Due Date /	Status	
1	Diane Peart	AVP Review		 Completed	
2	Steven Tinsley	SVP of Workforce Education and In		 Completed	
3	Alina Gonzalez	Review		 Completed	
4	Raj Mettai	Review		 Completed	
5	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
6	Orlando Aponte	Procurement Approval		 Completed	
7	Rabia Azhar	CFO Review		 Completed	
7	Christine Sims	Budget Departmental Review		 Completed	
7	<b>Legal Services Review Group</b>	Review and Approval for Form and		 Completed	
8	Board Clerk	Agenda Preparation		 Completed	
9	District Board of Trustees	Meeting	11/12/24 11:00 AM	 Pending	
10	<b>Electronic Signature(s)</b>	Signatures obtained via DocuSig 		 Pending	
11	Natalia Triana-Aristizabal	Contracts Coordinator		 Pending	



**CONTRACT FOR SERVICES  
TERMS AND CONDITIONS**

This contract for services ("Contract") is entered into as of August 1, \_\_\_\_\_, 2024, between the District Board of Trustees of Broward College, Florida ("College") BC-Continuing Education and MindEdge, Inc. 271 Waverly Oaks Road, Suite 404, Waltham MA 02452 ("Vendor") (collectively, the "Parties"), will be in effect until July 31, 2026 ("Contract").

**1. INVOICES AND PAYMENTS.**

A copy of all invoices (including an itemization of the date, hours expended, and description of the deliverable) shall be sent to the attention of AVP, Workforce & Continuing Education. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from the College will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the College conditions that are detailed herein.

**2. INDEMNIFICATION.**

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the Contract. The Vendor further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

**3. INDEMNIFICATION FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY CLAIMS.**

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees for any claim or lawsuit brought alleging infringement of any intellectual property right associated with Vendor's performance under this Contract, including its use, development or provision of any software, books, articles or any other materials ("Materials"). Vendor warrants that the materials are owned by or licensed to the Vendor. Vendor is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.



#### **4. TERMINATION FOR DEFAULT.**

A "material breach" of this Contract is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the Contract. If the Vendor materially fails to fulfill its obligations under this Contract, the College will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The Vendor shall have thirty (30) days to cure the breach. If the Vendor fails to cure the breach within the thirty (30) day period, the College may immediately terminate this Contract, in addition to exercising whatever legal and/or equitable remedies it chooses regarding Vendor's breach of contract.

#### **5. TERMINATION FOR CONVENIENCE.**

The College may terminate this Contract with or without cause at any time for convenience upon 30 calendar days' prior written notice to the Vendor. In the event of termination for convenience, the College shall compensate the Vendor for all authorized and accepted deliverables and/or services completed through the date of termination in accordance with the Statement of Work, which is attached hereto and incorporated herein as Exhibit "A." The College shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Contract. The College may withhold all payments to the Vendor for such work until such time as the College determines the exact amount due to the Vendor.

#### **6. AUDIT.**

The Vendor shall maintain all records, books and documents pertinent to the performance of this Contract in accordance with generally accepted accounting principles consistently applied. The College shall have inspection and audit rights to such records for a period of 3 years from final payment under this Contract. Records relating to any legal disputes arising from performance under this Contract shall be made available until final disposition of the legal dispute. If the audit reveals that Vendor owes the College any funds, Vendor shall pay for the audit and return all funds to the College immediately.

#### **7. NONDISCRIMINATION.**

The Vendor hereby assures that no person shall be excluded on the grounds of race, color, religion, national origin, disability, age gender, marital status, sexual orientation or any other basis prohibited by law from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The Vendor shall take all measures necessary to effectuate these assurances.

#### **8. STATE OF FLORIDA PUBLIC ENTITY CONTRACTING PROHIBITIONS.**

The Vendor represents, warrants and covenants that it is not currently and, throughout the term of this Contract, shall not be ineligible for the award of this Contract under Sections 287.133, 287.134 and 287.135, Florida Statutes. The Vendor understands and accepts that this Contract maybe void, voidable or subject to immediate termination by the College if the representation, warranty and covenant set forth above is violated. The College, in the event of such termination, shall not incur any liability to the Vendor for any work or materials furnished.



