

**AGREEMENT BETWEEN THE ATLANTA INDEPENDENT SCHOOL SYSTEM
AND THE KINDEZI SCHOOLS ATLANTA, LLC**

This **AGREEMENT** (“Agreement”) entered into effective as of November 11, 2016 between the **ATLANTA INDEPENDENT SCHOOL SYSTEM** (“APS”), a body corporate and politic, having its principal place of business at 130 Trinity Avenue S.W., Atlanta, Georgia 30303, and **THE KINDEZI SCHOOLS ATLANTA, LLC** (“KSI”), a Georgia limited liability corporation, having a principal place of business at 386 Pine Street, Atlanta, Georgia 30308. Both APS and KSI shall be referred to herein as the “Parties.”

RECITALS

WHEREAS, the Board of Education for APS (“Board”) is charged with the duty to provide adequate public schools and is authorized to supervise all matters pertaining to the public schools;

WHEREAS, the Board has identified a number of schools, characterized by low performance on state-mandated assessments and on the CCRPI ratings that are in need of turnaround support and intervention;

WHEREAS, the Georgia State Board of Education (“State Board”) has granted APS a system-wide charter (“System Charter”), having an initial effective term of July 1, 2016 to June 30, 2021, which provides APS with the maximum flexibility allowed by law in the operation of APS schools;

WHEREAS, KSI’s leadership has experience operating successful schools, and KSI has a proven educational and operating model that the Parties believe will work well in the Turnaround School needing turnaround support and intervention; and

WHEREAS, through this Agreement, APS seeks to contract with KSI to operate the school listed herein (the “Turnaround School”).

NOW, THEREFORE, for the consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, mutually agree as follows:

ARTICLE I – TURNAROUND SCHOOL

1.1 Turnaround School. For purposes of this Agreement, the Charles L. Gideons Elementary School shall be designated as the “Turnaround School.”

1.2 Appointment; Flexibility Waiver. Pursuant to the flexibility waiver provided to APS via the System Charter and subject to the terms and conditions set forth herein, APS hereby appoints KSI as the operator of the Turnaround School to implement the educational, basic academic and additional programs described in Article III (collectively, the “Education Program”). Notwithstanding the foregoing, the Turnaround School shall continue to be an APS community school and, to the extent not otherwise modified by this Agreement, shall be subject to APS policies and procedures regarding compliance with federal or state regulations, as well as enrollment, attendance zones, transportation of students, and student discipline.

ARTICLE II – TERM

2.1 Term. It is the intention of the parties that this Agreement remain in place for the school years commencing July 1, 2017 and ending on June 30, 2023. However, as required by O.C.G.A. § 20-2-506, this Agreement shall have an initial term commencing on the date hereof and, unless earlier terminated as provided elsewhere in this Agreement, terminating absolutely and without further obligation on the part of APS on December 31, 2016, and at the close of each succeeding calendar year for which it may be renewed. Following the initial term (if not previously terminated in accordance with Article VIII), this Agreement shall automatically renew for successive calendar year periods unless a notice of non-renewal has been provided as contemplated by Section 8.2.A below. As used herein “Term” shall mean the initial term, together with all renewal terms.

2.2 Timeline. KSI shall begin providing the services described herein to the Turnaround School on July 1, 2017 (the “Commencement Date”) and thereafter through the Term.

ARTICLE III – OBLIGATIONS AND COVENANTS OF THE PARTIES

3.1 Provision of Services. Upon the terms and subject to the conditions set forth in this Agreement, KSI agrees to provide services to APS as set forth herein.

3.2 Specific Duties and Obligations of KSI. KSI shall provide the following services with regard to students located within the attendance zone of the Turnaround School:

A. Enrollment Procedures.

1. KSI, using APS enrollment procedures, shall be responsible for enrolling students in the Turnaround School, provided, however, APS shall also be permitted to enroll students in accordance with such procedures.
2. The Turnaround School shall maintain its existing attendance zones. Any changes to the current attendance zone must be mutually agreed upon by APS and KSI. The Turnaround School shall operate as a neighborhood school, serving first the children living within the attendance zone, regardless of when they enroll. APS enrollment policies shall govern at all times during the life of the agreement. The school shall follow APS’s administrative transfer process that applies to all APS students; however, a former student of the Turnaround School who moves out of the school’s attendance zone, shall have the option to remain at that school (subject to school capacity) and will have first priority to transfer back to that school (and to the schools in the same feeder pattern) under APS’s administrative transfer process.
3. The Turnaround School may not be closed or merged without the consent of KSI, unless this Agreement is terminated.

