



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

EE-7.

MEETING DATE	2018-06-12 10:05 - School Board Operational Meeting
AGENDA ITEM	ITEMS
CATEGORY	EE. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Grants Administration

Special Order Request	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Time		
Open Agenda	<input checked="" type="radio"/> Yes	<input type="radio"/> No

TITLE:

Agreement with The Dan Marino Foundation, Inc. and VITA DMF, LLC

REQUESTED ACTION:

Approve the Agreement between The School Board of Broward County, Florida, and The Dan Marino Foundation, INC and VITA DMF, LLC. The Agreement begins the day of School Board approval and concludes twelve (12) months later.

SUMMARY EXPLANATION AND BACKGROUND:

The Dan Marino Foundation has provided access to the Virtual Interactive Training Agent (ViTA) system. ViTA was designed to give users with intellectual, development, or autism spectrum disorders the opportunity to practice job interviewing by conversing with and responding to a VH interviewer. ViTA provides a platform where participants can practice job interviewing with VH agents that are capable of asking a variety of questions in an assortment of settings, which can be adjusted across a spectrum of challenges. The Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:

<input type="radio"/> Goal 1: High Quality Instruction	<input checked="" type="radio"/> Goal 2: Continuous Improvement	<input checked="" type="radio"/> Goal 3: Effective Communication
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FINANCIAL IMPACT:

The positive financial impact is valued at \$14,560 for forty software downloads to run on two computers at each of the 20 identified schools. There is no additional financial impact to the District.

EXHIBITS: (List)

(1) Executive Summary (2) DMF Agreement

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:	
Name: Stephanie R. Williams	Phone: 754-321-2260
Name: Dr. Antoine Hickman	Phone: 754-321-3456

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Signature
Maurice Woods
6/4/2018, 11:51:17 AM

Approved In Open Board Meeting On: JUN 12 2018
By: *Nora Rupert*
School Board Chair

EXECUTIVE SUMMARY

Grant Program	The Dan Marino Foundation	
Status	New – Competitive	
Funds Requested	\$0 (\$14,560 in-kind donation awarded)	
Financial Impact Statement	<p>The positive financial impact for software donation at no cost to the District is valued at \$14,560 in the form of twenty (20) licensed stations and twenty (20) sub-stations. The source of funds is the Dan Marino Foundation. There is no additional financial impact to the District.</p> <p>Each school will receive a licensed station (initial software download) and a sub-station (secondary software download). The licensed station is valued at \$578 and the substation is valued at \$150. We will have 20 schools utilizing 2 ViTA softwares each. 20 initial software licenses for one school computer x \$578 = \$11,560; 20 secondary licenses for additional downloads as each school x \$150 = \$3,000; Total granted = \$14,560.</p>	
Schools Included	<p>The following schools will participate in this grant award:</p> <ul style="list-style-type: none"> • High: Marjory Stoneman Douglas, Monarch, Dave Thomas, Coral Glades, Deerfield Beach, Sheridan-Career Placement and Access, Atlantic Technical-Career Placement and Access, Whispering Pines, Hallandale, Cypress Bay, Blanche Ely, Ft Lauderdale, Boyd Anderson, Coconut Creek, Coral Springs, Miramar, Everglades, Taravella J.P, Dillard, and Nova 	
Managing Department	Exceptional Student Learning Support (ESLS) Transition Services	
Source of Additional Information	<ol style="list-style-type: none"> 1. Dr. Antoine Hickman, Executive Director – Exceptional Student Learning Support 2. Sonja Clay, Director – Exceptional Student Learning Support 3. Stacy Wolfe, Interim Transition Supervisor – Exceptional Student Learning Support 4. Stephanie R. Williams, Director – Grants Administration & Government Programs 	<p>754-321-3436</p> <p>754-321-3431</p> <p>754-321-3405</p> <p>754-321-2260</p>
Project Description	<p>Broward County Public Schools is required under federal legislation to educate and provide Transition Services for all identified transitioning students with disabilities. “Transition Services” is a term used in the Individuals with Disabilities Education Act (IDEA) that defines a coordinated set of activities that may address, among others, the assessment, planning process, educational and community experiences for youth with disabilities as they turn age 14. The intent of transition services is to create opportunities for youth with disabilities that lead to positive adult outcomes. SBBC seeks to enter into this agreement with the Dan Marino Foundation to increase students’ opportunity to obtain gainful employment through utilizing their Virtual Interactive Training Agent system to practice and significantly improve interview skills.</p> <p>The Virtual Interactive Training Agent (ViTA) system was designed to give users with intellectual, development, or autism spectrum disorders the opportunity to practice job interviewing by conversing with and responding to a VH interviewer. The use of a 3D graphic VH approach was made to foster flexibility in the range of VH characters that could be delivered with the support of variations in VH personality and level of provocativeness, creates a virtual reality experience that provides a comprehensive and hierarchical set of job interview practice experiences with VH interviewers that users can interact with as part of the interview training process. ViTA provides a platform where participants can practice job interviewing with VH agents that are capable of asking a variety of questions in an assortment of settings, which can be adjusted across a spectrum of challenges.</p>	

