

## 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

**ANN STORCK CENTER, INC.**  
(hereinafter referred to as "Provider"),  
whose principal place of business is  
1790 Southwest 43<sup>rd</sup> Way, Fort Lauderdale, Florida 33317

**WHEREAS**, SBBC recognizes the advantage of working cooperatively with community providers to increase the number of prekindergarten children who receive special education; and

**WHEREAS**, Provider has the capability of providing special education to prekindergarten students with disabilities and medically fragile students.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2018** and conclude on **June 30, 2019**.

2.02 **Eligibility.** Prekindergarten students with disabilities eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

- (a) Provider shall make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.

- (b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with a request from the Principal.
- (c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.
- (d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 **Administrative Responsibility.**

- (a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.
- (b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.
- (c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

2.05 **Technical Assistance/Staff Training.**

- (a) SBBC shall provide technical assistance to Provider in interpreting and implementing State Board of Education Rules and School Board policies related to eligibility and placement of students with disabilities and to the provision of therapy

through onsite observations and visits and through speech language, occupational, and/or physical therapy team meetings.

- (b) Provider shall provide 12 hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and the Provider.
- (c) Provider shall train new staff hired after the initial training. SBBC shall provide Provider with a current copy of SBBC's Special Programs and Procedures document.

2.06 **Medically Related Health Practices.**

- (a) SBBC shall provide guidelines for medically related health services practices and procedures.
- (b) Provider shall purchase necessary supplies related to the implementation of the health service practices.
- (c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.
- (d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health specific of these students.

2.07 **SBBC Disclosure of Educational Records.**

- (a) SBBC shall provide the types of education records listed in 2.07 (b), pursuant to parental consent as listed in 2.07 (c), for the development and implementation of an Individual Educational Plan (IEP)
- (b) SBBC shall provide Provider with access to the EasyIEP Electronic Records Management System and additional records of the students Provider serves. EasyIEP access shall be limited only to records of SBBC students enrolled in the specified program, and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EasyIEP contains the following records:
  - a. Individual Educational Plan (IEP);
  - b. Consent for Evaluation/Re-evaluation;
  - c. Functional Behavior Assessment/Positive Behavior Intervention Plan; and
  - d. Any other document necessary for the provision of FAPE.

Additional education records include:

- a. Progress Notes;
- b. Progress Reports; and
- c. Any other information necessary to enroll the student.

- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in section 2.07 (b) and for the purposes listed in section 2.07 (a). Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

2.08 **Provider Confidentiality of Educational Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider 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 records in strict confidence and not use or re-disclose 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) 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 administrative, physical and technological 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](mailto: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) 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 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 that media equipment is no longer in use or is to be disposed; secure erasure shall 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) Provider shall, 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 conclusion of all obligations existing under this Agreement.

2.09 **Staffing.** SBBC shall provide a person who is qualified to be the designee of the Executive Director of the ESLS Division to attend all initial eligibility and placement staffings. Provider shall organize, coordinate, and conduct individual educational plan (IEP) meetings, interims, and reevaluations on students who are eligible students with disabilities as defined in Section 2.02 and are enrolled with the Provider.

2.10 **Program Review/Audit.**

- (a) SBBC reserves the right to preview the instructional program provided by the Provider and audit records and bookkeeping procedures in compliance with this Agreement. A 30 day written notice shall be given prior to the audit, which shall be conducted within 90 days after the end of the Agreement period. The written notice and the examination shall be conducted by SBBC's Management Audit Department. Upon completion, a copy of the audit shall be provided to the Provider.
- (b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.11 **Transportation.**

- (a) SBBC shall provide transportation for eligible students with disabilities as defined in Section 2.02.
- (b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six approved Early Release Days.

2.12 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.33 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within 30 days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.13 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on August 20, 2018 and ending on June 5, 2019 for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

2.14 **Supervision.** Provider shall provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.15 **Parent Training.**

- (a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.
- (b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.16 **Classroom Equipment, Materials & Supplies.** Provider shall provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies that are developmentally appropriate for preschool students with disabilities.

2.17 **Individual Educational Plan (IEP).**

- (a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.
- (b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.
- (c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.18 **Special Programs and Procedures.**

- (a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.
- (b) Provider shall comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

2.19 **Communication.** Provider shall allow appropriate personnel of SBBC to confer with Provider staff in matters regarding student screening, evaluation, eligibility, placement, and IEP development. Additionally, Provider shall allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC preschool programs at all times.

2.20 **Custodial Services.** Provider shall provide daily custodial services to keep the classrooms clean and disinfected.

2.21 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen. Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class, six-to-one for prekindergarten students with disabilities with specialized needs in a self-contained class, or nine-to-one for prekindergarten students with disabilities in an integrated class. The Provider's President/CEO and SBBC ESLs Executive Director or designee must mutually agree upon exceptions to these ratios.

2.22 **Attendance/Quarterly Progress Reports.** Provider shall report the attendance of the students as directed by the ESLs designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, Provider shall develop quarterly progress reports on the student's progress in meeting the educational goals for each student and send such reports to the parent on a quarterly basis.

2.23 **Health/Safety Standards and Legal Compliance.**

- (a) Provider shall secure fire inspections and health, safety, and sanitation inspections annually from agencies having jurisdiction. Provider shall comply with local or state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, NFPA 101; Life Safety 101, Section 4A-36, F.A.C. and State Requirements for Educational Facilities (SREF).
- (b) A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report  
Fire Department Inspection  
Broward County Food Services Inspection  
State of Florida Sanitation Certification

- (c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.
- (d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.
- (e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.
- (f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.
- (g) Provider shall prohibit any policy or procedure that results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion, or sexual orientation.

2.24 **Therapy Services.**

- (a) Provider shall provide licensed occupational therapists (OTR) or certified occupational therapy assistants (COTA), physical therapists (PT) or physical therapy assistants (PTA), and speech-language pathologists (SLP) or speech-language pathology assistants (SLPA) as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and



certified and/or licensed SLPs must attend all IEP meetings and perform all evaluations including the BDI-II for exiting preschoolers.

- (b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.
- (c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.
- (d) Provider shall provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service who are enrolled with the Provider as defined by Section 2.02.

2.25 **Substitutes.** Provider shall provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.26 **Food Services.**

- (a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.
- (b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

2.27 **Early Release.** Provider shall provide six early release days to coincide with SBBC's approved 2018-2019 calendar. Provider shall implement a program of staff development activities on those days as set forth on Exhibit A.

2.28 **Publicity.** Provider shall identify SBBC's role as a provider of instructional services for preschool students with disabilities in any and all public documents, brochures, videos, and newsletters that are developed for the preschool program.

2.29 **Insurance Requirements.** Provider shall comply with the following insurance requirements throughout the term of this Agreement:

- (a) **General Liability.** Provider 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.** Provider 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. Provider 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. Provider 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 Provider 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 Provider to remedy any deficiencies. Provider 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. Provider 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, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.30 **EdPlan.** Provider shall make available a meeting room with Internet access and a projector for all IEP meetings. Provider staff shall use the web to access EasyIEP and the projector to display the IEP during such meetings.

2.31 **Extended School Year (ESY).** Provider shall ensure, on an individual basis, that ESY services are available if a student's IEP committee determines the eligibility and the need for these services are met in accordance with the SBBC ESY criteria.

2.32 **Payment.**

- (a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation shall then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments shall capture the increase or decrease. For the June and July FTE Survey period, the Provider shall receive payment equal to 95% of the FTE revenue generated through FEFP base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration and discretionary lottery) for each student meeting eligibility requirements for and receiving ESY instruction. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of 25 hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within 30 days of receipt of the invoice.
- (b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from July 1, 2018 to June 30, 2019. The projected total cost to SBBC not to exceed \$1,255,693 per school year, unless this Agreement is amended by the parties.

2.33 Inspection of Provider's Records by SBBC. Provider 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 Provider'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 Provider or any of Provider's payees pursuant to this Agreement. Provider'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. Provider'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) Provider's Records Defined. For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider'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 Provider pursuant to this Agreement.

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by Provider 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 Provider'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 Provider

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

(h) Inspector General Audits. Provider 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.

2.34 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: Curriculum Supervisor, Preschool ESLS  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1211 NW 33<sup>rd</sup> Terrace  
Fort Lauderdale, Florida 33311

To Provider: Chief Executive Director  
Ann Storck Center, Inc.  
1790 Southwest 43<sup>rd</sup> Way  
Fort Lauderdale, FL 33317

With a Copy to: Preschool Director  
Ann Storck Center, Inc.  
1790 Southwest 43<sup>rd</sup> Way  
Fort Lauderdale, FL 33317

2.35 Background Screening. Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background

screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider 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 Provider and its personnel. The parties agree that the failure of Provider 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. Provider 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 Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

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

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

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC 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 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Provider 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, Provider 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. Provider 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 Provider does not transfer the public records to SBBC. Upon completion of the Agreement, Provider shall transfer, at no cost, to SBBC all public records in possession of Provider or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Provider transfers all public records to SBBC upon completion of the Agreement, Provider shall

destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Agreement, Provider 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](mailto:REQUEL.BELL@BROWARDSCHOOLS.COM), RISK MAGAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA, 33301.**

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

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted 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.

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

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

3.15 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.



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

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

3.26 **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.

3.27 **Travel.** Local travel shall not be billed as a reimbursable expense. Out of county travel and per diem may be allowable at the sole discretion of SBBC. SBBC has delegated authority to the Superintendent of Schools or his/her designee to provide prior approval to Provider for any and all travel and per diem. Should any out of county travel and/or per diem be allowed, then it shall be billed and reimbursed in compliance with the current or updated School Board Policy 3400 and/or other relevant School Board Policies.

3.28 **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 PAGE TO 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:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams,  
Esq. - kathelyn.jacques-  
adams@gbrowardschools.com  
Reason: Ann Storck Center, Inc.  
Date: 2018.04.19 10:27:31 -04'00'

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

**FOR PROVIDER**

(Corporate Seal)

ANN STORCK CENTER, INC.

ATTEST:

By *Charles A. [Signature]*

\_\_\_\_\_, 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 Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 30th day of April, 2018 by Charlotte Mather-Taylor of Ann Storck Center, Inc, 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. Type of Identification

My Commission Expires:

*Michael Donovan*  
Signature – Notary Public

Michael Donovan  
Printed Name of Notary

GG049003  
Notary's Commission No.





