

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT

ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

August 2, 2018

TO: School Board Members

FROM: Maurice L. Woods *M.W.*
Chief Strategy & Operations Officer *MLW*

VIA: Robert W. Runcie *Robert W. Runcie*
Superintendent of Schools

SUBJECT: **REVISION TO E-3, RECOMMENDATION OF \$500,000 OR LESS –
59-026V – EDUCATIONAL SERVICES FOR HOSPITAL HOME-BOUND
STUDENTS – SOUTH BROWARD HOSPITAL DISTRICT D/B/A
MEMORIAL HEALTHCARE SYSTEM, FOR THE AUGUST 7, 2018,
SCHOOL BOARD OPERATIONAL MEETING**

Attached is a revision to E-3, Recommendation to Approve Second Amendment to Agreement – 59-026V – Educational Services for Hospital Home-Bound Students - South Broward Hospital District d/b/a Memorial Healthcare System, for the August 7, 2018, School Board Operational Meeting.

Exhibits:

- Added Agreement

RWR/MLW/MCC:bm
Attachment

cc: Senior Leadership Team

AGREEMENT

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

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

SOUTH BROWARD HOSPITAL DISTRICT
D/B/A MEMORIAL HEALTHCARE SYSTEM
(hereinafter referred to as "SOUTH BROWARD")
whose principal place of business is
3501 Johnson Street, Hollywood, Florida 33021

WHEREAS, SBBC shall fulfill its constitutional obligation to educate children of compulsory school age; and

WHEREAS, SOUTH BROWARD serves, as patients, children who are residents of the State of Florida and who are now enrolled in, or have applied for enrollment in, educational programs under the jurisdiction of SBBC; and

WHEREAS, SOUTH BROWARD operates the JOE DIMAGGIO CHILDREN'S HOSPITAL; and

WHEREAS, SBBC agrees to provide an educational component for students found eligible for Hospital Homebound Services as part of the SOUTH BROWARD program.

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 **August 7, 2018** and conclude on **August 6, 2019**.

2.02 **SBBC Disclosure of Education Records.**

- (a) SBBC shall provide the types of education records listed in 2.02 (b), pursuant to parental consent as listed in 2.02 (c), for the purpose of SOUTH BROWARD performing her responsibilities as listed in this Agreement, pertaining to SBBC staff providing educational services on location at SOUTH BROWARD's facility.



- (b) SBBC may provide limited information (including, but not limited to, name of student and name of school) to SOUTH BROWARD in order to perform education duties pursuant to this Agreement.
- (c) SBBC shall obtain consent from each student's parent/guardian or student age 18 or older prior to disclosing education records to SOUTH BROWARD. Consent form shall list the types of educational records to be disclosed, purpose(s) and recipient.

2.03 **SOUTH BROWARD Confidentiality of Education Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, SOUTH BROWARD shall:
 - 1) fully comply with the applicable 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; 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) to the extent a breach is caused by SOUTH BROWARD, 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, if breach is the fault of SOUTH BROWARD, in whole or in part;
 - 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) Subject to Section 3.01, SOUTH BROWARD shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for its 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 SOUTH BROWARD, or an officer, employee, agent, representative, contractor, or sub-contractor of SOUTH BROWARD to the extent that SOUTH BROWARD 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.

2.04 **Emergencies.** In the event of serious threat or harm to SBBC personnel, the Superintendent's Designee, the Executive Director of ESLS, has the authority to suspend educational services for up to ten (10) days to allow for SBBC and SOUTH BROWARD to address and resolve the emergency situation.

2.05 **SBBC's Designee.** SBBC's designee for purposes of administering this Agreement shall be the Superintendent of Schools who may assign a designated administrator for monitoring compliance and educational program administration.

2.06 **SOUTH BROWARD's Designee.** SOUTH BROWARD shall identify one person with whom SBBC is to communicate on all compliance issues related to this Agreement.



2.07 **SBBC shall provide:**

- a) Instructional personnel shall provide instruction for no more than 300 student contact minutes per day;
- b) Textbooks, supplies and other curriculum supplements necessary for instructional personnel and teachers to provide the appropriate curriculum and instructional program for the students;
- c) Staff development for teachers in current instructional and behavior management methods;
- d) Support services as determined by SBBC, including but not limited to: admission and exiting conferences; IEP preparation and staffing; and maintaining ESE compliance for students with disabilities;
- e) Annual evaluation of SBBC teachers and access to the professional orientation program (the evaluation of teachers is for SBBC's internal use and shall not be disclosed to SOUTH BROWARD unless prior written consent of the teacher is obtained);
- f) Appropriate instructional software as determined by SBBC personnel; and
- g) SBBC shall not disclose any student information from an education record to SOUTH BROWARD, except with prior written parental consent.

2.08 **SOUTH BROWARD shall provide:**

- a. Opportunities for SBBC personnel to participate in appropriate SOUTH BROWARD staff training, any privacy confidentiality requirements as per the Health, Insurance Portability and Accountability Act, and case conferences;
- b. The general availability of personnel to respond to security problems in the classroom, if needed;
- c. Computers, including the necessary phone/data lines, and technical support that are networked to provide the appropriate educational software determined by SBBC personnel;
- d. Medical personnel to supervise needs of students; and
- e. Classroom furniture including appropriate instructional wall coverings.

