

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2019 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

SCOTT J. ISRAEL, as SHERIFF OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SHERIFF"),
whose principal place of business is
2601 West Broward Boulevard, Fort Lauderdale, Florida 33312.

WHEREAS, SBBC operates all public district schools located in Broward County, Florida; and

WHEREAS, SHERIFF is a law enforcement agency having jurisdiction throughout Broward County, Florida; and

WHEREAS, SHERIFF desires to obtain access to real-time (live) video feeds from SBBC's surveillance cameras when active circumstances at a public district school or facility present an immediate need for law enforcement or fire safety personnel to respond to that school or facility to protect the health or safety of district school students, SBBC personnel or SBBC property.

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 January 16, 2019 and conclude on January 15, 2022.

2.02 **Confidential and Exempt Security and Safety Plan Information.** SHERIFF acknowledges that SBBC's video security monitor images depict the internal layout and structural elements of SBBC's buildings or other structures owned or operated by SBBC and are exempt from Section 119.07(1) and s. 24(a), Article I of the State Constitution [the provisions commonly referred to as the public records laws]" pursuant to Section 119.071(3), Florida Statutes. In addition, such video security monitor images constitute information relating to the security systems for property owned or leased by a political subdivision of the State of Florida and, pursuant to Section 281.301(1), Florida Statutes, are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure. Section 119.071(3)(a)3.c. and (b)3.a. and Section 281.301(2)(c), Florida Statutes, permit SBBC to disclose such confidential and/or exempt information to SHERIFF in furtherance of SHERIFF's official duties and responsibilities. Pursuant to Section 119.0701, Florida Statutes, SHERIFF shall keep and maintain confidential and exempt all such information provided to it under applicable law. SHERIFF agrees not to release such information or to disclose their contents to anyone other than a duly authorized law enforcement or fire department official in the performance of such person's official duties. Any failure by SHERIFF to maintain the confidential and exempt nature of such information shall constitute a material breach of this Agreement.

2.03 **Access to Recorded Video Images Not Involving an Emergency.** The parties acknowledge that video images recorded through use of SBBC's security video cameras may be considered a confidential and exempt "education record" pursuant to Sections 1002.22(2) and 1002.221(1), Florida Statutes; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the federal regulations issued pursuant thereto. The parties acknowledge that any and all original recordings of video security images captured through use of SBBC's video security cameras as well as any equipment within which such images are recorded are the property of SBBC and may not be removed from SBBC's property. The parties further acknowledge that the original copies of such video images are to be retained in SBBC's custody subject to Section 119.07, Florida Statutes, the applicable public records retention schedules, and any applicable exemptions. When SHERIFF desires access to recorded images from the SBBC security video cameras as part of SHERIFF's law enforcement responsibilities not involving an emergency, SHERIFF shall make a request for such recorded images to the SBBC's law enforcement unit, hereinafter referred to as the "SIU". SIU will submit any such request to SBBC's Office of the General Counsel to determine any applicable procedures, restrictions or limitations that are applicable to the requested images. Such requests by SHERIFF may require issuance of a subpoena or an order from a court of competent jurisdiction.

2.04 **Viewing of Real-Time (Live) Video Feeds from SBBC Security Cameras.** The parties acknowledge and agree that viewing of real-time (live) video feeds from SBBC security cameras by SHERIFF is not considered access to an "education record" as defined under state or federal law. Notwithstanding, the parties agree and acknowledge that SHERIFF's viewing of real-time (live) video feeds received from the SBBC security video cameras will be limited to specific circumstances, described below, which are necessary to protect the health or safety of students or individuals on or around SBBC property.

2.04.1 **Exigent Circumstances Authorizing Real-Time (Live) Video Access.** SHERIFF shall be permitted to view, through remote access, real-time (live) video feeds received from SBBC security cameras, in the following exigent circumstances:

- a. Where a district school or facility issues an elevated threat level at the school or facility;
- b. Where a call is received through the E-911 system of an emergency occurring on or near the grounds of a district school or facility;
- c. Where a district school or other SBBC facility notifies SHERIFF or another law enforcement agency having jurisdiction or participating under an applicable mutual aid agreement of an incident occurring on SBBC property that requires a law enforcement response;
- d. Where a district school or other SBBC facility notifies SHERIFF or another fire safety agency having jurisdiction or participating under an applicable mutual aid agreement of an incident occurring on SBBC property that requires a fire safety response.
- e. When necessary to protect the health or safety of district school student(s), SBBC personnel or other individuals on or near the grounds of a district school or facility;
- f. When necessary to protect SBBC property; and
- g. For routine maintenance solely to verify camera operability and functionality. This may include verifying that surveillance cameras are properly designated for their location at a district school or facility.

