

AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2018, 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

SOUTH BROWARD HOSPITAL DISTRICT d/b/a MEMORIAL HEALTHCARE SYSTEM
(hereinafter referred to as "VENDOR"),
whose principal place of business is
3111 Stirling Road
Fort Lauderdale, FL 33312

WHEREAS, the SBBC is in need of Athletic Trainers to provide immediate and essential services to protect the safety and welfare of students engaged in interscholastic sports; and

WHEREAS, VENDOR through the use of Athletic Trainers is willing to provide services regarding the prevention, recognition, emergency care, treatment and rehabilitation to student athletes; and

WHEREAS, VENDOR and SBBC recognize that student safety and welfare are the foremost considerations in the conduct of interscholastic athletic activities, and in particular athletic programs must be conducted with special attention for the prevention of physical injuries, minimization of severe injuries and prevention of reoccurrence of injuries; and

WHEREAS, central to athletic injuries and treatment program is the utilization of licensed and nationally certified athletic trainers, trained in the prevention and treatment of injuries that may occur during athletic activities, and

WHEREAS, SBBC issued a Request for Proposal identified as RFP 19-029V, Athletic Trainer and Physician Services (hereinafter referred to as "RFP"), dated March 16, 2018, and amended by Addendum No. 2 dated April 5, 2018, Addendum No. 1 dated April 2, 2018, of which is incorporated by reference herein, for the purpose of receiving proposals for Athletic Trainer and physician services; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide Athletic Trainer and physician services.

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 30, 2018** and conclude on **August 31, 2021**. The term of the Agreement may, by mutual agreement in writing between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period.

2.02 **Description of Goods or Services Provided.** VENDOR shall provide twenty-nine (29) nationally certified Athletic Trainers with the highest level of skill and training in the sports medicine industry as specified in their Proposal, and shall provide all other services referenced in its Proposal. See **Attachment A**.

2.03 **VENDOR Responsibilities.**

- (a) Pay Athletic Trainers under this Agreement.
- (b) Provide, at its sole cost and expense, the salary and any and all other costs and expenses, as necessary and appropriate, associated with the administrative direction of this program.
- (c) Retain State of Florida Licensed Athletic Trainers, and or licensed graduate athletic training students. VENDOR may also utilize and supervise athletic training student interns from area Athletic Training Education Programs (i.e. Nova Southeastern University or Florida International University) at each of the program sites. All members of the Sports Medicine Program will be supervised by VENDOR's Administrative Director, Manager, or Sports Medicine program designee ("VENDOR Personnel). The VENDOR Personnel shall cooperate with the SBBC's Director of Athletics and Student Activities to coordinate the activities, events and other arrangements for the Athletic Trainers contemplated for this service. The VENDOR Personnel shall provide supervision for the Athletic Trainers and shall provide coordination for the volunteer team physician participation when the volunteer team physician is available.
- (d) Athletic Trainer per diem or independent contractor employees are not entitled to any of the SBBC's employee benefit programs including, but not limited to, social security, health insurance, unemployment compensation, pension or other employee benefits unless the Athletic Trainer is also an employee of SBBC at a different role other than that of an Athletic Trainer.
- (e) Athletic Trainers shall make an initial assessment of athletes requiring services under this Agreement. Each student will be diagnosed and treated for their specific condition if the services are available at the school. If not available, the Athletic Trainers may refer the student to VENDOR's or athlete's family physician, clinic,



primary care facility or hospital of choice to assure the best continuity of care and to assure and encourage uniform standards for the coordination, education and athletic training services provided under this Agreement.