B. Educational Program

1. KSI shall implement at the Turnaround School a model that is consistent with that of the Kindezi Schools, allowing for substantive improvements approved

by APS. Among other elements, the Turnaround School will strive to maintain family-sized classrooms (meaning the annual average teacher-to-student ratio, subject to fluctuating student enrollment, shall not exceed 1 to 10), classes will implement Socratic dialogs and discussions, the Turnaround School will offer summer learning programs and free after-school programming, teachers will regularly receive professional development opportunities, and students will experience high behavioral expectations and a strong culture of learning.

2. KSI will develop an early education program similar to the program that is already at Gideons, which shall provide high quality early learning opportunities for pre-school age children.
3. KSI shall provide certain supplemental and supportive programming at the Turnaround School, to include the following: (1) summer camp/learning program that is available to all students who do not have other summer programming, and (2) supplemental social-worker, counselor, & behavior aide presence within the school to support high behavioral expectations and to move past a purely punitive approach to discipline and behavioral improvement, in a manner consistent with Section 3.D.1 below.
4. KSI shall follow federal and state law by providing school-level special education services and working in a cooperative relationship with APS. Any regional placement units currently housed at the school which KSI will manage will remain under the management of APS and may remain in its current location subject to APS's sole discretion. If APS desires to place any additional regional unit (or to re-place any current unit that has been relocated) at the Turnaround School, it shall give KSI at least 6 months' prior written notice and obtain the approval of KSI, which shall not be unreasonably withheld.

C. Basic Academic Programs

1. Subject to Section 5.1 below and the lease agreement referenced therein, KSI will be responsible for providing all specific textbooks and related teacher's editions, resource kits, library and media materials and new adoptions or textbook replacements (collectively, "Educational Resources"), designated for each KSI course, with the quantity provided being determined by the anticipated enrollment size and grade levels for each course or subject provided by KSI during the Term.
2. KSI shall review all student records, transcripts and Individualized Education Programs or Section 504 Plans to reasonably ensure that the required services will be timely provided to students enrolled in the Turnaround School. The parties agree that the Turnaround School will offer a full inclusion model program and that APS may monitor special education students, as defined by the IDEA, and students receiving rehabilitation services under Section 504 of the Rehabilitation Act, as appropriate under the students' IEPs or Section 504

plans. KSI shall employ and retain throughout the Term of this Agreement appropriately certified, highly qualified teachers to fully implement the students' IEPs and Section 504 plans under Georgia Department of Education and other applicable regulations.

D. Additional Programs

1. KSI shall use APS's Code of Student Conduct in the Turnaround School. KSI further agrees to follow all applicable federal and state laws and statutes and APS' policies and regulations in relation to classroom management and discipline, in a manner consistent with Section 3.B.3 above.
2. KSI agrees to follow APS policy regarding the expulsion of students. Students may be expelled only when the infraction(s) meet APS district guidelines.
3. KSI will administer state and local tests in compliance with applicable state and local laws, rules and regulations.

E. Staffing

1. All staff at the Turnaround School, except staff associated with special education regional placement units, shall be employees of KSI or its partner organizations. Professional staff shall be enrolled in the Georgia Teacher Retirement System, to the extent permitted by such system and applicable law.
2. KSI shall interview all current APS employees at the Turnaround School who are interested in working for KSI. KSI shall set up staff open houses at the Kindezi School solely for affected APS personnel. Any interested APS personnel shall be interviewed by KSI pursuant to KSI's established interview protocol. KSI shall have full discretion, subject to Section E.4 below, with respect to all hiring decisions.
3. KSI will at all times provide sufficient professional and other staff trained in compliance with all applicable state and federal law requirements to provide for and maintain supervision of students enrolled in the Turnaround School.
4. KSI will require its prospective employees to submit the necessary documentation and corresponding payment to APS to perform FBI and GBI criminal background checks in a manner consistent with APS policy and Georgia law. APS shall provide the resulting information to KSI upon receipt. KSI shall not permit any person, whether employed directly by KSI or by a contractor, to serve in any position in the Turnaround School if such person's background check reveals a conviction of any crime of moral turpitude, nor shall KSI permit any person whose background check reveals any other criminal conviction to serve in any position in the Turnaround School, whether employed directly by KSI or by a contractor, without the prior written consent and approval of APS. A copy of any such written

consent and approval shall be placed in the person's personnel file maintained by KSI.

