

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

ALTERNATE EDUCATIONAL SYSTEMS, INC.

(hereinafter referred to as the "AES"),
whose principal place of business is
10001 West Oakland Park Boulevard, Sunrise, FL 33351

WHEREAS, SBBC must fulfill its constitutional obligation to educate children of compulsory school age; and

WHEREAS, AES accepts, as clients, children who are residents of the State of Florida and who are now enrolled in, or have applied for enrollment in educational programs under the jurisdiction of the SBBC; and

WHEREAS, AES operates a Residential Treatment Program,

WHEREAS, AES provides a residential placement for a small number of students with severe emotionally disturbance (SED) who are unable to attend an exceptional education center due to their mental health status; and

WHEREAS, AES agrees to incorporate an educational component as part of its program;
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
Agreement with Alternate Educational Systems, Inc.

30, 2017. The term of this Agreement includes a 180-day school year. Additionally, extended school year services (ESY) will be ensured on an individual basis if an Individual Education Plan (IEP) committee determines the eligibility and the need for these services are in accordance with SBBC's ESY criteria.

2.02 **SBBC's Designee.** SBBC's designee for purposes of administering this agreement shall be the Superintendent of Schools who may assign a designated administrator for monitoring compliance and educational program administration. Any official written correspondence to or from AES with regard to enforcing provisions of this agreement must be with the Superintendent of Schools and sent by United States Postal Service certified mail, return receipts requested. Routine correspondence including, but not limited to, billings, records requests, inquiries, etc. may be sent directly to the Superintendent's designated administrator.

2.03 **AES's Designee.** AES shall identify one person with whom the SBBC is to communicate on all compliance issues related to this agreement. AES, at its option, may designate another person with whom the SBBC is to communicate regarding the operation of its educational program.

2.04 **Teacher Certification.** All AES teachers must meet the certification requirements as set forth in chapter 6A-4 of the State Board of Education rules and assigned classes in accordance with the Florida Course Code Directory. In the event that AES cannot employ certified instructional personnel for any reason, the SBBC shall provide certified teachers at the expense of AES.

2.05 **Potentially English Proficient Students.** All AES teachers must be qualified in a manner prescribed by the SBBC to teach potentially english proficient students.

2.06 **Certified ESE Teacher.** AES shall employ a minimum of one ESE certified teacher to develop, implement and determine mastery of the IEP goals for the special education students.

2.07 **ESE Specialist.** The SBBC shall employ an ESE Specialist who shall participate in intake and exiting conferences, IEP preparation and staffing, and maintaining ESE compliance for students with disabilities.

2.08 **Certified Substitutes.** AES shall employ properly certified substitute teachers for permanent instruction personnel who are temporarily absent due to illness or personal reason.

2.09 **Staff Training.** AES shall provide its teachers with a minimum of ten (10) paid hours annually during which they may upgrade skills through participation in SBBC sponsored or Superintendent's Designee approved AES in-service activities. The cost of said activities, if any, shall be AES's responsibility.

2.10 **Professional Orientation.** AES shall assume responsibility for credentialing of its employees including, but not limited to, costs associated with participation in a Professional Orientation Program.

2.11 **Supervision.** Supervision and control of students while in their program shall be the sole responsibility of AES.

2.12 **Consent for Educational Program Participation.** AES shall secure and provide to the SBBC an approved Consent for Educational Program Participation form for each client enrolled in its educational program. This form, reflecting parent/guardian consent, must be signed and dated prior to educational program enrollment each time a student enters AES's residential program.

2.13 **Eligibility.** Students will be enrolled in accordance with their current ESE eligibility and/or in accordance with State Board of Education Rules.

1) In accordance with each individual student IEP, AES shall reimburse SBBC for speech, language and occupational therapy services and travel required to provide services to students residing at AES.

2.14 **Legal Entitlements.** AES shall comply with the legal entitlements of students with disabilities identified as Exceptional and those who are English proficient.

2.15 **AES Intake Procedures.** AES shall provide the SBBC, with its written procedures governing intake, evaluation, dismissal, and separation of students by July 1, 2016, which shall include documentation that the student is a Florida resident.