Charlotte Mather-Taylor  
Chief Executive Officer

**ANN STORCK CENTER PRESCHOOL  
CALENDAR 2018-2019**

*In Memoriam*  
Marvin C. Gutter  
Board President  
(1981- 2010)

Executive Board

Jon Bandes  
Chairman of the Board  
Doris K. Sipos  
1st Vice Chair  
Rosalind Perlmutter  
2nd Vice Chair  
William Kelley  
Treasurer  
Howard Usher  
Secretary

Governing Board

Joan Aet  
Neal B. Janov  
Staci Buton  
Grafton Carlson  
Edward Farrell  
Dr. Alberto Kriger  
Susan Rennelsen  
Ira Schimmel  
Diane Lerner


Honorary Board

Marge Osceola  
Max Osceola  
Gena Osceola  
Wilma Bukin Siegel, M.D.  
Dr. Maureen Smith  
Arie Taykan

Emeritus Board

Virginia Benenati  
Lorraine Thomas

August	September	October	November	December	January
<b>15 First Day of School</b>	<b>3 Labor Day ASC Closed</b>  <b>10 Rosh Hashanah ASC Open</b>  <b>19 Yom Kippur ASC Open</b>	<b>18 Early Release Day</b>  <b>19 Employee Manning Day ASC Open</b>	<b>6 Early Release Day ASC Open</b>  <b>12 Veteran's Day ASC Open</b>  <b>21 Day Before Thanksgiving ASC Open</b>  <b>22-23 Thanksgiving Break ASC Closed</b>	<b>21 Early Release Day</b>  <b>24-31 Winter Break ASC Closed</b>	<b>1-4 Winter Break ASC Closed</b>  <b>7 Employee Planning Day ASC Open</b>  <b>21 M.L.K. Day ASC Closed</b>
February	March	April	May	June	
<b>18 President's Day ASC Closed</b>  <b>21 Early Release Day</b>	<b>21 Early Release Day</b>  <b>22 Employee Planning Day ASC Closed</b>  <b>25-28 Spring Break ASC Open</b>  <b>29 Staff Training Day ASC Closed</b>	<b>19 Good Friday ASC Closed</b>	<b>9 Early Release Day</b>  <b>27 Memorial Day ASC Closed</b>	<b>4 Early Release Day/Last Day of School</b>  <b>5 Employee Planning Day ASC Closed</b>	

 1790 S.W. 43rd Way, Fort Lauderdale, FL 33317 • (Ph) 954-584-8000 • (Fax) 954-321-8863  
www.annstorkcenter.org

## 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

**ARC BROWARD, INC.**  
(hereinafter referred to as "Provider"),  
whose principal place of business is  
10250 Northwest 53<sup>rd</sup> Street, Sunrise, Florida 33351

WHEREAS, SBBC recognizes the advantage of working cooperatively with community providers to increase the number of prekindergarten children who receive special education; and

WHEREAS, Provider has the capability of providing special education to prekindergarten students with disabilities and medically fragile students.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2018** and conclude on **June 30, 2019**.

2.02 **Eligibility.** Prekindergarten students with disabilities eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

(a) Provider shall make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.

- (b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with a request from the Principal.
- (c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.
- (d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 **Administrative Responsibility.**

- (a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.
- (b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.
- (c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol is to SBBC within two weeks of the evaluation in order to be processed for the state.

2.05 **Technical Assistance/Staff Training.**

- (a) SBBC shall provide technical assistance to Provider in interpreting and implementing State Board of Education Rules and School Board policies related to eligibility and placement of students with disabilities and to the provision of

therapy through onsite observations and visits and through speech language, occupational, and/or physical therapy team meetings.

- (b) Provider shall provide 12 hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and the Provider.
- (c) Provider shall train new staff hired after the initial training. SBBC shall provide Provider with a current copy of SBBC's Special Programs and Procedures document.

2.06 **Medically Related Health Practices.**

- (a) SBBC shall provide guidelines for medically related health services practices and procedures.
- (b) Provider shall purchase necessary supplies related to the implementation of the health service practices.
- (c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.
- (d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health specific of these students.

2.07 **SBBC Disclosure of Educational Records.**

- (a) SBBC shall provide the types of education records listed in 2.07 (b), pursuant to parental consent as listed in 2.07 (c), for the development and implementation of an Individual Educational Plan (IEP)
- (b) SBBC shall provide Provider with access to the EasyIEP Electronic Records Management System and additional records of the students Provider serves. EasyIEP access shall be limited only to records of SBBC students enrolled in the specified program, and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EasyIEP contains the following records:
  - a. Individual Educational Plan (IEP);
  - b. Consent for Evaluation/Re-evaluation;
  - c. Functional Behavior Assessment/Positive Behavior Intervention Plan; and
  - d. Any other document necessary for the provision of FAPE.

Additional education records include:

- a. Progress Notes;
- b. Progress Reports; and



- c. Any other information necessary to enroll the student.
- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in section 2.07 (b) and for the purposes listed in section 2.07 (a). Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

2.08 **Provider Confidentiality of Educational Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider 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 records in strict confidence and not use or re-disclose 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) 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 administrative, physical and technological 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](mailto: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) 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 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 that media equipment is no longer in use or is to be disposed; secure erasure shall 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) Provider shall, 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 conclusion of all obligations existing under this Agreement.

2.09 **Staffing.** SBBC shall provide a person who is qualified to be the designee of the Executive Director of the ESLS Division to attend all initial eligibility and placement staffings. Provider shall organize, coordinate, and conduct individual educational plan (IEP) meetings, interims, and reevaluations on students who are eligible students with disabilities as defined in Section 2.02 and are enrolled with the Provider.

2.10 **Program Review/Audit.**

- (a) SBBC reserves the right to preview the instructional program provided by the Provider and audit records and bookkeeping procedures in compliance with this Agreement. A 30 day written notice shall be given prior to the audit, which shall be conducted within 90 days after the end of the Agreement period. The written notice and the examination shall be conducted by SBBC's Management Audit Department. Upon completion, a copy of the audit shall be provided to the Provider.
- (b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.11 **Transportation.**

- (a) SBBC shall provide transportation for eligible students with disabilities as defined in Section 2.02.
- (b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six approved Early Release Days.

2.12 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.33 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within 30 days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.13 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on August 20, 2018 and ending on June 5, 2019 for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

2.14 **Supervision.** Provider shall provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.15 **Parent Training.**

- (a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.
- (b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.16 **Classroom Equipment, Materials & Supplies.** Provider shall provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies that are developmentally appropriate for preschool students with disabilities.

2.17 **Individual Educational Plan (IEP).**

- (a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.
- (b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.
- (c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.18 **Special Programs and Procedures.**

- (a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.
- (b) Provider shall comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

2.19 **Communication.** Provider shall allow appropriate personnel of SBBC to confer with Provider staff in matters regarding student screening, evaluation, eligibility, placement, and IEP development. Additionally, Provider shall allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC preschool programs at all times.

2.20 **Custodial Services.** Provider shall provide daily custodial services to keep the classrooms clean and disinfected.

2.21 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen. Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class, six-to-one for prekindergarten students with disabilities with specialized needs in a self-contained class, or nine-to-one for prekindergarten students with disabilities in an integrated class. The Provider's President/CEO and SBBC ESLS Executive Director or designee must mutually agree upon exceptions to these ratios.

2.22 **Attendance/Quarterly Progress Reports.** Provider shall report the attendance of the students as directed by the ESLS designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, Provider shall develop quarterly progress reports on the student's progress in meeting the educational goals for each student and send such reports to the parent on a quarterly basis.

2.23 **Health/Safety Standards and Legal Compliance.**

- (a) Provider shall secure fire inspections and health, safety, and sanitation inspections annually from agencies having jurisdiction. Provider shall comply with local or state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, NFPA 101; Life Safety 101, Section 4A-36, F.A.C. and State Requirements for Educational Facilities (SREF).
- (b) A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report  
Fire Department Inspection  
Broward County Food Services Inspection  
State of Florida Sanitation Certification

- (c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.
- (d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.
- (e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

- (f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.
- (g) Provider shall prohibit any policy or procedure that results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion, or sexual orientation.

2.24 **Therapy Services.**

- (a) Provider shall provide licensed occupational therapists (OTR) or certified occupational therapy assistants (COTA), physical therapists (PT) or physical therapy assistants (PTA), and speech-language pathologists (SLP) or speech-language pathology assistants (SLPA) as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and certified and/or licensed SLPs must attend all IEP meetings and perform all evaluations including the BDI-II for exiting preschoolers.
- (b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.
- (c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.
- (d) Provider shall provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service who are enrolled with the Provider as defined by Section 2.02.

2.25 **Substitutes.** Provider shall provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.26 **Food Services.**

- (a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.
- (b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

2.27 Early Release. Provider shall provide six early release days to coincide with SBBC's approved 2018-2019 calendar. Provider shall implement a program of staff development activities on those days as set forth on Exhibit A.

2.28 Publicity. Provider shall identify SBBC's role as a provider of instructional services for preschool students with disabilities in any and all public documents, brochures, videos, and newsletters that are developed for the preschool program.

2.29 Insurance Requirements. Provider shall comply with the following insurance requirements throughout the term of this Agreement:

- (a) General Liability. Provider 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. Provider 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. Provider 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. Provider 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 Provider 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 Provider to remedy any deficiencies. Provider 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. Provider 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, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.30 EdPlan. Provider shall make available a meeting room with Internet access and a projector for all IEP meetings. Provider staff shall use the web to access EasyIEP and the projector to display the IEP during such meetings.

2.31 Extended School Year (ESY). Provider shall ensure, on an individual basis, that ESY services are available if a student's IEP committee determines the eligibility and the need for these services are met in accordance with the SBBC ESY criteria.

2.32 Payment.

- (a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a



projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation shall then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments shall capture the increase or decrease. For the June and July FTE Survey period, the Provider shall receive payment equal to 95% of the FTE revenue generated through FEFP base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration and discretionary lottery) for each student meeting eligibility requirements for and receiving ESY instruction. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of 25 hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within 30 days of receipt of the invoice.

- (b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from July 1, 2018 to June 30, 2019. The projected total cost to SBBC not to exceed \$1,953,158 per school year, unless this Agreement is amended by the parties.

2.33 **Inspection of Provider's Records by SBBC.** Provider 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 Provider'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 Provider or any of Provider's payees pursuant to this Agreement. Provider'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. Provider'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) **Provider's Records Defined.** For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and

documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider'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 Provider pursuant to this Agreement.

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

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

(h) Inspector General Audits. Provider 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.

2.34 Notice. When any of the parties desire to give notice to the other, such notice shall 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: Curriculum Supervisor, Preschool ESLs  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1211 NW 33<sup>rd</sup> Terrace  
Fort Lauderdale, Florida 33311

To Provider: Chief Executive Officer  
ARC Broward Inc.  
10250 NW 53<sup>rd</sup> Street  
Sunrise, Florida 33351

With a Copy to: Director, Children's Services  
ARC Broward Inc.  
10250 NW 53<sup>rd</sup> Street  
Sunrise, Florida 33351

2.35 **Background Screening.** Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider 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 Provider and its personnel. The parties agree that the failure of Provider 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. Provider 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 Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

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

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

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

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC 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 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every

such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

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

**MAGAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600  
SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA, 33301.**

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

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted 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.

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

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

3.15 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not

affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

3.26 **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.

3.27 **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.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO 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:

*Kathelyn Jacques-Adams*  
Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@sbrowardschools.com  
Reason: Arc Broward, Inc. - Pre-kindergarten  
Date: 2018.04.19 11:12:23 -04'00'

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

FOR PROVIDER

(Corporate Seal)

ATTEST:

ARC BROWARD, INC.

By

*[Signature]*

Print Name

Dennis Haas

Print Title:

President / CEO

\_\_\_\_\_, Secretary

-or-

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 20<sup>th</sup> day of April, 2018 by Dennis Haas of Arc Broward Name of Person, on behalf of the corporation/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:  
NOV 6, 2021

*[Signature]*  
\_\_\_\_\_  
Signature - Notary Public

Adam R. Fernandez  
Printed Name of Notary

GG # 158023  
Notary's Commission No.

(SEAL)

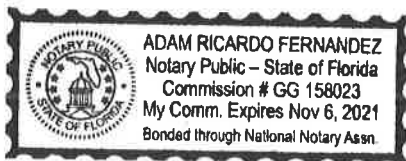


EXHIBIT A

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ARC PRESCHOOL STUDENT CALENDAR  
2018 – 2019

2018	Wed.	August 15	Classes Begin /First Day of School
	Mon.	September 3	Holiday
	Mon.	September 10	Day Off
	Wed.	September 19	Day Off
	Thurs.	October 18	Early Release Day
	Fri.	October 19	Employee Planning Day*
	Tues.	November 6	Employee Planning Day*
	Mon.	November 12	Holiday
	Wed	November 21	Day Off
	Thurs.	November 22	Holiday
	Fri.	November 23	Day Off
	Fri.	December 21	Early Release Day
	Mon. – Fri.	December 24 - 31	Winter Break
2019	Tues.- Fri.	January 1 - 4	Winter Break
	Mon.	January 7	Employee Planning Day*
	Mon.	January 21	Day Off
	Mon.	February 18	Holiday
	Thurs.	February 21	Early Release Day
	Thurs.	March 21	Early Release Day
	Fri.	March 22	Employee Planning Day*
	Mon.-Fri.	March 25 - 29	Spring Break
	Fri.	April 19	Day Off
	Wed.	May 9	Early Release Day
	Mon.	May 27	Holiday
	Tues.	June 4	Early Release /Last Day of School

NOTE: Dismissal is at 1:00 p.m. on Early Release Days.