5. KSI will maintain the personnel files of its employees. Access to all pertinent information contained in such employee personnel files shall be provided to APS upon the written request of APS, subject to applicable law.
6. KSI is solely responsible for all matters concerning the recruitment, performance and retention of its personnel. KSI must fully comply with all federal, state, and local laws/regulations regarding employment and immigration, including, but not limited to, nondiscrimination, compensation; taxation, and benefits.

F. Administrative Services

1. KSI shall maintain records on student enrollment, attendance, courses offered, number of students served, courses completed, transcripts and student report cards, and any other records required by APS to comply with federal or state reporting obligations in respect of the Turnaround School, utilizing APS's electronic record-keeping systems.
2. KSI shall establish the instructional hours of the school day and record absences in order to determine attendance for all grades using accepted attendance accounting procedures.
3. APS shall provide KSI with access to APS's intranet for purposes of sharing and transferring student records and administrative data, including e-mail. Each party shall bear the costs incurred by it in connection with any integration of data transfer and management systems.
4. APS and KSI shall cooperate as reasonably requested to ensure that the operation of the Turnaround School satisfies APS's applicable technology, data privacy and security policies.

G. Records

1. KSI shall keep proper and complete books, records and accounts with respect to the operation of the Turnaround School and all subcontracts relating to the operation thereof and shall permit APS and its designees, upon written notice to KSI, to inspect the same at all reasonable hours and to make and take away hard (paper) or electronic copies thereof, subject to applicable privacy and similar laws.
2. As soon as practical following the date of this Agreement (and in any event in advance of the Commencement Date), APS will provide KSI access to any existing electronic or other student records in its possession that pertain to any students enrolled in the Turnaround School, including attendance records, academic records, disciplinary records, IEPs, Section 504 plans and previous or current standardized or other test scores.

3. KSI and its employees and subcontractors agree to comply with and shall assist APS in compliance, in all material respects, with applicable laws and regulations, including with Family Educational Rights and Privacy Act (FERPA), 20 U.S.C 1232g and the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h, and all applicable privacy laws and APS policies regarding student privacy.
4. KSI agrees to cooperate fully with APS in responding to record requests made pursuant to the Georgia Open Records Act with respect to records in the possession of KSI.

H. GO Teams

1. KSI agrees to fully adopt the GO Team model at the Turnaround School, as described in APS's Local School Governance Teams Handbook, as amended from time to time. KSI will work with Gideon's GO Team on the vision for and planning of the 2017-2018 school year.

3.3 General Duties and Covenants.

- A. KSI shall provide the services described in this Agreement and shall operate, maintain and manage the Turnaround School in compliance with all applicable federal and state constitutional requirements and applicable federal, state and local laws, statutes, ordinances, rules and regulations, and, to the extent not otherwise modified by this Agreement, APS policies and procedures regarding compliance with federal or state regulations, as well as enrollment, attendance zones, transportation of students, and student discipline.
- B. Except as otherwise provided in the lease described in Section 5.1, KSI will provide the instructional and administrative employees necessary to administer at the Turnaround School the Education Program, all instructional materials, technology and software specifically required for delivery of the Education Program, general maintenance (including janitorial services, repairs due to general wear and tear, and repairs required due to vandalism), general liability insurance (as set forth in Section 9.2), and utilities, inclusive of trash removal.
- C. KSI shall provide APS with all necessary information and documentation needed by APS for all federal and state reporting purposes.
- D. KSI will operate in a fiscally sound manner as measured by an external audit conducted by an independent certified public accountant licensed in the State of Georgia that will be submitted annually to APS. KSI will meet all Generally Accepted Government Accounting Standards (GAGAS) as demonstrated by the annual external audit reports.

ARTICLE IV – BUYBACK SERVICES

4.1 Buyback Services. KSI may elect to execute a separate Buyback Services Agreement with APS. KSI currently intends to utilize the Buyback Services Agreement for the provision by APS of transportation, nutrition, and IT services at the Turnaround School, but nothing herein or in such agreement will prevent KSI from changing the scope of buyback services during the Term.

ARTICLE V – FACILITIES

5.1 Lease of Facilities and Use of Materials. APS shall lease to KSI the real property comprising the Turnaround School at no cost. The lease shall provide, among other things, for KSI's use, from the Commencement Date and throughout the Term thereafter; of all tangible property located at the Turnaround School as of the end of the academic year prior to the Commencement Date, including all existing inventory of Educational Resources, and all furniture, fixtures and equipment, including all computers and other technological resources, currently in place or obtained between the date hereof and the Commencement Date. At all times, the facilities and such leased property shall remain APS property subject only to the leasehold interest of KSI.

5.2 Transportation. KSI will follow APS's policies regarding transportation for enrolled elementary students living 1 mile or more from the school building.