- (f) In the event an athlete is referred to a physician, a specialist or a hospital for treatment, that entity shall retain the sole and exclusive right to bill and collect from Medicare, Medicaid, Third Party payors and any other party for reimbursement, including the athlete or his/her family, for services provided to the athlete. The entity shall have the responsibility for billing and collections. All funds collected shall remain the sole and exclusive property of that entity and SBBC shall not have a claim or right to any of said funds.
- (g) The hours of operation, activities, events and other arrangements contemplated under this Agreement will be determined mutually by the program coordinators but within officially sanctioned time periods for covered practices and athletic events.
- (h) All orthopedic, athletic training and sports medicine services offered to the high schools included in the Agreement are to be exclusively offered by VENDOR (including VENDOR's agents, employees, and contractors). Vendor represent and warrant that, to the best of its knowledge, the services to be rendered by VENDOR pursuant to this Agreement are not reimbursed by any federal health care program, as that term is defined at 42 U.S.C. § 1320a-7b(f) ("Federal Health Care Program"), or any other third party payor, and that it shall bill or collect any fees from any Federal Health Care Program or any other third party payor for services rendered by VENDOR pursuant to this Agreement. Any other providers of such services must first be approved solely in writing by VENDOR before any such provider works a Broward County Athletic Association (BCAA) sanctioned event. If any such services are to be provided by a volunteer service provider, such service provider must first become an approved volunteer of VENDOR in accordance with VENDOR's standard practices, policies and procedures. VENDOR shall have no liability whatsoever or otherwise be responsible in any way pursuant to this Agreement for any such services that a service provider other than VENDOR (or VENDOR's contractors) provides to SBBC at any of the high schools included in the Agreement, including, without limitation, if SBBC or any such high school approves the provision of any such services in a manner that does not comply with this Section 2.03(h).
- (i) If reasonably necessary as determined by VENDOR, VENDOR may provide each of its trainers with an iPad or similar electronic tablet ("Tablet") (twenty-nine (29) Tablets in total) to facilitate the implementation of secure electronic documentation in order to improve communication between school administrators, BCAA leadership, and healthcare providers. VENDOR shall purchase the Tablets, however SBBC shall be responsible for payment of any cellular or wireless services throughout the tenure of the contract. Ownership of the Tablets shall at all times remain with VENDOR.

2.04 **SBBC Responsibilities.**

- (a) If employed as teachers, pay Athletic Trainers their teaching salaries, benefits and other expenses associated with their SBBC responsibilities.
- (b) Provide VENDOR's Athletic Trainers at each high school with an Automatic External Defibrillator (AED) for their exclusive and individual use while on duty



as an Athletic Trainer.

- (c) Provide VENDOR Athletic Trainers at each high school with a Weather Bug storm-warning device for their exclusive use while on duty as an Athletic Trainer.
- (d) Every effort will be made to ensure that all sports medicine equipment used in connection with the athletic program (e.g. electric muscle stimulators, ultrasound machines, ice makers, whirlpools, hydro collators, etc.) at each high school is in good working condition, maintained and serviced annually as per manufacturers' recommendations.
- (e) Provide each Athletic Trainer a locked file drawer for patient and/or hospital records.
- (f) Provide each Athletic Trainer with the supplies needed to maintain patient and/or hospital records (file folders, paper, etc.)
- (g) Provide a copy machine or access to a copy machine for patient and/or hospital records.
- (h) Provide each Athletic Trainer with administrative and or secretarial support to maintain patient and/or hospital records and obtain signed Family Educational Rights and Privacy Act (FERPA) and HIPAA consent forms from the parents of minor students, or student age 18 or older whose education records are to be shared prior to disclosing the education records, for VENDOR to provide services as described herein.
- (i) Provide each Athletic Trainer access to the school weight room for rehabilitation of athletic injuries.
- (j) Provide each Athletic Trainer with a device (walkie-talkie or radio) for communication with school personnel while they are on duty.
- (k) Provide a reasonably accessible storage area in each athletic training facility for athletic training supplies.
- (l) Provide sports medicine supplies annually for each Athletic Trainer assigned to a high school.
- (m) Provide for the purchase of appropriate sports medicine equipment annually for each Athletic Trainer assigned to a high school.
- (n) Provide regular maintenance and janitorial service (trash removal, hazardous waste removal, normal cleaning and mopping) for the athletic training room located in each school building.
- (o) Ensure that all high schools have an updated emergency action plan signed by that high school's athletic director and/or principal. Each emergency action plan shall be shared and reviewed with all school staff who have direct contact with a student athlete and is to be implemented in the event that an Athletic Trainer is not on school



grounds or is otherwise unavailable.

