

AGREEMENT TO OFFER CAREER ONLINE HIGH SCHOOL

THIS AGREEMENT TO OFFER CAREER ONLINE HIGH SCHOOL (the "Agreement") is entered into, as of _____ **2023** (the "Effective Date"), by and among Smart Horizons Career Online High School, LLC, d/b/a Smart Horizons Career Online Education ("SHCOE"), which is a Florida limited liability company with an address of 25 E Nine One Half Mile Road, Pensacola, FL 32534, and FULTON COUNTY on behalf of the Fulton County Library System ("Library") and the Atlanta Fulton Public Library Foundation ("Foundation").

RECITALS:

WHEREAS, SHCOE has been awarded Cognia (formerly AdvancED) District Accreditation, Cognia being the unified organization of the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI), and the Northwest Accreditation Commissions (NWAC) as approved by the Cognia (formerly AdvancED/SACS commission) in February 2011, SHCOE is the world's first online Cognia accredited school district and is positioned to provide accredited online education programs to students seeking high school diplomas and career certificates;

WHEREAS, SHCOE operates Career Online High School ("COHS"), an online high school from which students receive both a career-based online high school diploma and a workforce certificate;

WHEREAS, Library is interested in offering COHS to Library patrons ("Students") and the Foundation is interested in funding the purchase of the license and 12 scholarships for eligible patrons; and

WHEREAS, SHCOE is willing to provide COHS to Library for Students on the terms and conditions hereinafter contained,

NOW, THEREFORE, the parties agree as follows:

- Offer.** At Library's request, SHCOE shall make available to Library, to offer to Students, the Services more particularly described in Exhibit A attached hereto and made part hereof.
- Price and Payment.** The current price Foundation shall pay for COHS shall be as provided on Exhibit A and shall be subject to the payment terms set forth in Exhibit A attached hereto and made a part hereof. Prices are subject to change upon one hundred twenty (120) days' notice.
- Costs.** SHCOE shall be responsible for the costs incurred for producing and delivering COHS via the Internet. Foundation and/or Students shall be responsible for any costs incurred for the purpose of receiving COHS, including, but not limited to, the costs for hardware, software, Internet access and telephone charges.
- Ownership of Intellectual Property.** SHCOE shall retain all title, copyright, trade secrets, patents, trademarks and other proprietary rights in COHS and all modifications, enhancements and other works derivative thereof. Library or Foundation shall not acquire any rights, expressed or implied, in COHS or modifications, enhancements or works derivative thereof, other than those rights identified in this Agreement. SHCOE shall retain all right, title and interest to all trademarks, trade names and logos used by SHCOE in association with COHS. Library or Foundation shall not claim or receive any ownership rights to COHS or such trademarks, trade names or logos. Neither COHS nor any portion thereof, may be reproduced, duplicated, copied, sold, resold or otherwise exploited for any commercial purpose without the prior written consent of SHCOE.
- Library Trademarks.** Library agrees that, during the term of this Agreement, SHCOE may include Library in SHCOE's Library listings and may place Library's name and logo, if requested, on SHCOE's Online Web site and in collateral marketing materials relating to SHCOE's products and services. Library hereby grants SHCOE the right to use Library's trademarks (name and logo only) designated by Library for such uses, subject to Library's trademark/logo usage guidelines, if any, provided by Library to SHCOE.
- SHCOE Trademarks.** SHCOE hereby grants Library and Foundation permission to use SHCOE's name and qualifications, for Library to use in advertising or promoting COHS. SHCOE agrees that, during the term of this Agreement, Library and Foundation may include SHCOE in Library listings and in collateral marketing materials relating to Library's products and services. SHCOE hereby grants Library and Foundation the right to use SHCOE's trademarks (name and logo only) designated by SHCOE for such uses, subject to SHCOE's trademark/logo usage guidelines, if any,

provided by SHCOE to Library and Foundation. Library and Foundation shall obtain the prior written consent of SHCOE before each use of SHCOE's information for advertising or promotion. SHCOE reserves the right to terminate any such use upon ten (10) days written notice to Library and Foundation.

