

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2016, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

NOVA SOUTHEASTERN UNIVERSITY, INC
(hereinafter referred to as "Provider")
whose principal place of business is
3301 College Avenue, Fort Lauderdale, Florida 33314

WHEREAS, SBBC recognizes the advantage of working cooperatively with community agencies to increase the number of prekindergarten children who receive special education; and

WHEREAS, Provider has the capability of providing special education to prekindergarten students with disabilities, and medically fragile students; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2016 and conclude on June 30, 2017.

2.02 **Eligibility.** Prekindergarten students with disabilities eligible to attend Provider’s program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.** Provider will make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.

SBBC, if necessary, will provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with authorization from the Cadre Director and Chief Performance and Accountability Officer.

Provider will ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid FL educator's certificate, that a Certificate Issuance Request form be submitted to the SBBC's Certification Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the district Certification Department.

An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 **Administrative Responsibility.** The director of SBBC's Department of Exceptional Student Education (ESE) will assign a designee (the name of such person to be furnished in writing to the Provider) to be responsible for reporting the instructional Full Time Equivalent (FTE) and maintaining necessary audit documentation. The Exceptional Student Education designee will authorize payment to the Provider on a monthly basis for eligible exceptional students and be responsible for maintaining audit file for funds paid to Provider from the generated FTE.

Provider is responsible for the supervision of the instructional and program staff, including providing the Exceptional Student Education designee responsible for reporting the instructional and transportation FTE, with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

Provider will adhere to the Office Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and Part B/619 Programs. Florida Department of Education has adopted the Battelle Developmental Inventory-II (BDI-II) as the instrument to gather the outcomes areas for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider must also evaluate all exiting students utilizing the BDI-II by the end of their last year of Preschool or before dismissal of the program which ever comes first. A photocopy of the BDI-II protocol is to be sent to SBBC within two weeks of the evaluation in order to process the instrument for the State.

2.05 **Technical Assistance/Staff Training.** SBBC will provide technical assistance to the Provider in interpreting and implementing State Board of Education Rules and School Board policies related to eligibility and placement of students with disabilities, provision of therapy through on site observations, visits, and through speech language, occupational, or physical team meetings.

Provider will provide twelve (12) hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and Provider.

Provider will be responsible for training new staff hired after the initial training. SBBC will provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

2.06 **Guidelines Medically Related Health Practices.** SBBC will provide guidelines for medically related health services practices and procedures.

Provider will comply with SBBC'S medically related health services practices and procedures; and ensure that release time is provided to staff to attend medically related health services staff development activities. Provider will purchase necessary supplies related to the implementation of the health services practices.

As per the Florida Nurse Practice Act, provider will submit detailed health documentation including nursing care plan relevant to the student's medical diagnosis. Provider will ensure there is Professional Registered Nurse clinical supervision for Licensed Practical Nurses (LPN) who is hired by the provider.

Provider will provide Coordinated Student Health Services (CSHS) the transportation schedules of the Medical Fragile student's by the third week of school. Provider will inform CSHS of all changes to the Medical Fragile Student's transportation schedule throughout the school year.

2.07 **Staffings.** SBBC will provide a person who is qualified to be the designee of the Director of Exceptional Student Education to attend all initial eligibility and placement staffings. Provider will organize, coordinate and conduct IEP (as hereinafter defined) meetings, interims and reevaluations on students who are eligible exceptional students as defined in Section 2.02 and are enrolled with the Provider.

2.08 **Program Review/Audit.** SBBC will reserve the right to review the instructional program provided by the Provider, and audit records and bookkeeping procedures in compliance with this Agreement. A thirty (30) day written notice will be given prior to any such review. In conducting such review, and/or audit, SBBC will not interfere with the business operations of Provider. Upon completion, a copy of the audit will be provided to the Provider.

2.09 **Transportation.** SBBC will provide transportation for eligible students with disabilities as defined in Section 2.02.