## **9. PUBLIC RECORDS/REQUEST FOR CONTRACTOR RECORDS.**

The Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Vendor and Vendor shall bear all costs and fees related to the same.

If the Vendor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, the Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by the College to perform the service.
- (b) Upon request from the College, provide the College with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the College.
- (d) Upon completion of the Contract, transfer, at no cost, to the College all public records in possession of the Vendor or keep and maintain public records required by the College to perform the service. If the Vendor transfers all public records to the College upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the College, upon request from the College's custodian of public records, in a format that is compatible with the information technology systems of the College
- (e) IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COLLEGE AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, THE VENDOR ACKNOWLEDGES THAT THE COLLEGE CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO THE VENDOR WITH RESPECT TO ITS OBLIGATIONS PURSUANT TO THIS SECTION RELATED TO PUBLIC RECORDS. THE VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON THE COLLEGE OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT THE VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS CONTRACT. THE VENDOR ACKNOWLEDGES THAT ITS FAILURE TO



COMPLY WITH FLORIDA LAW AND THIS CONTRACT WITH RESPECT TO PUBLIC RECORDS SHALL CONSITUTE A MATERIAL BREACH OF THIS CONTRACT AND GROUNDS FOR TERMINATION PURSUANT TO PARAGRAPH 4.

**10. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing contained herein shall be construed or interpreted as: (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida or the United States; (2) the consent of the State of Florida or their respective officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

**11. COLLEGE'S TAX EXEMPTION.**

The Vendor shall not utilize the College's tax exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the College. The Vendor shall be responsible and liable for the payment of all applicable FICA/Social Security and other taxes resulting from this Contract.

**12. ASSIGNMENT/GUARANTOR.**

The Vendor shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of the College. Any attempted assignment in violation of this provision shall be null and void. The Vendor shall not pledge the College's credit or make the College a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging the College's credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

**13. FORCE MAJEURE.**

Notwithstanding any provisions of this Contract to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this Contract that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, declared public health emergency restrictions, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this Contract shall otherwise remain in effect.

**14. AMENDMENTS.**

This Contract may be amended only when reduced to writing and signed by both Parties.



**15. ENTIRE AGREEMENT.**

This Contract states the entire understanding and agreement between the Parties and no course or prior dealing, usage of the trade or extrinsic or parol evidence shall be relevant to supplement, vary or explain any term used with respect to this Contract. The acceptance or acquiescence of any course of performance rendered under this Contract shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein. This Contract shall inure to the benefit of and shall be binding upon the Parties, their respective assigns and successors in interest.

**16. COMPLIANCE.**

The Vendor, its employees, subcontractors or assigns shall comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract.

**17. APPLICABLE LAW/VENUE.**

The laws of the State of Florida shall govern all aspects of the Contract. In the event it is necessary for either Party to initiate legal action regarding the Contract, venue for all claims shall be in Broward County, Florida.

**18. VENDOR NOT TO LIMIT WARRANTY.**

The Vendor shall not limit or exclude any express or implied warranties and any attempt to do so shall render this Contract void, at the option of the College. The Vendor warrants that the services comply with the deliverables in the Statement of Work, and are expressly fit for their particular purpose, and are in accordance with industry standards.

**19. TERMS/PROVISIONS.**

Should any term or provision of this Contract be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Contract, and the Contract shall remain operable, enforceable and in full force and effect to the extent permitted by law.

**20. STATEMENT OF SERVICES.**

The Vendor shall, to the satisfaction of the College, fully and timely perform all work items described in the Statement of Work. As part of the services to be provided by the Vendor under this Contract, the Vendor shall substantiate, in whatever form reasonably requested by the College, the methodology, lab analyses, scientific theories, data, reference materials and research notes to formulate its opinions. This requirement shall survive the expiration or termination of this Contract. The Parties agree that time is of the essence in the performance of each and every obligation hereunder. It is the Vendor's responsibility to advise its employees or hired workers of the nature of the project, as described in the Contract and the Statement of Work attached hereto. The Vendor shall determine the method, details and means of performing the services, within the parameters established by the Statement of Work. The College may provide additional guidance and instructions to the Vendor's employees or hired workers where necessary or appropriate as determined by the College. The Vendor agrees to abide by any and all additional guidance and instructions.