\* There is no school for students on Employee Planning Days.

## 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

**BROWARD CHILDRENS CENTER, INC.**  
(hereinafter referred to as "Provider"),  
whose principal place of business is  
200 Southeast 19<sup>th</sup> Avenue, Pompano Beach, Florida 33060

**WHEREAS**, SBBC recognizes the advantage of working cooperatively with community providers to increase the number of prekindergarten children who receive special education; and

**WHEREAS**, Provider has the capability of providing special education to prekindergarten students with disabilities and medically fragile and to students who are medically fragile residing at the skilled nursing facility.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 - SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2018** and conclude on **June 30, 2019**.

2.02 **Eligibility.** Students with disabilities eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

- (a) Provider shall make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.

- (b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with a request from the Principal.
- (c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations-(Instructional-Certification) Department so Board approval can be obtained.
- (d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 Administrative Responsibility.

- (a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.
- (b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.
- (c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

2.05 Technical Assistance/Staff Training.

- (a) SBBC shall provide technical assistance to Provider in interpreting and implementing State Board of Education Rules and School Board policies related to eligibility and placement of students with disabilities and to the provision of therapy through onsite observations and visits and through speech language, occupational, and/or physical therapy team meetings.

- (b) Provider shall provide 12 hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and the Provider.
- (c) Provider shall train new staff hired after the initial training. SBBC shall provide Provider with a current copy of SBBC's Special Programs and Procedures document.

2.06 **Medically Related Health Practices.**

- (a) SBBC shall provide guidelines for medically related health services practices and procedures.
- (b) Provider shall purchase necessary supplies related to the implementation of the health service practices.
- (c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.
- (d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health specific of these students.

2.07 **SBBC Disclosure of Educational Records.**

- (a) SBBC shall provide the types of education records listed in 2.07 (b), pursuant to parental consent as listed in 2.07 (c), for the development and implementation of an Individual Educational Plan (IEP)
- (b) SBBC shall provide Provider with access to the EasyIEP Electronic Records Management System and additional records of the students Provider serves. EasyIEP access shall be limited only to records of SBBC students enrolled in the specified program, and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EasyIEP contains the following records:
  - a. Individual Educational Plan (IEP);
  - b. Consent for Evaluation/Re-evaluation;
  - c. Functional Behavior Assessment/Positive Behavior Intervention Plan; and
  - d. Any other document necessary for the provision of FAPE.

Additional education records include:

- a. Progress Notes;
  - b. Progress Reports; and
  - c. Any other information necessary to enroll the student.
- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in

section 2.07 (b) and for the purposes listed in section 2.07 (a). Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

2.08 **Provider Confidentiality of Educational Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider 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 records in strict confidence and not use or re-disclose 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) 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 administrative, physical and technological 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](mailto: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) 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 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 that media equipment is no longer in use or is to be disposed; secure erasure shall 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) Provider shall, 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 conclusion of all obligations existing under this Agreement.

2.09 **Staffing.** SBBC shall provide a person who is qualified to be the designee of the Executive Director of the ESLS Division to attend all initial eligibility and placement staffings. Provider shall organize, coordinate, and conduct individual educational plan (IEP) meetings, interims, and reevaluations on students who are eligible students with disabilities as defined in Section 2.02 and are enrolled with the Provider.



2.10 Program Review/Audit.

- (a) SBBC reserves the right to preview the instructional program provided by the Provider and audit records and bookkeeping procedures in compliance with this Agreement. A 30 day written notice shall be given prior to the audit, which shall be conducted within 90 days after the end of the Agreement period. The written notice and the examination shall be conducted by SBBC's Management Audit Department. Upon completion, a copy of the audit shall be provided to the Provider.
- (b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.11 Dispute Process. In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.33 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within 30 days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.12 Preschool Program Design. Provider shall provide a 180-day instructional program starting on August 20, 2018 and ending on June 5, 2019 for students with disabilities. Students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct students with disabilities.

2.13 Supervision. Provider shall provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.14 Parent Training.

- (a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.
- (b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.15 Classroom Equipment, Materials & Supplies. Provider shall provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies that are developmentally appropriate for students with disabilities.

2.16 Individual Educational Plan (IEP).

- (a) Provider shall ensure that an IEP with specific measurable educational goals and objectives has been established for each student with disabilities and implemented

within a developmentally appropriate educational curriculum to meet each student's individualized needs.

- (b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.
- (c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.17 **Special Programs and Procedures.**

- (a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.
- (b) Provider shall comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

2.18 **Communication.** Provider shall allow appropriate personnel of SBBC to confer with Provider staff in matters regarding student screening, evaluation, eligibility, placement, and IEP development. Additionally, Provider shall allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC preschool programs at all times.

2.19 **Custodial Services.** Provider shall provide daily custodial services to keep the classrooms clean and disinfected.

2.20 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen. Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class. The Provider's President/CEO and SBBC ESLs Executive Director or designee must mutually agree upon exceptions to this ratio.

2.21 **Attendance/Quarterly Progress Reports.** Provider shall report the attendance of the students as directed by the ESLs designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, Provider shall develop quarterly progress reports on the student's progress in meeting the educational goals for each student and send such reports to the parent on a quarterly basis.

2.22 **Health/Safety Standards and Legal Compliance.**

- (a) Provider shall secure fire inspections and health, safety, and sanitation inspections annually from agencies having jurisdiction. Provider shall comply with local or

state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, NFPA 101; Life Safety 101, Section 4A-36, F.A.C. and State Requirements for Educational Facilities (SREF).

- (b) A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report  
Fire Department Inspection  
Broward County Food Services Inspection  
State of Florida Sanitation Certification

- (c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.
- (d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.
- (e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.
- (f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.
- (g) Provider shall prohibit any policy or procedure that results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion, or sexual orientation.

2.23 Therapy Services.

- (a) Provider shall provide licensed occupational therapists (OTR) or certified occupational therapy assistants (COTA), physical therapists (PT) or physical therapy assistants (PTA), and speech-language pathologists (SLP) or speech-language pathology assistants (SLPA) as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and certified and/or licensed SLPs must attend all IEP meetings and perform all evaluations deemed necessary as a result of a re-evaluation plan meeting.
- (b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.
- (c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

- (d) Provider shall provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service who are enrolled with the Provider as defined by Section 2.02.

2.24 **Substitutes.** Provider shall provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.25 **Food Services.**

- (a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.
- (b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

2.26 **Early Release.** Provider shall provide six early release days to coincide with SBBC's approved 2018-2019 calendar. Provider shall implement a program of staff development activities on those days as set forth on Exhibit A.

2.27 **Publicity.** Provider shall identify SBBC's role as a provider of instructional services for preschool students with disabilities in any and all public documents, brochures, videos, and newsletters that are developed for the preschool program.

2.28 **Insurance Requirements.** Provider shall comply with the following insurance requirements throughout the term of this Agreement:

- (a) **General Liability.** Provider 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.** Provider 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.** Provider 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.** Provider 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 Provider 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 Provider to remedy any deficiencies. Provider 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. Provider 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, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.29 EdPlan. Provider shall make available a meeting room with Internet access and a projector for all IEP meetings. Provider staff shall use the web to access EasyIEP and the projector to display the IEP during such meetings.

2.30 Extended School Year (ESY). Provider shall ensure, on an individual basis, that ESY services are available if a student's IEP committee determines the eligibility and the need for these services are met in accordance with the SBBC ESY criteria.

2.31 **Payment.**

- (a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation shall then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments shall capture the increase or decrease. For the June and July FTE Survey period, the Provider shall receive payment equal to 95% of the FTE revenue generated through FEFP base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration and discretionary lottery) for each student meeting eligibility requirements for and receiving ESY instruction. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of 25 hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within 30 days of receipt of the invoice.
- (b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from July 1, 2018 to June 30, 2019. The projected total cost to SBBC not to exceed \$3,627,334 per school year, unless this Agreement is amended by the parties.

2.32 **Transportation.** SBBC shall contract with Provider to provide pupil transportation services for eligible exceptional students as defined in Section 2.02. SBBC shall pay \$34.24 per student for students who physically rode the bus one day during the Florida Education Finance Program (FEFP) window and are enrolled in program. Provider shall be paid for two invoicing periods; October and February. Provider shall organize, coordinate, administer, supervise, and operate pupil transportation services as follows:

1. Pupil transportation services for disabled prekindergarten students shall be provided from:
  - a. The student's official pickup point to the Provider.
  - b. Return from the Provider to the students' official pickup point or to a location specified and agreed to by the student's parents or guardian.
  
2. Pupil transportation services shall be provided in compliance with the following provisions:
  - a. Vehicles shall be operated by or contracted for by the Provider.
  - b. Drivers and attendants and/or any and all personnel who ride on or who shall be in attendance on the bus at the time students are on the bus shall be an employee of the Provider or a volunteer at the Providers and receive clearance from SBBC through fingerprinting and security check, or go through the HRS security clearance procedures.
  - c. Individual employees assigned to drive at the time students are on the bus shall be licensed by the Florida State Department of Highway Safety and Motor Vehicles, Driver's License Division to operate a vehicle of this size and type.
  - d. Provider shall develop policies and procedures concerning the transportation of students and ensure that appropriate personnel are given an orientation regarding these procedures. Policies and procedures shall not be in conflict with any policy or procedure of SBBC ([www.pupiltrans.or](http://www.pupiltrans.or)) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).
  
3. All vehicles under the terms of this Agreement shall meet the following standards:
  - a. Provider shall meet all insurance requirements of SBBC and the State of Florida and agree to maintain insurance in accordance with the following:
    - 1) Auto Liability Insurance with bodily injury limits of no less than \$1,000,000.00 per occurrence. SBBC shall be named as an additional insured.
    - 2) Worker's Compensation and Employer's Liability Insurance with statutory limits.
    - 3) Hold harmless clause.
  - b. Equipped with seatbelts, car seats, or wheelchair securement devices (where appropriate), which are used at all times to secure students while being transported.
  - c. Maintained to Original Equipment Manufacturers (EOM) standards and comply with the requirements FMVSS, Department of Education and SBBC.
  - d. All vehicles used by the provider must meet DOE transportation requirements ([www.fldoe.org/transportation](http://www.fldoe.org/transportation))
  
4. Special provisions for providing this transportation service shall be those listed below:

- a. Provider shall provide for FTE survey counts using the same forms and providing the same information as that required of bus drivers serving the Public Schools.
  - b. If Provider purchases a management letter as part of an annual audit, the management letter must be received by SBBC one hundred and twenty (120) days following the close of the Provider's fiscal year.
  - c. If at any time an employee of the Provider is aware of or suspects that child abuse or neglect has occurred, as defined in Chapter 415, F.S., that employee is required to immediately report such known or suspected abuse or neglect to the Department of Health and Rehabilitative Services by calling the Central Abuse Registry (1-800-96-ABUSE). Failure of Provider to immediately report known or suspected child abuse or neglect shall constitute breach of contract and may result in termination.
  - d. The operating calendar shall be the same as the operating calendar of SBBC for elementary schools during the regular term and for summer school.
  - e. Provider shall accommodate the special needs of the students being transported. Special needs as defined but not limited to; baby seats, lifts, assistance in entering and exiting a vehicle and adequate care and supervision of all students while in the vehicle, and with attendants on the bus where appropriate. All special needs must be specified in the student's IEP.
  - f. Special care shall be given to assure the time limit spent on the vehicle is not excessive. No student should be required to spend time in excess of one hour on each one-way trip. Provider may be required to commission additional vehicles and employ additional drivers and attendants to ensure compliance with this provision.
  - g. Provider shall modify routes as student demographics change and shall notify students and parents of all route changes.
  - h. Termination of transportation services for a student shall be consistent with the requirements for termination from the education program for which SBBC is contracting.
  - i. Vehicles shall be maintained in a safe operating condition in accordance with FS 1006. SBBC reserves the right to halt all processing of payments due under this Agreement until deficiencies in the safety of vehicles are corrected.
  - j. Drivers shall maintain on the vehicle an updated list of all students assigned to the vehicle. This list shall contain as a minimum the name, address, telephone number, emergency telephone number and address, and the special needs of the student.
  - k. Provider shall ensure that all students and their families are notified of all changes in the route.
  - l. Shall complete SBBC FTE transportation survey.
5. As it relates to motor vehicle records, when hiring bus operators for the purpose of transporting students, Provider shall require bus operators:
- a. License to be checked at the initial time of employment.