EXECUTIVE SUMMARY

	<p>The Dan Marino foundation has donated 2 ViTA software components to 20 high schools for teachers and job coaches to use with students who need to increase their communication skills, social skills, interview skills and confidence. Thus, each school needs downloads for two different computers at their school. The first download is the licensed station and the second download is the sub-station.</p>
Evaluation Plan	<p>This study will use a one-group pre-post design, in which each user acts as his/her own control and progress is tracked over time: 1) Marino Interview Assessment Scale score and 2) Self-efficacy – score on the VITA-DMF Self-Efficacy scale. Annual evaluation measures will include performance outcome measures, observations, and mastery of Transition Individual Education Plan (TIEP) goals.</p>
Research Methodology	<p>Aim 1: Evaluate the measurable impact of ViTA software on participants' interviewing skills.</p> <p>Hypothesis 1: Examination of pre- and post- test MIAS scores of participants who used ViTA software will demonstrate a statistically significant increase in interview skills and communication skills.</p> <p>Aim 2: Evaluate the measurable impact of ViTA software on participants' perceived self- efficacy.</p> <p>Hypothesis 2: Examination of pre- and post- test survey scores of participants who used ViTA DMF software will demonstrate a statistically significant increase in perceived self-efficacy.</p> <p>Aim 3: Evaluate the relationship between curriculum/intervention program participation and the participants' Marino Interview Assessment Scale (MIAS) score.</p> <p>Hypothesis 3: Examination of pre- and post- test scores of participants who participated in the curriculum/intervention program will demonstrate a statistically significant increase in Marino Interview Assessment Scale scores.</p> <p>Aim 4: Evaluate the moderation of the treatment effects described in Aims 1, 2, and 3 by age, gender, program participation, and disability.</p> <p>Hypothesis 4: Subgroup analysis will show differentiation of treatment effects by age, sex, program participation, and disability.</p>
Alignment with Strategic Plan	<p>This grant is aligned to District Strategic Plan Goal 2: Continuous Improvement and District Strategic Plan Goal 3: Effective Communication.</p>
Level of Support provided by GAGP	<p>GAGP staff provided level 1 support in routing the contract through the legal process, developing the executive summary for the board agenda, preparing a hard copy of the file for record keeping, and tracking the grant through the grants management system.</p>

AGREEMENT

THIS AGREEMENT is made and entered into as of this 12th day of June, 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

THE DAN MARINO FOUNDATION, INC AND VITA DMF, LLC
(Hereinafter referred to as "VENDOR"),
a Florida not-for-profit whose principal place of business is
400 North Andrews Avenue, Fort Lauderdale, FL 33301

WHEREAS, the SBBC is in need of non-exclusive rights to the Licensed Program for Interview Training Use as well as certain support services and has selected the VENDOR to provide such products and services; and

WHEREAS, VENDOR is willing to grant such license and provide certain services related thereto, as set forth herein to the SBBC; and

WHEREAS, SBBC POLICY 3320, Part VI (C)(5)(c), and Rule 6A-1.012(14), Florida Administrative Code, permit the acquisitions of information technology as defined in Section 282.0041(14), Florida Statutes, by direct negotiation; and

WHEREAS, SBBC pursuant to Department of Education Rule 6A -1.012 (11B and 14) Florida Administrative Code and School Board Policy 3320, Section II, H, which authorizes the purchase of any type of copyrighted materials, instructional materials and computer software without competitive solicitations; and

WHEREAS, the SBBC and VENDOR desire to memorialize the terms and conditions of their agreement;

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

ARTICLE 1 – RECITALS

1.0 **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

2.0 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.06 of this Agreement, the term of this Agreement shall commence upon approval by SBBC and conclude twelve (12) months later. The term of the Agreement may be extended by two (2) additional one-year periods. In addition, SBBC has the option to extend the Agreement beyond the initial Agreement period or beyond any renewal period for an additional one-hundred and eighty (180) days.