5.3 Information Technology. APS shall continue to provide network and IT services. The Parties acknowledge that current controls on the APS network infrastructure may not allow the flexibility required for full instructional technology use as contemplated under the Educational Program. The Parties agree to work to a mutual solution on this issue.

5.4 Building Operations and Maintenance. KSI shall be responsible for all aspects of operations and maintenance of the facilities except as otherwise specifically agreed to by the Parties. KSI anticipates phasing in full responsibility over the term of this contract; it is likely that APS will provide certain specific services during the phase-in period.

ARTICLE VI – COMPENSATION; METHOD OF PAYMENT

6.1 Funding Formula and Procedures. APS shall provide per-pupil funding that is comparable to the funding currently allocated towards the Turnaround School, including an investment consistent with that of other district targeted support schools, in accordance with the formula and procedures set forth on Exhibit A to this Agreement. APS shall also pay the costs of a principal-in-training during the year prior to the first year of operation and support KSI in raising grant and philanthropic funds for additional start-up needs. Recognizing that APS's budget varies from year-to-year, the Parties shall renegotiate the funding formula to be used during any subsequent year where the Georgia Legislature has changed the funding formula to districts and schools, but in any event, APS shall treat the Turnaround School no less favorably than other similarly situated schools within the Atlanta Independent School System with respect to the allocation and provision of funds, including Title I funds, early-education or pre-school funds, and any other federal or state funding allocated by APS to similarly situated schools.

6.2 Use of Funds. KSI shall have sole discretion on the expenditure of funds received from APS or otherwise, subject to the terms of this Agreement, the System Charter and applicable law.

ARTICLE VII – PERFORMANCE STANDARDS

7.1 Intent. It is the intent of KSI and APS that their partnership results in an outstanding school with a rich educational program where students achieve at high levels. APS and KSI also recognize that long-lasting transformation takes time.

7.2 Target Performance. Target performance standards for the Turnaround School are based upon the APS Challenge Index. The Challenge Index is published by the Atlanta Public Schools' Research & Evaluation Department annually on the department's public blog. The public will be able to view partner progress over time. The goal is as follows: at the end of 5 years of KSI's operation, and for each 5-year period thereafter (if applicable), the Turnaround School will achieve at or above the challenge index trend line or move at least 5 normal curve equivalent points closer to the trend line by the end of each 5 year period.

ARTICLE VIII -- TERMINATION

8.1 With Cause.

- A. Subject to clause 8.1(B) below, if either party refuses or fails to perform any of its material obligations hereunder in a material manner, the other party may give written notice of such default. If the defaulting party fails or refuses to cure any material default within thirty (30) days after such notice is given, or if such default is not reasonably susceptible to cure within such time, if the defaulting party does not commence to cure the default within thirty (30) days after notice is given and is not proceeding to diligently work towards curing it thereafter, then the other party may terminate this Agreement by written notice with immediate effect.
- B. APS may terminate this Agreement without penalty for KSI's failure to substantially implement the Education Program, as follows. Prior to exercising such termination right, APS shall give KSI a notice describing such failure in reasonable detail. Within ten (10) business days of receiving such notice, APS and KSI shall meet to discuss the alleged failure and options for resolution. The parties shall work together in good faith to prepare a written plan of resolution, including specific goals with reasonable time frames. If, following the date that is sixty (60) days from the date a plan or resolution is agreed to by the parties, KSI has failed to achieve the goals set out in the plan of resolution, APS shall be entitled to terminate this Agreement by written notice with immediate effect.
- C. APS may terminate this Agreement without penalty for KSI's failure to achieve the Performance Standards as outlined herein.

8.2 Without Cause

- A. As required by O.C.G.A. § 20-2-506, this Agreement shall terminate absolutely and without further obligation on the part of APS at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, unless earlier terminated as provided in this Agreement. At the end of each calendar year, this Agreement will be automatically renewed for an additional 12 month period unless, no later than January 31 of the then-current term, APS provides KSI with an affirmative notice of non-renewal. APS agrees that any such non-renewal shall require approval by the APS Superintendent and the Board. In the event any such notice of non-renewal is given, KSI shall cease its operation of the Turnaround School as of June 30 of the year in which such notice is given, even though this Agreement shall terminate on December 31 of such year (or such earlier date as the parties may agree).
- B. This Agreement shall no longer apply if the Turnaround School is taken over by the State of Georgia as part of its Opportunity School District, provided, however, that APS shall use good faith efforts to oppose any such action by the State of Georgia, and KSI shall cooperate in such efforts as reasonably requested.