SBBC will schedule transportation services for students with disabilities to accommodate SBBC's six approved Early Release Days.

2.10 **Interagency Dispute Process.** In the event that a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 3.17 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) days of the service of said notice to attempt to amicably resolve the pending dispute. In the event that such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.11 **Preschool Program Design.** Provider will provide a 180-day instructional program starting on August 22, 2016 and ending on June 8, 2017 for prekindergarten students with disabilities. Prekindergarten students will attend the instructional program as specified on the IEP. Full time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider will mutually agree on the methodology, curriculum and assessment used to instruct preschool children with disabilities.

2.12 **Supervision.** Provider will provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.13 **Parent Training.** SBBC will disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

Provider will disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.14 **Classroom Equipment, Materials & Supplies** Provider will provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies which are developmentally appropriate for preschool students with disabilities.

2.15 **Individual Educational Plan (IEP)** Provider will ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives have been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

The IEP shall be reviewed annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider or the parent/guardian and conducted upon notification to all parties.

Provider will ensure that the parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.16 **Special Programs and Procedures.** SBBC will provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

Provider will comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards and the protection of confidentiality of student records, and assure that parents are provided with access to and copies of their child's records.

2.17 **Communication.** Provider will allow appropriate personnel of SBBC to confer with staff in matters regarding student screening, evaluation, eligibility, placement and IEP development.

Provider will allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC Preschool Programs at all times.

2.18 **Custodial Services.** Provider will provide daily custodial services to keep the classrooms clean and disinfected.

2.19 **Class Size.** Provider will adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher is eighteen (18) students in pre-kindergarten. Provider will ensure that pupil/teacher ratios do not exceed 6 to 1 for prekindergarten students with disabilities in a self-contained class with specialized needs, 3 to 1 for prekindergarten students in a self-contained class with intensive needs or 9 to 1 for prekindergarten students with disabilities in the Integrated class. The Dean of the Provider's Mailman Segal Center for Human Development and SBBC's director or designee of the ESE Department must agree upon exceptions to these ratios.

2.20 **Attendance/Quarterly Progress Reports.** Provider will report the attendance of the students as directed by the ESE designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, quarterly progress reports on the student's progress in meeting the educational goals shall be developed for each student and sent to the parent on a quarterly basis.

2.21 **Health/Safety Standards and Legal Compliance.** Provider will secure fire inspections and health, safety and sanitation inspections annually from agencies having jurisdiction. Provider will comply with local or state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, National Fire Protection Association 101; Life Safety 101, Section 4A-36, F.A.C and State Requirements for Educational Facilities (SREF).

A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report
Fire Department Inspection
State of Florida Sanitation Certificate

Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.

Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

Provider will prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

Provider will comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

Provider will prohibit any policy or procedure, which results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion or sexual orientation.

2.22 **Therapy Services.** Provider will provide licensed occupational therapists or certified occupational therapy assistants, physical therapists and physical therapy assistants and Speech-Language pathologists or Speech Language assistant as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and certified and/or licensed Speech Language pathologists must attend all IEP meetings and perform all evaluations including the BDI-II for exiting preschoolers.

Provider will send therapists or therapists with assistants to a minimum of one scheduled team meeting annually for any or all of the following: 1) training in policies and procedures 2) in-service training 3) participation in therapy program development 4) sharing information among therapists in both agency and school system programs.

Provider will ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

Provider will provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service (as defined in the Individuals with Disabilities Education Act) who are enrolled with the Provider as defined by Section 2.02.

2.23 **Substitutes.** Provider will provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.24 **Food Services.** SBBC will make its food services program available to the Provider for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

Provider will ensure that refrigeration is available for students' lunches brought from home.

2.25 **Early Release.** Provider will provide six (6) early release days to coincide with SBBC's approved 2016-2017 calendar. Provider will implement a program of staff development activities on those days as set forth on **Exhibit A** attached hereto and made a part hereof.