## **21. COMPENSATION/CONSIDERATION.**

The total consideration for all work required by the College pursuant to the Contract shall not exceed the amount indicated in the Statement of Work. Should the Vendor incur any travel expenses, payment for such travel will be in accordance with Section 112.061, Florida Statutes. The Vendor shall supply the College with receipts and supporting documentation for all reimbursable travel expenses. The Vendor, by executing the Contract, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting. If the total consideration for this Contract is subject to multi-year funding allocations, funding for each applicable fiscal year of this Contract will be subject to College Board of Trustees budgetary appropriation. In the event the College does not approve funding for any subsequent fiscal year, this Contract shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Contract to the contrary. The College will notify the Vendor of the termination in writing.

## **22. INSURANCE.**

The insurance requirements in terms of types of insurance and the amount of insurance will vary depending on the Statement of Work. The College will determine the amounts and types of insurance required, if any, for the work performed. The Vendor shall procure and maintain, through the term of this Contract, insurance coverage required by the College, each with a limit of not less than the following:

- A. Commercial General Liability
  - 1. Each Occurrence \$ 1,000,000
  - 2. Personal & Advertising Injury \$ Click or tap here to enter text.
  - 3. General Aggregate \$ Click or tap here to enter text.
  - 4. Products-Completed Operations \$ \_\_\_\_\_  
Policy must contain contractual liability coverage.
  
- B. Automobile Liability \$ 0  
Coverage required for all owned, non-owned and hired vehicles used in connection with this Contract.
  
- C. Worker's Compensation in accordance with Florida Statutory limits and Employer's Liability Insurance.
  
- D. Professional Liability
  - 1. Per Occurrence \$ Click or tap here to enter text.
  - 2. General Aggregate \$ Click or tap here to enter text.
  
- E. Cyber Liability \$ 1,000,000
  
- F. Pollution Liability
  - 1. Per Occurrence \$ \_\_\_\_\_
  - 2. General Aggregate \$ \_\_\_\_\_  
Coverage may be provided through a stand-alone Pollution Liability policy or added to the Commercial General Liability policy through endorsement.



The coverage required shall extend to all employees and subcontractors of the Vendor. The Vendor must provide a Certificate of Insurance completed in full, indicating the producer, insured, carrier's name, and Best rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by an authorized representative and shall identify the College as an additional insured as required. No work is authorized until such time as the College has received a Certificate of Insurance in compliance with the above requirements.

### **23. OWNERSHIP OF WORKS.**

If the Contract involves the creation or development of works entitled to intellectual property protection, such works shall be considered works for hire and ownership shall vest in the College. For all other works created or developed by Vendor under this Contract for the benefit of College which are either not eligible to be works for hire or are not eligible for intellectual property protection, Vendor hereby grants to College a perpetual, non-transferable, exclusive right to use, reproduce, perform, display, distribute copies and make derivative works of such works, as applicable. For purposes hereof, works includes, but is not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code. Any equipment purchased by the Vendor with College funding shall be returned and title transferred from the Vendor to the College upon expiration or termination of the Contract.

### **24. COMPLIANCE/LICENSES.**

The Vendor, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract. The Vendor is also responsible for compliance with all labor and employment laws as well as all Federal, State, and local discrimination laws. The Vendor is solely responsible for compliance with all labor and tax laws pertaining to its officers, agents, and Vendor employees and shall indemnify and hold the College harmless from any failure by Vendor to comply with such laws and this indemnification obligation shall survive the expiration or earlier termination of the Contract.

### **25. INDEPENDENT CONTRACTOR.**

The Vendor shall be considered an independent contractor and nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of the Contract. Both Parties are free to enter into contracts with other Parties for similar services. The College assumes no duty with regard to the supervision of the Vendor and the Vendor shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under the Contract. In the event the Vendor is a sole proprietor, the Vendor is responsible for submitting legally required tax returns to the Federal Government.

### **26. DISPUTES.**

In the event a dispute arises which the Vendor and the College cannot resolve between themselves, the Parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law. Mediation shall not occur unless both Parties agree in writing.