2.16 **Code of Conduct** AES shall provide the SBBC, upon request, its written policies regarding the conduct and disciplining of students while they are enrolled in the educational program. As a minimum, this Code of Student Conduct must include a listing of rules, what constitutes an infraction of the rules, consequences for violating the rules, student and parent/guardian signatures acknowledging an understanding of the rules and penalties for violating them, and an appeal procedure.

2.17 **Immunization.** AES shall comply with the State of Florida immunization requirements as described in the Code of Student Conduct. Compliance with the current schedule of immunizations is required to be admitted to school or to attend classes. The official document is identified as Form 680. A thirty-day waiver to provide for those students who are remanded by the courts to a program in Broward County but whose records must be requested from another County in the State of Florida.

2.18 **AES Incident Procedures.** AES shall provide the SBBC, its written procedures regarding critical incidents - bomb threats, fires and other such incidence(s) that could put students in jeopardy of bodily injury and/or cause bodily injury by July 1, 2016. Additionally, AES shall inform the SBBC, within 24 hours when a student is involved in a serious incident or is injured as defined by the SBBC. AES will report seclusions and restraints to the SBBC and the parent in the manner prescribed by Florida Department of Education and Section 1003.573, Florida Statutes.

2.19 **Student Meals.** The SBBC shall provide access to meals, breakfast and lunch, for free and/or reduced lunch eligible students. Non-eligible students may purchase meals

at the standard SBBC rate. AES shall transport meals from the SBBC identified public school to AES at a time established by the SBBC.

In lieu of 2.19 above, AES may provide meals, breakfast and lunch, to students at no cost to the students.

2.20 **Transition** The SBBC and AES mutually agree that all students' effective transition, both short and long-term, to the home, community, school and/or the work environment must be at the program intake stage and continue throughout the program and/or treatment implementation. The transition plan shall include but not be limited to, the following:

- a) Identification of the student's assessed strengths, competencies, and needs relating to survival/coping independent living skills; crisis intervention/stress management/conflict resolution skills; social skills; employability skills; health/mental health/medical status; legal status, existing support network; and education progress and status;
- b) Realistic, meaningful and achievable goals and objectives;
- c) Strategies to address specific needs; and
- d) Recognition of exemplary progress, achievement, or demonstration of leadership.

AES shall schedule a meeting with school personnel to establish a transition plan before the student is withdrawn from the program, with recommendations for the student's discharge and aftercare. AES shall provide the SBBC with a copy of each student's transition plan.

2.21 **Attendance.** AES agrees to comply with the SBBC's attendance policy as described in the Code of Student Conduct in order to prevent truancy and promote school attendance.

2.22 **Program Completion.** AES shall inform the SBBC of a student's program completion date a minimum of 30 days prior to dismissal to the fullest extent possible to ensure an IEP meeting can be held to determine continued ESE eligibility, ongoing educational needs and the completion of the educational transition process. If notice is not possible due to individual student needs, the SBBC may not be able to complete all aforementioned processes.

2.23 **Curriculum.** The responsibility for administration of the instructional program rests with AES and they shall provide a school day that is no more than 300 student contact minutes in length.

2.24 **Academic Placement.** AES shall conduct an academic assessment of each student upon intake. The results of this assessment combined with the student's previous class schedule and educational goals shall determine the instructional strategies employed while the student is enrolled in AES's educational program. The SBBC shall provide AES with a student schedule outlining a course of study that the student is to follow. For students with disabilities, the ESE teacher shall modify the curriculum as stated on the IEP.

2.25 **Materials and Supplies.** AES shall provide age/ability-appropriate classroom furniture, equipment and instructional materials. Upon request, the SBBC shall provide AES with a list of state-adopted textbooks, recommended instructional materials and suggested vendors from whom these items may be purchased or place an order on behalf of AES.

2.26 **SBBC Standards of Service.** AES shall meet the minimum instructional requirements of the Florida Standards for student achievement, and the SBBC's standards of service.

2.27 **Academic Records.** AES shall maintain individual achievement records in a form prescribed by the SBBC for each student. Included therein must be a record specifying which competencies have been mastered, the date on which mastery was achieved, and the signature of the certified teacher verifying mastery.

