

AGREEMENT

THIS AGREEMENT is made and entered into as of this 6th day of October 2015, 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

Kendall Hunt Publishing Company
(hereinafter referred to as "[Publisher]"),
whose principal place of business is
[4050 Westmark Drive, Dubuque, IA 52004-1840].

WHEREAS, Publisher is seeking to have non-exclusive rights to use SBBC's material entitled ESOL Instructional Strategies Matrix in the publication and publication's future editions as listed as follows (hereinafter referred to as "Publications"):

- a. Fundamentals of Teaching English to Speakers of Other Languages in K-12 Mainstream Classrooms - Text, by Ariza et al
- b. Fundamentals of Teaching English to Speakers of Other Languages in K-12 Mainstream Classrooms – Ebook, by Ariza et al (identical to printed text)
- c. Editions as needed for use by people with disabilities (Americans with Disabilities Act).
- d. Customized versions/Individual chapter/Sub-units/Ancillaries.
- e. North American distribution

A copy of the ESOL Instructional Strategies Matrix is attached and incorporated as Attachment A; and

WHEREAS, SBBC is willing to grant Publisher non-exclusive rights to use SBBC's material entitled ESOL Instructional Strategies Matrix attached as **Attachment A** in the Publications.

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 by all parties and continue in perpetuity.

2.02 **Publisher Responsibilities** Publisher shall perform as follows:

2.01.1 The following Credit line shall be used on the face of **Attachment A:**
Copyright © The School Board of Broward County, Florida, Bilingual/ESOL Department. Reprinted by permission.

2.02.2 Upon Publisher's publication. Publisher shall provide SBBC with 10 copies of same publication. The 10 books shall be mailed to:

Victoria Saldala
600 SE Third Avenue
Fort Lauderdale, FL 33301

2.03 **SBBC Responsibilities** SBBC hereby grants Publisher non-exclusive rights to use SBBC's material entitled ESOL Instructional Strategies Matrix in the above-noted Publications.

2.04 **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, Bilingual/ESOL Department
Victoria Saldala
600 SE Third Avenue
Fort Lauderdale, FL 33301

To Publisher: Wendy Jochum
Production Manager
Kendall Hunt Publishing Company
4050 Westmark Drive
Dubuque, IA 52002

With a Copy to: N/A

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, provided, however, such termination by SBBC shall operate prospectively only, and the license provided herein shall remain in effect for all existing orders, adoptions, or for customers who have used the Publications before or at the time of the termination notice.

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 **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.

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

3.09 **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.

3.10 **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.

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

3.12 **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.

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

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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 Publisher: Publisher 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 Publisher, its agents, servants or employees; the equipment of Publisher, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Publisher or the negligence of Publisher'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 Publisher, SBBC or otherwise.

3.23 **School Board Policies.** Publisher agrees to comply with all School Board Policies, local, state and federal laws.

3.24 **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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:



Robert W. Runcie

Robert W. Runcie, Superintendent of Schools

By

Donna Korn

Donna P. Korn, Chair

Approved as to Form and Legal Content:

Kathleen Lagarias Stokes 9-15-15

Office of the General Counsel

FOR PUBLISHER

(Corporate Seal)

Kendall Hunt Publishing

ATTEST:

By Wendy S Jochum

_____, 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 Iowa

COUNTY OF Dubuque

The foregoing instrument was acknowledged before me this 15th day of September, 2015 by Wendy Jochum of Kendall Hunt Publishing, on behalf of the corporation/agency.

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

My Commission Expires: 2-6-2016

Cheryl Allen
Signature - Notary Public

Cheryl Allen
Printed Name of Notary

708206
Notary's Commission No.

(SEAL)



ESOL Instructional Strategies Matrix

(How We Teach is as Important as *What* We Teach)

A Accommodations	B Clear Communication	C Assessments	D Vocabulary	E Collaboration & Conversation	F Metacognitive & Metalinguistic
A1 Heritage Dictionary A2 Heritage Language (L1) Support A3 Flexible Scheduling A4 Flexible Setting A5 Flexible Timing	B1 Concise Language B2 Clear Directions B3 Enunciation B4 Pauses & Pacing B5 Pointing B6 Repeating/Paraphrasing B7 Gestures B8 Show Examples & Non-Examples B9 Demonstrations B10 Anecdote/Storytelling	C1 Rubrics C2 Presentation C3 Portfolio C4 Checklist C5 Labeling C6 Interview C7 Response Cards C8 Oral Assessment C9 Observation C10 Context-Embedded Text C11 Voting Devices C12 Cloze Test C13 Visual Representations C14 Self/Peer Assessment C15 Samples C16 Sentence Frames	D1 Etymology/Cognates D2 Semantic Feature Analysis D3 Context Clues D4 Tier II/Tier III Analysis D5 Interactive Word Walls D6 Vocabulary Games D7 Multiple Meanings D8 Phonology D9 Vocabulary Banks	Grouping Configurations: E1 Heterogeneous Grouping (Language/Content Readiness; Learner Profiles; Interests) E2 Homogeneous Grouping (Language/Content Readiness; Learner Profiles; Interests) E3 Jigsaw E4 Peer Pair E5 Reader's Theater E6 Think/Pair/Share E7 Academic Games E8 Group Presentations/Projects E9 Socratic Seminar E10 Panel Discussion E11 Debate/Defend with Evidence	F1 L1 Transfer F2 Mnemonic Devices F3 Dialogue Journals F4 Self-Correction F5 Self-Evaluation F6 Self-Monitor F7 Peer Editing F8 Associations
G Context Embedded Supports & Close Reading					
G1 Activating and/or Building Prior Knowledge G2 Chunking Text G3 Annotations & Symbols G4 Ask Inferential & HOT Questions G5 Ask Clarifying Questions G6 Modeling G7 Read Aloud G8 Think Aloud G9 Multimodal Texts G10 Visualization/Illustrations G11 Summarizing G12 Dramatic Enactments/Role Play G13 Identify Key Concepts G14 Similarities & Differences G15 Language Experience Approach	G16 Note-Taking/Outline Notes G17 Question-Answer-Relationship (QAR) G18 Reading with Specific Purpose G19 Reread Text G20 Text Features & Structural Analysis G21 Survey, Question, Read, Recite, Review (SQ3R) G22 Text Connections G23 Total Physical Response (TPR) G24 Vary Complexity of Assignment G25 Realia/Manipulatives G26 Captioning	Multimodal & Multimedia H1 Audio-Visual Applications H2 Digital Books H3 Computer Software H4 Document Camera H5 Interactive White Board H6 Tablet/Interactive Devices H7 Language Master H8 Video/Film/CD/MP3 H9 Digital Simulations H10 Translation Devices	Advance Organizers I1 Charts (Flowcharts, T-Charts, etc.) I2 Anticipation Guide I3 Cornell Notes I4 Digital Tools/Software I5 Foldables I6 Graphs/Diagrams I7 K-W-L I8 Reading and Analyzing Non-Fiction (RAN) I9 Notes TM I10 Webbing/Mapping I11 Story Maps I12 Timelines I13 Venn Diagrams I14 Vocabulary Improvement Strategy (VIS)	Additional Resources J1 Art Integration J2 Community Resources J3 Cultural Sharing J4 Celebrations J5 Field Trips J6 Guest Speakers J7 Holiday Programs J8 Multicultural Resources J9 Music/Songs/Jazz Chants	