**27. E-VERIFY.**

If the Vendor meets the definition of “contractor” under Section 448.095, Florida Statutes, in addition to other contract requirements provided by law, the Vendor shall register with and use the E-Verify system operated by the United States Department of Homeland Security to verify the work authorization status of all its employees hired during the term of this Agreement. The Vendor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. The Vendor must provide evidence of compliance to the College as required under Section 448.095, Florida Statutes. Failure to comply with this provision is a material breach of the Agreement, and the College may terminate the Agreement at its sole discretion without liability. The Vendor shall be liable for all costs incurred by the College resulting from the Vendor’s noncompliance with the requirements of this section.

**28. CHANGE IN PERSONNEL.**

The College may at any time and at its sole discretion request that the Vendor replace any Vendor personnel provided by the Vendor to work on this Contract if the College believes that it is in the best interest of the College to do so. The College may, but will not be required to, provide a reason for requesting the replacement of personnel. Such change in personnel shall be made immediately upon the College’s written request for a change of personnel. The Vendor shall place the above language in any contract that it has with subcontractors. The Vendor will enforce the replacement of subcontractor personnel upon a request by the College.

**29. BACKGROUND CHECKS.**

***This clause applies to long term Vendors working on site, including, but not limited to, Janitorial Services, Food Services and Security. In addition, this clause applies to Vendors providing childcare services, on site or off site.*** Vendor shall conduct thorough background checks for all of the Vendor’s employees or hired workers who will be working on any College site. The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with the above provision titled “E-VERIFY.” After reviewing the results of the background check, the Vendor shall determine whether the Vendor’s employee and/or hired worker meets the necessary criteria for the position sought to be filled by the College. The College will rely on the Vendor’s assessment of its employees’ or hired workers’ suitability to be hired for the position(s) sought to be filled by the College, based on the background check conducted by the Vendor. Prior to allowing any employees or hired workers to work on-site at College facilities, the Vendor will provide written verification to the College that a complete background check, as described above, was conducted for any such employee or hired worker. The Vendor will place the above language in any contract that it has with its subcontractors and is responsible for enforcement of this provision.

***Vendor who has long term onsite workers performing work at College facilities agrees to be bound by the College policies and standards of conduct listed in the “Contractor Policy Code Acknowledgement Form,” which is attached hereto and incorporated herein as Exhibit “B.”***

**30. ANNOUNCEMENTS AND PRESS STATEMENTS.**



No party shall, except with prior written consent of the other party on each occasion, make any press or media announcements concerning the Agreement or use the name, logos, or trademarks of any other party, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fundraising without the written permission of the party whose name, logo, or trademark is sought for use. In the case of the College, permission must be granted by its \_\_\_\_\_ or that position's designee, and in the case of the other party, permission must be granted by its \_\_\_\_\_ or that position's designee.

**31. EMPLOYMENT BENEFITS.**

Vendor expressly understands and agrees that Vendor, its officers, agents, and employees, are not entitled to any employment benefits from the College.

**32. STOP WORK ORDER.**

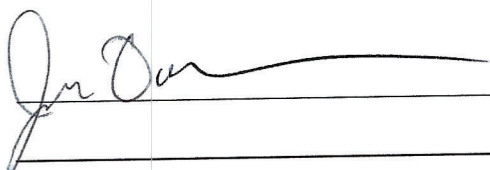
The College may order that all or part of the work stop if circumstances dictate that this action is in the College's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the College's Board of Trustees, a condition of immediate danger to the College, the Vendor or the public, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the Vendor to the College. If this provision is invoked, the College shall notify the Vendor in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The Vendor shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the College is received. If deemed appropriate by the College and in the event work is resumed, the College may amend this Contract to reflect any changes to the Statement of Work and/or the project schedule.

**33. ADDITIONAL TERMS AND CONDITIONS.**

Parties shall initial here if there are any changes, deletions and/or additions to the terms and conditions and they are contained in Exhibit "C."

