

Collaboration Agreement

[TO BE USED IN SITUATIONS WHEN PARTIES ARE COLLABORATING WITHOUT THE EXCHANGE OF MONEY]

This Collaboration Agreement (the “Agreement”) is entered into by and between the _____ County First Steps to School Readiness Local Partnership (the “Local Partnership”) and _____ (the “Collaborating Party”) as of this _____ day of _____, 20____ (the “Effective Date”). In this Agreement the Local Partnership and the Collaborating Party are each referred to as a party and collectively as the parties.

WHEREAS, the Local Partnership is a non-profit corporation organized and existing pursuant to the laws in the state of South Carolina and operating for purposes set forth in South Carolina Code § 59-152-10, *et seq.* and 63-11-1720, *et seq.*; and

WHEREAS, the Collaborating Party is _____; and

WHEREAS, the Local Partnership and the Collaborating Party desire to collaborate and work together to perform the Project, as defined below.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Project Performance. During the term of this Agreement, the parties shall work collaboratively to perform the project, as described in such project descriptions as the parties may execute from time to time (each a “Project Description”). The initial Project Description is attached as Exhibit A hereto.

Each party’s respective duties and obligations in the performance of the Project shall be set forth in the applicable Project Description.

Each party shall coordinate with the other party regarding the performance of the Project. The parties will keep each other informed with respect to all activities directly related to a Project. Each party will assign personnel to its Project team with the appropriate skills and experience to accomplish such party’s responsibilities (each a “Project”). Each party’s Team Leaders as identified in the applicable Project Description shall meet with each other according to a mutually agreed upon meeting schedule so as to coordinate the activities of the applicable Project.

If either party determines that the other party is failing to perform its responsibilities pursuant to this Agreement, then the performing party shall notify non-performing party of such failure. Upon such notice, the parties shall meet in person to attempt to mutually agree upon a corrective action plan (the “CAP”). Upon execution of the CAP, the parties shall comply with their respective obligations pursuant to the CAP.

Each party shall provide the other party with any reports as are identified in the applicable Project Description. To the extent there is any change in the applicable Project, the parties shall execute a mutually agreed upon amendment to the applicable Project Description.

2. Compensation. Neither party shall be responsible for the payment of any compensation of whatsoever nature with regard to the performance of this Agreement. Each party shall be responsible for its own costs and expenses with regard to the performance of this Agreement and neither party is obligated to reimburse the other party for any costs or expenses the other party incurs in performing its obligations under this Agreement.

3. Term and Termination. This Agreement shall begin on the Effective Date and continue for a period of one (1) year thereafter. Each Project Description may state a term applicable to the applicable Project (each a "Project Term"). Upon expiration of the initial term of this Agreement and any subsequent renewal term this Agreement automatically shall renew unless either party provides the other party with notice of non-renewal prior to the expiration of the then current term. Additionally, either party may terminate this Agreement, or any Project, at any time in such party's sole discretion by providing notice of termination to the other party at least thirty (30) days prior to the effective date of such termination. The following sections shall survive termination of this Agreement: 5, 6, 8, 10, 11, 12 and 13.

4. No Authority to Bind. Neither party shall have the right to bind the other party to any representation, statement, contract, agreement or other matter.

5. Indemnification. Each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party and its officers, directors, employees, agents, successors and assigns (the "Indemnified Party") from and against all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees ("Losses") arising out of or resulting from: (i) the Indemnifying Party's breach of any representation, warranty, covenant or obligation under this Agreement; and (ii) the Indemnifying Party's negligence, gross negligence or willful misconduct. The Indemnified Party shall promptly notify the Indemnifying Party in writing of any suit or claim related to any Loss and shall cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense in the defense of any such suit or claim. The Indemnifying Party shall take and have sole control of the defense and settlement of any suit or claim.

6. Confidentiality.

a. Nondisclosure. The term "Confidential Information" means any and all confidential and proprietary information disclosed by either party to the other party under this Agreement. Each party agrees not to use any Confidential Information of the other party for its own use or for any purpose except in connection with performing its obligations and exercising its rights under this Agreement. Each party agrees to hold the other party's Confidential Information in strict confidence and not to disclose such Confidential Information, which also includes all information provided pursuant to any due diligence and vendor management requests, to any third parties. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information only to those employees or consultants who require such information in order to perform under this Agreement and only to the extent necessary and nothing herein prevents either party from using know-how or other information it may develop or acquire in connection with its performance of this Agreement. Each party agrees that it will

take all reasonable measures to protect the confidentiality of and avoid disclosure or use of the other party's Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that it utilizes to protect its own confidential information of a similar nature. No copies of the disclosing party's Confidential Information may be made unless expressly authorized under this Agreement or approved in writing by the disclosing party.

b. Exceptions. The obligations set forth in the above section, shall not apply to any information which (a) was known to the receiving party prior to being disclosed by the disclosing party, or (b) becomes publicly known through no wrongful act of the receiving party, or (c) is approved for release by written authorization of the disclosing party, or (d) is rightfully received from a third party who provided such information without breach of any separate confidentiality obligation and without restriction or subsequent disclosure, or (e) is independently developed without reference to the disclosing party's Confidential Information. In addition, Confidential Information may be disclosed to the extent required by court order or as otherwise required by law, provided that the party required to make any such disclosure notifies the other party promptly upon learning of the possibility of any such requirement, but only to the extent it is permitted to provide such notice, and has given that party a reasonable opportunity (and cooperated with the party) to contest or limit the scope of such required disclosure (including application for a protective order).

