

## 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

**HEALTHY SCHOOLS, LLC**

(hereinafter referred to as “Healthy Schools”),  
whose principal place of business is  
3546 St. Johns Bluff S, Unit 113, Jacksonville, FL 32224

**WHEREAS**, as part of an initiative to improve public health, student health and reduce absenteeism, SBBC desires to obtain certain health-related services (e.g. vaccination programs, adolescent wellness checks (physicals), from Healthy Schools;

**WHEREAS**, Healthy Schools desires to provide the Services subject to the terms of this Agreement;

**WHEREAS**, Healthy Schools, through its licensed healthcare workers, provides vaccination services, including the influenza vaccine, TDAP vaccine at no cost to students in SBBC;

**WHEREAS**, Healthy Schools, perform comprehensive child health check ups (physical) for students (ages 12-19) who have not had a physical in 12 months or more and are Medicaid eligible at no cost; and

**WHEREAS**, The School Board of Broward County (SBBC) wishes to engage the services of Healthy Schools to provide licensed healthcare workers, support staff and supplies to administer the vaccinations to SBBC students and conduct physicals for students with written parental/guardian consent.

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

### ARTICLE 1 - RECITALS

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

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon the execution of all parties and conclude on August 7, 2019.

2.02 **Healthy Schools Services to be Provided.** Healthy Schools agrees, during the term, to perform the following obligations:

**Vaccination Program.** As part of an initiative to improve public health and ensure that recommended vaccinations are available to all school-age children and school staff, the parties have entered into this Agreement. Healthy Schools, through its licensed healthcare workers, provides vaccination services, including the vaccine. SBBC wishes to engage the services of Healthy Schools to provide licensed healthcare workers, support staff, and supplies to administer the vaccine to SBBC’s students, as described in this Schedule (the “**Vaccination Program**”). The following vaccinations shall be provided in connection with this Schedule: Influenza, TDAP.

### **Healthy Schools Obligations.**

- a. **Supplies.** Healthy Schools will supply all needed medical supplies, including syringes, needles, isopropyl alcohol, gloves, band aids and sharps biohazard containers for proper disposal.
- b. **Vaccine.** Healthy Schools will supply the vaccine as identified by the CDC as appropriate for that treatment year. At all times, Healthy Schools will have exclusive ownership and control over its vaccine supply.
- c. **Vaccine Control.** Healthy Schools will transport, store and handle the vaccine in accordance with the Vaccine Storage and Handling Recommendations promulgated by the Department of Health and Human Services (DHHS) and CDC and Prevention Recommendations for Storage and Handling of Selected Biologicals. Healthy Schools shall handle the vaccine in accordance with the package insert provided with the vaccine including compliance with cold chain requirements at vaccination sites.
- d. **Information Sheet.** Healthy Schools will provide a current Vaccine Information Sheet to each individual before vaccination and answer questions about the benefits and risks of vaccination for all individuals or their guardians.
- e. **Administration of Vaccine.** Healthy Schools will administer the vaccine according to the recommendations and guidance issued by the CDC and vaccine manufacturer.
- f. **Records.** Healthy Schools will keep a record of the administration by individual student name, date, site, vaccine type and lot number, and name of immunization provider for the vaccines it administers. Healthy Schools will record the administration of the vaccine into its cloud Services and make such records available for access by SBBC. Healthy Schools will also maintain records of the informed and express consent to treatment form (see exhibits) 2018 – 2019 Seasonal Flu Shot (IIV\*) Vaccine Consent Form (**Exhibit 1**) and

2018 Tdap Vaccine Consent Form (**Exhibit 2**) for each individual that has received services. Records must be kept for a minimum of three years following vaccination.