2.09 **SOUTH BROWARD and SBBC shall collaborate to:**

- a. Develop an appropriate schedule within the framework of the teacher contract; and
- b. Establish regularly scheduled meetings to facilitate communication and proactive problem solving.

2.10 **Eligibility.** Students enrolled shall be referred through hospitals, medical agencies, physicians with eligibility for Hospital/Homebound in accordance with State Board of Education Rules.

2.11 **Reimbursement.** SOUTH BROWARD shall reimburse SBBC on a pro-rata basis for up to one teacher's salary, including fringe benefits for both survey periods. Funding for the first semester shall be based on the total number of Hospital Homebound eligible students in attendance at Joe DiMaggio Children's Hospital during the October FTE Survey weeks. Funding for the second semester shall be based on the total number of Hospital Homebound eligible students in attendance at Joe DiMaggio Children's Hospital during the February FTE survey weeks. The funding shall be based on the difference between the revenue (revenue = unweighted FTEs as defined by the state x state weight x 80% of based student allocation) generated from the program less the actual teacher's salary, average or actual, whichever is less, including fringe benefits. Shortfall reimbursements from SOUTH BROWARD shall be made by October 31, 2018 to SBBC.



If the teacher assigned is to be terminated or replaced, a mutually agreed upon staff member, whose salary plus fringe shall be equal or lesser to the previous staff member, shall be assigned.

2.12 **Student Supervision.** Supervision and control of students shall be the sole responsibility of SOUTH BROWARD. However, SOUTH BROWARD shall inform SBBC when a student is involved in a serious incident or is injured as defined 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.

2.13 **Code of Conduct.** SBBC shall provide the Code of Student Conduct which shall be signed by the parent(s)/guardian(s) and the student as part of the intake process. The Code of Student Conduct shall be enforced by SOUTH BROWARD.

2.14 **Immunization.** SOUTH BROWARD agrees to comply with the State of Florida immunization requirements as described in Code of Student Conduct. Compliance with the current schedule of immunizations is required to be admitted to school or to attend classes. The official document is identified as Form 680. A 30 day waiver is provided for those students who are remanded by the courts to a program in Broward County but whose records shall be requested from another county in the State of Florida or state.

2.15 **Fee Collection.** Any fees collected by SOUTH BROWARD shall not be collected as a condition of student enrollment in the educational program.

2.16 **SOUTH BROWARD Incident Procedures.** SOUTH BROWARD shall provide SBBC its written procedures regarding critical incidents – bomb threats, fire and other such incidence(s) that could put students and/or teachers in jeopardy of bodily injury and/or cause bodily injury within 30 days of this Agreement being signed by both parties.

2.17 **SOUTH BROWARD Intake Procedures.** SOUTH BROWARD shall provide SBBC its written procedures governing intake, evaluation, and completion of required medical/educational forms for potential placement in Hospital/Homebound within 30 days of this Agreement being signed by both parties.

2.18 **Student Meals.** SOUTH BROWARD shall provide access to meals for students in the program.

2.19 **Transition.** All students' effective transition, both short and long-term, to the home, community, school and/or the work environment shall be a joint responsibility of SOUTH BROWARD and SBBC personnel.

2.20 **Discharge.** SOUTH BROWARD shall inform SBBC of a student's potential discharge from SOUTH BROWARD as soon as possible. SOUTH BROWARD shall include in a patient follow-up survey, when practicable, regarding satisfaction with SBBC's educational program.

2.21 **Curriculum.** The responsibility for administration of the instructional program rests with SBBC and shall be conducted in accordance with SBBC policies and rules, which include, but are not limited to, scheduling and staffing patterns.

2.22 **Supplemental Efforts.** Any informational and/or promotional materials, which SOUTH BROWARD prepares regarding the program, shall indicate that SBBC is providing the educational component to the program.



2.23 **Facility:** The facility shall be provided and maintained by SOUTH BROWARD at the Joe DiMaggio Children's Hospital at 1005 Joe DiMaggio Drive, Hollywood, Florida. SOUTH BROWARD's facility shall be in compliance with the Americans with Disabilities Act requirements for students with disabilities.

2.24 **Furniture.** SOUTH BROWARD shall provide classroom furniture for student and teacher use. Instructional personnel shall be provided adequate space for desk, file cabinets, instructional materials, and secured storage of SBBC-owned equipment and confidential documents, such as student tests and records.

2.25 **Safety Requirement.** SOUTH BROWARD shall comply with the facility safety requirements embodied in the State Uniform Building Code for Public Educational Facilities and the Florida Department of Education's State Requirements for Educational Facilities (SREF) 2007, especially those pertaining to fire safety, storage of hazardous materials, exit marking, lighting, ventilation, evacuation and occupancy loads. Student classrooms shall provide a minimum of twenty-five usable square feet per pupil. Instructional personnel shall be provided adequate space for desk, file cabinets, instructional materials, and secured storage of SBBC owned equipment and confidential documents, such as student tests and records.