7. **Marketing Support.** SHCOE shall provide Library and Foundation with digital marketing materials and assistance to promote COHS as determined by SHCOE.
8. **Marketing Requirements.** Library shall promote COHS on Library's website including, at a minimum, a link to COHS and student enrollment. Library shall prominently list COHS on Library's website.
9. **Taxes.** Foundation shall be responsible for paying applicable federal, state, local and other taxes, if any, applicable to this Agreement.
10. **Term and Termination.** This Agreement shall commence upon the Effective Date and shall terminate on the 31st day of December of 2023 with the option to renew for five (5) annual terms of January 1 through December 31st with a final term ending December 31, 2028. Any party may terminate this entire Agreement upon thirty (30) days' prior written notice to the other parties. Termination does not require a refund of any amounts received by SHCOE for COHS enrollments previously provided under this Agreement. Upon the expiration or termination of this Agreement, Library and Foundation shall cease all marketing of COHS and return to SHCOE all print materials, software, passwords, code and other information supplied by SHCOE, or a third party, in connection with COHS or this Agreement.
11. **Cancellation.** SHCOE expressly reserves the right to cancel or modify, without prejudice, any course offered through COHS at any time.
12. **Confidentiality.** Each party acknowledges that, from time to time, each party may receive confidential and proprietary information of the other parties ("Confidential Information"). Each party agrees that, during the term of this Agreement and for a period of two (2) years after termination of this Agreement, it will take appropriate steps to protect the other parties' Confidential Information from unauthorized disclosure, and that it will not disclose the other parties' Confidential Information to any third party, and that it will not use any of the other parties' Confidential Information (other than as authorized by this Agreement) without the prior written consent of the other parties. As used herein, the term "Confidential Information" does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by the recipient or anyone to whom the recipient transmits the information, (b) becomes available to the recipient on a non-confidential basis from a source other than the disclosing party who is not bound by a confidentiality agreement with the disclosing party, (c) was known to the recipient or in its possession prior to the date of disclosure by the disclosing party, (d) is furnished by the disclosing party to others with written permission to disclose, (e) is independently developed by the recipient without reference to the Confidential Information, or (f) is required to be disclosed by legal process or rule or regulation. Each party agrees to take all reasonable steps to ensure that the other parties' Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
13. **Assignment.** This Agreement shall be binding upon the heirs, executors, administrators and permitted assigns of each party, but no assignment by any party shall be binding on the other parties without the written consent of the others; provided, however, that SHCOE may assign this Agreement without the written consent of Library or Foundation to (i) an affiliate, or (ii) a successor to all or a substantial portion of the business (by way of a sale of assets or by merger, consolidation or otherwise).
14. **Independent Contractors.** The term "Library" as used herein shall be construed as figurative only and shall not imply or in any way suggest the existence or formation by this Agreement of a partnership, joint venture or any other relationship among the parties that imposes on any of them the legal duties or obligations of the other party. Each party hereto is an independent contractor, not an agent of the other party, and shall not have the ability to legally bind the other party.
15. **Limitation of Liability.** SHCOE shall not be liable for defects in transmission, connectivity, Internet, Internet service provider, interruptions, disruptions, or delays, including those which may be caused by regulatory or judicial authorities. Nor shall SHCOE be liable for viruses unless due to their negligent acts or omissions or their willful misconduct. IN NO EVENT SHALL ANY PARTY BE LIABLE IN ANY RESPECT, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, PUNITIVE DAMAGES, ARISING OUT OF THIS AGREEMENT OR ACTS OR OMISSIONS IN FULFILLING ITS OBLIGATIONS HEREUNDER.
16. **Non-Exclusivity.** This Agreement does not give Library or Foundation exclusivity to any rights or privileges granted under this Agreement.
17. **Force Majeure.** Except for the obligation to make payments hereunder, no party shall be in breach of this Agreement by reason of a cause beyond such party's control, including, but not limited to, earthquake, flood, fire, storm or other natural disaster, acts of God, war or armed conflict.

18. **Notices.** Any and all notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to any Party hereto by any other Party shall be in writing and shall be deemed duly served, given or delivered when personally delivered, or in lieu of such personal delivery, when (a) three business days after mailing, return receipt requested, or (2) one business day after being sent via overnight mail, to the following addresses, or when delivered by email, when the recipient, by an email sent to the email address for the sender or by a notice delivered by another method in accordance with this section, acknowledges having received that email. An automatic "read receipt" does not constitute acknowledgement of an email for purposes of this section.

To SHCOE:

Smart Horizons Career Online Education
Andra Spurlock, VP Finance & Contracts
P.O. Box 368
Lawton, OK 73502
aspurlock@shcoe.org

To Library:

With a copy to:

The Office of the Fulton County Attorney
141 Pryor Street SW, Suite 4038
Atlanta GA 30303

To Foundation:

Atlanta-Fulton Public Library Foundation
One Margaret Mitchell Square
Atlanta, GA 30303

Any party may change the notice (either of person to be notified or address change) by serving notice at least 10 days in advance of the effective date of the change.

19. **Publicity.** Except as otherwise provided herein, no party may, without the other parties' prior written consent as to each use, publish any press release, advertising, sales literature or other publicity or statements relating to the existence or substance of this Agreement or the relationship among the parties created by this Agreement.

Except as otherwise provided herein, no party shall use any of the names, service marks or trademarks of the other parties in any of its advertising or marketing materials.

20. **Governing Law.** This Agreement, the relations, rights and duties of the Parties among themselves and all matters pertaining to this Agreement shall be governed by, and construed in accordance with, the laws of the

State of Florida, without regard to its conflict of law principles.

21. . In the event any matter or dispute arises between the Parties to this Agreement with respect to the matters set forth herein, the parties first agree to submit the dispute to mediation before a certified mediator.

22. **Enforceability; Offset.** If any provision contained in this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of that provision in every other respect and the remaining provisions of this Agreement shall not be in any way impaired. Any amounts owed SHCOE by Foundation under this Agreement or otherwise may be offset against amounts owed by SHCOE to Foundation.