- g. Publicity. Healthy Schools will obtain the approval of Coordinated Student Health Services department prior to distributing any documents, consent forms, announcements, emails, advertising posters or documents regarding any vaccination event or any document indicating the approval by or involvement with SBBC. Healthy Schools shall also provide its contact information for the use of parents and/or guardians.
- h. No Re-Use. Healthy Schools acknowledges that vaccines, syringes, or needles cannot be reused.
- i. Licensure Required. Healthy Schools healthcare professionals that administer vaccinations must be licensed in the relevant state.
- j. Background Screening. Healthy Schools will comply with all applicable laws and regulations, including those relating to background screenings for all Healthy Schools staff at Healthy Schools's cost.
- k. Eligibility. Healthy Schools will only administer vaccines to individuals who present a signed informed and express consent to treatment form. Minors must have said consent form signed by their custodial parent or legal guardian including any information regarding third party payor coverage. Healthy Schools will provide vaccinations to individuals in accordance with CDC guidelines and accepted standards of medical practice. Individuals will not be refused due to lack of insurance or inability to pay an administrative fee under Florida's Vaccines for Children Program.
- l. No Fees. Healthy Schools will perform and provide the Vaccination Program at no cost to SBBC. Healthy Schools may contact and bill any appropriate third-party payer, including, but not limited to commercial insurance carriers or Medicaid as identified on the informed and express consent to treatment form.

**Comprehensive Health Child Check Up (CHCU) Program**: As part of an initiative to improve public health, Healthy Schools, through its licensed healthcare workers, provides a comprehensive child health checkup ("CHCU"), which includes a complete physical examination, BMI measurement, nutritional and physical activity, counseling, screening for diabetes, and screening for sexually transmitted infection (the "**CHCU Program**") at agreed upon locations. The parties will reasonably cooperate with each other in the conduct of the CHCU Program.

#### **Healthy Schools Obligations.**

- a. Medicaid Provider. Healthy Schools will be a fully credentialed Medicaid provider as a managed care provider.
- b. Supplies. Healthy Schools will supply all needed medical supplies, including syringes, needles, isopropyl alcohol, gloves, band aids and sharps biohazard containers for proper disposal.

- c. Information Sheet. Healthy Schools will provide a current information sheet to each individual or their guardian and answer questions about the benefits and risks of certain detected conditions or subjects as determined by Healthy Schools for specific individuals and their guardians. The information sheet will contain, as appropriate, the following information:
- Dental Care
  - Optical Care
  - Nutrition and Physical Activity
  - STD referral information to students who are sexually active following screening.
- d. Administration of Examination. Healthy Schools will administer the annual physical examination according to recommendations and guidance issued by the NCQA HEDIS 2017 Technical Specification, including the following:
- Comprehensive child examination
  - Screening for STDs
  - BMI
  - Nutritional and physical activity information and review
- e. Records. Healthy Schools will keep a record of the administration by individual student name, date, site, and all referrals. Healthy Schools will record the administration of the examination in medical records as required by statute and state Medicaid requirements. Healthy Schools will assist the student's Health Plan in providing all pertinent medical data to the student's designated primary care provider.
- f. Publicity. Healthy Schools will obtain the approval of Coordinated Student Health Services department prior to distributing any documents, consent forms, announcements, emails, advertising posters or documents regarding any vaccination event or any document indicating the approval by or involvement with Customer. Healthy Schools shall also provide its contact information for the use of parents and/or guardians.
- g. No Re-Use. Healthy Schools acknowledges that syringes or needles cannot be reused.
- h. Licensure Required. Healthy Schools healthcare professionals that administer vaccinations must be licensed in the relevant state.
- i. Background Screening. Healthy Schools will comply with all applicable laws and regulations, including those relating to background screenings for all Healthy Schools staff at Healthy Schools's cost.
- j. Digital Platform. Healthy Schools will provide its cloud Services for parent outreach, parent sign up and clinic management.