2.01 **Description of Goods or Services Provided.** VENDOR shall provide the products and services described in Attachment A (Statement of Work/Scope of Services)

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

First: This Agreement, then;
Second: Attachment A and B

2.03 **Cost of Services.** SBBC has been granted funding from The Dan Marino Foundation in the amount of \$14,560 to cover the cost of twenty (20) Licensed Stations and twenty (20) Sub-Stations.

(a) Initial Licensed Station is \$578; each additional Sub-Station included in the license is an additional \$150, the total cost of which is included above.

(b) SBBC is prohibited from collecting any fees in exchange for a participant's use of VENDOR's products and/or services.

2.04 **Services.** VENDOR will provide SBBC with non-exclusive licensing rights and ten (10) hours of technical support.

2.05 **SBBC Disclosure of Education Records.** VENDOR will utilize age, gender, primary disability, primary language spoken, and ethnicity (name will remain anonymous) facilitating SBBC and its minimum of twenty (20) participants to be included in the VENDOR's Research Study.

(a) SBBC will provide VENDOR with the following education records for each research participant: one (1) Participant Demographics Form, one (1) Pre-Program Self-Efficacy Survey, two (2) VENDOR Interview Rubrics (MIAS), one (1) Post-Program Self-Efficacy Survey and consent form. The forms are to be submitted (i) in accordance with the date provided on the Data Collection Timeline & Checklist or (ii) within thirty (30) days of the execution of this Agreement. Use of the VENDOR's system may not begin prior to submission of the consent forms. In the event that SBBC shall commit any breach of, or default in, any of the obligatory dates within

the Data Collection Timeline & Checklist, AND also shall fail to remedy such default or breach within fourteen (14) days, it shall be considered a breach of this Agreement.

(b) All materials listed in section 2.05(b), as they may be updated from time to time at the VENDOR's sole discretion, shall be provided by VENDOR to SBBC. SBBC must use the supplied forms and shall be responsible for assuring the forms are properly and fully completed for each of its participants before submission.

(c) SBBC will obtain consent from each participant / student's parent/guardian or participant / student age 18 or older whose education records are to be shared prior to disclosing or allowing access to the education records listed above.

(c) All data are to be submitted via VENDOR's research partner, Florida International University online portal at Redcap, unless VENDOR provides at least fourteen (14) days advanced written notice to SBBC that such option is no longer available and the method of delivery that shall be used thereafter.

(d) 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.

(e) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for 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.

2.06 **Confidentiality of Education Records.** Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

a) 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;

b) 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;

- c) 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;
- d) 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;
- e) 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;
- f) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone and email at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), 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;
- g) 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;
- h) prepare and distribute, at its own cost if 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;
- i) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- j) 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
- k) securely erase education records from any media once that media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

2.05 Inspection of VENDOR Records by SBBC: VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR

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 VENDOR or any of VENDOR'S payees pursuant to this Agreement. VENDOR 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. VENDOR 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) VENDOR Records Defined. For the purposes of this Agreement, the term "VENDOR 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 VENDOR Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR 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 the VENDOR'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 VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any VENDOR 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 VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the VENDOR. If the audit discloses billings or charges to which

the VENDOR is not contractually entitled, the VENDOR 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. VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of the VENDOR.

(h) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.06 Notice: When any of the parties desire to give official notice to the other, such notice must be in writing, sent by certified U.S. Mail, postage prepaid or via a nationally or an internationally, as applicable, recognized overnight delivery service, 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: Sonja Clay, Director, ESLs Secondary
Exceptional Student Learning Support
Arthur Ashe Jr. Campus
1701 NW 23rd Avenue
Fort Lauderdale, Florida 33311

To VENDOR: ATTN: VITA DMF
The Dan Marino Foundation, Inc
400 North Andrews Avenue
Fort Lauderdale, Florida 33301

2.07 BACKGROUND SCREENING. VENDOR agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the VENDOR or its personnel providing any services under the conditions described in the previous sentence.

VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

(a) **General Liability.** Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** Limit not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability.** Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

If VENDOR does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 shall be accepted. In addition, an affidavit signed by VENDOR must be furnished to SBBC indicating the following:

VENDOR does not own any vehicles. In the event insured acquires any vehicles throughout the term of this Agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

(e) **Acceptability of Insurance Carriers.** The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) **Verification of Coverage.** Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS RiskWorks to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit VENDOR time to remedy any deficiencies. EXIGIS RiskWorks will send an email notification within three (3) business days after receipt of the award letter.

- New vendors will receive an email notification requesting account verification and insurance agent information.
- Existing vendors will receive an email notification of current status.

(g) **Required Conditions.** Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
2. All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
3. Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668

(h) **Cancellation of Insurance.** VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

(i) The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this agreement.

2.09 **Payment Method.** The District's preferred method of payment is via ACH electronic payments. An electronic payment can reduce processing time and administrative overhead costs for both parties, resulting in expedited payment upon invoice approval, and reduces exposure to check fraud. SBBC will not pay convenience fees, surcharges, or any additional costs for payments made by electronic payment.

VENDOR accepts payment via electronic payment as noted above. VENDOR shall provide SBBC with its ACH form upon its execution of this Agreement.

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, and 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 S/M/WBE Commitment. Throughout the term of the Agreement, VENDOR shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified S/M/WBE VENDORS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, S/M/WBE VENDORS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. VENDOR agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding S/M/WBE participation, including dollars spent on S/M/WBE VENDORS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for S/M/WBE VENDOR participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for S/M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 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.

3.07 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.

3.08 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.

3.09 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.

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

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

3.11 Student Records. Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.12 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.

3.13 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.

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

3.15 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.

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

3.17 **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.

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

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.

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

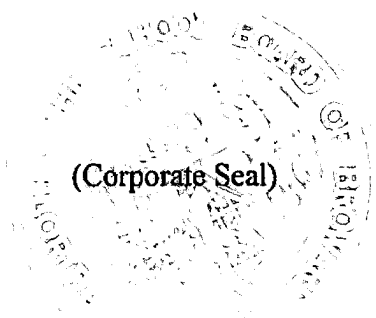
3.27 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

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

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.



(Corporate Seal)

FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By Nora Rupert
Nora Rupert, Chair

ATTEST:

Robert W. Runcie
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

[Signature] 06/01/10
Office of the General Counsel

FOR VENDOR

(Corporate Seal)

THE DAN MARINO FOUNDATION, INC

ATTEST:

By Mary Partin
Mary Partin CEO

_____, Secretary

-or-

Jeremy Christy
Witness

Janey Busnel
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 1 day of June, 2018 by Mary Partin of

Name of Person

The Dan Marino Foundation, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced FL DL # P635-542-52-633-0 as identification and did/did not first take an oath. Type of Identification

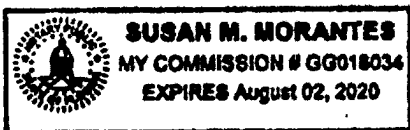
My Commission Expires:

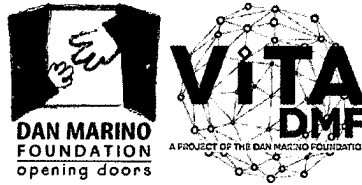
Susan Morantes
Signature - Notary Public

Susan Morantes
Printed Name of Notary

(SEAL)

GG 018034
Notary's Commission No.





ATTACHMENT A

VITA DMF TERMS OF USE RESEARCH PROGRAM PARTICIPATION AND LICENSE

SECTION 1: EXCHANGE OF SERVICES. Subject to the terms and conditions set forth in this Agreement, including the Seat Station limitation set forth herein, DMF hereby grants to SBBC a non-transferable, non-exclusive license to use (i) the Licensed Program in Object Code form for Interview Training Use and (ii) University of Southern California's (USC) patents, if any, that read on the Licensed Program, to use and import the Licensed Program (collectively, the "License"). No license, right, or grant other than the express license in this Section 1 is expressed or implied in this Agreement. **At no time may SBBC sublicense the License granted herein.**

1.1 Under this Agreement DMF will provide to SBBC:

- Use of Licensed Program Seat Stations (initially twenty) and Sub-Stations (initially twenty)
- Applicable Licensed Program updates
- Technical Support Services as set forth in Section 6
- Recognition as a contributor to the ViTA DMF Community Research Study
- ViTA DMF Research Report
- SBBC Data Analysis as set forth in Section 3.6
- Right for SBBC to use the ViTA DMF name & logo in connection with the use of the Licensed Program