- b. License checked prior to the first day of fall semester,
  - c. License checked quarterly throughout the school year.
6. As it relates to drug testing, when employing bus operators for the purpose of transporting students, Provider shall require bus operators to:
    - a. Pre-employment drug test.
    - b. Undergo random drug test.
    - c. Drug test as a result of reasonable suspicion.
  7. Provider shall require that bus operators meet DOT and/or DOE requirements for physical and dexterity testing.  
 (<http://www.flhsmv.gov/ddl/cdlmedicalcert.html>) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).
  8. As it relates to training, Provider shall require bus operators to go through:
    - a. Initial time of employment training based on vehicle and purpose of transportation.
    - b. Minimum of eight hours of inservice training annually.
  9. Provider shall complete bus evacuation drills within the first 6 weeks of each semester (2) per school year.
  10. Schedule transportation services to accommodate SBBC six approved Early Release Days.

2.33 **Inspection of Provider's Records by SBBC.** Provider 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 Provider'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 Provider or any of Provider's payees pursuant to this Agreement. Provider'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. Provider'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) **Provider's Records Defined.** For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider'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 Provider pursuant to this Agreement.

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

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

(h) Inspector General Audits. Provider 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.

2.34 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: Curriculum Supervisor, Preschool ESLs  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1211 NW 33<sup>rd</sup> Terrace  
Fort Lauderdale, Florida 33311

To Provider: Chief Executive Officer  
Broward Childrens Center, Inc.  
25 SE 20<sup>th</sup> Avenue  
Pompano Beach, FL 33060

With a Copy to: Operations Officer  
Broward Childrens Center, Inc.  
25 SE 20<sup>th</sup> Avenue  
Pompano Beach, FL 33060

2.35 **Background Screening.** Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider 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 Provider and its personnel. The parties agree that the failure of Provider 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. Provider 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 Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

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

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party

by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC 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 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If

SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Provider 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, Provider 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. Provider 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 Provider does not transfer the public records to SBBC. Upon completion of the Agreement, Provider shall transfer, at no cost, to SBBC all public records in possession of Provider or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Provider transfers all public records to SBBC upon completion of the Agreement, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Agreement, Provider 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](mailto:REQUEL.BELL@BROWARDSCHOOLS.COM), RISK MAGAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA, 33301.**

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

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted 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.

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

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

3.15 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 Survival. All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

3.26 **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.

3.27 **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.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO 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:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams,  
Esq. - kathelyn.jacques-  
adams@gbrowardschools.com  
Reason: Broward Childrens Center, Inc.  
Date: 2018.04.19 11:35:10 -04'00'

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**



**North Campus**  
 25 S.E. 20th Avenue  
 Pompano Beach, FL 33060  
 Tel: 954.946.7508  
 Fax: 954.580.0461

**South Campus**  
 3891 Stirling Road  
 Dana Point Beach, FL 33412  
 Tel: 954.416.2464  
 Fax: 954.416.2445  
 www.bcckids.org

**EXHIBIT A**

**2018-2019 Broward Children's Center School Calendar**  
 M.O.S.T. Non-School Days Calendar – Dates TBD  
 M.O.S.T. Summer Camp – Dates TBA  
 M.O.S.T. Spring Break/Camp – dates TBA

**2018-2019 School/Personnel Calendar - SYNOPSIS**  
**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**First Quarter**

Wednesday, August 8, 2018  
 Thursday, August 9, 2018  
 Friday, August 10, 2018  
 Monday, August 13, 2018  
 Tuesday, August 14, 2018  
 Wednesday, August 15, 2018  
 Monday, September 3, 2018  
 Monday, September 10, 2018  
 Monday, September 17, 2018  
 Wednesday, September 19, 2018  
 Monday, October 8, 2018  
 Tuesday, October 9, 2018  
 Wednesday, October 10, 2018  
 Thursday, October 11, 2018  
 Friday, October 12, 2018  
 Thursday, October 18, 2018  
 Friday, October 19, 2018

Employee Planning - 1  
 Employee Planning - 2  
 Employee Planning - 3  
 Employee Planning - 4  
 Employee Planning - 5  
 Start 1st Quarter - (44 Days)  
 Holiday - 1  
 Day Off  
 Interim Reports Issued  
 Day Off  
 FTE Survey 2  
 FTE Survey 2  
 FTE Survey 2  
 FTE Survey 2  
 FTE Survey 2  
 FTE Survey 2  
 Early Release - 1  
 Employee Planning - 6

**Second Quarter**

Monday, October 22, 2018  
 Tuesday, November 6, 2018  
 Monday, November 12, 2018  
 Wednesday, November 14, 2018  
 Tuesday, November 20, 2018  
 Wednesday, November 21, 2018  
 Thursday, November 22, 2018  
 Friday, November 23, 2018  
 Friday, December 21, 2018  
 Monday, December 24, 2018  
 Tuesday, December 25, 2018  
 Wednesday, December 26, 2018  
 Thursday, December 27, 2018  
 Friday, December 28, 2018  
 Monday, December 31, 2018  
 Tuesday, January 1, 2019  
 Wednesday, January 2, 2019  
 Thursday, January 3, 2019  
 Friday, January 4, 2019  
 Monday, January 7, 2019

Start 2nd Quarter (40 Days)  
 Employee Planning - 2  
 Holiday - 2  
 Report Cards Issued for First Quarter  
 Interim Reports Issued  
 Day Off  
 Holiday - 3  
 Day Off  
 Early Release - 2  
 Day Off  
 Day Off  
 Day Off  
 Day Off  
 Day Off  
 Day Off  
 Day Off  
 Holiday - 4  
 Day Off  
 Day Off  
 Day Off  
 Employee Planning - 8

**Third Quarter**

Tuesday, January 8, 2019  
 Monday, January 21, 2019  
 Wednesday, January 30, 2019  
 Monday, February 4, 2019  
 Tuesday, February 5, 2019  
 Wednesday, February 6, 2019  
 Thursday, February 7, 2019  
 Friday, February 8, 2019  
 Tuesday, February 12, 2019  
 Monday, February 18, 2019  
 Thursday, February 21, 2019  
 Thursday, March 21, 2019  
 Friday, March 22, 2019  
 Monday, March 25, 2019  
 Tuesday, March 26, 2019  
 Wednesday, March 27, 2019  
 Thursday, March 28, 2019  
 Friday, March 29, 2019

Start 3rd Quarter (53 Days)  
 Day Off  
 Report Cards Issued for Second Quarter  
 FTE Survey 3  
 FTE Survey 3  
 FTE Survey 3  
 FTE Survey 3  
 FTE Survey 3  
 Interim Reports Issued  
 Holiday - 5  
 Early Release - 3  
 Early Release - 4  
 Employee Planning - 9  
 Day Off  
 Day Off  
 Day Off  
 Day Off  
 Day Off

**Fourth Quarter**

Monday, April 1, 2019  
 Tuesday, April 16, 2019  
 Wednesday, May 1, 2019  
 Friday, April 19, 2019  
 Wednesday, May 9, 2019  
 Monday, May 27, 2019  
 Tuesday, June 4, 2019  
 Tuesday, June 4, 2019  
 Wednesday, June 5, 2019  
 Wednesday, June 26, 2019

Start 4th Quarter (45 Days)  
 Report Cards Issued for Third Quarter  
 Interim Reports Issued  
 Day Off  
 Early Release - 5  
 Holiday - 6  
 Early Release - 6  
 Last Day of School  
 Employee Planning - 10  
 Report Cards Issued for Fourth Quarter

Notes: When Schools and Administrative Offices are closed, "Black-Out-Days" are identified by The Office of School Performance, and Accountability and extracurricular activities will be restricted or will not occur.



**FOR PROVIDER**

(Corporate Seal)

BROWARD CHILDRENS CENTER, INC.

ATTEST:

By Margorie Evans, CEO  
Print Name: MARGORIE EVANS  
Print Title: CEO

\_\_\_\_\_, Secretary

-or-

[Signature]  
Witness

Mervin Akada  
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.**

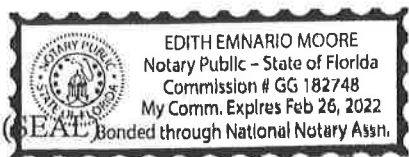
STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of May, 2018 by Margorie Evans of Broward Children's Center, on behalf of the corporation/agency.

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

My Commission Expires:



[Signature]  
Signature - Notary Public

Edith Moore  
Printed Name of Notary

GG 182748  
Notary's Commission No.

**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

**NORTH LAUDERDALE EDUCATIONAL CENTERS INC.**  
(hereinafter referred to as "Provider"),  
whose principal place of business is  
2851 North State Road 7, Margate, Florida 33063

**WHEREAS**, SBBC recognizes the advantage of working cooperatively with community providers to increase the number of prekindergarten children who receive special education; and

**WHEREAS**, Provider has the capability of providing special education to prekindergarten students with disabilities.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1 - RECITALS**

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

**ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2018** and conclude on **June 30, 2019**.

2.02 **Eligibility.** Prekindergarten students with disabilities eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

- (a) Provider shall make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.
- (b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with a request from the Principal.
- (c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider shall also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.
- (d) An applicant for renewal of a professional certificate shall earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 **Administrative Responsibility.**

- (a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.
- (b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.
- (c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider shall evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also shall evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

2.05 **Technical Assistance/Staff Training.**

- (a) SBBC shall provide technical assistance to Provider in interpreting and implementing State Board of Education Rules and School Board policies related to eligibility and placement of students with disabilities and to the provision of therapy through onsite observations and visits and through speech language, occupational, and/or physical therapy team meetings.
- (b) Provider shall provide 12 hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and the Provider.
- (c) Provider shall train new staff hired after the initial training. SBBC shall provide Provider with a current copy of SBBC's Special Programs and Procedures document.

2.06 **Medically Related Health Practices.**

- (a) SBBC shall provide guidelines for medically related health services practices and procedures.
- (b) Provider shall purchase necessary supplies related to the implementation of the health service practices.
- (c) Provider shall oversee their assigned nurses on their campus. All nursing services shall follow the Nurse Practice Act of Florida.
- (d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility shall collaborate regarding the health specific of these students.