2.05 Cost of Goods or Services.

As full compensation for the services rendered to SBBC pursuant to this Agreement, SBBC shall pay VENDOR the following amounts (collectively, the "Compensation"):

(a) SBBC shall pay VENDOR \$696,000 annually in two (2) equal installments for services rendered under this Agreement within thirty (30) days of receipt of an invoice from the VENDOR.

(b) If Tablets are provided pursuant to Section 2.03(i), SBBC shall pay VENDOR the total actual cost of Tablet cellular service, expected not to exceed \$18,500 annually, in two (2) equal installments. Payment shall be made within thirty (30) days of receipt of an invoice from the VENDOR.

(c) Reasonableness and Fairness of Compensation. SBBC and VENDOR agree that the Compensation is (1) the product of bona fide, arm's length negotiations, (2) not determined in a manner that takes into account, in the aggregate or otherwise, the volume or value of patient referrals or other business generated by and among the parties, or any of their respective affiliates, owners, employees, or contractors, (3) commercially reasonable, and (4) to the best of the parties' knowledge, consistent with fair market value.

(d) Billing and Collection. SBBC and VENDOR represent and warrant that, to the best of their knowledge, the services to be rendered by Athletic Trainers pursuant to this Agreement are not reimbursed by any federal health care program, as that term is defined at 42 U.S.C. Section 1320a 7b(f) ("Federal Health Care Program"), or any other third party payor. Neither party shall bill or collect any fees from any Federal Health Care Program or any other third party payor for services rendered by Athletic Trainers pursuant to this Agreement.

2.06 Priority of Documents. In the event of a conflict between documents, the following priority of documents shall govern.

First:	This Agreement, then;
Second:	Addendum No. 2 to RFP 19-029V, then;
Third:	Addendum No. 1 to RFP 19-029V, then;
Fourth:	RFP 19-029V Athletic Trainer and Physician Services, then;
Fifth:	Proposal submitted by VENDOR in response to RFP 19-029V

2.07 SBBC Disclosure of Education Records.

(a) Education records shall be disclosed to VENDOR for purpose(s) stated below:

- 1) Student's health records are needed so that VENDOR has a basis of the student athlete's general health, potential health risks, limitation considerations or need for additional clearance from a specialist before being cleared to return to sport.



- 2) Student's parental contact information is needed by VENDOR in the event questions arise regarding their child's health or to inform parent that an injury has occurred and discuss course for treatment.
- (b) SBBC will provide VENDOR with the following education records:
- 1) Student health records including physical and neurocognitive impact test results
 - 2) Student's parental contact information
- (c) SBBC shall obtain written consent from each student's parent/guardian or student age 18 or older whose education records are to be shared prior to disclosing the education records listed above.

2.08 **VENDOR Confidentiality of Education Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, VENDOR 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) as applicable to VENDOR, and any other state or federal law or regulation regarding the confidentiality of student information and records if applicable. For the purpose of this Agreement, pursuant to FERPA, SBBC designates VENDOR as a school official with a legitimate educational interest in the educational records of the students who participate in athletic activities for SBBC to the extent that access to the records is required by VENDOR to carry out its responsibilities.

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) use commercially reasonable efforts to ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

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

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification



steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) if VENDOR is solely liable for a breach, prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

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

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of 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 dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for VENDOR's 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 if penalty is imposed solely due to VENDOR's conduct in violating this section, or payment of reasonable attorney's fees and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of VENDOR's breach of this covenant by VENDOR, or an officer, employee, agent, representative, contractor, or sub-contractor of VENDOR 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 conclusion of all obligations existing under this Agreement.

2.09 **HIPAA COMPLIANCE**. To the extent applicable to this Agreement, each party agrees to comply with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and any current and future regulations promulgated under either HIPAA or the HITECH Act, including without limitation the federal privacy standards contained in 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "Privacy Rule"), and the federal security standards contained in 45 C.F.R. Part 160 and Subparts A



and C of Part 164 (the "Security Rule"), all as may be amended from time to time, and all collectively referred to herein as the "HIPAA Requirements." VENDOR shall enter into SBBC's HIPAA Business Associate Agreement ("BAA") attached as **Attachment B**. VENDOR shall follow all state and federal regulations imposed on it as a Covered Entity pursuant to HIPAA. PHI may be used and disclosed only in compliance with HIPAA.