2.04.2 General Surveillance Prohibited. SHERIFF acknowledges that being granted real-time (live) access to the SBBC security video cameras does not authorize SHERIFF to conduct general surveillance of SBBC property unrelated to a specific law enforcement purpose as described in Section 2.04.1 of this Agreement.

2.04.3 SBBC Access to Remote Viewing Site. SHERIFF shall permit SBBC's designated personnel access to the remote location at which SHERIFF will be afforded real-time access to the SBBC security cameras.

2.04.4 Procedures for Remote Access via VPN Tunnel. SBBC will provide SHERIFF with a password that will allow SHERIFF, for the purposes described herein, uninterrupted, real-time (live) video feeds from all SBBC security cameras via a VPN tunnel created by SBBC and assigned to SHERIFF. The password will be required only for initial access to the VPN tunnel. SBBC will notify SHERIFF immediately upon any change to the password. SBBC's designated personnel will maintain an audited register of the VPN tunnel status and SHERIFF's usage.

2.04.5 Limited Authority to Record Video Screen Shots or Short Video Clips. SHERIFF acknowledges that the video access authorized by this Agreement is intended to be restricted to real-time (live) video access and that SHERIFF shall make no recordings of such real-time (live) video images except as expressly authorized by this Agreement. Notwithstanding Section 2.03.1, SHERIFF is permitted to make screen shots or short video clips not in excess of 10 seconds in length capturing the video images of persons of interest that appear through the real-time (live) video access feeds to the extent necessary to assist law enforcement personnel responding to the exigent circumstances specified in Section 2.04.1 of this Agreement. Any SHERIFF's personnel who makes any recordings of real-time (live) video access from SBBC's security video feeds other than as permitted by this

Subsection 2.04.5 shall be subject to discipline including, without limitation, suspension and termination, in accordance with SHERIFF's policies and procedures.

2.04.6 SHERIFF's Video Supervisor; Authorized Personnel. Any determination by SHERIFF that real-time (live) video access of SBBC's security video feeds is to be engaged by SHERIFF shall require confirmation by a SHERIFF's representative having the minimum rank of sergeant (hereafter "Video Supervisor") that one of the exigent circumstances specified in Section 2.04.1 of this Agreement exists. Any SHERIFF's personnel viewing SBBC's real-time (live) video access feeds must be authorized to do so by the Video Supervisor with regard to one of the exigent circumstances specified in Section 2.04.1 of this Agreement. Any Video Supervisor or SHERIFF's personnel who engages in real-time (live) video access of SBBC's security video feeds without proper authorization under this Agreement shall be subject to discipline including, without limitation, suspension and termination, in accordance with SHERIFF's policies and procedures.

2.04.7 Other Law Enforcement Agencies or Fire Safety Personnel. The SHERIFF's Video Supervisor and his/her designee(s) are authorized to provide other law enforcement or fire safety agencies having jurisdiction over a particular SBBC district school or facility or responding under a mutual aid agreement with the same information SHERIFF would provide to his own personnel responding to an exigent circumstance under Section 2.04.1 of this Agreement.

2.05 Confidentiality of Education Records. Notwithstanding any provision to the contrary within this Agreement, to the extent that SHERIFF receives access to "education records", as defined under state and federal law, SHERIFF shall:

2.05.1 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;

2.05.2 notify SBBC immediately upon discovery of a breach of confidentiality of education records held by SHERIFF 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, and fully cooperate with appropriate SBBC staff, including SBBC's Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

2.05.3 prepare and distribute, at SHERIFF's 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, when SHERIFF's personnel have been determined to be the source of the breach;

2.05.4 be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law, when SHERIFF's personnel have been determined to be the source of the breach;

2.05.5 provide SBBC with the name and contact information of SHERIFF's 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, when SHERIFF's personnel have been determined to be the source of the breach; and

2.05.6 securely erase copies of 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 copies of education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

2.06 **Ownership of Education Records.** To the extent that SHERIFF receives any original education records from SBBC, such records shall remain the property of SBBC. Upon termination of this Agreement SHERIFF shall, at SBBC's request, return to SBBC or dispose of any such original education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

2.07 **Audit of SHERIFF's Access to SBBC Security Video Images.** SHERIFF's access and use of real-time (live) video feeds from SBBC security cameras is subject to audit by SBBC. On a weekly basis, SHERIFF will provide SBBC's designated personnel with detailed information about such use including, at a minimum, the following information:

a) the identity of the Video Supervisor who activated any real-time (live) video access by the SHERIFF to SBBC's security video feeds and the identities of each user authorized by the SHERIFF to view said video feeds;

b) the exigent circumstances under Section 2.04.1 of this Agreement which authorized the Video Supervisor to engage the SHERIFF's real-time (live) video access to SBBC's security video feeds;

c) the location of each district school or facility at which security cameras were accessed;

d) the location of the security camera(s) accessed;

d) the date, the time of access, and the length of viewing of the security camera(s);

c) the names of the law enforcement personnel who viewed SBBC's security video feeds; and

d) copies of any screen shots or short video clips that were captured by SHERIFF from the real-time (live) video feeds pursuant to Section 2.04.5 of this Agreement.