2.28 **Student Evaluation.** AES shall evaluate the progress of students enrolled in its educational program. Term reports and/or grades-in-progress shall be issued based upon students' work while enrolled in AES's program. Upon program exit, all student records must be transmitted to the Superintendent's designee.

2.29 **Academic Climate.** AES's curriculum shall be challenging, provoke critical thinking, and incorporate survival skills, goal setting, and the achievement of socially acceptable behavioral patterns. Instruction shall facilitate learning and build self-esteem by incorporating a variety of modalities.

2.30 **Instructional Staff Ration.** AES classes shall not exceed an average daily attendance pupil/instructional staff ration of 10:1.

2.31 **Standardized Testing.** SBBC shall provide testing materials as required by state and district guidelines. AES shall initiate testing in accordance with the district's testing calendar and procedures.

2.32 **Facilities.** The facilities shall be provided and maintained by AES and shall be located at 5925 McKinley Street, Hollywood, FL 33021, or at another site approved by the Superintendent's designee.

2.33 **Safety Requirements.** AES will comply with the facility safety requirements embodied in the State Uniform Building Code for Public Educational Facilities and the Florida Department of Education's State Requirements for Educational Facilities (SREF) 2014, especially those pertaining to fire safety, storage of hazardous materials, exit marking, lighting, ventilation, evacuation and occupancy loads. Student classrooms must provide a minimum of twenty-five usable square feet per pupil. Instructional personnel must be provided adequate space for desk, file cabinets, instructional materials, and secured storage of SBBC-owned equipment and confidential documents, such as student tests and records.

2.34 **Certificates.** AES shall maintain current sanitation, health and fire inspection certificates for all buildings used as part of its educational program. AES will conduct monthly fire drills and submit documentation of these drills to the Superintendent or designee.

2.35 **Building.** AES shall maintain buildings used to house students in a state of clean and good repair and submit to SBBC inspections upon request.

2.36 **Testing and Staffing Room.** AES shall make available a quiet, private room for SBBC sponsored psychological evaluations and ESE and/or ESOL staffings.

2.37 **Initial Payment.** The SBBC shall make initial payment to AES upon final Budget Adoption by the SBBC. The initial payment shall cover all invoices received to date. From that time equal payments shall be monthly provided AES has invoiced the SBBC for the agreed upon amount at least twenty (20) calendar days prior to the payment due date.

2.38 **Monthly Distribution.** AES's payments shall be based upon an equal monthly distribution generated by full-time equivalent students enrolled in AES's educational program, not to exceed forty (40) unweighted full time equivalent (UFTE) students. The rate of payment for each UFTE student shall be 80% of the state-based student allocation (BSA), including the district cost differential (DCD) multiplied by the district's cost factor. Shortfall reimbursements from AES will be made by June 30, 2016 to the SBBC.

2.39 **Changes to Funding Formula.** If, at any time during the term of this Agreement, the State Department of Education changes the SBBC's formula allocation of funds, said increase or decrease shall be passed along AES on a pro rata basis.

2.40 **Funding Loss.** In the event AES violates any state law, Board of Education rule, School Board policy, and/or other covenant set forth herein, and said violation results in a loss of funding to the SBBC, AES shall reimburse the SBBC for the full amount of the loss. This provision shall remain in force, even if the agreement is terminated, for a period of three (3) years or until all state audits are conducted, whichever occurs first.

2.41 **FTE Membership Collection.** AES's full-time equivalent membership shall be counted during the official FTE survey weeks in July (for summer school), October, February. Failure by AES to meet targeted projections during these established weeks shall result in a reduction of funds and an appropriate adjustment in monthly payments.

2.42 **Student Membership.** Membership - A student is in membership when he/she is officially assigned (not withdrawn) to a course or program by the SBBC. To be reported for funding, each student must be enrolled and scheduled appropriately in the state automated data system. All course identification information must be accurate such as state approved course number, section number, period number, days per week, and class minutes.

2.43 **FTE Attendance Collection.** Attendance - The student must be in attendance in class at least one day during the FTE survey week or one of the six days/classes proceeding the survey week. The presence, absence or tardiness of each student shall be checked

each day and recorded daily in the Automated Student Attendance Recordkeeping System. To comply with the rules, a pupil is in attendance if actually present at the school site or away from school on an approved field trip.

