

AGREEMENT

THIS AGREEMENT is made and entered into as of this _15th day of September_, 2017, 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

Erahm Machado

(AKA Erahm Christopher)
(hereinafter referred to as "EM"),
whose principal place of business is
501 Glengarry Avenue
Mont-Royal, Quebec
H3R 1B1

WHEREAS, EM will endeavor to launch a district-wide initiative that provides specific trainings and services to selected student, leaders, educators, administrators and parents to expand on the Broward County Public Schools' current Social Emotional Learning focus and build an important awareness to mental health and youth issues.

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 upon execution of this agreement and conclude on June 30, 2018.

2.02 **Purpose.** The purpose of the initiative is to raise an important awareness of mental health related issues, collect valuable data on the current mental health state of the community, provide practical resources and instruction on how to be an active listener, collect valuable data on the effectiveness of the program and ultimately empower Broward County business owners, administrators, educators, parents and students to be more connected, empathetic, self-aware and responsive leaders in the community.

2.03 **Scope of Work.** EM shall provide the following services for SBBC:

- a) Schedule student, educator and community LISTEN discussion events;
- b) Design and produce the sticker and button “message anchoring” materials;
- c) Provide a polished short video (five (5) minutes maximum length) made up of video content shot exclusively by Becon TV that provides an overview of the initiative and its impact on the SBBC community. Video will include polished video editing, color correction, sound design, music, mix and graphics;
- d) EM will prepare and coordinate two (2) Sidewalk Talk active listening events open to the community and all others at the discretion of the district
- e) EM will distribute *It Only Takes a Moment* stickers and buttons at each Sidewalk Talk events.

EM shall provide the following services at twenty-nine (29) participating schools:

- f) Facilitate the discussion following up to thirty (30) school film screenings in person (Cypress Bay High School will have two (2) screenings);
- g) Deliver a 2-hour Active Listener Training for up to seventy-five (75) youth and fifteen (15) adult leaders at up to twenty-nine (29) participating schools;
- h) Distribute Active Listener Workbooks and *It Only Takes a Moment* stickers and buttons at each school screening event
- i) Collect pre/post survey data from willing and participating audience members (students, educators, community members) after each and every screening event for the purpose of quantifying value and measuring success. SBBC shall obtain written consent from the parent/guardian or student age 18 or over, prior to collecting any pre/post surveys administered to SBBC students by EM. Data collected will be anonymous and not contain any names;
- j) Facilitate eleven (11) evening film screening to parents and community stakeholders.
 - a. Deliver a 35-minute instructional Active Listener talk following each and every screening. The talk will provide the audience with basic skills and information on how to be an active listener and information on how to be a part of the Sidewalk Talk initiative.
 - b. Collect name, phone numbers, and emails from willing and participating audience members for the purpose of being contacted to participate in the Sidewalk Talk initiative and make available “It Only Takes a Moment” anchoring materials following each and every screening
 - c. Distribute Active Listener Workbooks and *It Only Takes a Moment* stickers and buttons at each school screening event.

- k) Complete and provide a Data Compilation & Evaluation Report by no later than June 30, 2018.

2.04 **Fees.** The total not to exceed and all-inclusive fees to EM, as outlined below shall not exceed **\$137,827.00**. The following fee schedule is applicable to the school program:

- a) Fee for each post-film discussion is \$1,196
- b) Fee for each Active Listener training is \$2,177
- c) Fee for data collection and reporting is \$690
- d) Fee for each school program is \$4,063 payable to EM at the completion of services (including community event);
- e) Total fee for school programs is \$117,827;

The following fee schedule is applicable to the production of the district initiative:

- f) Fee for designer and video production services is \$15,980
- g) Fee for the preparation and coordination of two (2) Sidewalk Talks is \$4,000.00
- h) Total fee for documenting and reporting the district initiative is \$19,980;

2.05 **Payment.** EM shall invoice SBBC after every two weeks of delivery of each of the Deliverables listed in Section 2.03. SBBC will pay EM within thirty (30) days of the date of EM's proper and appropriate invoice.

2.06 **Research Studies.** Under the terms of this Agreement, EM may opt to conduct a study for the purpose of evaluating the quality and effectiveness of services impacting students, parents or staff. The design, procedures, and potential impact on school and district operations of said study must be reviewed and approved by the District's Institutional Review Board (IRB) prior to the initiation of any research activities. Approval through the District's IRB and Research Review Process will ensure: (a) the purpose, scope, limitations, and duration of study is clearly outlined; (b) the protection of human subjects in the research process; (c) personally identifiable information (PII) is only used for purposes of the identified study; (d) PII is only used by representatives of the organization identified in this agreement; and (e) the safe and confidential storage and transmittal of education records. EM agrees that any disclosed information will be destroyed or returned to SBBC when no longer needed for the purposes for which the study is to be conducted. EM agrees to comply with all requirements of the District's IRB and Research Review Process, which may be accessed at:

<http://www.broward.k12.fl.us/sar/irb/index.htm>.