\_\_\_\_\_  
College                      Vendor

**FOR VENDOR USE ONLY**

Vendor Name (type)	<u>MindEdge, Inc.</u>	Tax ID No.	_____
Authorized Representative	<u>Joseph D. Muller</u>	Title	<u>VP, Sales &amp; Partnerships</u>
Address	_____	Telephone	_____
Signature of Vendor		Date	<u>6/26/2024</u>
Attested By Name (type)	_____	Title	_____

Signature of Attester \_\_\_\_\_ Date Signed \_\_\_\_\_

**FOR COLLEGE USE ONLY**

Contract Originator Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

AVP/Dean Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Campus President/VP Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Senior Vice President \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**IF REQUIRED**

College President Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*Approved as to Form and Legality*

Signature \_\_\_\_\_ Date \_\_\_\_\_

Board Chairperson Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Contract for Services**  
**Statement of Work**  
**Exhibit “A”**

College offers high quality self-paced online certification & certificate programs through the Hosted Catalog, LTI and Self-Provisioning (SP) modalities. The research-based programs meet high academic rigor and accessibility (ADA compliant, videos with captions and transcripts, gamification activities, scenario- based activities, mobile friendly, Ask the expert – course Chat, CEU and PDU available).

**COLLEGE AGREES TO**

- Integrate unaltered course information into the College’s LMS (LTI and SP modalities)
- Apply updates course enhancements, as requested, for continuous improvement
- Perform updates using Vendor’s supplied resources

***Marketing, Promotion, and Branding - College Agrees to:***

- Promote and market courses offered to prospective students and companies
- Brand the program pages and login screen with College logo and brand
- Mutually agree on course discounts along with Vendor

***Registration and eCommerce - College Agrees to:***

- Use Vendor’s registration eCommerce platform and Learning Management system (LIT modality)
- Use Vendor’s online learning platform expanding into emerging distance education (Hosted Catalog)
- Registration fees are based on Vendor’s list prices, discount codes applied during check-out
- Give learner access to the courses according to a pre-determined duration, approved extensions

*Not provide refunds to learners after one week of access and/or after completing 10% of any course.*

**VENDOR AGREES TO:**

- Design, develop, and provide online educational courses for College to deliver via the internet
- Provide co-branded eCommerce platform where students will register for online courses
- Provide digital courses curriculum: Materials are the property of the vendor and cannot be used/altered by College
- Register students and collects course fees, through eCommerce portal
- Provide student enrollment confirmation and student orientation, delivered via the *Student Online Instruction Center*
- Provide updates to course prices within a one hundred twenty days (120) period
- Remit to College, revenue share collected from enrollment of courses
- Provide marketing assets to assist in marketing efforts for programs





## **PAYMENT AND INVOICE:**

**Vendor agrees to pay quarterly revenue to college, \*Calculation based on per student consumption**

- 1-499 enrollments: 40% College / 60% Vendor
- 500-1000 enrollments: 45% College / 55% Vendor
- 1000+: 50% College 50% Vendor

Vendor will pay quarterly revenue checks reflective of enrollments during respective months within each calendar year: quarter (Q1, Q2, Q3, Q4).

Payment via direct deposit to College (less wholesale cost and credit card merchant fees).

- ACH (Automated Clearing House) *college preferred* Payment to: Banking form will be provided to vendor. Payment will include bank reference number, invoice number, and College point of contact: Broward College Account Department. Email: [ce@broward.edu](mailto:ce@broward.edu), Voice: 954-201-7800. Receipts and other communication to be sent to: [ce@broward.edu](mailto:ce@broward.edu)
- Total amount due for each online course using the student completion verification report available for download from College's dashboard administrative site

### **\*Revenue Share Percentage**

Vendor agrees to modify the revenue share based on the following tiered enrollment totals.

- One course: a single course registration
- Certificate program: the number of courses contained within that certificate
- Each domain will count singularly, and enrollments within each domain shall be counted separately and distinctly.

*Note: Course extension, transfers and enrollments secured by College that necessitate a sub-domain are excluded.*

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**1. Incorporation by Reference.** The District Board of Trustees of Broward College, Florida ("BC") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum-Software ("Addendum") into the agreement between BC and Vendor ("Agreement"). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

**2. Payment.** Vendor shall submit bills for compensation for goods, services, and/or expenses in detail sufficient for a pre- and post-audit. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from BC will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the BC conditions that are detailed herein. In lieu of all provisions in the Agreement pertaining to penalties for late payment, if BC does not issue payment within approximately thirty days of receipt of a proper invoice, BC shall pay Vendor an interest penalty from the date the invoice was due until it was paid at the rate established pursuant to Section 55.03(1), Florida Statutes, if the interest exceeds one dollar.