8.3 Mutual Agreement. This Agreement may be terminated prior to expiration of the Term by mutual written agreement of the parties hereto, which agreement shall state the effective termination date and any other conditions of said termination.

8.4 Effect of Termination. Upon the effective date of termination of this Agreement, KSI shall:

- A. immediately cease all work under this Agreement;
- B. within ten (10) days, deliver to APS copies of all educational records of all students then or previously enrolled in the Turnaround School (to the extent such records are not already available in APS electronic record keeping systems);
- C. place no further orders to subcontractors without the prior written consent of APS;
- D. terminate all orders and subcontracts to the extent that they relate to the performance of work relating to the Turnaround School; and
- E. as soon as practicable, transfer possession to APS of any furniture and equipment purchased with public funds for the Turnaround School as well as any remaining public funds held by KSI, in each case, subject to KSI's obligations in accordance with Section 9.5.

ARTICLE IX – OTHER GENERAL TERMS

9.1 Notices. Except as otherwise expressly provided, any notice, instruction or other written communication required or permitted to be given under this Agreement shall be deemed to have been delivered or received:

and property damage combined single limit. The following specific extensions of coverage shall be provided and indicated on the certificate of insurance:

- (a) Comprehensive Form
- (b) Contractual Insurance
- (c) Personal Injury
- (d) Broad Form Property Damage
- (e) Premises-Operations
- (f) Completed Operations

This coverage shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under this Agreement. Policy coverage must be on an occurrence basis.

C. Automobile Liability Insurance. KSI shall procure and maintain Automobile Liability Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided and indicated on the certificate of insurance:

- (a) Comprehensive Form
- (b) Owned, Hired, Leased and non-owned vehicles to be covered

D. Crime Insurance. KSI shall procure and maintain Crime Insurance to include coverage of theft of APS' property by KSI's personnel. Coverage shall be in an amount not less than \$100,000 per occurrence.

- 9.3 Surplus Funds.** Any surplus funds remaining at the close of each fiscal year will be used to enhance the Turnaround School's academic program. Under no circumstances shall any surplus be distributed to KSI employees, board members, or educational service providers. Nothing in this section shall be construed to prevent KSI from setting aside surplus funds in a reserve account or budgeting and awarding performance bonuses as part of its annual operating expenses.
- 9.4 Responsibility for Debts.** KSI shall be responsible for all debts incurred by it in connection with its performance of this Agreement. Except as agreed hereto, APS shall not be contractually bound to any third party with whom KSI has a contract or from whom KSI has purchased goods or services.
- 9.5 Distribution of Funds and Assets Upon Dissolution.** In the event KSI is dissolved, it shall comply with the applicable requirements set forth in the Georgia Nonprofit Corporation Code and will cooperate with APS to the extent necessary to wind down its operation of the Turnaround School. Without limiting the foregoing, KSI shall return to APS any public surplus remaining at the time of dissolution, after all liabilities and obligations of KSI have been paid and discharged, or adequate provisions have been made therefor. APS shall not be responsible for KSI's unpaid debts in the event KSI does not have sufficient funds to pay all of its debts at the time it ceases operation.

- 9.6 **Non-Agency.** The parties expressly acknowledge and agree that KSI is not acting as agent of APS except as required by law or this Agreement. KSI acknowledges that it is without authority to, and will not, extend the full faith and credit of APS to any third party.
- 9.7 **Delegation.** The parties acknowledge and agree that the functions and powers of each party may be exercised only by each party and may not be delegated to a third party without written agreement by the parties.
- 9.8 **Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party.
- 9.9 **Severability.** If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 9.10 **Force Majeure.** Neither party shall be liable to the other for any loss, damage, delay or default resulting from a failure to perform any obligation hereunder if performance by such party is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, act of Government, sabotage, accident or any other casualty or cause beyond said party's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- 9.11 **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision hereof. No delay in acting with regard to any breach of any provision hereof shall be construed to be a waiver of any such breach.
- 9.12 **Authorization of Agreement.** Each party represents and warrants to the other that its execution and delivery of this Agreement has been duly authorized and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms and in accordance with the laws of the State of Georgia.
- 9.13 **Further Assurances.** Each party agrees to execute and deliver such further instruments and documents and take such other actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.
- 9.14 **Relationship of the Parties.** Except as otherwise explicitly provided herein, neither party shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party and nothing in this Agreement shall be deemed to constitute any party a partner, agent, employee or legal representative of the other party or to create any fiduciary relationship between or among the parties. KSI shall be an independent contractor and, subject to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control and direct the performance of the services under this Agreement. Unless agreed

otherwise, KSI shall be solely responsible for, and APS shall have no obligation with respect to, payment of all federal, state and other taxes owed or claimed to be owed by KSI arising out of KSI's association with APS pursuant to this Agreement.