1.2 Under this Agreement SBBC is responsible for:

- Participation in the ViTA DMF Research Study as set forth in Section 3
- All equipment needed to set up and operate the Licensed Program
- Location & staff for operation of the Licensed Program
- Minimum of twenty participants (for research study)
- Right for DMF to use SBBC's name & logo in connection with the (i) use of the Licensed Program and (ii) the data it provides to DMF as required herein
- Procure and maintain in effect a comprehensive general liability policy of insurance as required in Section 13.1

SECTION 2: LIMITATIONS OF SERVICES

2.1 This Agreement initially limits SBBC's License to twenty (20) Seat Stations including

installation and Technical Support Services with twenty (20) Additional Sub-Stations

2.2 The parties understand and agree that the License and Services granted and to be provided by DMF to SBBC as outlined in this Agreement are non-transferable.

SECTION 3: ViTA DMF RESEARCH STUDY PARTICIPATION

3.1 ViTA DMF Research Study. The purpose of this research study is to determine the effectiveness of the ViTA DMF program in terms of improving interviewing skills and increasing self-confidence in order to reach employment goals.

3.2 DMF agrees to provide results of data analysis from ViTA DMF Members through the ViTA DMF Research Report.

3.3 Publication of Data. DMF shall be free to use any results, suggestions, improvements, corrections and other contributions contained in the forms or otherwise provided by SBBC regarding the Licensed Program and the results obtained from such use, and SBBC hereby (i) irrevocably assigns to DMF any and all rights it has in any such suggestions, improvements, corrections and other contributions provided by SBBC regarding the Licensed Program, and (ii) grants to DMF a non-exclusive, royalty-free, perpetual, irrevocable license to use any and all data, including, but not limited to results and reports relating to its use of the Licensed Program for any and all purpose.

3.3.1 SBBC may publish or present its results relating to its use of the Licensed Program, provided SBBC (i) provides DMF with a copy of such publication or presentation at least fourteen (14) days prior to its use and (ii) cites in any presentation or publication as follows (citation may be amended by DMF at any time with at least fourteen (14) days advanced written notice to SBBC):“The Dan Marino Foundation licenses ViTA DMF, developed by USC’s Institute for Creative Technologies with funding from, and in collaboration with DMF.”

SECTION 4: AGREEMENT TERMINATION

4.1 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party of any obligation that matured prior to the date of such termination. SBBC shall not be entitled to refunds of any Technical Support Service Fees paid prior to termination.

4.2 Surviving any termination are:

4.2.1 Any cause of action or claim of SBBC or DMF, accrued or to accrue, because of any breach or default by the other party.

4.3 Upon termination SBBC shall:

4.3.1 Delete the Licensed Program from all computers on which it has been installed and from all other software into which it had been merged;

4.3.2 Erase all copies of the Licensed Program from any storage media; and

4.3.3 Upon request from DMF, certify in writing to DMF that, to the best of SBBC’s

knowledge, all copies of the Licensed Program have been returned or destroyed.

SECTION 5: DELIVERY AND INSTALLATION

5.1 DMF will deliver the Licensed Program to SBBC no later than ten (10) days upon receipt of all required initial documentation. Notwithstanding anything stated herein to the contrary, SBBC shall be solely responsible for installation of the Licensed Program on its equipment. **5.2** DMF is under no obligation to provide SBBC with updates or modifications to the Licensed Program. If DMF, at its sole option, supplies updates or modifications to SBBC, such updates and/or modifications will be considered part of the Licensed Program and subject to the terms of this Agreement. Notwithstanding anything stated to the contrary herein, DMF agrees to support SBBC's use of the Licensed Program by providing the Technical Support Services in a timely fashion in accordance to Section 6 included herein to the extent technical issues arise.

SECTION 6: TECHNICAL SUPPORT SERVICES

6.1 DMF agrees to provide ten (10) hours of Technical Support Services per school location to SBBC. The training and support services provided to SBBC are limited to support of accurate collection and submission of the data outlined in Section 3, installation and setup of the Licensed Program, full operations and use of all of the Licensed Program's functions, implementation and execution of provided resources, and regular support and maintenance as related directly to the Licensed Program.

6.2 Technical Support Services provided to SBBC by DMF will be provided via phone, internet, or other method chosen at the sole discretion of DMF.