2.26 **Publicity.** Provider will identify SBBC's role as a Provider of instructional services for preschool exceptional students in any and all public documents, brochures, videos, and newsletters, which are developed for the preschool program.

2.27 **Disputes.** Provider will resolve any complaints or disputes brought to the Provider by SBBC. Potential methods of resolving disputes include informal meetings, mediation, and conferences.

2.28 **Certificate of Insurance.** **GENERAL LIABILITY:** Limits shall not be less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$2,000,000 General Aggregate. Such coverage provided by Provider may be offered via commercial insurance, self-insurance, or some combination thereof. Coverage provided via commercial insurance carrier,

shall be provided by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Service.

AUTO LIABILITY: Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

If the Provider does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit must be furnished to SBBC indicating the following: (PROVIDER Name) does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

WORKER'S COMPENSATION: Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$500,000/\$500,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

PROFESSIONAL LIABILITY: Limits shall not be less than \$1,000,000 per occurrence covering services provided under the contract.

ACCEPTABILITY OF INSURANCE CARRIERS: Such coverage provided by Provider may be offered via commercial insurance, self-insurance, or some combination thereof. Coverage provided via commercial insurance carrier, shall be provided by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Service.

The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

CANCELLATION OF INSURANCE: Providers are prohibited from providing services under this contract with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

THE FOLLOWING MUST BE ON THE EVIDENCE/CERTIFICATE OF INSURANCE:

Certificate Holder: School Board of Broward County, 600 Southeast Third Avenue,
Fort Lauderdale, Florida 33301.

The School Board of Broward County, FL, its members, officers, employees and agents are added as additional insured.

All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.

Prior the Provider's Certificate of Insurance reaching its expiration, the Provider will provide SBBC with an updated certificate of Insurance renewal.

HOW TO SUBMIT YOUR CERTIFICATE OF INSURANCE COVERAGE: Certificates of Insurance showing proof of the required insurance coverage must be furnished to SBBC Risk

Management Department in the following manner **prior to the first day of the 2016- 2017 school year**: you may FAX your certificates to 1-866-897-0424 OR you may use the following link to upload your certificates from your computer and input the fax number. The link is: <https://www.trackcertsnow.com/tcn/faxUpload/faxUpload.jsp>

Please do not mail or email certificates of insurance.

2.29 **EdPlan.** Provider will make available a meeting room with Internet access to be used to access Easy IEP during all IEP meetings and a projector to display the IEP at the staffing.

2.30 **Extended School Year (ESY).** Provider will ensure, on an individual basis, that ESY services are available if a student's IEP committee determines the eligibility and the need for these services are met in accordance with the SBBC ESY criteria. Provider will receive the pro-rata rate of the student allocation for each student meeting eligibility requirements for and receiving ESY instruction.

2.31 **Payment.** SBBC will pay Provider \$18,503 for each student annually (\$9,251.50 per semester) for each student for the 180 day program who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Funding for the first semester will begin with a projected allocation based on the student enrollment count taken on the tenth day of the one hundred eighty (180)-day school calendar for the August and September payments. The total first semester allocation will then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments will capture the increase or decrease in the allocation. Funding for the second semester will begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation will then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments will capture the increase or decrease. Payment will be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment will be provided for the instructional program which includes classroom instruction and therapy services for a maximum of twenty-five (25) hours per student. For the June and July FTE Survey period, the Provider will receive the pro rata rate for each student meeting eligibility requirements for and receiving ESY instruction. SBBC will pay the amount agreed upon and named in this Agreement within thirty (30) days of receipt of the invoice.

If during the term of this Agreement the State of Florida reduces the amount the district receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction will be passed on to the contracting agency. In the event, Provider violates any state law, State Board of Education rule, SBBC policy; Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated, for a period of three (3) years or until all state audits are conducted, whichever occurs first. This Agreement shall

have effect from July 1, 2016 to June 30, 2017. The projected total cost to the SBBC not to exceed \$2,497,905 per school year, unless this Agreement is amended by the parties.