2.10 **Inspection of VENDOR's Records by SBBC.** VENDOR 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 VENDOR's applicable 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 the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **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 VENDOR'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 VENDOR pursuant to this Agreement.

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

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have reasonable access to VENDOR's facilities as appropriate and permitted by law, 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. Records containing PHI or records that are otherwise confidential shall be exempt from this provision, unless the appropriate consents are obtained.

(d) **Failure to Permit Inspection.** Failure by VENDOR 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 SBBC's denial of some or all of any VENDOR's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually entitled, VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, VENDOR 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 VENDOR 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 Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR 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.

2.11 Compliance.

- (a) **General.** SBBC and VENDOR agree that (1) each shall comply with applicable laws, regulations, and sub-regulatory guidance in the performance of their respective duties and obligations under the Agreement, (2) the Agreement is designed to meet their respective and legitimate business purposes, and (3) the Agreement is not intended, in whole or in part, to induce the other party or any of its owners, affiliates, employees or contractors to engage in any conduct that is prohibited by the Federal Health Care Program and kickback statute, 52 U.S.C. Section 1329a 7b(b), or any of its state law counterparts.
- (b) **No Patient Referrals.** SBBC and VENDOR acknowledge that none of the remuneration exchanged under this Agreement is conditioned on any requirement that either party or its owners, affiliates, employees or contractors refer patients to, or otherwise generate business for the other party or its affiliates, owners, employees or contractors.
- (c) **Exclusion.** Each party represents and warrants that it is not and at no time has been excluded, debarred or suspended from participation in any Federal Health Care Program or any other federally funded program or federal contract, including, but not limited to, Medicare and Medicaid. Each party hereby agrees to promptly notify the other party of any threatened, proposed or actual exclusion, debarment or suspension of such party from any Federal Health Care Program or any other federally funded program or federal contract.

2.12 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, Athletics & Student Activities**
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301



To VENDOR: **Aurelio M. Fernandez, III, President and CEO**
Memorial Healthcare System
3111 Stirling Road
Fort Lauderdale, FL 33312

With a Copy to: Attn: General Counsel
Memorial Healthcare System
3111 Stirling Road
Fort Lauderdale, FL 33312

2.13 **Background Screening.** VENDOR shall 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR 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 VENDOR and its personnel. The parties agree that the failure of VENDOR 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. VENDOR 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 VENDOR's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.14 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR 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, VENDOR 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. VENDOR 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 VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR 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.**

2.15 **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 VENDOR: VENDOR 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.

2.16 **Insurance Requirements**. VENDOR shall comply with the following insurance requirements throughout the term of this Agreement or maintain a self-insurance program compliant with Florida law:

(a) **General Liability**. VENDOR shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions**. VENDOR shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation**. VENDOR shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability**. VENDOR shall maintain Owned, Non-Owned and Hired Auto Liability insurance 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 required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) **Verification of Coverage**. Proof of the required insurance must be furnished by VENDOR to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify



its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms 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. VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.17 Nondiscrimination.

(a) As a condition of entering into this Agreement, VENDOR represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, VENDOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, VENDORS, suppliers, or commercial customers, nor shall VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR shall provide equal opportunity for subcontractors, VENDORS, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.18 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.

2.19 **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.

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

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 Agreement.

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 **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.



3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC or VENDOR during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a pro rata refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. 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 **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. The parties acknowledge that there is no requirement under this Agreement, or any other agreement between the parties, that any party refer any patients to any healthcare provider or purchase any healthcare goods or services from any source. Additionally, no payment arrangement under this Agreement is (i) in return for the referral of patients, if any, or (ii) in return for purchasing, leasing, or ordering services from any party. Any party may refer, or not refer, patients to the other parties and shall make such referrals, if any, based only on the professional medical judgment of the healthcare provider, and the needs and desires of the relevant patients. All consideration under this Agreement is intended to be fixed, consistent with fair market value on an arms length basis and is not intended to be determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties. It is understood that student athletes may choose to utilize other providers for sports medicine services.

3.07 **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.

3.08 **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 exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **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.

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



3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **Waiver**. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement 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.