2.44 **Attendance Collection Procedures.** AES is required to take attendance on a daily basis. Attendance reports must be transmitted by telephone facsimile to the Superintendent's Designee no later than 11:00 a.m. Eastern Time each day during the school year. This report shall also include any students who arrived tardy the previous day. (AES must provide a telephone line, at no cost to the SBBC, for an SBBC provided telephone facsimile machine for SBBC use only.) Attendance records must be maintained in a manner prescribed by the SBBC, which includes but not limited to designated student attendance cards which reflect "homeroom" (once a day), attendance status and the Teachers' grade books which reflect attendance in each class period on the student's schedule, until such time AES is authorized by the SBBC to dispose of said records, or until the expiration of this agreement when all such records shall be surrendered to the SBBC.

2.45 **Annual School Calendar.** The academic program must operate a minimum of 180 days for the regular term and may operate on a flexible calendar, which differs from the approved SBBC calendar. This flexible calendar must coincide with the fiscal year calendar and must be attached (**Attachment C**). Failure to be in operation on designated school days (SBBC calendar or flexible calendar) shall be considered a default.

2.46 **Distribution of Funds.** One hundred percent (100%) of the funds paid by the SBBC must be used to support AES's educational program. Eighty percent (80%) of the funds paid by the SBBC must be used for Direct Classroom Expenses limited to instructional personnel (with student contact) salaries and benefits, classroom materials and supplies, and classroom equipment.

2.47 **Student Performance.** The SBBC shall periodically evaluate the quality of AES's educational program at the SBBC's expense. The Superintendent of Schools shall give AES ten (10) calendar days prior notice by United States Postal Service certified mail, return receipt requested. AES shall cooperate with the SBBC employees, appointees, and/or agents as they attend to their assigned task. Upon development of a final report, AES shall be given twenty (20) calendar days to react and draft a response which shall be included in the report to the SBBC.

2.48 **Financial Record Maintenance.** AES shall maintain all financial records related to the educational component of the program for three (3) years.

2.49 **Quarterly Financial Reports.** AES shall provide a financial accounting of all expenditures toward the educational component of the program on a quarterly basis. The accounting report shall be in accordance with forms provided by the Superintendent's designee and shall be delivered to the Superintendent's Designee within ten (10) days after the close of each quarter.

2.50 **Independent Audits.** The SBBC, at its option, may desire to account for funds paid to AES through an independent audit at the SBBC's expense. If the SBBC elects to exercise this option, the Superintendent of Schools shall give AES ten (10) calendar days prior notice by United States Postal Service certified mail, return receipt requested. AES shall cooperate with the SBBC's employees, appointees, and/or agents as they attend to their assigned task. Upon development of a final report, AES shall be given twenty (20) calendar days to react and draft a response which shall be included in the report to the SBBC.

2.51 **Grievance Procedure.** In the event that a dispute arises under this agreement, the parties agree to the following dispute resolution measures:

- Step 1 is resolution of the dispute at the Exceptional Student Education Director level.
- Step 2 is resolution of the dispute at the Chief Academic Office level or designee.
- Step 3 is resolution of the dispute by the Superintendent of Schools or designee.

2.52 **HIPAA Compliance.** AES agrees to adhere to all applicable HIPAA guidelines as they relate to SBBC students and to enter into a business associate agreement (**Attachment A**) with the SBBC regarding HIPAA rules, regulations and procedures. Because AES may access, use and disclose HIPAA-covered information from SBBC, SBBC is considered the "Covered Entity" and AES is considered the "Business Associate" in the HIPAA agreement. A copy of the HIPAA agreement is attached and incorporated as **Attachment A**.

2.53 **FERPA Compliance.** AES shall adhere to all applicable FERPA guidelines with regard to confidentiality of student records and contained in **Attachment B** which is attached hereto and incorporated herein by reference.

2.54 **Inspection of AES's Records by SBBC.** AES 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 AES'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 AES or any of AES's payees pursuant to this Agreement. AES'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. AES'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) **AES's Records Defined.** For the purposes of this Agreement, the term "AES'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.