2.07 **SBBC Disclosure of Educational Records.**

- (a) SBBC shall provide the types of education records listed in 2.07 (b), pursuant to parental consent as listed in 2.07 (c), for the development and implementation of an Individual Educational Plan (IEP)
- (b) SBBC shall provide Provider with access to the EasyIEP Electronic Records Management System and additional records of the students Provider serves. EasyIEP access shall be limited only to records of SBBC students enrolled in the specified program, and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EasyIEP contains the following records:
  - a. Individual Educational Plan (IEP);
  - b. Consent for Evaluation/Re-evaluation;

- c. Functional Behavior Assessment/Positive Behavior Intervention Plan; and
- d. Any other document necessary for the provision of FAPE.

Additional education records include:

- a. Progress Notes;
  - b. Progress Reports; and
  - c. Any other information necessary to enroll the student.
- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in section 2.07 (b) and for the purposes listed in section 2.07 (a). Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

**2.08 Provider Confidentiality of Educational Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider 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 records in strict confidence and not use or re-disclose 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) 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 administrative, physical and technological 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](mailto: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) 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 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 that media equipment is no longer in use or is to be disposed; secure erasure shall 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) Provider shall, 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 conclusion of all obligations existing under this Agreement.

2.09 **Staffing.** SBBC shall provide a person who is qualified to be the designee of the Executive Director of the ESLS Division to attend all initial eligibility and placement staffings. Provider shall organize, coordinate, and conduct individual educational plan (IEP) meetings, interims, and reevaluations on students who are eligible students with disabilities as defined in Section 2.02 and are enrolled with the Provider.

2.10 **Program Review/Audit.**

- (a) SBBC reserves the right to preview the instructional program provided by the Provider and audit records and bookkeeping procedures in compliance with this Agreement. A 30 day written notice shall be given prior to the audit, which shall be conducted within 90 days after the end of the Agreement period. The written notice and the examination shall be conducted by SBBC's Management Audit Department. Upon completion, a copy of the audit shall be provided to the Provider.
- (b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.11 **Transportation.**

- (a) SBBC shall provide transportation for eligible students with disabilities as defined in Section 2.02.
- (b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six approved Early Release Days.

2.12 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.33 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within 30 days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.13 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on August 20, 2018 and ending on June 5, 2019 for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree

on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

2.14 **Supervision.** Provider shall provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.15 **Parent Training.**

- (a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.
- (b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.16 **Classroom Equipment, Materials & Supplies.** Provider shall provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies that are developmentally appropriate for preschool students with disabilities.

2.17 **Individual Educational Plan (IEP).**

- (a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.
- (b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.
- (c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.18 **Special Programs and Procedures.**

- (a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.
- (b) Provider shall comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

2.19 **Communication.** Provider shall allow appropriate personnel of SBBC to confer with Provider staff in matters regarding student screening, evaluation, eligibility, placement, and IEP development. Additionally, Provider shall allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC preschool programs at all times.

2.20 **Custodial Services.** Provider shall provide daily custodial services to keep the classrooms clean and disinfected.

2.21 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen. Provider shall ensure that pupil/teacher ratios do not exceed nine-to-one for prekindergarten students with disabilities in an integrated class. The Provider's President/CEO and SBBC ESLS Executive Director or designee shall mutually agree upon exceptions to these ratios.

2.22 **Attendance/Quarterly Progress Reports.** Provider shall report the attendance of the students as directed by the ESLS designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, Provider shall develop quarterly progress reports on the student's progress in meeting the educational goals for each student and send such reports to the parent on a quarterly basis.

2.23 **Health/Safety Standards and Legal Compliance.**

- (a) Provider shall secure fire inspections and health, safety, and sanitation inspections annually from agencies having jurisdiction. Provider shall comply with local or state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, NFPA 101; Life Safety 101, Section 4A-36, F.A.C. and State Requirements for Educational Facilities (SREF).
- (b) A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report  
Fire Department Inspection  
Broward County Food Services Inspection  
State of Florida Sanitation Certification

- (c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.
- (d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

- (e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.
- (f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.
- (g) Provider shall prohibit any policy or procedure that results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion, or sexual orientation.

2.24 **Therapy Services.**

- (a) Provider shall provide licensed occupational therapists (OTR) or certified occupational therapy assistants (COTA), physical therapists (PT) or physical therapy assistants (PTA), and speech-language pathologists (SLP) or speech-language pathology assistants (SLPA) as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and certified and/or licensed SLPs shall attend all IEP meetings and perform all evaluations including the BDI-II for exiting preschoolers.
- (b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.
- (c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.
- (d) Provider shall provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service who are enrolled with the Provider as defined by Section 2.02.

2.25 **Substitutes.** Provider shall provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.26 **Food Services.**

- (a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.
- (b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

2.27 **Early Release.** Provider shall provide six early release days to coincide with SBBC's approved 2018-2019 calendar. Provider shall implement a program of staff development activities on those days as set forth on Exhibit A.

2.28 **Publicity.** Provider shall identify SBBC's role as a provider of instructional services for preschool students with disabilities in any and all public documents, brochures, videos, and newsletters that are developed for the preschool program.

2.29 **Insurance Requirements.** Provider shall comply with the following insurance requirements throughout the term of this Agreement:

- (a) **General Liability.** Provider 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.** Provider 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.** Provider 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.** Provider 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 shall be furnished by provider 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) shall be received and approved by SBBC's Risk Management Department before any work commences to permit Provider to remedy any deficiencies. Provider shall 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 shall 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. Provider is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and shall notify SBBC within two (2) business days if required insurance is cancelled.
- (i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.30 EdPlan. Provider shall make available a meeting room with Internet access and a projector for all IEP meetings. Provider staff shall use the web to access EasyIEP and the projector to display the IEP during such meetings.

2.31 Payment.

- (a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation shall then be adjusted to the number of students eligible during the February FTE

Survey week, and February through May payments shall capture the increase or decrease. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of 25 hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within 30 days of receipt of the invoice.

- (b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from July 1, 2018 to June 30, 2019. The projected total cost to SBBC not to exceed \$304,511 per school year, unless this Agreement is amended by the parties.

**2.32 Inspection of Provider's Records by SBBC.** Provider 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 Provider'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 Provider or any of Provider's payees pursuant to this Agreement. Provider'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. Provider'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) **Provider's Records Defined.** For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider'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 Provider pursuant to this Agreement.

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

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

(h) Inspector General Audits. Provider 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.

2.33 Notice. When any of the parties desire to give notice to the other, such notice shall 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: Curriculum Supervisor, Preschool ESLS  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1211 NW 33<sup>rd</sup> Terrace  
Fort Lauderdale, Florida 33311

To Provider: President/CEO  
North Lauderdale Educational Centers Inc.  
6700 Horizon Lane  
Margate, FL 33063

With a Copy to: Director of Operations  
North Lauderdale Educational Centers Inc.  
6700 Horizon Lane  
Margate, FL 33063

2.34 **Background Screening.** Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider 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 Provider and its personnel. The parties agree that the failure of Provider 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. Provider 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 Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

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

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

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC 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 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof.

Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Provider 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, Provider 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. Provider 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 Provider does not transfer the public records to SBBC. Upon completion of the Agreement, Provider shall transfer, at no cost, to SBBC all public records in possession of Provider or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Provider transfers all public records to SBBC upon completion of the Agreement, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Agreement, Provider shall meet all applicable requirements for retaining public records. All records stored electronically shall be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

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

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

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted 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.

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

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

3.15 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

3.26 **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.

3.27 **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.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO 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:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. -  
kathelyn.jacques-adams@gbrowardschools.com  
Reason: North Lauderdale Educational Centers Inc.  
Date: 2018.04.19 11:59:26 -0400

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

**FOR PROVIDER**

(Corporate Seal)

NORTH LAUDERDALE EDUCATIONAL  
CENTERS INC.

ATTEST:

By [Signature]

\_\_\_\_\_, Secretary

Print Name: Dave Wolnek

-or-

Print Title: C.E.O

Witness [Signature]  
Witness [Signature]

**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 27<sup>th</sup> day of  
April, 2018 by David Wolnek of

North Lauderdale Educational Centers Inc. on behalf of the corporation/agency.  
Name of Person  
Name of Corporation or Agency

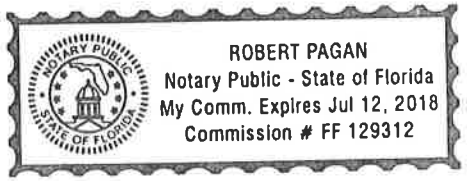
He/She is personally known to me or produced \_\_\_\_\_ as  
identification and did/did not first take an oath. \_\_\_\_\_  
Type of Identification

My Commission Expires:

[Signature]  
Signature - Notary Public

(SEAL)

Robert Pagan  
Printed Name of Notary



FF129312  
Notary's Commission No.



**EXHIBIT A**  
**2018-2019 Alphetland VPK School Calendar**

**First Quarter**

Wednesday, August 8, 2018	Employee Planning – 1 (ESE Teacher Classroom Set Up/ Training)
Thursday, August 9, 2018	Employee Planning – 2 (ESE Teacher Classroom Set Up/ Training)
Friday, August 10, 2018	Employee Planning – 3 (ESE Teacher Classroom Set Up/ Training)
Monday, August 13, 2018	Employee Planning – 4 (Meet and Greet ESE Teacher/ Director/ Assistant Teacher)
Tuesday, August 14, 2018	Employee Planning – 5 (Meet and Greet ESE Teacher/ Director/ Assistant Teacher)
Wednesday, August 15, 2018	Start 1st Quarter - (44 Days)
Monday, September 3, 2018	Labor Day Holiday - 1
Monday, September 10, 2018	Day Off
Monday, September 17, 2018	Interim Reports Issued
Wednesday, September 19, 2018	Day Off
Monday, October 8, 2018	FTE Survey 2
Tuesday, October 9, 2018	FTE Survey 2
Wednesday, October 10, 2018	FTE Survey 2
Thursday, October 11, 2018	FTE Survey 2
Friday, October 12, 2018	FTE Survey 2
Thursday, October 18, 2018	Early Release - 1
Friday, October 19, 2018	Employee Planning – 6 (Professional Development for ESE Teachers)

**Second Quarter**

Monday, October 22, 2018	Start 2nd Quarter (40 Days)
Tuesday, November 6, 2018	Employee Planning – 7 (Professional Development for ESE Teachers)
Monday, November 12, 2018	Holiday - 2
Wednesday, November 14, 2018	Report Cards Issued for First Quarter
Tuesday, November 20, 2018	Interim Reports Issued
Wednesday, November 21, 2018	Day Off
Thursday, November 22, 2018	Holiday - 3
Friday, November 23, 2018	Day Off
Friday, December 21, 2018	Early Release - 2
Monday, December 24, 2018	Day Off
Tuesday, December 25, 2018	Day Off
Wednesday, December 26, 2018	Day Off
Thursday, December 27, 2018	Day Off
Friday, December 28, 2018	Day Off
Monday, December 31, 2018	Day Off
Tuesday, January 1, 2019	Holiday - 4
Wednesday, January 2, 2019	Day Off
Thursday, January 3, 2019	Day Off
Friday, January 4, 2019	Day Off
Monday, January 7, 2019	Day Off

**EXHIBIT A**  
**2018-2019 Alphetland VPK School Calendar**  
**(Continued)**

**Third Quarter**

Tuesday, January 8, 2019	Start 3rd Quarter (51 Days)
Monday, January 21, 2019	Day Off
Wednesday, January 30, 2019	Report Cards Issued for Second Quarter
Monday, February 4, 2019 FTE	Survey 3
Tuesday, February 5, 2019 FTE	Survey 3
Wednesday, February 6, 2019	FTE Survey 3
Thursday, February 7, 2019	FTE Survey 3
Friday, February 8, 2019	FTE Survey 3
Tuesday, February 12, 2019	Interim Reports Issued
Monday, February 18, 2019	Holiday - 5
Thursday, February 21, 2019	Early Release - 3
Thursday, March 21, 2019	Early Release - 4
Friday, March 22, 2019	Day Off
Monday, March 25, 2019	Day Off
Tuesday, March 26, 2019	Day Off
Wednesday, March 27, 2019	Day Off
Thursday, March 28, 2019	Day Off
Friday, March 29, 2019	Day Off

**Fourth Quarter**

Monday, April 1, 2019	Start 4th Quarter (45 Days)
Tuesday, April 16, 2019	Report Cards Issued for Third Quarter
Wednesday, May 1, 2019	Interim Reports Issued
Friday, April 19, 2019	Day Off
Wednesday, May 9, 2018	Early Release - 5
Monday, May 27, 2019	Holiday - 6
Tuesday, June 4, 2019	Early Release - 6
Tuesday, June 4, 2019	Last Day of School
Wednesday, June 26, 2019	Report Cards Issued for Fourth Quarter

## 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

**NOVA SOUTHEASTERN UNIVERSITY, INC.**  
(hereinafter referred to as "Provider"),  
whose principal place of business is  
3301 College Avenue, Fort Lauderdale, Florida 33314

WHEREAS, SBBC recognizes the advantage of working cooperatively with community providers to increase the number of prekindergarten children who receive special education; and

WHEREAS, Provider has the capability of providing special education to prekindergarten students with disabilities and medically fragile students; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2018 and conclude on June 30, 2019.