3.17 **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.

3.18 **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.

3.19 **Agreement 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.



3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **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; SIGNATURE PAGES FOLLOW]



FOR SBBC:

(Corporate Seal)

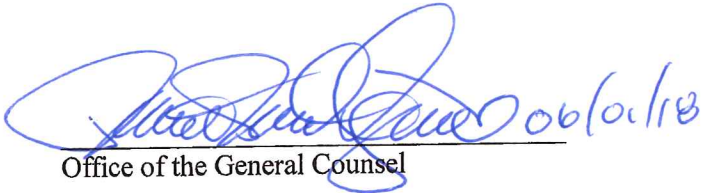
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Nora Rupert, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]



FOR VENDOR:

(Corporate Seal)

**SOUTH BROWARD HOSPITAL
DISTRICT d/b/a MEMORIAL
HEALTHCARE SYSTEM**

ATTEST:

By *[Signature]*

Name Aurelio M. Fernandez, III

Title President/CEO

, Secretary

-or-

[Signature]
Witness

[Signature]
Witness

**The Following Notarization is Required for Every Agreement Without Regard to
Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Florida

COUNTY OF Broward

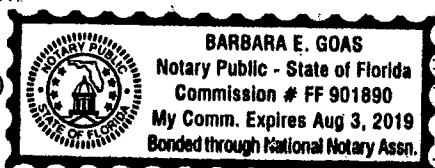
The foregoing instrument was acknowledged before me this 1st day of June, 2018, by Aurelio M. Fernandez, III of South Broward Hospital District Name of Person
aka Memorial Healthcare System, on behalf of the corporation/agency. Name of Corporation or Agency

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

My Commission Expires:

[Signature]
Signature - Notary Public

(SEAL)



Barbara E. Goas
Printed Name of Notary

FF901890
Notary's Commission No.

S:/v/allwork-use/contracts/review/1718year/180601memorial3



ATTACHMENT A

SCOPE OF SERVICES

1. Staff each high school with licensed and nationally certified Athletic Trainers.
2. The certified Athletic Trainer shall conduct clinical assessments, rehabilitation when appropriate, and administer standard techniques of first aid to the acutely ill/injured athlete, protecting the athlete from further injury.
3. The Athletic Trainer shall educate the student athlete and provide direct services to the athlete on hydration, concussion recognition and awareness, conditioning, nutrition, performance, enhancement training and injury care. All Athletic Trainers shall be certified in CPR and First Aid.
4. Before practices and games, the Athletic Trainer shall prepare athletes with pre-game taping, padding, bracing joints and limbs.
5. Athletic Trainer shall attend all football games, practices and other high trauma athletic events to provide immediate assessment, evaluation and basic treatment.
6. VENDOR shall be the primary facilitator of SBBC's concussion management program.
7. VENDOR shall be responsible for hiring, employing, insuring and paying all Athletic Trainers. SBBC does not pay any fringe benefit costs for Athletic Trainer services.
8. VENDOR shall assist SBBC in educating principals, athletic directors, coaches and school system staff on sports medicine issues through:
 - (a) Presentations to athletic directors and coaches.
 - (b) Printed materials and published guidelines on sports medicine issues such as hydration, concussion management, etc., all materials and information contained therein which shall remain the sole intellectual property of VENDOR
 - (c) Recommendations, if any as and as appropriate per SBBC, to the Department of Athletics and Student Activities.
9. VENDOR shall provide materials to SBBC's Director of Athletics and Student Activities for the promotion of the sports medicine partnership through game announcements and banner displays (i.e. gym/stadium) by SBBC at participating high schools at no additional cost to SBBC.
10. VENDOR encourages school staff to educate student athletes and their families on the importance of receiving an annual sports physical with a pediatrician or primary care physician. For student athletes and families who seek assistance in finding a primary care physician or pediatrician, VENDOR shall make available information about its physician referral line which may assist the athlete's family, at their option, in finding a physician. VENDOR will also provide access to its "HITS" program and assist eligible South Broward District Hospital residents in applying for insurance, subject to the program requirements.
11. VENDOR shall provide Athletic Trainers for all Broward County Athletic Association (BCAA) special events.