9.15 KSI Board of Directors. APS acknowledges that it has reviewed the current membership of KSI's board of directors and has approved of such membership as of the date hereof.

9.16 Indemnification.

- A. KSI agrees to indemnify, hold harmless and defend the Board, APS, and their respective current, future or past officers, agents and employees from any and against all claims, liabilities, damages, losses, judgments, charges, expenses (including attorneys' fees) and/or causes of action arising out of third party claims due to KSI's gross negligence, willful misconduct, or breach of its obligations under this Agreement, but only to the extent such Losses are not the result of APS's negligence or willful misconduct. KSI further agrees that its agreement to indemnify and hold harmless APS, its current, future or past officers, agents and employees shall not be limited to the limits of any insurance that may be required under this Agreement.
- B. APS shall cooperate fully with KSI in the defense of any claim for which indemnification may be sought hereunder. APS shall not settle or compromise any threatened or pending claim for which it will seek indemnification hereunder, nor permit a default or consent to a judgment in respect thereof, in each case, without the prior written consent of KSI. In addition, with respect to any claim for which APS has sought indemnification hereunder, if KSI notifies APS that it supports entering into an Acceptable Settlement Agreement (as defined below) and APS does not consent thereto, KSI's liability to APS under this Agreement shall thereafter be limited to the settlement amount proposed in the Acceptable Settlement Agreement. As used herein, "Acceptable Settlement Agreement" means a proposed agreement that (a) is agreed to by the third party plaintiff, (b) includes as a sole remedy the payment of a sum that KSI (or its insurer) is ready, willing and able to pay, and (c) does not contain any admission of wrongdoing or finding of liability on the part of APS.
- C. The amount of any claim for indemnification under this Agreement shall be reduced by the amount of any insurance proceeds or third party indemnity or contribution available to APS, and APS shall use commercially reasonable efforts to obtain all such amounts. If any such amounts are received by APS after it has received an indemnification payment from KSI hereunder, it shall pay such amount over to KSI, up to the amount of the indemnification payment received.

9.17 Third Party Beneficiary. This Agreement is intended to be solely for the benefit of KSI and APS and their respective successors and permitted assigns and is not intended to and shall not infer any rights or benefits upon any third party not a signatory hereto.

- 9.18 **Authority.** The parties hereby represent and warrant that the individuals executing this Agreement have the authority to legally bind APS and KSI respectively.
- 9.19 **Section Headings.** The headings of sections contained in this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend or construe the terms or provisions of the sections of this Agreement.
- 9.20 **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Georgia. Jurisdiction and venue for any action brought under this Agreement shall lie exclusively in the federal and state courts located in Fulton County, Georgia.
- 9.21 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed, and have the full force and effect of, an original, but all of which shall constitute but one and the same instrument, effective when one or more counterparts has/have been signed by each of the parties and delivered to the other party.
- 9.22 **Amendments.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration or modification is sought.
- 9.23 **Integration.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all previous communications, representations or agreements with respect to such subjects, either written or oral, between them, and not incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized representative of the day, month and year last written below.

Atlanta Independent School System

By: [Signature]
 Name: Meria J. Carstarphen
 Title: Superintendent
 Date: 11/24/16

The Kindezi Schools Atlanta, LLC

By: [Signature]
 Name: Dean Leeper
 Title: executive director
 Date: 11/11/16

APPROVED AS TO LEGAL FORM:
 By: [Signature]

EXHIBIT A – Funding Formula and Procedures

A. Per Pupil Funding Amount. APS shall provide per-pupil funding as follows:

1. The Initial Per Pupil Funding Amount shall be calculated according to the following formula (all items as contained in the Official Budget approved by the Board of Education):
 - a. Total APS General Fund Budget; less
 - b. Any Unfunded Pension Liability Expense; less
 - c. The Direct Turnaround Services Funding allocated to APS schools identified as requiring Intensive Support or Targeted Support (as outlined in more detail in Section E of this Exhibit A below). Such costs currently include the following direct service expenses: Wraparound Services, Tutoring, Professional Learning Communities, Specialists Training in Reading and Math, Social and Emotional Learning, Targeted Professional Learning, and the Vacation Academy.

The result of a, b and c above shall be divided by the Weighted Average APS Enrollment using enrollment counts provided to the State Department of Education (detailed in Section B of this Exhibit A below), resulting in an “**Initial Per Pupil Funding Amount**”.