2.32 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by Provider or any of Provider's payees pursuant to this Agreement. Provider's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Any such SBBC audit, inspection, examination, evaluation and/or reproduction shall not interfere with the business operations of the Provider. Provider's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **Provider 's Records Defined.** For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement. Any NSU personnel, other than Mailman Segal Center personnel, used in connection with this Agreement shall not be deemed NSU subcontractors.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the earlier of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall furnish Provider reasonable advance written notice (not less than two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall

be provided adequate and appropriate work space in order to exercise the rights permitted under this Section.

(e) Failure to Permit Inspection. Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any Provider's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. Provider shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to Provider pursuant to this Agreement and such excluded costs shall become the liability of Provider.

(h) Inspector General Audits. Provider shall comply and cooperate promptly with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.33 **Notice.** When any of the parties desire to give notice to the other pursuant to the terms of this Agreement, such notice must be in writing, and either (i) personally delivered with a written receipt obtained, (ii) sent by a nationally recognized overnight delivery service (e.g. Federal Express), (iii) or registered or certified U.S. Mail, postage prepaid and return receipt requested addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Coordinator, Preschool ESE
Exceptional Student Education Department
1211 NW 33rd Terrace
Fort Lauderdale, Florida 33311

To NSU: President, Nova Southeastern University
3301 College Avenue
Fort Lauderdale, Florida 33314

With a Copy to: Dean
Mailman Segal Center for Human Development
3301 College Avenue
Fort Lauderdale, Florida 33314

2.34 **Background Screening.** Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and consequently agrees that all of its personnel who (i) are to be permitted access to school grounds when students are present, (ii) will have direct contact with students, or (iii) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Except with respect to injury or damage arising out of or resulting from the acts or omissions of SBBC, its agents, employees, officers, or contractors; Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this

Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days written notice. Notwithstanding the foregoing, there shall be no cure period available to SBBC with regard to any failure by SBBC to make any payments to Provider in accordance with the Florida Prompt Payment Act as referenced in this agreement. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; the Family Education Rights and Privacy Act (commonly known as FERPA); and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this Section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this Section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the reasonable control of either party, and which cannot be overcome by reasonable diligence and without unusual or extraordinary expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All indemnification and liability obligations under Section 3.26 below, Provider's obligations to reimburse SBBC including the return of public funds, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, Provider's obligations to return public funds to SBBC, and SBBC's obligation to pay Provider shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26. **Liability.** This Section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence or wrongful acts or omissions, or its employees' acts of negligence or wrongful acts or omissions when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence, wrongful acts or omissions up to said limits.

B. By Provider: Provider, except as provided for in the last sentence of this Section, agrees to indemnify, hold harmless and defend SBBC, its agents and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents or employees; the equipment of Provider, its agents or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property,

and injury or death of any person whether employed by Provider, SBBC or otherwise. Provider shall have no indemnification related obligations to the extent any claim arises out of or results from the acts or omissions of the SBBC, its agents, employees or contractors.

3.27 **Travel.** Local travel shall not be billed as a reimbursable expense. Out of county travel and per diem may be allowable at the sole discretion of SBBC. SBBC has delegated authority to the Superintendent of Schools or his/her designee to provide prior approval to Provider for any and all travel and per diem. Should any out of county travel and/or per diem be allowed, then it shall be billed and reimbursed in compliance with the current or updated School Board Policy 3400 and/or other relevant School Board Policies.

3.28 **School Board Policies.** Provider agrees to comply with all School Board Policies furnished to the Provider and local, state and federal laws.