- k. Eligibility. Healthy Schools will only conduct examinations for students who are:
- Medicaid recipients;
  - Clients of a Medicaid managed care group in the applicable state, that has credentialed Healthy Schools to provide services for this student;
  - Not otherwise assigned to a designated Medicaid managed care provider responsible for the annual physical examination of the student; and
  - Has presented a signed informed and express consent to treatment form.
- l. Consent. The informed and express consent to treatment form will be agreed upon by the parties. No less than one month prior to the scheduled examination date, Healthy Schools will provide a sufficient number of copies of the form and the Information Sheet referenced above to SBBC for distribution to students and guardians. Because the students are minors, each student must have their parent or guardian execute the form on their behalf and verify the third party payor, Medicaid Managed Care Group, coverage for the student.
- m. No Fees. Healthy Schools will perform and provide the Vaccination Program at no cost to SBBC. Healthy Schools may contact and bill any appropriate third-party payer, including, but not limited to commercial insurance carriers or Medicaid as identified on the informed and express consent to treatment form.

2.03 **SBBC Performance**. SBBC agrees , during the term, to perform the following obligations:

- a. Send Healthy Schools consent form to parents at the beginning of the school year and throughout the school year with information on the Healthy Schools services for vaccination and physicals, to notify parents/ guardians of their right to consent to their child receiving these services, if eligible;
- b. Provide a list of students, who qualify with eligibility to participate in getting comprehensive child health check up and vaccinations;
- c. Provide a list of students, with written parental/guardian consent for vaccination(s) and comprehensive child health check up;
- d. Send Healthy Schools consent forms/printed materials to schools to be sent home to parents for vaccinations;
- e. Instruct participating schools on procedures for processing consent forms signed and returned by parents/guardians of students who wish to participate for services;
- f. Provide site locations for vaccine administration and comprehensive child health check up;
- g. Locations for vaccine administration shall be determined by SBBC principal/designee;

- h. Coordinate date and time with the principal/designee for the services at school site;
- i. The facilities shall be used by the Provider, its staff, as designated by the principal/designee as a point of distribution for dispensing the vaccinations and/or comprehensive child health check up;
- j. Student access to students with parental/guardian written consent will be granted to the Provider by SBBC principal/ designee for the vaccination administration and/or adolescent wellness checks; and
- k. Provide a designated person at each school to ensure consent forms are collected and to bring the children from their class to the clinic location.

**2.04 SBBC Disclosure of Education Records.**

- a) SBBC shall provide Healthy Schools, LLC, licensed healthcare providers the records listed in (b) for the licensed healthcare provider to provide vaccination services and comprehensive child health check ups (ages 12-19) (school physicals) for students with written parental/guardian consent.
- b) SBBC shall provide Healthy Schools, LLC, licensed healthcare providers with personally identifiable student medical information, demographics and contact information, as included on the following consent forms which are signed by the parent/guardian:
  - 1. 2018 – 2019 Seasonal Flu Shot (IIV\*) Vaccine Consent Form (**Exhibit 1**)
  - 2. 2018 Tdap Vaccine Consent Form (**Exhibit 2**)
  - 3. 2018 Well Visit Health Questionnaire Teens/Adolescents (**Exhibit 3**)
- c) SBBC will obtain written consent from each student’s parent/guardian or student age 18 or older prior to disclosing education records listed in 2.04(b) to Healthy Schools.

**2.05 Healthy Schools Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, Healthy Schools shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent

of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) 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 safety standards designed 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 promptly upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com), and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

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

8) prepare and distribute, at its own cost, any and all required breach notifications, to the extent resulting from Healthy Schools breach of security or confidentiality with regard to student records, 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) to the extent resulting from Healthy Schools breach of security or confidentiality with regard to student records, be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

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

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

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims

no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Healthy Schools 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 third party 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 Section 2.05 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 2.05 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. The indemnitees shall: (i) give Healthy Schools prompt written notice of any such claim; and (ii) allow Healthy Schools sole control, and fully cooperate with Healthy Schools (at Healthy School's sole expense), of the defense and all related negotiations. Healthy Schools shall not enter into any stipulated judgment or settlement that purports to bind the indemnitees without their express written authorization, which shall not be unreasonably withheld or delayed.