(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 AES's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to AES pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide AES reasonable advance notice [not to exceed 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 AES'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 AES 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 AES'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 AES in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by AES. If the audit discloses billings or charges to which AES is not contractually entitled, AES 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. AES 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 AES 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 AES pursuant to this Agreement and such excluded costs shall become the liability of AES.

(h) Inspector General Audits. AES shall comply and cooperate immediately 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.

2.55 **Background Screening:** AES agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) 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 AES or its personnel providing any services under the conditions described in the previous sentence. AES 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 AES and its personnel. The parties agree that the failure of AES 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. AES 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 in AES's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.56 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, 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 paragraph. 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: Executive Director
Exceptional Student Education & Student Support Services
School Board of Broward County, Florida
Arthur Ashe Campus
1701 NW 23rd Avenue, Room 277
Fort Lauderdale, FL 33311

To AES: David Ferguson, President
Alternate Educational Systems, Inc.
10001 West Oakland Park Boulevard
Sunrise, FL 33351

With a Copy to: Site Administrator
Alternate Educational Systems, Inc.
5925 McKinley Street
Hollywood, FL 33021

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 AES 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 AES 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 notice. 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 contract 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 fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; 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, contractors 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, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, 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, state and local laws, SBBC policies, 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.** **Attachments A, B and C** 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 control of either party, and which cannot be overcome by reasonable diligence and without unusual 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 representations and warranties made herein regarding indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Indemnification.** 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 its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence up to said limits.

B. By AES: AES agrees to indemnify, hold harmless and defend SBBC, its agents, servants 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, servants 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 AES, its agents, servants or employees; the equipment of AES, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of AES or the negligence of AES'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 AES, SBBC or otherwise.

3.26 **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.

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FOR SBBC

(Corporate Seal)

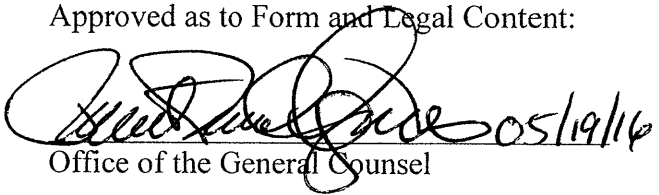
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Dr. Rosalind Osgood, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:


Office of the General Counsel

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FOR ALTERNATE EDUCATIONAL SYSTEMS, INC.

(Corporate Seal)

ATTEST:

ALTERNATE EDUCATIONAL SYSTEMS, INC.

By

[Handwritten Signature]

_____, Secretary

-or-

Witness

Witness

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 June, 2016 by David Ferguson of

Alternate Educational Systems, on behalf of the corporation/AES.

He/She is personally known to me or produced identification and did first take an oath.

My Commission Expires:



Michelle Thomas
Signature - Notary Public

Michelle Thomas
Printed Name of Notary

#EE853908
Notary's Commission No.

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is made and entered into as of this _____ day of _____, 20____ (the "**Effective Date**"), by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "**SBBC**" or "**Covered Entity**"),
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

ALTERNATE EDUCATIONAL SYSTEMS, INC.
(hereinafter referred to as "**Business Associate**"),
whose principal place of business is
10001 West Oakland Park Boulevard, Sunrise, FL 33351.

WHEREAS, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined at 45 C.F.R. §160.103; and

WHEREAS, SBBC and Business Associate may share Protected Health Information ("PHI") (as defined below) in the course of their relationship; and

WHEREAS, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "Business Associate Requirements"); and

WHEREAS, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("**PHI**") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

WHEREAS, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of ePHI.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 – RECITALS

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:

Attachment A

- (a) "**Breach**" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.
- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors and assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (f) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (g) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (h) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (i) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (j) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth at 45 C.F.R. Parts 160 and 164, subparts A and E.
- (k) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (l) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (m) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (n) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth at 45 C.F.R. Parts 160 and 164 Subpart C.
- (o) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

ARTICLE 2 – SPECIAL CONDITIONS

2. Obligations and Activities of Business Associate Regarding PHI.

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI following the first day on which Business Associate knows of such Breach or following the first day on which Business Associate should have known of such Breach.
- (f) For the Breach of Unsecured PHI in its possession:
 - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors :
 - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
 - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.