2.02 **Eligibility.** Prekindergarten students with disabilities eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

(a) Provider shall make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.

- (b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with a request from the Principal.
- (c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the SBBC's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the SBBC's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.
- (d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 **Administrative Responsibility.**

- (a) The Executive Director of the SBBC's Exceptional Student Learning Support (ESLS) Division shall assign a designee (the name of such person to be furnished in writing to the Provider) to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.
- (b) Provider shall supervise its instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.
- (c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

2.05 **Technical Assistance/Staff Training.**

- (a) SBBC shall provide technical assistance to Provider in interpreting and implementing State Board of Education Rules and School Board policies related

to eligibility and placement of students with disabilities and to the provision of therapy through onsite observations and visits and through speech language, occupational, and/or physical therapy team meetings.

- (b) Provider shall provide 12 hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and the Provider.
- (c) Provider shall train new staff hired after the initial training. SBBC shall provide Provider with a current copy of SBBC's Special Programs and Procedures document.

2.06 **Medically Related Health Practices.**

- (a) SBBC shall provide guidelines for medically related health services practices and procedures.
- (b) Provider shall purchase necessary supplies related to the implementation of the health service practices.
- (c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.
- (d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health specific of these students.

2.07 **SBBC Disclosure of Educational Records.**

- (a) SBBC shall provide the types of education records listed in 2.07 (b), pursuant to parental consent as listed in 2.07 (c), for the development and implementation of an Individual Educational Plan (IEP)
- (b) SBBC shall provide Provider with access to the EasyIEP Electronic Records Management System and additional records of the students Provider serves. EasyIEP access shall be limited only to records of SBBC students enrolled in the specified program, and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EasyIEP contains the following records:
  - a. Individual Educational Plan (IEP);
  - b. Consent for Evaluation/Re-evaluation;
  - c. Functional Behavior Assessment/Positive Behavior Intervention Plan; and
  - d. Any other document necessary for the provision of FAPE.

Additional education records include:

- a. Progress Notes;
- b. Progress Reports; and
- c. Any other information necessary to enroll the student.

- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in section 2.07 (b) and for the purposes listed in section 2.07 (a). Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

2.08 **Provider Confidentiality of Educational Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider 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 records in strict confidence and not use or re-disclose 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) 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 administrative, physical and technological 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, except as permitted by law;
  - 6) notify SBBC promptly 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](mailto: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) 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 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 that media equipment is no longer in use or is to be disposed; secure erasure shall 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) Provider shall, 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 conclusion of all obligations existing under this Agreement.

2.09 **Staffing.** SBBC shall provide a person who is qualified to be the designee of the Executive Director of the ESLS Division to attend all initial eligibility and placement staffings. Provider shall organize, coordinate, and conduct individual educational plan (IEP) (as

hereinafter defined) meetings, interims, and reevaluations on students who are eligible students with disabilities as defined in Section 2.02 and are enrolled with the Provider.

2.10 **Program Review/Audit.** SBBC reserves the right to preview the instructional program provided by the Provider and audit records and bookkeeping procedures in compliance with this Agreement. A 30 day written notice shall be given prior to any such review. In conducting such review and/or audit, SBBC shall not interfere with the business operations of Provider. Upon completion, a copy of the review and/or audit shall be provided to the Provider.

2.11 **Transportation.**

- (a) SBBC shall provide transportation for eligible students with disabilities as defined in Section 2.02.
- (b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six approved Early Release Days.

2.12 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.33 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within 30 days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.13 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on August 20, 2018 and ending on June 5, 2019 for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

2.14 **Supervision.** Provider shall provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.15 **Parent Training.**

- (a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.
- (b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.16 **Classroom Equipment, Materials & Supplies.** Provider shall provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies that are developmentally appropriate for preschool students with disabilities.



2.17 **Individual Educational Plan (IEP).**

- (a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.
- (b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.
- (c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.18 **Special Programs and Procedures.**

- (a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.
- (b) Provider shall comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

2.19 **Communication.** Provider shall allow appropriate personnel of SBBC to confer with Provider staff in matters regarding student screening, evaluation, eligibility, placement, and IEP development. Additionally, Provider shall allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC preschool programs at all times.

2.20 **Custodial Services.** Provider shall provide daily custodial services to keep the classrooms clean and disinfected.

2.21 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen. Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class, six-to-one for prekindergarten students with disabilities with specialized needs in a self-contained class, or nine-to-one for prekindergarten students with disabilities in an integrated class. The Dean of the Provider's Mailman Segal Center for Human Development and SBBC's ESLs Executive Director or designee of the ESLs Division must agree upon exceptions to these ratios.

2.22 **Attendance/Quarterly Progress Reports.** Provider shall report the attendance of the students as directed by the ESLs designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, Provider shall develop quarterly progress reports

on the student's progress in meeting the educational goals for each student and send such reports to the parent on a quarterly basis.

2.23 **Health/Safety Standards and Legal Compliance.**

- (a) Provider shall secure fire inspections and health, safety, and sanitation inspections annually from agencies having jurisdiction. Provider shall comply with local or state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, National Fire Protection Association (NFPA) 101; Life Safety 101, Section 4A-36, F.A.C. and State Requirements for Educational Facilities (SREF).
- (b) A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report  
Fire Department Inspection  
State of Florida Sanitation Certification

- (c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.
- (d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.
- (e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.
- (f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.
- (g) Provider shall prohibit any policy or procedure that results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion, or sexual orientation.

2.24 **Therapy Services.**

- (a) Provider shall provide licensed occupational therapists or certified occupational therapy assistants, physical therapists or physical therapy assistants, and speech-language pathologists or speech-language pathology assistants as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and certified and/or licensed speech-language pathologists must attend all IEP meetings and perform all evaluations including the BDI-II for exiting preschoolers.

- (b) Provider shall send therapists or therapists with assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.
- (c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.
- (d) Provider shall provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service (as defined in the Individuals with Disabilities Education Act) who are enrolled with the Provider as defined by Section 2.02.

2.25 **Substitutes.** Provider shall provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.26 **Food Services.**

- (a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.
- (b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

2.27 **Early Release.** Provider shall provide six early release days to coincide with SBBC's approved 2018-2019 calendar. Provider shall implement a program of staff development activities on those days as set forth on **Exhibit A** attached hereto and made a part hereof.

2.28 **Publicity.** Provider shall identify SBBC's role as a provider of instructional services for preschool students with disabilities in any and all public documents, brochures, videos, and newsletters that are developed for the preschool program.

2.29 **Insurance Requirements.** Provider shall comply with the following insurance requirements throughout the term of this Agreement:

- (a) **General Liability.** Provider 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. Provider 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. Provider 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. Provider 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. Such coverage provided by Provider may be offered via commercial insurance, self insurance, or some combination thereof. Coverage provided via commercial insurance carrier shall be provided 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 the required insurance must be furnished by Provider 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 Provider to remedy any deficiencies. Provider 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. Provider 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, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.30 EdPlan. Provider shall make available a meeting room with Internet access and a projector for all IEP meetings. Provider staff shall use the web to access EasyIEP and the projector to display the IEP during such meetings.

2.31 Extended School Year (ESY). Provider shall ensure, on an individual basis, that ESY services are available if a student's IEP committee determines the eligibility and the need for these services are met in accordance with the SBBC ESY criteria.

2.32 Payment.

- (a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation shall then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments shall capture the increase or decrease. For the June and July FTE Survey period, the Provider shall receive payment equal to 95% of the FTE revenue generated through FEFP base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration and discretionary lottery) for each student meeting eligibility requirements for and receiving ESY instruction. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of 25 hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within 30 days of receipt of the invoice.

- (b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from July 1, 2018 to June 30, 2019. The projected total cost to SBBC not to exceed \$4,045,950 per school year, unless this Agreement is amended by the parties.

2.33 Inspection of Provider's Records by SBBC. Provider 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 Provider'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 Provider or any of Provider's payees pursuant to this Agreement. Provider'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. Provider'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) Provider's Records Defined. For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider'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 Provider pursuant to this Agreement.

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

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

(h) Inspector General Audits. Provider 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.

2.34 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: Curriculum Supervisor, Preschool ESL  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1211 NW 33<sup>rd</sup> Terrace  
Fort Lauderdale, Florida 33311

To NSU: President, Nova Southeastern University  
3301 College Avenue  
Fort Lauderdale, Florida 33314

With a Copy to: Dean  
Mailman Segal Center for Human Development  
3301 College Avenue  
Fort Lauderdale, Florida 33314

2.35 **Background Screening.** Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider 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 Provider and its personnel. The parties agree that the failure of Provider 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. Provider 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 Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

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

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

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC



employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

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

3.05 **Termination.** This Agreement may be canceled with 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. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Provider 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, Provider 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. Provider 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 Provider does not transfer the public records to SBBC. Upon completion of the Agreement, Provider shall transfer, at no cost, to SBBC all public records in possession of Provider or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Provider transfers all public records to SBBC upon completion of the Agreement, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Agreement, Provider 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](mailto:REQUEL.BELL@BROWARDSCHOOLS.COM), RISK MAGAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA, 33301.**

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

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. Provider 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 Provider.

3.13 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or

understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

3.15 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other

labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 **Survival.** All representations and warranties made herein, indemnification obligations, obligations under section 3.25 below, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence or wrongful acts or omissions, or its employees' acts of negligence or wrongful acts or omissions when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence, wrongful acts or omissions up to said limits.

B. By Provider: Provider, except as provided for in the last sentence of this Section, agrees to indemnify, hold harmless and defend SBBC, its agents 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 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 Provider, its agents or employees; the equipment of Provider, its agents or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider'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 Provider, SBBC or otherwise. Provider shall have no indemnification related obligations to the extent any claim arises out of or results from the negligent or wrongful acts or omissions of the SBBC, its agents, employees or contractors.

3.26 **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.

3.27 **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.

**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:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@gbrowardschools.com  
Reason: Nova Southeastern University, Inc.  
Date: 2018.04.19 12:12:13 -04'00'

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

FOR PROVIDERS

(Corporate Seal)

NOVA SOUTHEASTERN UNIVERSITY, INC.

