

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

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

and

**ANN STORCK CENTER, INC.**

(hereinafter referred to as "Provider"),  
a Florida Not For Profit Corporation whose principal place of business is  
1790 Southwest 43<sup>rd</sup> Way  
Fort Lauderdale, Florida 33317

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

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

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

### ARTICLE 1 - RECITALS

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

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement**. Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2020** and conclude on **June 30, 2021**.

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

2.03 **Teacher Certification**.

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

(b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten, Primary or Preschool Education with a request from the Principal.

(c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.

(d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent in-service points in instruction for teaching students with disabilities.

#### 2.04 **Administrative Responsibility.**

(a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.

(b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

(c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first thirty (30) calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

#### 2.05 **Technical Assistance/Staff Training.**

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

(b) Provider shall provide twelve (12) hours of release time annually for the instructional staff to attend in-service training jointly approved by SBBC and the Provider.

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

#### 2.06 **Medically Related Health Practices.**

(a) SBBC shall provide guidelines for medically related health services practices and procedures.

(b) Provider shall purchase necessary supplies related to the implementation of the health services practices.

(c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.

(d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health-specific of these students.

#### 2.07 **SBBC Disclosure of Education Records.**

(a) SBBC shall provide the types of education records listed in this section for the development and implementation of an Individual Educational Plan (IEP).

(b) SBBC shall provide Provider with access to the EdPlan Electronic Records Management System, and additional records of the student's Provider serves. EdPlan access shall be limited only to records of SBBC students enrolled in the specified program and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EdPlan contains the following records:

- 1) Individual Educational Plan (IEP), which may include medical information;
- 2) Consent for Evaluation/Re-evaluation;
- 3) Functional Behavior Assessment/Positive Behavior Intervention Plan; and
- 4) Any other document necessary for the provision of Free Appropriate Public Education (FAPE).
- 5) Additional education records include:
  - i) Progress Notes;
  - ii) Progress Reports; and
  - iii) Medical records (including, but not limited to types of medication, diagnosed illness and diagnosed disabilities); and
  - iv) Any other information necessary to enroll the student.

(c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

#### 2.08 **Provider Confidentiality of Education Records.**

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

- 1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;
- 2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;
- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

- 4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
- 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
- 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and
- 11) securely erase education records from any media once that media equipment is no longer in use or is to be disposed; secure erasure shall be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Provider shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.09 **HIPAA Compliance.** VENDOR 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 **Attachment A**. PHI may be used and disclosed only in compliance with HIPAA.

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

2.11 **Program Review/Audit.**

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

(b) Provider shall allow appropriate staff of SBBC to formally audit Provider’s instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.12 **Transportation.**

(a) SBBC shall provide transportation for eligible students with disabilities, as defined in Section 2.02.

(b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC’s six (6) approved Early Release Days.

2.13 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.34 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) calendar days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.14 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on **August 19, 2020** and ending on **June 9, 2021** for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of twenty-five (25) hours per week (unless the vacation schedule prohibits a full week’s instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

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

2.16 **Parent Training.**

(a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

(b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

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

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

(a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

(b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.

(c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.19 **Special Programs and Procedures.**

(a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

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

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

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

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

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

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

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

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

- 1) Broward County Child Care Licensing Report
- 2) Fire Department Inspection
- 3) Broward County Food Services Inspection
- 4) State of Florida Sanitation Certification

(c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.

(d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

(e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

(f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

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

2.25 **Therapy Services**.

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

(b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following:

- 1) training in policies and procedures,
- 2) in-service training,
- 3) participation in therapy program development, and
- 4) sharing information among therapists in both agency and school system programs.

(c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

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

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

2.27 **Food Services**.

(a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

(b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

(c) Provider shall adhere to the disclosure restrictions of student meal eligibilities. Child Nutrition Programs (CNPs) are subject to disclosure restrictions imposed by Section 9(b)(6) of the National School Lunch Act (NSLA). Student eligibility information cannot be made available to all school officials as a general practice. A program or person may be authorized under the NSLA to receive free and reduced price eligibility information, however, there must be a legitimate "need to know" to provide a service or carry out an authorized activity.

2.28 **Early Release**. Provider shall provide six (6) early release days to coincide with SBBC's approved **2020-2021** calendar. Provider shall implement a program of staff development activities on those days as set forth on **Attachment B**.

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

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

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

2.32 **Payment**.