23. **Waivers and Amendments.** Any waiver of any term or condition of this Agreement, or any amendment or supplement to this Agreement, shall be effective only if in writing and signed by the parties. In the event of a conflict between a provision of an amendment to this Agreement and the body of this Agreement, the provision contained in the amendment shall prevail. A waiver of any breach or failure to enforce any terms or conditions of this Agreement shall not in any way affect, limit or waive any other term or provision or a party's rights under this Agreement at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

24. **Entire Agreement.** This Agreement, including any addenda and exhibits attached hereto and made a part hereof, comprises the entire agreement and understanding of the parties regarding the subject matter hereof and supersedes any and all prior and contemporaneous agreements and understanding, whether oral or written, among the parties regarding such subject matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by either party, or by anyone acting on the behalf of any party, which are not embodied herein.

25. **No Third Party Rights.** Except as provided herein, nothing contained in this Agreement is intended or shall be construed to give any person, other than the parties hereto, any legal or equitable right, remedy or claim under this Agreement or any provision contained herein other than as specified in this Agreement.

26. **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart shall be deemed to be an original instrument, but all counterparts together shall constitute but one agreement. A counterpart of this Agreement signed and transmitted by facsimile or other electronic means shall be treated as an original, executed document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Smart Horizons Career Online High School, LLC d/b/a Smart Horizons Career Online Education

By: _____

Printed Name: _____

Title: _____

Atlanta Fulton Public Library Foundation:

By: _____

Printed Name: _____

Title: _____

FULTON COUNTY, GEORGIA

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:

Tonya R. Grier
Clerk to the Commission

APPROVED AS TO FORM

Office of the County Attorney

EXHIBIT A
CAREER ONLINE HIGH SCHOOL

SHCOE shall make available to Library, to offer to Library's Students, COHS, including course materials, online instructors, course hosting by SHCOE and evaluation. SHCOE shall provide access to COHS through a portal which is linked to Library's website.

1. **Services.** The services of the COHS program include:

- a. Unlimited access to the Smart Horizons Marketing and Readiness Tool (SMART) that allows prospective students to determine if they would like to participate in the program and determine eligibility. Eligibility will be based on personal information, including but not limited to age, high school diploma status, accessibility to program resources, and interview results. Once a prospective student is deemed eligible, Library will provide prospective student access to two-week pre-requisite course that is comprehensive enough to determine if students have sufficient knowledge and determination necessary to begin the high school classes. Results of the pre-requisite course will be provided to Library for Library to determine if student shall be awarded a COHS Scholarship provided by the Foundation.
- b. Branded enrollment portal configured to provide secure, encrypted, password-protected access and single sign on capability.
- c. Over one hundred (100) online semester courses in the areas of Language Arts, Mathematics, Science, Social Studies and Career Certificate Electives.
- d. Transcript analysis for each student awarded a COHS Scholarship to determine the student's status of acceptable and transferrable credits and coursework necessary to receive a high school diploma from the COHS.
- e. Eighteen (18) month access for each Student that meets the pre-requisite and enrolls as a student in COHS meeting all COHS Scholarship requirements.
- f. Career certificates for all career majors successfully completed by Students.
- g. Academic coaches (certified teachers) available via email, SMS, or phone.
- h. Official high school diplomas for Students who satisfy all graduation criteria as set forth by SHCOE under the purview of its Cognia (formerly AdvancED) District Accreditation.
- i. Extensions for qualifying students available for Student, Foundation, or Library to purchase.

2. **Price.**

COHS Prepaid Scholarships - The cost of each COHS Scholarship is one thousand one hundred ninety-five dollars (\$1,095).

COHS Extensions - SHCOE offers various extension options depending upon the number of semesters remaining for a Student to complete the COHS program. The extension options available are:

Extension Option	Qualifying Students	Price to Library/Foundation
3-month	Students with 6 semesters or less remaining	\$250.00
6-month	Students with 7-12 semesters or less remaining	\$500.00
9-month	Students with 13-18 semesters or less remaining	\$750.00

- 3. **Invoicing and Payment.** SHCOE shall submit an invoice to Foundation upon receipt of order. Payment shall be due within thirty (30) days of receipt of each invoice. Invoices shall be sent to Jennifer Artigue at jartigue@afplf.org.
- 4. **Admissions Criteria.** All students entering COHS must be at least nineteen (19) years of age prior to the first day of class and have successfully completed the eighth (8th) Grade at an accredited institution. Minors will be required to obtain parental consent to enrollment and acknowledgement of responsibility. SHCOE shall be solely responsible for admission of Students to COHS.
- 5. **Cancelled Enrollments.** If a Student is withdrawn from COHS within thirty (30) days of enrollment, that Student will be considered a Cancelled Enrollment. The COHS Scholarship will remain available and the Foundation and Library may use that COHS Scholarship for another Student.

6. **Terminations.** SHCOE reserves the right to terminate a Student's enrollment at any time for several reasons, including, but not limited to, inactivity or failure to comply with SHCOE's rules and policies or failure to comply with the terms and conditions set forth in the SHCOE Student Handbook. SHCOE further reserves the right to modify the rules and policies in the Student Handbook, and any such revisions will be posted online at the student login page.