

FOOD SERVICE AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made and entered into as of this ____ day of _____, 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

WELLNESS IN THE SCHOOLS, INC.
(hereinafter referred to as “**WITS**”),
whose principal place of business is
PO Box 250832
New York, New York 10025

WHEREAS, as of the date hereof, WITS is a duly organized and registered non-profit corporation of the State of New York and charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code dedicated to children's environmental health, nutrition, and fitness in schools;

WHEREAS, WITS has agreed to provide its Cook for Kids and related wellness programs, as more fully described below (collectively, the “**Program**”), at the two designated schools during the 2016–2017 academic school year, subject to the conditions set forth below;

WHEREAS, the School has agreed to authorize the WITS’s volunteers, chefs, and trainers (collectively, the “**WITS Personnel**”) to operate the Program at the School during the 2016–2017 academic school year; and

WHEREAS, the parties desire to express to each other their mutual support and commitment in respect of the Program on the terms and conditions contained in this Agreement.

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 the day following SBBC approval and conclude on June 30, 2017.

2.02 **Scope of Program.** The parties shall undertake the actions set forth in Exhibit A hereto.

2.03 **Location and Hours.** WITS shall implement the Program only on School grounds, during or after school hours, and during the 2016–2017 academic school year, in each case as mutually agreed to by the parties. For purposes of this Agreement, the 2016–2017 academic school year does not include days or weeks when the school is not operating or operating with limited hours because of scheduled holiday breaks, Teacher Work Days, or Half-Days. Unless otherwise agreed to by the parties, WITS shall have no obligation to implement the Program other than at the location, and dates and times set forth in this section.

2.04 **Confidentiality; Non-Disclosure; Ownership of Property.**

(a) **Confidentiality and Non-Disclosure:** Each party acknowledges that it may receive or be exposed to certain confidential and proprietary information about the other parties. Except as set forth in the non-disclosure section below, each party shall hold confidential and shall not disclose, publish, or use for the benefit of itself or any third party, any such confidential or proprietary information. This restriction shall not apply if the confidential or proprietary information: (i) was known by the receiving party prior to receipt from the party that provided confidential information; (ii) is generally available to the public other than by a breach of this Agreement; (iii) is lawfully acquired from third parties who have a right to disclose such information; or (iv) is required to be disclosed by law or legal proceeding. As soon as commercially practical after being requested by one of the parties, the other parties will destroy or return all confidential or proprietary information, and all copies and all related work product thereof, provided by the requesting party. All confidential information will remain the property of the party that provided Agreement it and will only be used by the parties for the intended purpose stated in this Agreement. Confidential information will be kept strictly confidential and will not be disclosed to any person in any manner whatsoever, except that the parties receiving the confidential information may disclose confidential information or portions thereof to its directors, officers, employees, agents, advisors, and representatives (the “**Representatives**”) who need to know such information. If any receiving party or any of its Representatives becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar compulsory process) to disclose any of the confidential information, the receiving party shall provide the party that provided the confidential information with prompt notice of such requirement in accordance with the notice information set forth below (where such notice is not prohibited by law) so that the party that provided confidential information, in its discretion and at its sole cost and expense, may seek a protective order or other appropriate remedy.

(b) **Ownership of Property:** The School shall have no right, title or interest in or to any intellectual property of WITS, including, without limitation, any trademark, trade name, slogan, logo or other identification of WITS, and further agrees that any such intellectual property is and shall remain the sole property of WITS. WITS may provide the School with intellectual property, including, without limitation, trademarks, service marks, logos, names trade names, taglines or other proprietary designation (collectively the “**WITS Marks**”) for use in connection with the Program, and the School shall not use any of the WITS Marks without having first obtained the prior written consent of WITS in each instance for such use.

2.05 **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: Director of Food and Nutrition Services
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard, Suite 204
Sunrise, FL 33351

To WITS: Wellness in the Schools, Inc.
PO Box 250832
New York, New York 10025

With a Copy to: nancy@wellnessintheschools.org
greg@wellnessintheschools.org

2.06 **Background Screening.** WITS 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 WITS or its personnel providing any services under the conditions described in the previous sentence. WITS 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 WITS and its personnel. The parties agree that the failure of WITS 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. WITS agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from WITS’s failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

ARTICLE 3.
GENERAL CONDITIONS

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

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon thirty (30) days' written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

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 thirty (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 **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. Any such excess funds shall be refunded to SBBC.