2.07 **Inspection of EM's Records by SBBC.** EM 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 EM'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 EM or any of EC's payees pursuant to this Agreement. EM'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. EM'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) EM's Records Defined. For the purpose of this Agreement, the term "EM's Records" shall mean any documents evidencing the receipt of payments from SBBC, such as invoices and cancelled checks.

(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 EM'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 EM pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide EM reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. Any audit by SBBC shall not take place at EM's premises, but rather, EM shall send the relevant documents to SBBC or its authorized representative.

(e) Failure to Permit Inspection. Failure by EM 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 EM'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 EM in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by EM. If the audit discloses billings or charges to which EM is not contractually entitled, EM 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. EM 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 EM 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 EM pursuant to this Agreement and such excluded costs shall become the liability of EM.

(h) Inspector General Audits. EM 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.

2.08 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: Michaëlle Valbrun-Pope
Executive Director, Student Support Initiatives
Lauderdale Manors Early Learning & Resource Center
1400 NW 14th Court
Fort Lauderdale, Florida 33311

To EM: Erahm Machado
501 Glengarry Avenue
Mont-Royal, QC H3R1B1

With a Copy to: Erahm Machado
P.O. Box 676
Linden, CA 95236

2.09 Background Screening: EM agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all 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 EM or its personnel providing any services under the conditions described in the previous sentence. EM 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 EM and its personnel. The parties agree that the failure of EM 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. EM 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 EM's failure to comply with the requirements of this Section or with Sections 1012.32 and

1012.465, Florida Statutes. SBBC agrees to conduct all background screening requirements remotely.

2.10 **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 EM: EM 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 breach by EM of its representations and warranties set forth in this section; the equipment of EM, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of EM or the negligence of EM'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 EM, SBBC or otherwise. EM represents and warrants that any products, goods or services furnished by EM to SBBC hereunder shall not violate or infringe any third-party rights (including, without limitation, any third-party rights of copyright or trademark). EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EM MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO ITS PRODUCTS, GOODS OR SERVICES. EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT, EM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2.11 **Insurance Requirements.** EM shall comply with the following insurance requirements throughout the term of this Agreement.

- a) **General Liability.** Limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.
- b) **Professional Liability/Errors & Omissions.** Limits not less than \$1,000,000 per occurrence covering services provided under this Agreement.

- c) Workers' Compensation. Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).
- d) Auto Liability. Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.
- e) Acceptability of Insurance Carriers. The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.
- f) Verification of Coverage. Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit EM time to remedy any deficiencies. Please verify your account information and provide contact details for your company's Insurance Agent via the link provided in the email upon award.
- g) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:
 - 1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
 - 2. All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
 - 3. Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668
- h) Cancellation of Insurance. EM is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations

under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. 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 (30) days written notice to cure the default. 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.** Except with respect to any actual uses by SBBC or participating schools of any of EM's products, goods or services, where applicable, the performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. For the avoidance of doubt, SBBC shall pay EM for any actual uses by SBBC or participating schools of EM's products, goods or services (including, without limitation, discussions, workshops, production, documenting, reporting, data collection and design services that take place) at the rates (including, without limitation, discussions, workshops, production, preparation, coordination, documenting, reporting, data collection and design services fees) set forth in Section 2.06 above (and, for further clarity, any actual discussions, workshops, production, preparation, coordination, documenting, reporting, data collection and design services shall trigger payment of the full fees (for such participating schools). 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. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

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

3.10 **Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education record in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law unless the parent of a student or a student age 18 or older provides prior written consent for their release;

3) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the student's records and information in accordance with FERPA's privacy requirements;

4) notify SBBC immediately upon discovery of a breach of confidentiality of education record and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, Section 501.171, Florida Statutes;

5) 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, including, but not limited to Section 501.171, Florida Statutes;

6) be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law; and

(b) All education records shall remain the property of the SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and upon termination of this Agreement shall, at SBBC's request, return to SBBC or destroy any student information and records in its possession.

(c) 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. This section shall survive the termination of all performance required or obligations existing under this Agreement.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal, state and 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. EM agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida and the Southern District of Florida shall have jurisdiction over EM.

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

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

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

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

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way, define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect 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 **Intellectual Property.** EM reserves all rights (including, without limitation, all rights of copyright and trademark) in and to the Active Listener Training Curriculum, the motion picture entitled "Listen: It Only Takes a Minute", and all other products, goods and services licensed or furnished to SBBC hereunder. All materials created or developed under this Agreement shall be the sole exclusive property of, and Listen LP shall exclusively own all rights (including, without limitation, all rights of copyright and trademark) therein and thereto.

3.26 **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.

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

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

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Kathelyn Jacques-Adams

Digitally signed by Kathelyn Jacques-Adams, Esq. -
kathelyn.jacques-adams@gbrowardschools.com
Reason: Eram Machado
Date: 2017.09.20 09:39:41 -04'00'

Office of the General Counsel

FOR EM:

Erahm Christopher Machado

Witness

Signature

Witness

Printed Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by _____
Erahm Christopher Machado
who is personally known to me or who produced _____ as
Type of Identification
identification and who did/did not first take an oath this _____ day of _____,
20____.

My Commission Expires:

Signature – Notary Public

(SEAL)

Notary's Printed Name

Notary's Commission No.