2.08 **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: Chief – Special Investigative Unit
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard
Sunrise, FL 33351

To SHERIFF: Sheriff Scott J. Israel, Sheriff of Broward County, Florida
2601 W. Broward Blvd.
Fort Lauderdale, FL 33312

With a Copy to: Ronald M. Gunzburger, General Counsel
Office of the General Counsel
2601 W. Broward Blvd.
Fort Lauderdale, FL 33312

2.09 **Public Records.** With respect to any public records created, received, or maintained in connection with this Agreement, each party 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 the other party 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 or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to either party, all public records in that party's possession upon termination of this Agreement, 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 must be provided to the other party in a format that is compatible with the other party's 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.

2.10 **Indemnification.** Each party shall each be individually and separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.

To the extent permitted by law, SBBC shall indemnify defend, and hold BSO, its officials, agents, servants and employees, harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in Equity, which results from or arises out of the intentional or negligent acts or omissions of

SBBC, its employees, agents, or servants and SBBC shall indemnify BSO, its officials, agents, servants and employees, for damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which BSO, its officials, agents, servants and employees, might suffer in connection with or as a result of the intentional or negligent acts of SBBC, its employees, agents, or servants. For purposes of this provision, SBBC employees shall not be deemed agents or servants of BSO and BSO employees shall not be deemed agents or servants of SBBC. SBBC shall at all times be entitled to the benefits of sovereign immunity as provided in Florida Statutes, Section 768.28, and common law. Nothing contained in this Agreement shall be construed as a waiver of sovereign immunity.

To the extent permitted by law, BSO shall indemnify, defend, and hold SBBC, its officials, agents, servants and employees, harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of BSO, its employees, agents, servants and BSO shall indemnify SBBC, its officials, agents, servants and employees, for damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which SBBC, its officials, agents, servants and employees, might suffer in connection with or as a result of the intentional or negligent acts of BSO, its employees, agents, or servants. For purposes of this provision, SBBC employees shall not be deemed agents or servants of BSO and BSO employees shall not be deemed agents or servants of SBBC. BSO will at all times be entitled to the benefits of sovereign immunity as provided in Florida Statutes, Section 768.28, and common law. Nothing contained in this Agreement shall be construed as a waiver of sovereign immunity.

2.11 **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.

2.12 **Annual Appropriation.** The performance and obligations of the parties under this Agreement shall be contingent upon an annual budgetary appropriation by their governing bodies, and if either party's governing body does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by such party at the end of the period for which funds have been allocated. The terminating party shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to either party in the event this provision is exercised, and neither party shall be obligated or liable for any future payments due or any damages as a result of termination under this section.

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 retirement, leave benefits or any other benefits of either party's employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. Neither party shall 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days' notice which shall be the sole remedy for a default of this Agreement. 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 either party during the term hereof upon thirty (30) calendar days written notice to the other party of its desire to terminate this Agreement.

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 **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.

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

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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.

3.13 **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.

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

3.15 **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.

3.16 **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.

3.17 **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.

FOR SBBC:

(Corporate Seal)

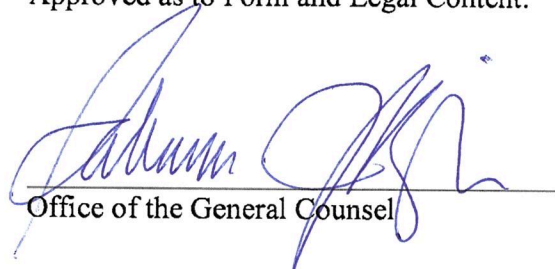
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

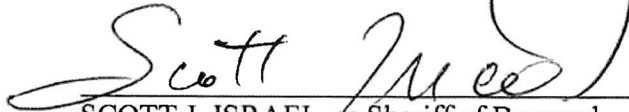


Office of the General Counsel

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FOR SHERIFF

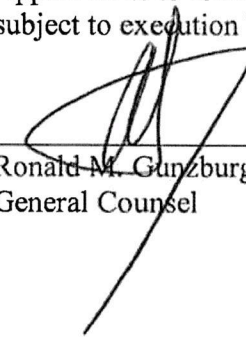
**SCOTT J. ISRAEL, as SHERIFF OF
BROWARD COUNTY, FLORIDA**



SCOTT J. ISRAEL, as Sheriff of Broward
County, Florida

DATE: JANUARY 8, 2019.

Approved as to form and legal sufficiency,
subject to execution by the parties:



① Ronald M. Gunzburger, Esq.
General Counsel

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