2. The following shall be added to the Initial Per Pupil Funding Amount:
 - a. The portion of the Direct Turnaround Services Funding, stated on a per pupil basis, that is allocable to the Turnaround School (which shall be calculated as shown under Section E of this Exhibit A below); and
 - b. The Title I funding earned by the Turnaround School, stated on a per pupil basis (using the same number of students as used for Direct Turnaround Services Funding);
 - c. Without duplication of any other amount included in the APS General Fund Budget, any other federal or state funding allocated by APS to similarly situated schools - that is not currently both received and allocated by APS to similarly situated schools as of July 1, 2017 - stated on a per pupil basis (using the same number of students as used for Direct Turnaround Services Funding). This shall not apply to any new federal or state grants to other similarly situated schools for which the Turnaround School is not eligible pursuant to the terms of the grant; and

The total of a, b, and c above, added to the Initial Per Pupil Funding Amount, shall be the “**Supplemented Per Pupil Funding Amount**”.

3. APS shall subtract from the Supplemented Per Pupil Funding Amount an administrative fee equal to 0.75% of the Supplemented Per Pupil Funding Amount. The resulting figure shall be the “**Per Pupil Funding Amount**”. An example calculation of the Per Pupil Funding Amount is shown on Attachment 1 to this Exhibit A, using the APS Official Budget for the 2016-2017 school year. This example is an illustration of the Parties’ intent with respect to how the formula is to be applied each year of this Agreement,

understanding that actual amounts shall be based on the APS Official Budget for the relevant school year.

- B. Calculation of Weighted Average APS Enrollment.** The Weighted Average APS Enrollment specified in Section A.1 above shall be the average of the total APS October enrollment count and the total APS March enrollment count of the preceding school year. For example, in determining the Per Pupil Funding Amount for the 2017-18 school year, the Parties would use the average of the APS enrollment counts from October 2016 and March 2017.
- C. Calculation of Initial Turnaround School Enrollment and Mid-Year Turnaround School Enrollment.**
1. Recognizing that an individual school's student enrollment can fluctuate from school year to school year, as well as within a given school year, for purposes of determining the Funding Amount (see Section D of this Exhibit A below) the Parties shall calculate, for each school year, both an Initial Turnaround School Enrollment and a Mid-Year Turnaround School Enrollment.
 2. The "**Initial Turnaround School Enrollment**" shall be calculated by taking the average of the October and March enrollment counts in the preceding school year. For example, in determining the Initial Turnaround Schools Enrollment for the 2017-18 school year, the Parties shall use the average of the October 2016 count and the March 2017 count.
 3. The "**Mid-Year Turnaround School Enrollment**" shall be calculated by taking the average of the March enrollment count of the preceding school year and the October enrollment count of the current school year. For example, in determining the Mid-Year Enrollment Count for the 2017-18 school year, the Parties shall use the average of the March 2017 count and the October 2017 count.
- D. Payments of the Funding Amount.** In each year of this Agreement, APS shall pay an aggregate amount (the "**Funding Amount**") to KSI as follows:
1. Initial Year of Term. During 2017-2018 school year, APS shall pay to KSI an amount calculated as below:
 - a. Beginning on July 1, 2017, APS shall make five (5) monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the Initial Turnaround School Enrollment for the Turnaround School, and then divided by eleven (11); and
 - b. Beginning on December 1, 2017, APS shall make six (6) monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the Mid-Year Turnaround School Enrollment for the Turnaround School, less the sum of payments already made pursuant to Section D.1.a above, and then divided by six (6).

2. Subsequent Years of Term. With respect to each subsequent school year during the Term of this Agreement, APS shall pay to KSI a Funding Amount as calculated below:
 - a. Beginning on August 1 of each year (starting in 2018), APS shall make four (4) monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the total Initial Turnaround School Enrollment and then divided by ten (10); and
 - b. Beginning on December 1 of each year (starting in 2018), APS shall make six (6) monthly payments, each being equal to the Per Pupil Funding Amount multiplied by the total Mid-Year Turnaround School Enrollment, less the sum of payments already made pursuant to Section 2.a above, and then divided by six (6).
3. All monthly payments of the Funding Amount shall be paid by the fifth (5th) day of each month in which they are due.