7. Insurance. During the term of this Agreement, each party shall maintain insurance in the following amounts: _____

8. Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) (i) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder, and (ii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(c) when executed and delivered by the party, this Agreement shall constitute the legal, valid and binding obligation of that party.

9. Compliance With Laws. In the performance of this Agreement each party will comply with all applicable laws, rules, regulations, ordinances and other government directives. Each party shall maintain all applicable licenses, permits or other government required permissions to perform its obligations pursuant to this Agreement.

10. Family Educational Rights and Privacy Act of 1974 ("FERPA"). To comply with FERPA and the Family Privacy Protection Act of 2002, each party shall maintain the confidentiality of

any student educational and personal information or records to which it has access. Each party shall use and/or disclose protected student educational and personal information or records only to the extent necessary to satisfy obligations under this Agreement and may only do so consistent with this Agreement and FERPA. Such information may not be released without a properly completed authorization signed by the student's parent or guardian. If information is released pursuant to the receipt of a properly completed authorization, documentation of the release must be maintained. A copy of the authorization must be included in this documentation.

11. Protected Health Information. To the extent either of the parties exchanges or provides access to protected health information, the parties shall execute a business associate agreement and otherwise comply with the applicable provisions of the then current Health Insurance Portability and Accountability Act.

12. Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

13. Miscellaneous.

a. Force Majeure. Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any delays, failure in performance or damages, due to unforeseen events of force majeure, including fire, explosion, lightning, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, act of civil or military authorities, telecommunications failure, fuel or energy shortages, or acts or omissions of communications carriers (each, a "Force Majeure"). Each party shall use reasonable effort to mitigate the effects of any Force Majeure event. A party may terminate this Agreement if a Force Majeure event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more. Unless the party terminates this Agreement pursuant to the preceding sentence, all timelines in the Project Description shall automatically be extended for a period up to five (5) days after the Force Majeure event.

b. Remedies. Each party acknowledges and agrees that the unauthorized disclosure or use of the other party's Confidential Information will cause irreparable harm and significant injury which will be difficult to ascertain and incapable of adequately compensating solely in terms of monetary damages. Accordingly, each party agrees that the injured party shall have the right to the issuance of immediate injunctive relief enjoining any breach or threatened breach of the receiving party's obligations hereunder.

c. Further Assurances. Each party shall, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

d. Independent Contractors. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, Local Partnership, joint venture, or other form of joint enterprise, employment, or

fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

e. No Public Statements or Use of Trademarks. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party.

f. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and sent to the addresses as listed on the signature page. Notices sent in accordance with this Section shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) when received, if mailed, by certified or registered mail or (d) if delivery is refused at the address for such notice.

g. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

h. Entire Agreement. This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Exhibits or other document, the following order of precedence shall govern: (a) first, this Agreement, excluding its Exhibits; (b) second, the Exhibits to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

i. Assignment. Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party's prior written consent. Any purported assignment, delegation, or transfer in violation of this section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns and each party's obligations hereunder shall survive any change in control or ownership of such party.

j. No Third-Party Beneficiaries. Except as set forth in section 5 (Indemnification), this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

k. Amendment; Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving party. Except as otherwise set forth in this Agreement, no

failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

l. Severability. Any term or provision of this Agreement that is held invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provisions in any other situation or in any other jurisdiction.

m. Governing Law; Submission to Jurisdiction.

(1) This Agreement and all related documents, and all disputes and other matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina without regard to the conflict of laws provisions thereof or of any other jurisdiction to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

(2) Any dispute for which a party is permitted to bring a court proceeding shall be instituted exclusively in the United States for this District of South Carolina or the courts of the State of South Carolina located in the county of Local Partnership's principal place of business and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding; provided that an action to enforce a judgment or order of any such court may be enforced in any court having competent jurisdiction.

(3) Counterparts. This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as delivery of the original.

n. Flow Down Clauses. Each party agrees to comply with the terms of Exhibit B attached hereto and incorporated by reference.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereby agree to this Agreement by affixing their signatures below.

LOCAL PARTNERSHIP:

_____ County First Steps to School Readiness
Local Partnership

By:_____

Name:_____

Title:_____

Address:

COLLABORATING PARTY:

By:_____

Name:_____

Title:_____

Address:

EXHIBIT A
Project Description

Project Term:

Part A – Description of Project:

Part B – Local Partnership Responsibilities:

Part C – Collaborating Party Responsibilities:

Part D - Implementation Plan and Schedule

Local Partnership Team Leader:

Collaborating Party Team Leader:

Reports:

IN WITNESS WHEREOF, the parties hereby agree to the Project Description by affixing their signatures below.

LOCAL PARTNERSHIP:

_____ County First Steps to School Readiness
Local Partnership

By:_____

Name:_____

Title:_____

COLLABORATING PARTY:

By:_____

Name:_____

Title:_____

EXHIBIT B
Flowdown Clauses