

AGREEMENT

THIS AGREEMENT is made and entered into this __ day of _____, 2023 by and between Brainfuse, LLC a limited liability company organized and existing under the laws of the State of Delaware (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 at 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. Unused hours may be rolled over to the subsequent year. 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, 2024.

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, LLC
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 - FEDERAL GRANT DOLLARS

Section 7.1 Because the Agreement is being funded with federal grant dollars (ESSER funds), the following terms and conditions shall also apply:

- (a) With respect to the federal grant that will provide funding used by the School to pay Brainfuse, Brainfuse agrees to cooperate fully with the School to ensure compliance with all grant conditions and requirements and to take any actions that are deemed necessary by the School to meet all conditions and requirements associated with the grant, the grant application, the grant award, the Uniform Grant Guidance, and any other applicable law or regulation, and the School's applicable policies and procedures.
- (b) The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et. seq.) prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. Brainfuse agrees to comply with the provisions of this Act as amended, which is incorporated herein by reference as if stated fully herein.
- (c) Brainfuse certifies that it is not currently listed as ineligible to be awarded a contract involving federal grant dollars as a part of the government-wide exclusions in the System for Award Management (SAM) and is not debarred, suspended, or otherwise excluded or declared ineligible to be awarded a contract involving federal grant dollars under any statutory or regulatory authority. Brainfuse further agrees, while its contractual relationship with the School remains in effect, to immediately notify the School if it is later listed in SAM, or is later debarred, suspended, or otherwise excluded or declared ineligible under any statutory or regulatory authority.
- (d) To the extent applicable, Brainfuse shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
- (e) Pursuant to applicable federal law, when the School expends federal funds, the School reserves the right to terminate this Agreement, with 7 business days advance written notice to Brainfuse, for convenience if the School believes, in its sole discretion, that it is in the best interest of the School to do so. If this Agreement is terminated in accordance with this paragraph, the School shall only be required to pay Brainfuse for services satisfactorily performed prior to the

termination. If the School has paid Brainfuse for services not yet provided as of the date of termination, Brainfuse shall refund such payment(s).

- (f) Brainfuse agrees to comply with all local, state and federal laws, regulations, ordinances, and requirements applicable at any time, including but not limited to, the Family Educational Rights and Privacy Act (FERPA) and any federal law, regulation, or requirement applicable to federal grants.

ARTICLE VIII - GENERAL PROVISIONS

Section 8.1 Survival The representations, warranties, general covenants, and indemnities contained herein shall survive the termination of this Agreement.

Section 8.2 Applicable Law This Agreement shall be construed in accordance with, and governed by the laws of the State of Pennsylvania.

Section 8.3 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 8.4 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 8.5 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 8.6 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 8.7 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, LLC

By: _____
Name:
Title:

By: _____
Name: Alex Sztuden
Title: Managing Director

ATTEST: _____