ATTEST:

[Signature]  
Asst. Secretary

By [Signature]  
Int. Dir. / COO

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 Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 17 day of May, 2018 by Frederick Lyman of Nova Southeastern University, on behalf of the corporation/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

Julissa Batista  
Printed Name of Notary

(SEAL)

GG153925  
Notary's Commission No.



Julissa Batista  
Commission # GG153925  
Expires: February 13, 2022  
Bonded thru Aaron Notary

APPROVED AS TO LEGAL FORM	
Signature	<u>[Signature]</u>
Print Name	<u>Eric R. Huot</u>
APPROVED AS TO BUSINESS CONTENT	
Signature	<u>[Signature]</u>
Print Name	<u>[Signature]</u>



**Exhibit A**

**2018-2019 School Calendar**

<b>August 8, 2018</b>	<b>Employee Planning - 1</b>
<b>August 9, 2018</b>	<b>Employee Planning - 2</b>
<b>August 10, 2018</b>	<b>Employee Planning - 3</b>
<b>August 13, 2018</b>	<b>Employee Planning - 4</b>
<b>August 14, 2018</b>	<b>Employee Planning - 5</b>
<b>August 15, 2018</b>	<b>Start 1st Quarter - (44 Days)</b>
<b>September 3, 2018</b>	<b>Holiday - 1</b>
<b>September 10, 2018</b>	<b>Day Off</b>
<b>September 19, 2018</b>	<b>Day Off</b>
<b>October 18, 2018</b>	<b>Early Release 1, End of 1st Quarter</b>
<b>October 19, 2018</b>	<b>Employee Planning - 6</b>
<b>October 22, 2018</b>	<b>Start 2nd Quarter - (40 Days)</b>
<b>November 6, 2018</b>	<b>Employee Planning - 7</b>
<b>November 12, 2018</b>	<b>Holiday - 2</b>
<b>November 21, 2018</b>	<b>Day Off</b>
<b>November 22, 2018</b>	<b>Holiday - 3</b>
<b>November 23, 2018</b>	<b>Day Off</b>
<b>December 21, 2018</b>	<b>Early Release 2, End of 2nd Quarter</b>
<b>December 25-31, 2018</b>	<b>Days Off</b>
<b>January 1, 2019</b>	<b>Holiday - 4</b>
<b>January 2-4, 2019</b>	<b>Days Off</b>
<b>January 7, 2019</b>	<b>Employee Planning - 8</b>
<b>January 8, 2019</b>	<b>Start of 3rd Quarter (46 Days)</b>
<b>January 21, 2019</b>	<b>Day Off</b>
<b>February 18, 2019</b>	<b>Holiday - 5</b>
<b>February 21, 2019</b>	<b>Early Release 3</b>
<b>March 21, 2019</b>	<b>Early Release 4, End of 3rd Quarter</b>
<b>March 22, 2019</b>	<b>Employee Planning - 9</b>
<b>March 25-29, 2019</b>	<b>Days Off</b>
<b>April 1, 2019</b>	<b>Start of 4th Quarter (45 Days)</b>
<b>April 19, 2019</b>	<b>Day Off</b>
<b>May 9, 2019</b>	<b>Early Release 5</b>
<b>May 27, 2019</b>	<b>Holiday 6</b>
<b>June 4, 2019</b>	<b>Early Release 6 and Last Day of School</b>
<b>June 5, 2019</b>	<b>Employee Planning - 10</b>

Baudhuin Preschool at Nova Southeastern University's Malkman Segal Center for Human Development  
 Mailing address: 3301 College Avenue Ft. Lauderdale FL 33314  
 Phone: (954) 262-7100 Fax: (954) 262-3936

## 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

**UNITED CEREBRAL PALSY OF BROWARD, PALM BEACH AND MID-COAST COUNTIES, INC**  
(d/b/a **United Community Options of Broward, Palm Beach and Mid Coast Counties**)  
(hereinafter referred to as "Provider"),  
whose principal place of business is  
3117 Southwest 13<sup>th</sup> Court, Fort Lauderdale, Florida 33312

WHEREAS, SBBC recognizes the advantage of working cooperatively with community providers to increase the number of prekindergarten children who receive special education; and

WHEREAS, Provider has the capability of providing special education to prekindergarten students with disabilities and medically fragile students.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2018** and conclude on **June 30, 2019**.

2.02 **Eligibility.** Prekindergarten students with disabilities eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

(a) Provider shall make available appropriately certified teachers according to the Florida Course Code Directory, Florida Statutes, and State Board of Education Rules.



- (b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten Primary or Preschool Education with a request from the Principal.
- (c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.
- (d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent inservice points in instruction for teaching students with disabilities.

2.04 **Administrative Responsibility.**

- (a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.
- (b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.
- (c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

2.05 **Technical Assistance/Staff Training.**

- (a) SBBC shall provide technical assistance to Provider in interpreting and implementing State Board of Education Rules and School Board policies related to eligibility and placement of students with disabilities and to the provision of therapy through onsite observations and visits and through speech language, occupational, and/or physical therapy team meetings.
- (b) Provider shall provide 12 hours of release time annually for the instructional staff to attend inservice training jointly approved by SBBC and the Provider.

- (c) Provider shall train new staff hired after the initial training. SBBC shall provide Provider with a current copy of SBBC's Special Programs and Procedures document.

**2.06 Medically Related Health Practices.**

- (a) SBBC shall provide guidelines for medically related health services practices and procedures.
- (b) Provider shall purchase necessary supplies related to the implementation of the health service practices.
- (c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.
- (d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health specific of these students.

**2.07 SBBC Disclosure of Educational Records.**

- (a) SBBC shall provide the types of education records listed in 2.07 (b), pursuant to parental consent as listed in 2.07 (c), for the development and implementation of an Individual Educational Plan (IEP)
- (b) SBBC shall provide Provider with access to the EasyIEP Electronic Records Management System and additional records of the students Provider serves. EasyIEP access shall be limited only to records of SBBC students enrolled in the specified program, and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EasyIEP contains the following records:
  - a. Individual Educational Plan (IEP);
  - b. Consent for Evaluation/Re-evaluation;
  - c. Functional Behavior Assessment/Positive Behavior Intervention Plan; and
  - d. Any other document necessary for the provision of FAPE.

Additional education records include:

- a. Progress Notes;
  - b. Progress Reports; and
  - c. Any other information necessary to enroll the student.
- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in section 2.07 (b) and for the purposes listed in section 2.07 (a). Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

**2.08 Provider Confidentiality of Educational Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider 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 records in strict confidence and not use or re-disclose 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) 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 administrative, physical and technological 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](mailto: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) 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 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 that media equipment is no longer in use or is to be disposed; secure erasure shall 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) Provider shall, 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 conclusion of all obligations existing under this Agreement.

2.09 **Staffing.** SBBC shall provide a person who is qualified to be the designee of the Executive Director of the ESLS Division to attend all initial eligibility and placement staffings. Provider shall organize, coordinate, and conduct individual educational plan (IEP) meetings, interims, and reevaluations on students who are eligible students with disabilities as defined in Section 2.02 and are enrolled with the Provider.

2.10 **Program Review/Audit.**

- (a) SBBC reserves the right to preview the instructional program provided by the Provider and audit records and bookkeeping procedures in compliance with this Agreement. A 30 day written notice shall be given prior to the audit, which shall be conducted within 90 days after the end of the Agreement period. The written notice and the examination shall be conducted by SBBC's Management Audit Department. Upon completion, a copy of the audit shall be provided to the Provider.
- (b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.11 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.33 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within 30 days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.12 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on August 20, 2018 and ending on June 5, 2019 for prekindergarten students with disabilities. Prekindergarten

students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of 25 hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

2.13 **Supervision.** Provider shall provide supervision and evaluation of the instructional staff and therapists employed by the Provider.

2.14 **Parent Training.**

- (a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.
- (b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

2.15 **Classroom Equipment, Materials & Supplies.** Provider shall provide appropriate classroom and therapy furniture, equipment, technology, and instructional and evaluation materials and supplies that are developmentally appropriate for preschool students with disabilities.

2.16 **Individual Educational Plan (IEP).**

- (a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.
- (b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.
- (c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.17 **Special Programs and Procedures.**

- (a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.
- (b) Provider shall comply with SBBC's current Special Programs and Procedures document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

2.18 **Communication.** Provider shall allow appropriate personnel of SBBC to confer with Provider staff in matters regarding student screening, evaluation, eligibility, placement, and IEP development.

Additionally, Provider shall allow assigned appropriate SBBC support staff access to classroom and student records associated with SBBC preschool programs at all times.

2.19 **Custodial Services.** Provider shall provide daily custodial services to keep the classrooms clean and disinfected.

2.20 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen. Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class, six-to-one for prekindergarten students with disabilities with specialized needs in a self-contained class, or nine-to-one for prekindergarten students with disabilities in an integrated class. The Provider's President/CEO and SBBC ESLS Executive Director or designee must mutually agree upon exceptions to these ratios.

2.21 **Attendance/Quarterly Progress Reports.** Provider shall report the attendance of the students as directed by the ESLS designee who is responsible for reporting the FTE and maintaining audit documentation. In addition, Provider shall develop quarterly progress reports on the student's progress in meeting the educational goals for each student and send such reports to the parent on a quarterly basis.

2.22 **Health/Safety Standards and Legal Compliance.**

- (a) Provider shall secure fire inspections and health, safety, and sanitation inspections annually from agencies having jurisdiction. Provider shall comply with local or state standards for health and safety of the students whichever are more stringent. Said inspections shall be in strict compliance with handicapped accessibility codes, NFPA 101; Life Safety 101, Section 4A-36, F.A.C. and State Requirements for Educational Facilities (SREF).
- (b) A copy of the following annual inspections shall be furnished to SBBC's representative with the first invoice:

Broward County Child Care Licensing Report  
Fire Department Inspection  
Broward County Food Services Inspection  
State of Florida Sanitation Certification

- (c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.
- (d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.
- (e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.
- (f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

- (g) Provider shall prohibit any policy or procedure that results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion, or sexual orientation.

2.23 **Therapy Services.**

- (a) Provider shall provide licensed occupational therapists (OTR) or certified occupational therapy assistants (COTA), physical therapists (PT) or physical therapy assistants (PTA), and speech-language pathologists (SLP) or speech-language pathology assistants (SLPA) as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists and certified and/or licensed SLPs must attend all IEP meetings and perform all evaluations including the BDI-II for exiting preschoolers.
- (b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.
- (c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.
- (d) Provider shall provide occupational and physical therapy and speech-language evaluations on students who may be eligible for a related service who are enrolled with the Provider as defined by Section 2.02.

2.24 **Substitutes.** Provider shall provide a substitute teacher and paraprofessional according to SBBC policy for each teacher and paraprofessional who is not in their designated classroom for one or more days.

2.25 **Food Services.**

- (a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.
- (b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

2.26 **Early Release.** Provider shall provide six early release days to coincide with SBBC's approved 2018-2019 calendar. Provider shall implement a program of staff development activities on those days as set forth on Exhibit A.

2.27 **Publicity.** Provider shall identify SBBC's role as a provider of instructional services for preschool students with disabilities in any and all public documents, brochures, videos, and newsletters that are developed for the preschool program.

2.28 **Insurance Requirements.** Provider shall comply with the following insurance requirements throughout the term of this Agreement:

- (a) **General Liability.** Provider 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. Provider 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. Provider 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. Provider 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 Provider 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 Provider to remedy any deficiencies. Provider 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. Provider 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, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.