2.26 **Testing and Staffing Room.** SOUTH BROWARD shall make available a quiet, private room for SBBC sponsored psychological evaluations, ESE staffings, and parent conferences.

2.27 **Telephone Services.** SOUTH BROWARD shall provide a dedicated telephone line, at no cost to SBBC, for a SBBC provided telephone facsimile machine for SBBC use only. SBBC personnel shall be afforded unlimited private access to a telephone for official school-related business. In addition, SOUTH BROWARD shall provide telephone lines, at no cost to SBBC, for instructional telecommunications purposes at mutually agreed upon locations.

2.28 **Damaged Property.** SOUTH BROWARD agrees to provide SBBC with adequate facilities to lock SBBC property. SBBC is responsible for locking up its property at the close of each school day. In the event SBBC locks up its property and, thereafter, damage or loss to such property occurs through no fault of SBBC, SOUTH BROWARD shall reimburse SBBC. SOUTH BROWARD shall be billed by SBBC for repair or replacement cost. SOUTH BROWARD shall make such remuneration within thirty (30) days of billing.

2.29 **Health Certificates.** SOUTH BROWARD shall maintain current sanitation and health certificates and submit to annual fire inspections for all buildings as part of its educational program.

2.30 **Building Maintenance.** SOUTH BROWARD shall maintain buildings used to service educational programming to students in a state of good repair and submit to SBBC inspections upon request.

2.31 **Student Performance.** Student performance shall be evaluated annually by SBBC.

2.32 **Grievance Procedure.** In the event that a dispute arises under this Agreement, the parties agree to, include but not be limited to, the following dispute resolution measures:

Step 1 is resolution of the dispute at the Exceptional Student Learning Support Executive Director level;

Step 2 is resolution of the dispute at the Chief Academic Office Level;

Step 3 is resolution of the dispute by the Superintendent of Schools or Designee;

In the event such efforts do not resolve the dispute, the aggrieved party may take such action as it deems appropriate



2.33 **Background Screening.** This Agreement is ancillary to SOUTH BROWARD's delivery of healthcare services to its patients as a hospital licensed under Chapter 395, Florida Statutes. Any contact that may arise between SOUTH BROWARD personnel and SOUTH BROWARD's patients in a hospital setting shall not be construed to be contact with students under Sections 1012.32 and 1012.465, Fla. Stat., as a result of SBBC's coincidental provision of educational services to such patients.

2.34 **Inspection of SOUTH BROWARD's Records by SBBC.** SOUTH BROWARD 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 SOUTH BROWARD'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 SOUTH BROWARD or any of SOUTH BROWARD's payees pursuant to this Agreement. SOUTH BROWARD'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. SOUTH BROWARD'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. SOUTH BROWARD shall not be required to allow inspection of any records to the extent prohibited by applicable law.

(a) **SOUTH BROWARD Records Defined.** For the purposes of this Agreement, the term "SOUTH BROWARD_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 SOUTH BROWARD 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 SOUTH BROWARD pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide SOUTH BROWARD 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 SOUTH BROWARD 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 SOUTH BROWARD 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 SOUTH BROWARD 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 SOUTH BROWARD in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by SOUTH BROWARD. If the audit discloses billings or charges to which SOUTH BROWARD is not contractually entitled, SOUTH BROWARD 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.** SOUTH BROWARD 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 SOUTH BROWARD 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 SOUTH BROWARD pursuant to this Agreement and such excluded costs shall become the liability of SOUTH BROWARD.

(h) **Inspector General Audits.** SOUTH BROWARD 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.

2.35 **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: Executive Director
Exceptional Student Learning Support
The School Board of Broward County, Florida
1701 NW 23rd Ave, #277
Fort Lauderdale, Florida 33311

To Hospital: Aurelio Fernandez, President & CEO
South Broward Hospital District D/B/A
Memorial Healthcare System and Joe DiMaggio Children's Hospital
3501 Johnson Street
Hollywood, Florida 33021

With a Copy to: Chantal Leconte, Administrator
Joe DiMaggio Children's Hospital
1005 Joe DiMaggio Drive
Hollywood, Florida 33021



ARTICLE 3 – GENERAL CONDITIONS

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

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

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

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

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 **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.

3.17 **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.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

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

3.25 **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.

3.26 **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 SOUTH BROWARD: SOUTH BROWARD 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.

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

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES 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: South Broward Hospital District d/b/a
Memorial Healthcare System
Date: 2018.08.02 12:03:32 -04'00'

Office of the General Counsel

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



FOR SOUTH BROWARD

(Corporate Seal)

SOUTH BROWARD HOSPITAL
DISTRICT D/B/A MEMORIAL
HEALTHCARE SYSTEM

ATTEST:

By *[Signature]*
Aurelio Fernandez, President & CEO

_____, Secretary
[Signature]

Witness *[Signature]*
Witness

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

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 2nd day of August, 2018 by Aurelio M. Ferrandez of South Broward Hospital District "b" Memorial Healthcare System Name of Person, on behalf of the corporation/agency. 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

Barbara E. Goas
Printed Name of Notary

901890
Notary's Commission No.

(SEAL)