3.08 **Public Records**. The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. WITS shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, WITS shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. WITS shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if WITS does not transfer the public records to SBBC. Upon completion of the Agreement, WITS shall transfer, at no cost, to SBBC all public records in possession of WITS or keep and maintain public records required by SBBC to perform the services required under the Agreement. If WITS transfer all public records to SBBC upon completion of the Agreement, WITS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If WITS keeps and maintains public records upon completion of the Agreement, WITS shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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.

3.13 **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.

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

3.15 **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.

3.16 **Incorporation by Reference.** **Exhibit A** attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.17 **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 affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **Survival.** All representations and warranties made herein, 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.

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

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

(a) **By SBBC:** SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or 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.

(b) **By WITS:** WITS 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 out of or resulting from the gross negligence, recklessness, or intentional wrongful conduct of WITS, its agents, servants or employees, 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 WITS, SBBC or otherwise; provided that WITS's indemnification obligations under this section shall in no event exceed an aggregate of twenty-five thousand dollars (\$25,000).

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.

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

(Corporate Seal)

FOR SBBC
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By: _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR WITS

(Corporate Seal)

WELLNESS IN THE SCHOOLS, INC.

ATTEST:

By: *Nancy Easton*
Nancy Easton

_____, Secretary

-or- *Ana de Varona*

Witness *Blaywell*

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 Miami-Dade

The foregoing instrument was acknowledged before me this 9th day of JANUARY, 2017 by NANCY EASTON of _____
Name of Person

Wellness in the Schools, Inc., on behalf of the corporation/agency.
Name of Corporation or Agency

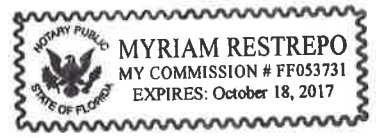
He/She is personally known to me or produced DL: 251 248 372 as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

Myriam Restrepo
Signature -- Notary Public

MYRIAM RESTREPO
Printed Name of Notary

(SEAL)



FF053731
Notary's Commission No.

EXHIBIT A

SCOPE OF PROGRAM

1. **Agreement of WITS.** Upon the terms and subject to the conditions hereof, WITS agrees that, for the duration of this Agreement it shall:

a. Implement the Program at the School and work with the School's Wellness Committee (as defined below) in an attempt to improve the School's lunch experience in both food and physical activity;

b. In implementing the Program, provide one (1) chef/wellness professional who is an employee of WITS (a "**WITS Professional**") who shall work in the school for a minimum of twenty-five (25) hours per week during the Term and shall work with any other WITS Personnel; provided that the twenty-five (25) hours per week requirement does not apply if School is not operating or is operating with limited hours during any given week; and

c. Through a WITS Professional, facilitate the following initiatives, using WITS' s best efforts:

i. Obtain the support of the School's Wellness Committee;

ii. Offer culinary training to cafeteria personnel employed at the School, in an attempt to enhance the visibility and presentation of healthy menu choices and introduce new menu items at the School;

iii. Offer nutrition and wellness education at the School, in an attempt to connect students with healthy food choices offered in the cafeteria in the School;

iv. Partner with a local restaurant/chef to support the Program with tastings, cooking classes and events on mutually acceptable terms with the Wellness Committee;

v. WITS may provide additional wellness activities to the School from and after approval of this agreement, which may include, without limitation, a WITS Cafe Day with a local chef, WITS culinary and/or nutrition classes, and WITS FIT BITS (fitness breaks), each on mutually acceptable terms with the Wellness Committee; and

vi. Liaise with and provide support to parents, students, and staff of the School, in an attempt to help the School obtain an optimal experience in WITS's implementation of the Program.

2. **Agreement of the School.** Upon the terms and subject to the conditions hereof, the School agrees that, for the duration of this Agreement, it shall:

a. Create upon approval of this agreement, and maintain, a school-based wellness committee that meets each month during each of the academic school year, is given express authority by the School to undertake the actions or provide direction to School personnel to undertake the actions or actions relating to such actions described herein or otherwise agreed

to by the Parties, and shall consist of parents of current students who attend the School, School staff and administration and current students who attend the School, as appropriate (the “**Wellness Committee**”);

b. Designate a liaison on the Wellness Committee who shall be responsible for working closely with the WITS Professional and for scheduling, organizing and presiding over monthly Wellness Committee meetings with parents, students, and other interested members of the School community; and

c. Use its best efforts to commit to, and to make, the School a healthier place for its students to nourish their minds and bodies, including without limitation provide WITS with the resources, such as sufficient facilities and School personnel, if available, that WITS requests in order to successfully implement the Program.