Attachment A

3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to by Federal and/or Florida law.
 - (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent's or subcontractor's subcontractors.
 - (h) Business Associate agrees to provide access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set that is not also in SBBC's possession, to SBBC in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
 - (i) Business Associate agrees to make PHI available for amendment and incorporate all amendments to PHI in a Designated Record Set that SBBC directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of SBBC or an Individual in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at a request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
 - (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
 - (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.

- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

3. Permitted Uses and Disclosures of PHI by “Business Associate”.

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC as previously agreed to by the parties (the “Service Agreement”) provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- (c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

4. Obligations of SBBC Regarding PHI.

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled with ten (10) business days prior written notice to Business Associate to audit Business Associate from time-to-time to verify Business Associate compliance with the terms of this Agreement.

SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate normal operations.

5. Security of Electronic Protected Health Information.

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of “electronic protected health information” (as defined in 45 C.F.R. §160.103) (“ePHI”) on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including “Business Associate”.

6. Compliance with EDI Rule.

Business Associate agrees that, on behalf of SBBC, it will perform all transactions for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its functions on behalf of SBBC.

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

7. Subsequent Legislative or Regulatory Changes.

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA in general shall be deemed to amend this Agreement to incorporate said changes without further action.

8. Amendment.

The parties agree to take any and all actions necessary to amend this Agreement from time to time so that SBBC is in compliance with the Privacy Rule, the Security Rule, the HITECH Act and HIPAA in general. The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

9. Term and Termination.

- (a) ***Term.*** This Agreement shall be effective as of the Effective Date and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) ***Termination for Convenience.*** This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) ***Termination for Cause by SBBC.*** Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice of such breach to Business Associate, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, for example, if SBBC makes illegal demands on Business Associate, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Covered Entity.

- (d) ***Effect of Termination.*** Except as set forth in this Section 9(d), upon termination of this Agreement for any reason, at the request of SBBC, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is infeasible, such as in the use of data aggregation, Business Associate shall provide to SBBC written notification of the conditions that make return or destruction infeasible. If the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that

make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

10. Indemnification.

- (a) By SBBC: SBBC agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.
- (b) By Business Associate: Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must 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 Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

ARTICLE 3 – GENERAL CONDITIONS

11. No Waiver of Sovereign Immunity.

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

12. 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. 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.

13. Non-Discrimination.

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

14. Records.

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.

15. 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.

16. 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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. 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.

18. Binding Effect.

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

19. Assignment.

Neither this Agreement nor 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.

20. 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 control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

21. 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.

22. Notices.

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. mail, postage prepaid, 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 paragraph. 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 3rd Avenue
Fort Lauderdale, FL 33301

With a Copy to: Executive Director
Exceptional Student Education and Support Services
1701 Northwest 23rd Avenue
Fort Lauderdale, FL 33311

Privacy Officer
Risk Management Department
The School Board of Broward County, Florida
600 S.E. 3rd Avenue, 11th Floor
Ft. Lauderdale, FL 33301

To Business Associate: David Ferguson, President
Alternate Educational Systems, Inc.
10001 West Oakland Park Boulevard
Sunrise, FL 33351

With a Copy to: Site Administrator
Alternate Educational Systems, Inc.
5925 McKinley Street
Hollywood, FL 33021

23. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

24. Captions.

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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.

25. 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. The person signing on behalf of "Business Associate" has authority to bind "Business Associate" with respect to all provisions contained in this Agreement.

26. No Waiver of Rights, Powers and Remedies.

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure there from granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

27. Regulatory References.

A reference in this Agreement to a section in the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA in general means the referenced section or its successor, and for which compliance is required.

28. Governing Law.

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.

29. Entire Agreement.

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

30. Interpretation.

Any ambiguity in this Agreement shall be interpreted in a manner that permits SBBC to comply with the Privacy Rule, Security Rule, the HITECH Act, HIPAA in general and any subsequent legislation or regulations otherwise affecting Business Associates.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

FOR SBBC

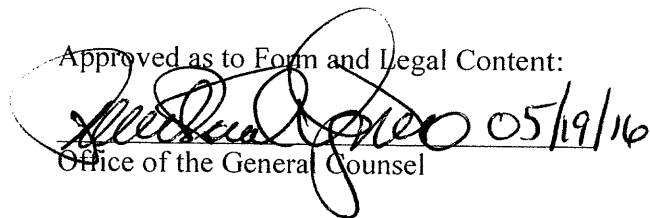
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____

ATTEST:

Approved as to Form and Legal Content:


Office of the General Counsel

FOR BUSINESS ASSOCIATE

[Signature]
Signature

David L Ferguson III
Print Name and Title
V. President

Witness

Witness

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by David Ferguson who is personally known to me or who produced _____ as identification and who did / did not first take an oath this 17 day of June, 2016.

