

AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of July, 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. It is SBBC's responsibility to hold ESE staffings beyond the 180-day school year so that students may attend ESY.

2.02 **SBBC's Designee.** SBBC's designee for purposes of administering this agreement shall be the Superintendent of Schools who designates administrator for monitoring compliance and educational program administration. Whispering Pines school is designated for 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 and receiving Hospital Homebound services..

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. AES shall follow SBBC Substitute Teacher policy 4100.

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.

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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. AES shall follow the SBBC Enrollment and Withdrawal policy 5.1.

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. Students shall not be in the classroom until registered per School Board Policy.

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. AES shall obtain previous grades earned to substantiate student progression and grade placement. 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 current adopted 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 using current assessment tools. 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, 2017 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 preceding 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 Pinnacle or email 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.

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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. These funds will not be used for administrative cost for AES.

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 AES, in advance of AES or its personnel providing any services under the conditions described in the previous sentence. SBBC will have access to review screening. 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.

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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:

- | | |
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| 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 |

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)

ALTERNATE EDUCATIONAL SYSTEMS, INC.

ATTEST:

By _____

_____, 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 _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ of _____

Name of Person

_____, on behalf of the corporation/AES.

Name of Corporation or AES

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:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.