3.29 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

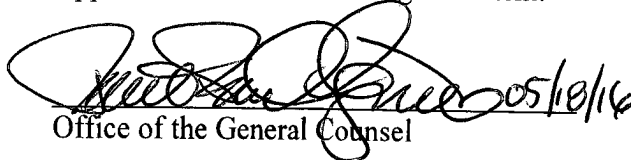
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Dr. Rosalind Osgood, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:


Office of the General Counsel

FOR NOVA SOUTHEASTERN UNIVERSITY, INC

(Corporate Seal)

ATTEST:

Julissa Batista
Asst., Secretary
-or-

Witness

Witness

NOVA SOUTHEASTERN UNIVERSITY,
INC

By Joel Berman

APPROVED AS TO LEGAL FORM	
Signature:	<u>Joel Berman</u>
Print Name:	<u>Joel Berman, Esq.</u> <u>Eric Hud</u> Vice President, Office of Legal Affairs
APPROVED AS TO BUSINESS CONTENT	
Signature:	<u>Roni Beth Leiderman</u>
Print Name:	<u>Roni Beth Leiderman</u> Dean, Mailman Segal Center

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 17 day of May, 2016 by Jaqueline Travisano of Nova Southeastern University Name of Person, on behalf of the corporation/agency. Name of Corporation or Agency

He/She is personally known to me or produced _____ as identification and did/did not first take an oath. _____ Type of Identification

My Commission Expires:

(SEAL)  **Julissa Batista**
Commission # **FF077834**
Expires: Feb. 13, 2018
www.AARONNOTARY.com

Julissa Batista
Signature - Notary Public

Julissa Batista
Printed Name of Notary

FF 077834
Notary's Commission No.

Exhibit A

Appendix A
2016-2017 School Calendar
Baudhuin Preschool, Nova Southeastern University

First Quarter

Monday, August 15-Friday August 19, 2016
Monday, August 22, 2016
Monday, September 5, 2016
Thursday, September 15, 2016
Thursday, September 22, 2016
Monday, October 3, 2016
Wednesday, October 12, 2016
Thursday, October 27, 2016
Friday, October 28, 2016

Employee Planning 1-5
Start 1st Quarter (46 days)
Holiday 1
Early Release 1
Interim Reports Issued
Day Off
Day Off
Early Release 2
Employee Planning 6

Second Quarter

Monday, October 31, 2016
Tuesday, November 8, 2016
Friday, November 11, 2016
Thursday, November 17, 2016
Wednesday, November 23, 2016
Thursday, November 24, 2016
Friday, November 25, 2016
Thursday, December 1, 2016
Monday, December 26-30, 2016
Monday, January 2, 2017
Tuesday, January 3-6, 2017
Thursday, January 12, 2017
Friday, January 13, 2017

Start 2nd Quarter (39 days)
Employee Planning 7
Holiday 2
Report Cards Issued for First Quarter
Day Off
Holiday 3
Day Off
Interim Reports Issued
Days Off
Holiday 4
Days Off
Early Release 3
Employee Planning 8

Third Quarter

Monday, January 16, 2017
Tuesday, January 17, 2017
Thursday, February 2, 2017
Thursday, February 16, 2017
Monday, February 20, 2017
Thursday, February 23, 2017
Thursday, March 23, 2017
Friday, March 24, 2017

Day Off
Start 3rd Quarter (47 days)
Report Cards Issued for Second Quarter
Interim Reports Issued
Holiday 5
Early Release 4
Early Release 5
Employee Planning 9

Fourth Quarter

Monday, March 27, 2017
Monday, April 10-Friday, April 14, 2017
Thursday, April 20, 2017
Thursday, May 4, 2017
Monday, May 29, 2017
Thursday, June 8, 2017
Friday, June 9, 2017
Wednesday, June 28, 2017

Start 4th Quarter (48 days)
Days Off
Report Cards Issued for Third Quarter
Interim Reports Issued
Holiday 6
Early Release 6 and Last Day of School
Employee Planning 10
Report Cards Issued for Fourth Quarter