2.29 **EdPlan.** Provider shall make available a meeting room with Internet access and a projector for all IEP meetings. Provider staff shall use the web to access EasyIEP and the projector to display the IEP during such meetings.

2.30 **Extended School Year (ESY).** Provider shall ensure, on an individual basis, that ESY services are available if a student's IEP committee determines the eligibility and the need for these services are met in accordance with the SBBC ESY criteria.

2.31 **Payment.**

- (a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second semester allocation shall then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments shall capture the increase or decrease. For the June and July FTE Survey period, the Provider shall receive payment equal to 95% of the FTE revenue generated through FEFP base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration and discretionary lottery) for each student meeting eligibility requirements for and receiving ESY instruction. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of 25 hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within 30 days of receipt of the invoice.
- (b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from July 1, 2018 to June 30, 2019. The projected total cost to SBBC not to exceed \$976,579 per school year, unless this Agreement is amended by the parties.

2.32 **Transportation.** SBBC shall contract with Provider to provide pupil transportation services for eligible exceptional students as defined in Section 2.02. SBBC shall pay \$34.24 per student for students who physically rode the bus one day during the Florida Education Finance Program (FEFP) window and are enrolled in program. Provider shall be paid for two invoicing periods; October and February. Provider shall organize, coordinate, administer, supervise, and operate pupil transportation services as follows:

1. Pupil transportation services for disabled prekindergarten students shall be provided from:
  - a. The student's official pickup point to the Provider.
  - b. Return from the Provider to the students' official pickup point or to a location specified and agreed to by the student's parents or guardian.
  
2. Pupil transportation services shall be provided in compliance with the following provisions:
  - a. Vehicles shall be operated by or contracted for by the Provider.
  - b. Drivers and attendants and/or any and all personnel who ride on or who shall be in attendance on the bus at the time students are on the bus shall be an employee of the Provider or a volunteer at the Providers and receive clearance from SBBC through fingerprinting and security check, or go through the HRS security clearance procedures.
  - c. Individual employees assigned to drive at the time students are on the bus shall be licensed by the Florida State Department of Highway Safety and Motor Vehicles, Driver's License Division to operate a vehicle of this size and type.
  - d. Provider shall develop policies and procedures concerning the transportation of students and ensure that appropriate personnel are given an orientation regarding these procedures. Policies and procedures shall not be in conflict with any policy or procedure of SBBC ([www.pupiltrans.or](http://www.pupiltrans.or)) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).
  
3. All vehicles under the terms of this Agreement shall meet the following standards:
  - a. Provider shall meet all insurance requirements of SBBC and the State of Florida and agree to maintain insurance in accordance with the following:
    - 1) Auto Liability Insurance with bodily injury limits of no less than \$1,000,000.00 per occurrence. SBBC shall be named as an additional insured.
    - 2) Worker's Compensation and Employer's Liability Insurance with statutory limits.
    - 3) Hold harmless clause.
  - b. Equipped with seatbelts, car seats, or wheelchair securement devices (where appropriate), which are used at all times to secure students while being transported.
  - c. Maintained to Original Equipment Manufacturers (EOM) standards and comply with the requirements FMVSS, Department of Education and SBBC.
  - d. All vehicles used by the provider must meet DOE transportation requirements ([www.fldoe.org/transportation](http://www.fldoe.org/transportation))
  
4. Special provisions for providing this transportation service shall be those listed below:
  - a. Provider shall provide for FTE survey counts using the same forms and providing the same information as that required of bus drivers serving the Public Schools.
  - b. If Provider purchases a management letter as part of an annual audit, the management letter must be received by SBBC one hundred and twenty (120) days following the close of the Provider's fiscal year.
  - c. If at any time an employee of the Provider is aware of or suspects that child abuse or neglect has occurred, as defined in Chapter 415, F.S., that employee is required to immediately report such known or suspected abuse or neglect to the Department of Health and Rehabilitative Services by calling the Central Abuse Registry (1-800-96-

- ABUSE). Failure of Provider to immediately report known or suspected child abuse or neglect shall constitute breach of contract and may result in termination.
- d. The operating calendar shall be the same as the operating calendar of SBBC for elementary schools during the regular term and for summer school.
  - e. Provider shall accommodate the special needs of the students being transported. Special needs as defined but not limited to; baby seats, lifts, assistance in entering and exiting a vehicle and adequate care and supervision of all students while in the vehicle, and with attendants on the bus where appropriate. All special needs must be specified in the student's IEP.
  - f. Special care shall be given to assure the time limit spent on the vehicle is not excessive. No student should be required to spend time in excess of one hour on each one-way trip. Provider may be required to commission additional vehicles and employ additional drivers and attendants to ensure compliance with this provision.
  - g. Provider shall modify routes as student demographics change and shall notify students and parents of all route changes.
  - h. Termination of transportation services for a student shall be consistent with the requirements for termination from the education program for which SBBC is contracting.
  - i. Vehicles shall be maintained in a safe operating condition in accordance with FS 1006. SBBC reserves the right to halt all processing of payments due under this Agreement until deficiencies in the safety of vehicles are corrected.
  - j. Drivers shall maintain on the vehicle an updated list of all students assigned to the vehicle. This list shall contain as a minimum the name, address, telephone number, emergency telephone number and address, and the special needs of the student.
  - k. Provider shall ensure that all students and their families are notified of all changes in the route.
  - l. Shall complete SBBC FTE transportation survey.
5. As it relates to motor vehicle records, when hiring bus operators for the purpose of transporting students, Provider shall require bus operators:
    - a. License to be checked at the initial time of employment.
    - b. License checked prior to the first day of fall semester.
    - c. License checked quarterly throughout the school year.
  6. As it relates to drug testing, when employing bus operators for the purpose of transporting students, Provider shall require bus operators to:
    - a. Pre-employment drug test.
    - b. Undergo random drug test.
    - c. Drug test as a result of reasonable suspicion.
  7. Provider shall require that bus operators meet DOT and/or DOE requirements for physical and dexterity testing.  
(<http://www.flhsmv.gov/ddl/cdlmedicalcert.html>) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).
  8. As it relates to training, Provider shall require bus operators to go through:
    - a. Initial time of employment training based on vehicle and purpose of transportation.
    - b. Minimum of eight hours of inservice training annually.

9. Provider shall complete bus evacuation drills within the first 6 weeks of each semester (2) per school year.
10. Schedule transportation services to accommodate SBBC six approved Early Release Days.

2.33 **Inspection of Provider's Records by SBBC.** Provider 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 Provider'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 Provider or any of Provider's payees pursuant to this Agreement. Provider'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. Provider'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) **Provider's Records Defined.** For the purposes of this Agreement, the term "Provider's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider'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 Provider pursuant to this Agreement.

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

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to Provider's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by Provider 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 Provider'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 Provider in excess of two percent (2%) of

the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider 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. Provider 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 Provider 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 Provider pursuant to this Agreement and such excluded costs shall become the liability of Provider.

(h) Inspector General Audits. Provider 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.

2.34 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: Curriculum Supervisor, Preschool ESLS  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1211 NW 33<sup>rd</sup> Terrace  
Fort Lauderdale, Florida 33311

To Provider: Executive Director  
3117 SW 13<sup>th</sup> Court  
Fort Lauderdale, FL 33312

With a Copy to: Director, Preschool  
3117 SW 13<sup>th</sup> Court  
Fort Lauderdale, FL 33312

2.35 Background Screening. Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of Provider or its personnel providing any services under the conditions described in the previous sentence. Provider 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 Provider and its personnel. The parties agree that the failure of Provider 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. Provider 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 Provider's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

### **ARTICLE 3 – GENERAL CONDITIONS**

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

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

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by 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. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Provider 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, Provider 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. Provider 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 Provider does not transfer the public records to SBBC. Upon completion of the Agreement, Provider shall transfer, at no cost, to SBBC all public records in possession of Provider or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Provider transfers all public records to SBBC upon completion of the Agreement, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Agreement, Provider 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](mailto:REQUEL.BELL@BROWARDSCHOOLS.COM), RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA, 33301.**

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

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. Provider 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 Provider.

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

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

3.15 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.



3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.23 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

3.26 **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.

3.27 **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.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO 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:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. -  
kathelyn.jacques-adams@browardschools.com  
Reason: United Cerebral Palsy of Broward, Palm Beach  
and Mid-Coast Counties, Inc d/b/a United Community  
Options of Broward, Palm Beach and Mid Coast Counties  
Date: 2018.04.30 13:41:20 -0400

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

**FOR PROVIDER**

(Corporate Seal)

UNITED CEREBRAL PALSY OR  
BROWARD, PALM BEACH AND  
MID-COAST COUNTIES, INC  
d/b/a UNITED COMMUNITY OPTIONS OF  
BROWARD, PALM BEACH AND MID COAST  
COUNTIES

ATTEST:

By Patricia Murphy

\_\_\_\_\_, Secretary

-or-

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 24<sup>th</sup> day of  
April, 2018 by Patricia Murphy of

Name of Person

United Community Options, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced FL Driver's License as identification and  
did/did not first take an oath. Type of Identification

My Commission Expires:



Claudia Scott  
Signature - Notary Public

Claudia P. Scott  
Printed Name of Notary

GG 121658  
Notary's Commission No.



Exhibit A

**Early Beginnings Academy  
2018-2019 Calendar**

First and Second Quarter (First Semester)

<b>August 15-17</b>	Employee Planning/Inservice Day (3)	Wed.-Friday
<b>August 20</b>	First Day of School	Monday
<b>September 3</b>	Labor Day Holiday (1)	Monday
<b>September 10</b>	Employee Planning/Inservice Day (4)	Thursday
<b>September 19</b>	Employee Planning/Inservice Day (5)	Wednesday
<b>October 18</b>	Early Release (2)	Thursday
<b>October 19</b>	Employee Planning/Inservice Day (6)	Friday
<b>November 12</b>	Employee Planning/Inservice Day (7)	Friday (Veteran's Day)
<b>November 14</b>	Issue Report Cards	Thursday
<b>November 21</b>	Employee Planning/Inservice Day (8)	Wednesday
<b>November 22-23</b>	Thanksgiving Holiday (2, 3)	Thursday-Friday
<b>December 21</b>	Early Release (3)	Friday

Third and Fourth quarter (Second Semester)

<b>December 25</b>	Holiday (4)	Monday
<b>December 26-31</b>	Winter Vacation days (1-4)	Tuesday-Friday
<b>January 1, 2019</b>	Holiday (5)	Monday
<b>January 2-4</b>	Winter Vacation days (5-8)	Tues.-Friday
<b>January 7</b>	Employee Planning/Inservice Day (9)	Monday
<u>(Third Semester)</u>		
<b>January 8</b>	Martin Luther King Holiday (6)	Tuesday
<b>January 21</b>	Issue Report Cards	Monday
<b>January 30</b>	Employee Planning/Inservice Day (10)	Thursday
<b>February 18</b>	Early Release (4)	Monday (President's Day)
<b>February 21</b>	Early Release (5)	Thursday
<b>March 21</b>	Employee Planning/Inservice Day (11)	Thursday
<b>March 22</b>	Spring Vacation days 9, 10, 11, 12, & 13	Friday
<b>April 15-19</b>	Issue Report Cards	Mon.-Fri.
<b>April 16</b>	Employee Planning/Inservice Day (12)	Thursday
<b>May 24</b>	Memorial Day Holiday (7)	Friday
<b>May 27</b>	Early Release (6) / Last Day	Monday
<b>June 5</b>	Graduation	Wednesday
<b>June 6</b>	Employee Planning/Inservice Day (13)	Thursday
<b>June 7</b>	Issue Report Cards	Friday
<b>June 26</b>		Wednesday

School is closed on all Holidays and no students are in attendance on Teacher Planning/In-service Days