

## **AGREEMENT**

THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of September, 2021 by and between Brainfuse, Inc., a corporation organized and existing under the laws of the State of New York (hereinafter, "Brainfuse"), and Warren County School District, an institution organized and existing under the laws of the State of Pennsylvania (hereinafter, the "School").

### **W I T N E S S E T H:**

WHEREAS, Brainfuse is engaged in the development and provision of educational technology, services and content; and

WHEREAS, the parties desire to supply School students with an online tutoring services program pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises of each party to the other contained herein, it hereby is mutually agreed as follows:

### **ARTICLE I - PURPOSE**

Brainfuse shall provide web-based technology and online tutoring to the School pursuant to the terms set forth herein.

### **ARTICLE II - RESPONSIBILITIES OF THE PARTIES**

#### **Section 2.1     Responsibilities of Brainfuse**

- (a) Brainfuse shall prepare and provide instant access live help for School students in core subjects (hereinafter, the "Brainfuse Program").
- (b) The Brainfuse Program shall serve all eligible students. The asynchronous portion of the Brainfuse Program is available 24 hours a day, 7 days a week. Access to the live, online tutors shall be for all eligible students Monday through Sunday during mutually-agreed upon times.
- (c) Brainfuse shall make its online tutors available through any compatible computer to participating students, both within and without the School facility.
- (d) Brainfuse shall provide all necessary training to appropriate School staff for the Brainfuse Program.

#### **Section 2.2     Responsibilities of School**

Technical support staff from the School shall cooperate in good faith with Brainfuse to ensure that the Brainfuse Program and the Software are accessible from School computers.

### **ARTICLE III - LIABILITY**

Brainfuse shall not be responsible or liable for any disruption, pause or cessation of the Brainfuse Program or Software caused by actions or events beyond Brainfuse's immediate control, including, but not limited to, Internet disruptions, the School's computers, hardware malfunctions, firewall restrictions, browser incompatibilities, other systems problems, or the failure of students to attend sessions.

### **ARTICLE IV - COMPENSATION AND EXPENSES**

#### **Section 4.1     Compensation**

The School shall pay to Brainfuse a fee of \$24 per hour for up to 1000 hours of live tutoring with writing submissions metered at 35 minutes per submission. Invoices shall be paid within 45 calendar days from receipt of invoice. In no event shall the total compensation paid by the District exceed \$24,000. Brainfuse reserves the right to withhold service pending processing and payment of invoices by the School.

#### **Section 4.2     Expenses**

Except as provided otherwise herein, the parties to this Agreement shall be responsible for their own expenses, including taxes and general administrative expenses. Brainfuse shall not be responsible for providing the necessary hardware or software (including, but not limited to, computers, speakers, microphones, Internet access, as well as browsers and firewall modifications) for the proper operation of the Brainfuse Program or Software.

### **ARTICLE V - TERM OF THE AGREEMENT**

This Agreement shall terminate on June 30, 2022.

### **ARTICLE VI - NOTICES AND LEGAL ADDRESSES OF THE PARTIES**

**Section 6.1     Legal Addresses** All notices or other communications required or which may be given hereunder shall be addressed and forwarded as set forth herein. Any such notice if sent to School shall be addressed as follows:

Superintendent  
Warren County School District  
6820 Market St  
Russell, PA 16345

Any such notice if sent to Brainfuse shall be addressed as follows:

Alex Sztuden  
Managing Director  
Brainfuse, Inc.  
271 Madison Avenue  
Third Floor

New York, New York 10016  
Telephone: (212) 683-5212

**Section 6.2     Electronic Transmissions** Any notice, invoice or other communication hereunder shall be deemed to have been properly transmitted when sent by telegraph, telecopy, cable transmission, or any other form of electronic communication, and shall be deemed to have been given on the date of receipt thereof.

## **ARTICLE VII - GENERAL PROVISIONS**

**Section 7.1     Survival** The representations, warranties, general covenants, and indemnities contained herein shall survive the termination of this Agreement.

**Section 7.2     Applicable Law** This Agreement shall be construed in accordance with, and governed by the laws of the State of Pennsylvania.

**Section 7.3     Entire Agreement** This instrument contains the entire agreement between the parties and supersedes all other prior negotiations, undertakings, notes, memoranda, and agreements, whether written or oral, concerning the specific subject matter hereof, and may only be modified, altered, changed, or amended by agreement between the parties in writing that is approved by the School's Board of School Directors at a public meeting held in compliance with the Pennsylvania Sunshine Act.

**Section 7.4     Waiver** No waiver, alteration, amendment, or modification of this Agreement, or any covenant, condition, or limitation contained in this Agreement is valid unless in writing and duly executed by the party to be charged therewith.

**Section 7.5     Illegality/Unenforceability** In the event that any provision of this Agreement is declared illegal or unenforceable in any respect under applicable law, rule, or court decision, (1) the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired, and (2) this Agreement shall be construed so as to effectuate as nearly as possible the intent of said provision and the intent of the parties hereto.

**Section 7.6 Successors and Assigns** This Agreement, and the rights and benefits under this Agreement, shall not be assignable, without the written consent of each of the parties hereto.

**Section 7.7 Facsimile Signatures** The parties agree that facsimile signature of this Agreement shall be deemed to be valid, binding, and legally enforceable.

IN WITNESS WHEREOF the parties hereto have set their hands as of the date above written.

Warren County School District

Brainfuse, Inc.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Alex Sztuden  
Title: Managing Director

ATTEST: \_\_\_\_\_