E. Calculation of Direct Turnaround Services Funding.

1. APS currently allocates a portion of its General Fund Budget for specific additional services provided to schools it classifies as needing additional instructional and other support due to low academic performance. Currently APS refers to these schools as those needing Intensive Support or Targeted Support. For purposes of this Agreement, the Turnaround School shall be deemed to be classified as needing additional instructional or other support for at least the 5 year period beginning in the 2017-2018 school year, regardless of such Turnaround School's actual academic performance.
2. In its 2016-17 General Fund Budget, APS outlines the following specific programs provided to these schools: Wraparound Services, Tutoring, Professional Learning Communities, Specialists Training in Reading and Math, Social and Emotional Learning, Targeted Professional Learning, and the Vacation Academy.
3. In any given year of this Agreement, the "**Direct Turnaround Services Funding**" (as referenced in Section A.1.c above) shall be the total funding of these additional programs provided to schools designated by APS as eligible for Intensive Support or Targeted Support.
4. The Parties acknowledge that the terminology APS uses for these "additional support programs" may change from year to year, as may the actual programs themselves. It is the intent of the Parties that throughout the life of this Agreement any additional funding that APS uses for targeted interventions or support in schools with low academic performance shall be considered "Direct Turnaround Services Funding" for purposes of the Per Pupil Funding Amount. However, notwithstanding anything to the contrary herein, KSI acknowledges that any Turnaround Services Funding or similar initiative shall be subject to the determination of the Board of Education as to whether or not to continue such initiative.

5. APS also identifies the specific schools classified as requiring Intensive Support or Targeted Support. A list of those schools for the 2016-2017 school year is included as Attachment 2 to this Exhibit A. For purposes of stating the Direct Turnaround Services Funding on a per pupil basis as required in Item 2.a of Section A above, the Direct Turnaround Services Funding shall be divided by the March enrollment count of all such schools identified as receiving Intensive Support or Targeted Support.
6. An example of the calculation of the Direct Services Turnaround Funding, on a per pupil basis, is included as part of Attachment 1 to this Exhibit A. In Attachment 1, the number of students in “Targeted and Intensive Schools” comes directly from Attachment 2.

EXHIBIT A – Funding Formula and Procedures

Attachment 1

Sample Calculation of Per Pupil Funding Amount 2016-17 School Year

General Fund Budget for upcoming year	\$743,435,686
Less: allocation for Direct Turnaround Services	
Funding for upcoming year	(3,284,107)
Less: Unfunded Pension Balance	(52,000,000)
Total General Fund Available	688,151,579
Divided by: Weighted Average APS Enrollment	50,154
Initial Per Pupil Funding Amount	13,721
Plus (a): Direct Turnaround Services Funding Per Pupil (see below)	326
Subtotal	<u>14,047</u>
Plus (b) Title I funding (estimate)	—
Plus (c) Additional State/Federal Funds Provided to Turnaround Schools in the future, if applicable	—
Plus (d) Early-education funds (estimate)	—
Supplemented Per Pupil Funding Amount	<u>14,047</u>
Less Admin Support (0.75%)	105
Total Per Pupil Funding Amount	<u>\$13,942</u>

Direct Turnaround Services

Wraparound	\$650,000
Tutoring	1,258,144
PLCs	765,220
Specialists Training: Reading/Math	60,621
SEL	415,622
Targeted PL	25,000
Vacation Academy	<u>109,500</u>
Total Turnaround Services	\$3,284,107
Turnaround students in Targeted & Intensive Schools (as determined on Attachment 2)	10,088
Per student Allocation	<u>\$326</u>

EXHIBIT A – Funding Formula and Procedures

Attachment 2

**2016-17 School Year
Enrollment Count**

APS designated schools receiving Intensive Support and Targeted Support

Cluster	School	March 2016 TFE
Mays	1. Young Middle School	855
	2. Miles Elementary School	385
	3. Peyton Forest Elementary School	457
Jackson	4. Dunbar Elementary School	403
Douglass	5. Douglass High School	841
Therrell	Continental Colony Elementary School	<u>450</u>
Subtotal		<u>3,391</u>

Targeted Schools

Cluster	School	March 2016 TFE
Washington	1. Michael R. Hollis Academy	487
	2. Connally/Venetian Merged School	676
Carver	3. Kimberly Elementary School	444
	4. Gideons Elementary School	329
	5. Perkerson Elementary	520
	6. Slater Elementary School	545
	7. Finch Elementary School	521
Jackson	8. D.H. Stanton School	235
Douglass	9. Usher/Collier Elementary School	413
	10. Scott Elementary School	344
	11. Fain Elementary School	495
	12. Boyd Elementary School	446
	13. Towns Elementary School	322
	14. Woodson Park Academy	637
	15. F. L. Stanton Elementary School	<u>283</u>
Subtotal		<u>6,697</u>
TOTAL		<u>10,088</u>