6.3 Technical Support Services provided by DMF in excess of ten (10) hours can be provided at the rate of \$75 per hour. DMF shall not provide any Technical Support Services that would exceed the ten (10) hours, and incur additional costs for SBBC, without receipt of a valid purchase order issued from SBBC.

SECTION 7: MARKETING PRACTICES

7.1 Use of Name & Logos. The License granted herein grants SBBC the right to use the ViTA DMF name and logo; and, as set forth above in Section 1.1, DMF shall have the right to use the SBBC's name and logo.

7.1.1 Notwithstanding anything stated herein to the contrary, SBBC understands, acknowledges and agrees that its use of the ViTA DMF name or logo must be pre-approved in writing by DMF. A copy of the document that includes ViTA DMF's name and/or logo must be submitted to DMF, ATTN: ViTA DMF, vitasupport@danmarinofoundation.org, at least five (5) business days prior to SBBC's desired use.

7.1.2 When using the name and/or logo on a web page, a link to the ViTA DMF website (www.vitadmf.org) is required.

7.1.3 Notwithstanding anything stated herein to the contrary, DMF understands, acknowledges and agrees that its use of the SBBC's name or logo must be pre-approved in writing by SBBC. A copy of the document that includes SBBC's name and/or logo must be submitted at least five (5) business days to SBBC for its approval prior to its use.

7.2 Television Interviews. Televised appearances made on media channels related to ViTA DMF should include mention **“The Dan Marino Foundation licenses ViTA DMF, developed by USC's Institute for Creative Technologies with funding from, and in collaboration with DMF.”**

7.3 Print. Information written for print media should credit DMF and include mention of **“The Dan Marino Foundation licenses ViTA DMF, developed by USC's Institute for Creative Technologies with funding from, and in collaboration with DMF.”** Written information for print media with mention of DMF or the Licensed Program must be submitted for pre-approval to DMF in accordance with Section 7.1.1 above.

7.4 Radio. Any radio appearances should include mention of **“The Dan Marino Foundation licenses ViTA DMF, developed by USC's Institute for Creative Technologies with funding from, and in collaboration with DMF.”**

7.5 SBBC agrees to update DMF at least five (5) business days prior to all scheduled media, including television, radio, and print.

SECTION 9: CONFIDENTIALITY

9.1 SBBC will take all reasonable steps to maintain the confidentiality of the Licensed Program, the documentation associated therewith, and any other information provided to SBBC by DMF as part of this Agreement (collectively, “DMF Confidential Information”) during the Term and thereafter so long as any DMF Confidential Information remains non-public. As such, SBBC specifically acknowledges, agrees and understands that it shall not use any of the DMF Confidential Information for any purposes other than those specifically set forth herein.

9.2 DMF will take all reasonable steps to maintain the confidentiality of the any information provided by SBBC to DMF as part of this Agreement (collectively, “SBBC Confidential Information” and together with “DMF Confidential Information, “Confidential Information”) during the Term and thereafter so long as any SBBC Confidential Information remains non-public. SBBC Confidential Information shall not include any information SBBC is required to submit herein for DMF's use in connection with its research and analysis which is entitled to be shared with third parties, including USC.

SECTION 11: WARRANTY DISCLAIMER AND DAMAGES LIMITATION

11.1 Disclaimer of Warranties. THE LICENSED PROGRAM AND OTHER DMF CONFIDENTIAL INFORMATION IS FURNISHED TO SBBC AS-IS. NEITHER USC NOR DMF MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE, BUT NOT LIMITATION, NEITHER USC NOR DMF MAKES ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED PROGRAM COMPONENTS OR DOCUMENTATION WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS. DMF'S AND USC'S (IF ANY

LIABILITY OF USC COULD EXIST) TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF THE LICENSE FEE, IF ANY, PAID BY SBBC TO DMF AND \$1,000.

11.2 Nothing in this Agreement shall be construed as:

11.2.1 A warranty or representation that use of the Licensed Program, including Interview Training Use of the Licensed Program as permitted herein, will result in any particular result or any result at all for any of SBBC's participants/clients, or that such use will not result in a negative outcome or effect for the participants. The Interview Training Use of the Licensed Program is at SBBC's sole risk.

11.2.2 A warranty or representation that the Licensed Program will operate uninterrupted or error free.

11.2.3 Conferring rights to SBBC to use in advertising, publicity or otherwise, the name, logo, trademark, or symbol of USC, its affiliates, or employees.