**3. Taxes.** BC is immune and/or exempt from the payment of taxes and shall not be responsible for the payment thereof. BC shall provide an appropriate exemption certificate.

**4. Travel Expenses.** If BC is reimbursing travel expenses, Section 112.061, Florida Statutes, applies to those reimbursements. In order to be reimbursed, travel expenses must be expressly stated in the Agreement or otherwise approved by an authorized BC official in writing in advance.

**5. No Automatic Renewals or Extensions.** Provisions resulting in the automatic renewal or extension of the term of the Agreement shall be of no force and effect and are hereby deleted. To renew or extend the term of the Agreement, the parties shall enter into an amendment.

**6. Compliance with Laws.** Vendor represents, warrants and covenants as of the date of the Agreement and throughout the term of the Agreement that the software complies with all applicable legal requirements, including, but not limited to, the Americans with Disabilities Act and related regulations.

**7. Vendor Intellectual Property Indemnification.** Vendor shall indemnify, defend, and hold harmless BC and its officers, directors, board of trustees, agents, assigns, and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, for any claim or lawsuit brought alleging infringement of any intellectual property right arising out of the rights granted by Vendor to BC under the Agreement. This section shall not be subject to any limitations of liability provisions in the Agreement. This paragraph shall survive the expiration or early termination of the Agreement.

**8. Announcements and Press Statements.** No party shall, except with prior written consent of the other party on each occasion, make any press or media announcements concerning the Agreement or use the name, logos, or trademarks of any other party, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fundraising without the written permission of the party whose name, logo, or trademark is sought for use. In the case of BC, permission must be granted by its \_\_\_\_\_ or that position's designee, and in the case of the other party, permission must be granted by its \_\_\_\_\_ or that position's designee.

**9. Relationship of the Parties.** Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other.

**10. Use of BC Information Not Allowed.** Pursuant to the Agreement, Vendor may access, maintain, collect, record, organize, structure, store, retrieve, adapt, alter, use, process or otherwise handle information owned or held by BC and may create information from or with such existing information owned or held by BC (collectively, the "BC Data"). Vendor shall not have the right to use BC Data (whatever the medium) except to perform its obligations under the Agreement. Without limitation of the foregoing, Vendor shall not give any third party access to BC Data without BC's written permission except as expressly authorized in the Agreement or this Addendum.

**11. BC Rights in Information.** BC retains all rights to, title to, and interest in BC Data, and Vendor's use and possession thereof is solely on BC's behalf. BC



may access and copy any BC Data in Vendor's possession at any time, and Vendor shall facilitate such access and copying promptly after BC's request.

**12. Termination for Convenience.** BC may terminate the Agreement upon thirty (30) days' notice to Vendor, with no further obligation to Vendor other than to pay for any amounts owing prior to the effective date of termination. BC shall not be liable for any early termination charges and shall not be entitled to any refund of prepaid amounts.

**13. Annual Appropriation Contingency.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event funding is not approved for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions to the contrary. BC shall notify Vendor in writing after the adoption of the final budget for each subsequent fiscal year if funding is not approved.

**14. State of Florida Public Entity Contracting Prohibitions.** Vendor represents, warrants and covenants that it is not currently and, throughout the term of this Agreement shall not be, ineligible for the award or continuation of this Agreement under Sections 287.133, 287.134 and 287.135, Florida Statutes. Vendor understands and accepts that this Agreement may be void, voidable or subject to immediate termination by BC if the representation, warranty and covenant set forth above is violated. BC, in the event of such termination, shall not incur any liability to Vendor for any work or materials furnished.