My Commission Expires:

Michelle Thomas
Signature – Notary Public



Michelle Thomas
Notary's Printed Name

#EE 853908
Notary's Commission No.

EXHIBIT A

NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and ALTERNATE EDUCATIONAL SYSTEMS, INC. (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date or date range of the breach: _____

Date of the discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Attachment "B"

Safeguarding the Confidentiality of Student Records and Information

The parties acknowledge that Sections 1002.022, 1002.221 and 1002.222, Fla. Stat. and the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. Part 99), protect the privacy rights of students and their parents with respect to information and records created and/or maintained by public schools. The student personally identifiable information (PII) may be disclosed only in compliance with FERPA. Pursuant to FERPA, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student.

Each party participating in this Agreement further agrees to:

(1) Hold the student records and information in strict confidence and not use or disclose except as required by this Agreement or as required or permitted by law unless the parent of a student provides prior written consent for their release. All shared student records will be disclosed only to those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement. Absent consent from the parent or eligible student, student records and information will not be disclosed except as allowed by the aforementioned laws.

(2) Safeguard the student records through administrative, physical and technological safety standards to ensure adequate controls are in place to protect the student information in accordance with FERPA's privacy requirements.

(3) Continually monitor its operations and take all actions necessary to assure that the student information and records are safeguarded in accordance with the terms of this Agreement, and

(4) Ensure that all employees, appointees or agents of each party to this Agreement who are granted access to shared student records will have successfully completed (a) the background screening requirements under Section 435.04, Florida Statutes, under Level 2 screening standards and (b) a FERPA training webinar, as it may become available, at the U.S. Department of Education, Privacy Technical Assistance Center website:

<http://www2.ed.gov/policy/gen/guid/ptac/index.html>, <http://ptac.ed.gov/> including, but not limited to, <http://www2.ed.gov/policy/gen/guid/ptac/pdf/slides.pdf>

Each party to this Agreement agrees to notify the other party immediately upon discovery of a breach of confidentiality of student information and to take all necessary notification steps as may be required by federal and Florida law. A breach of the confidentiality requirements shall constitute grounds for immediate termination of this Agreement without advance notice. Any provisions within this Agreement concerning the resolution of disputes shall not be applicable to a breach of the requirements of this Attachment "B."

This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such student records are returned to The School Board of Broward County, Florida ("SBBC") or disposed of in compliance with the applicable Florida Retention Schedules and a written acknowledgment of said disposition is provided to SBBC.

2016/17 SCHOOL CALENDAR-BROWARD COUNTY PUBLIC SCHOOLS*

AUGUST				
M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

SEPTEMBER				
M	T	W	T	F
			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21		23
26	27	28	29	30

OCTOBER				
M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

NOVEMBER				
M	T	W	T	F
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30		

DECEMBER				
M	T	W	T	F
				2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

JANUARY				
M	T	W	T	F
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23	24	25	26	27
30	31			








FEBRUARY				
M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15		17
20	21	22	23	24
27	28			

MARCH				
M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

APRIL				
M	T	W	T	F
3	4	5	6	7
	11			14
17	18	19	20	21
24	25	26	27	28

MAY				
M	T	W	T	F
1	2	3		5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

JUNE				
M	T	W	T	F
			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

-  Employee Planning (no school for students)
-  Schools & Administrative Offices Closed
-  Schools Closed
-  Report Cards Issued
-  Interim Reports Issued
-  Early Release Day
-  First & Last Day of School

Hurricane make-up days in order of preference: 10/27/16, 1/12/17, 2/23/17, 3/23/17, 6/8/17

*Year-Round Schools Follow Different Calendars