2.06 **HIPAA COMPLIANCE.** Healthy Schools acknowledges that the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") (HIPAA and HITECH Act are collectively referred to herein as "HIPAA") protect the privacy of protected health information ("PHI") and may be applicable to student records in certain circumstances; and shall enter into SBBC's HIPAA Business Associate Agreement ("BAA") attached as **Exhibit 4**. PHI may be used and disclosed only in compliance with HIPAA.

2.07 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Marcia Bynoe, Director  
Coordinated Student Health Services  
The School Board of Broward County, Florida  
1400 NW 14 Court, Fort Lauderdale, FL 33311

To Healthy Schools: Tony Boselli, President  
3546 St. Johns Bluff S Unit 113, Jacksonville, FL 32224



With a Copy to:

Joe Palmiotto

104 West 40th Street, Suite 1030, New York, NY 10018

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

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

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

2.10 **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 Healthy Schools:** *Healthy Schools* agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all third party claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, and court costs to the extent arising from medical malpractice claims arising from the Services. The indemnified party shall: (i) give Business Associate prompt written notice of any such claim; and (ii) allow Business Associate sole control, and fully cooperate with Business Associate (at Business Associate's sole expense), of the defense and all related negotiations. Business Associate shall not enter into any stipulated judgment or settlement that purports to bind the indemnified parties without their express written authorization, which shall not be unreasonably withheld or delayed.

(c) EXCEPT FOR HEALTHY SCHOOLS' EXPRESS INDEMNITY OBLIGATIONS HEREUNDER, MEDICAL MALPRACTICE, OR VIOLATION OF APPLICABLE LAW, HEALTHY SCHOOLS SHALL NOT BE LIABLE TO SBBC OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND HEALTHY SCHOOL'S AGGREGATE LIABILITY HEREUNDER FOR ALL OTHER DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL NOT TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

2.11 **Insurance Requirements.** Healthy Schools shall comply with the following insurance requirements throughout the term of this Agreement:

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

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

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

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

(e) Acceptability of Insurance Carriers. The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) Verification of Coverage. Proof of the required insurance must be furnished by *Healthy Schools* to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit *Healthy Schools* to remedy any deficiencies. *Healthy Schools* must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

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

(h) Cancellation of Insurance. *Healthy Schools* is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

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

2.12 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.

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

shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

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

2.15 **Incorporation by Reference.** Exhibits 1, 2, 3 and 4 are attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power,

or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

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

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

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC. Notwithstanding the foregoing, Business Associate may assign this Agreement to an affiliate or to a successor entity in the event of a merger, acquisition, or sale of all or substantially all of its business.

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

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

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

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

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

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

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

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

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

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

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

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

**FOR SBBC:**

(Corporate Seal)


THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

  
Digitally signed by Kathelyn  
Jacques-Adams, Esq. -  
kathelyn.jacques-  
adams@gbrowardschools.com  
Reason: Healthy Schools, LLC  
Date: 2018.07.30 10:11:13 -04'00'

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

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]**



**FOR HEALTHY SCHOOLS:**

(Corporate Seal)

Healthy Schools, LLC

ATTEST:

[Signature]  
\_\_\_\_\_  
, Secretary

By Don (Tony) A Boselli Jr

-or-

[Signature]  
\_\_\_\_\_  
Witness

[Signature]  
\_\_\_\_\_  
Witness

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

STATE OF New Mexico

COUNTY OF Santa Fe

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2018 by Don A. Boselli Jr. of

Healthy Schools, LLC Name of Person  
\_\_\_\_\_, on behalf of the corporation/agency.  
Name of Corporation or Agency

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

My Commission Expires:  
05.21.2022

[Signature]  
\_\_\_\_\_  
Signature – Notary Public

Andrew N. Perez  
\_\_\_\_\_  
Printed Name of Notary

(SEAL)

05.21.2022  
\_\_\_\_\_  
Notary's Commission No.