**15. BC's Sovereign Immunity.** Nothing in the Agreement shall act, or be construed, to increase or alter BC's liability for tort claims beyond the waiver of immunity limits set forth in Section 768.28, Florida Statutes

**16. Governing Law and Other Legal Matters.** The laws of the State of Florida shall govern all aspects of the Agreement without regard to any conflict-of-law principles. The exclusive venue of any legal actions arising out of the Agreement shall be Broward County, Florida. BC is entitled to the benefits of sovereign immunity, including but not limited to immunity from suit in federal court. Any provisions in the Agreement requiring arbitration and/or mediation of matters arising out of or relating to the Agreement or altering the time to bring lawsuits or to make claims under the

Agreement shall be of no force and effect and are hereby deleted. Any provisions resulting in the Agreement's causing a default under another agreement or otherwise triggering rights and responsibilities under another agreement between the parties shall be of no force and effect and are hereby deleted.

**17. Confidentiality Obligations.** Vendor shall comply with any and all applicable state and federal laws and BC policies and procedures governing the use and/or safekeeping of BC Data, including but not limited to the Family Educational Rights and Privacy Act, laws governing personally identifiable information, the Florida the Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act, the Federal Trade Commission's Red Flags Rule, and amendments thereto (collectively, "Privacy Laws"). In the Agreement involves Vendor's access to education records, Vendor is hereby designated a school official and will comply with all legal requirements applicable thereto. If the Agreement involves Vendor's access to, any protected health information, as that term is or may be defined by state or federal law, BC and Vendor shall enter into a separate business-associate agreement that shall govern the use of the protected health information.

In the event Vendor is required by subpoena, law, or other judicial or administrative process to disclose BC Confidential Information, Vendor shall (i) provide BC with prompt notice thereof; (ii) consult with BC on taking steps to resist or narrow such disclosure; (iii) furnish only that portion of BC Confidential Information that is responsive to the request; (iv) comply with the requirements of all Privacy Laws; and (v) reasonably cooperate with BC in any attempt that BC may make to obtain an order or other reliable assurance that confidential treatment shall be accorded.

Upon termination of the Agreement or upon request by BC, Vendor shall promptly return all BC Confidential Information. This section shall not be subject to any limitations of liability provisions in the Agreement. Vendor agrees to include all such terms and conditions in this section in any subcontractor or agency contracts providing services on behalf of Vendor, provided this requirement is not intended to authorize any subcontracting or agency unless permitted hereby.

**18. Vendor's Confidential Information / Public Records Law.** BC is subject to the public records



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laws of Florida, including records retention requirements, and any provisions in the Agreement pertaining to confidentiality obligations on the part of BC are hereby deleted and shall be of no force and effect. Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon Vendor and Vendor shall bear all costs and fees related to the same.

If Vendor meets the definition of “contractor” under Section 119.0701, Florida Statutes, in addition to other Agreement requirements provided by law, Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by BC to perform the service.
- (b) Upon request from the BC, provide the BC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Vendor does not transfer the records to the BC.
- (d) Upon completion of the Agreement, transfer, at no cost, to the BC all public records in possession of Vendor or keep and maintain public records required by the BC to perform the service. If Vendor transfers all public records to the BC upon completion of the Agreement, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the Agreement, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BC, upon request from the BC’s custodian of public records, in a format that is compatible with the information technology systems of the BC
- (e) IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF

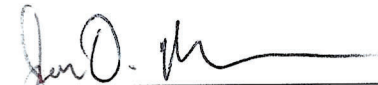
CHAPTER 119, FLORIDA STATUTES, TO VENDOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT BC AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, VENDOR ACKNOWLEDGES THAT BC CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO VENDOR WITH RESPECT TO ITS OBLIGATIONS UNDER THIS SECTION. VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON BC OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS AGREEMENT. VENDOR ACKNOWLEDGES THAT ITS FAILURE TO COMPLY WITH FLORIDA LAW AND THIS AGREEMENT WITH RESPECT TO PUBLIC RECORDS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND GROUNDS FOR TERMINATION.

**19. Miscellaneous.** Any terms and/or conditions in the Agreement on the following subject matters are hereby deleted in their entirety and shall be of no force and effect: (i) grants of exclusivity by BC to Vendor; (ii) restrictions on the hiring of Vendor’s employees; and (iii) attorneys’ or collection-fees provisions.

**By signing below, Vendor’s authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.**

**VENDOR:** Click or tap here to enter text.

By:   
Name: Joseph D. Muller  
Title: Sr. VP, Sales & Partnerships  
Date: 7/17/2024