11.3 Limitation of Damages and Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL USC OR DMF BE RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST GOODWILL, LOST PROFITS, LOST BUSINESS OR OTHER INDIRECT ECONOMIC DAMAGES, WHETHER SUCH DAMAGES ARISE FROM CLAIMS BASED UPON AGREEMENT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHER LEGAL THEORY, RESULTING FROM A BREACH OF ANY REPRESENTATION, WARRANTY, AGREEMENT OR—OTHER TERM OF THIS AGREEMENT, AND REGARDLESS OF WHETHER DMF AND/OR USC WAS ADVISED OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

IN NO CASE WILL DMF'S AND USC'S TOTAL CUMULATIVE LIABILITY UNDER THE TERMS OF OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY SBBC TO DMF UNDER THE TERMS OF THIS AGREEMENT.

11.4 THE LICENSED PROGRAM IS NOT DESIGNED, INTENDED, OR AUTHORIZED FOR USE IN ANY TYPE OF SYSTEM OR APPLICATION IN WHICH THE FAILURE OF THE SYSTEM OR APPLICATION COULD CREATE A SITUATION WHERE PERSONAL INJURY OR DEATH MAY OCCUR (E.G., MEDICAL SYSTEMS, LIFE-SUSTAINING OR LIFE-SAVING SYSTEMS).

11.5 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, DMF REPRESENTS AND WARRANTS TO SBBC THAT IT HAS THE RIGHT TO ENTER INTO THIS AGREEMENT AND GRANT A LICENSE TO USC'S RIGHTS AND INTEREST IN THE LICENSED PROGRAM TO SBBC AS SET FORTH HEREIN.

SECTION 12: MISCELLANEOUS

12.1 Partial Invalidity. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full

force without being impaired or invalidated in any way.

12.2 Relationship of the Parties. SBBC and DMF shall function solely as an independent contractor and not as agent, partner, employee or joint venturer of the other party hereto.

12.3 Non Waiver. A waiver of any breach of any provision of this Agreement shall not be construed as a continuing waiver of said breach or a waiver of any other breaches of the same or other provisions of this Agreement.

12.4 Third-Party Beneficiary. By signing below, SBBC acknowledges, understands and agrees that USC is an intended third party beneficiary to the terms of this Agreement and that many of the rights of DMF to the Licensed Program, including DMF's right to license the Licensed Program to SBBC in accordance with the terms hereof, are granted to DMF by USC.

ATTACHMENT B

DEFINITIONS

1.1 “Covered Disabilities” includes any of the following conditions:

1.1.1 “Autism” - which means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

1.1.2 “Cerebral palsy” - which means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

1.1.3 “Intellectual disability” – which means significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

1.1.3.1 “Adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

1.1.3.2 “Significantly sub average general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test.

1.1.4 “Prader-Willi syndrome” - which means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

1.1.5 “Spina bifida” - which means, for purposes of this Agreement, a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

1.2 “Effective Date” means the date defined in Section 4.

1.3 “Interview Training Use” means use of a product to provide (i) job interview practice experiences, and (ii) general interview and communication skill training, to young adults with one or more Covered Disabilities.

1.4 “Licensed Program” means DMF’s rights and interest in the computer program in Object Code form which embodies “Virtual Interactive Training Agents (ViTA),” as defined in USC Tech ID: 2015-108 and delivered to SBBC under this Agreement, as well as additions or changes, if any, provided by DMF during the Term. No rights are granted to any open source or other software authored by third parties and necessary for the use of the Licensed Program.

1.5 “Object Code” means machine-readable, executable code of a computer program.

1.6 “Seat Station” means the grant of the right for SBBC to execute and use the Licensed Program or a modified version of the Licensed Program, in Object Code form, on a computer owned or controlled by SBBC and used by only one of their respective care providers at a time.

1.7 “Technical Support Service” means services provided to SBBC to support operation of the Licensed Program including without limitation, assessment, maintenance, support or training services provided in person, via telephone or online to attempt to help SBBC and/or other end users learn how to operate or to solve specific problems related to the operation of the Licensed Program and any other occurrences as outlined in Section 6.

1.8 “Term” means the period defined in Section 4.

1.9 “USC” means the University of Southern California, a California nonprofit corporation with offices at 1150 South Olive Street, Suite 2300, Los Angeles, California 90015, an intended beneficiary of the terms of this Agreement.

1.10 “ViTA DMF Research Report” means the final report of research data analysis provided from DMF to the ViTA DMF Community.