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



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

(b) If during the term of this Agreement, the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from **July 1, 2020** to **June 30, 2021**. The projected total cost to SBBC is not to exceed One Million, Two Hundred Fifty-One Thousand, Seven Hundred and Fifty-nine Dollars and 00/100 Cents (\$1,251,759.00) per school year, unless this Agreement is amended by the parties.

2.33 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's applicable 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 the applicable business records of Provider directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

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

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

(d) **Failure to Permit Inspection.** Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any Provider's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total

billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, Provider shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to Provider pursuant to this Agreement and such excluded costs shall become the liability of Provider.

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

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

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

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

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

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

**2.35 Background Screening.** Provider shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement

entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

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

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

2.37 **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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By Provider. Provider agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Provider, SBBC or otherwise.

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

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

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

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

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

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

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

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

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

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

(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.

2.39 **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.

2.40 **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.

2.41 **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.

2.42 **Incorporation by Reference.** Attachment A and Attachment B 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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. 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) calendar 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, SBBC policies, 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.

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.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

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

Approved as to Form and Legal Content:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. -  
kathelyn.jacques-adams@gbrowardschools.com  
Reason: Ann Storck Center, Inc.  
Date: 2020.05.11 13:30:40 -04'00'

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

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



**FOR PROVIDER**

(Corporate Seal)

ANN STORCK CENTER, INC.

ATTEST:

By [Signature]

Print Name: Terri Shemelt

Title: CEO

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

-or-

[Signature]

Witness

Alcenia Farrist

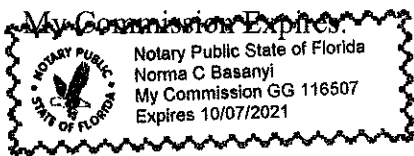
Witness

**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 by means of  physical presence or  online notarization, this May 1, 2020 (date) by Terri Shemelt (name of officer or agent, title of officer or agent) of Ann Storck Center (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if applicable) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 1st day of May, 2020.



(SEAL)

Norma C. Basanyi  
Signature – Notary Public

Norma C Basanyi  
Notary's Printed Name

116507  
Notary's Commission No.

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("*Agreement*") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the "*Effective Date*", by and between

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

and

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

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("*PHI*") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("*HITECH*"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "*Business Associate Requirements*"); and

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("*PHI*") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("*ePHI*").

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:
  - (a) "***Breach***" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

ARTICLE 1 – RECITALS

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**Electronic PHF**" or "ePHI", shall mean PHI that is transmitted by or maintained in electronic media.
- (f) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (g) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (h) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (i) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (j) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (k) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
- (l) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHF**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

**ARTICLE 2 – SPECIAL CONDITIONS****2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

**3. Permitted Uses and Disclosures of PHI by "Business Associate".**

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

**5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (as defined in 45 C.F.R. §160.103) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS****6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

**7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

**8. Amendment.**

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

**9. Term and Termination.**

- (a) ***Term.*** This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) ***Termination for Convenience.*** This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) ***Termination for Cause by SBBC.*** Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

**10. Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's 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 Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

**11. No Waiver of Sovereign Immunity.**

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

**ARTICLE 3 – GENERAL CONDITIONS****12. 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. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.



**ARTICLE 3 – GENERAL CONDITIONS****14. Records.**

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.

**15. 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.

**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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**17. Compliance with Laws.**

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

**18. Binding Effect.**

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

**19. 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.

**20. 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.

**21. 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.

**ARTICLE 3 – GENERAL CONDITIONS****22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

Privacy Officer  
Risk Management Department  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301

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

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

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**ARTICLE 3 – GENERAL CONDITIONS****25. 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.

**26. No Waiver of Rights, Powers and Remedies.**

The parties agree that each requirement, duty, right 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.

**27. Regulatory References.**

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

**28. Governing Law.**

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

**29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

**FOR SBBC:**

(Corporate Seal)

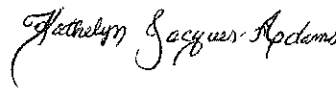
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, 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: Ann Storck Center, Inc.  
Date: 2020.05.11 13:34:17 -04'00'

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

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

**FOR BUSINESS ASSOCIATE**

(Corporate Seal)

ANN STORCK CENTER, INC.

ATTEST:

By Terris Shermett

Print Name: Terris Shermett

Title: Terris Shermett CEO

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

-or-

[Signature]

Witness

Alcenio Parnal

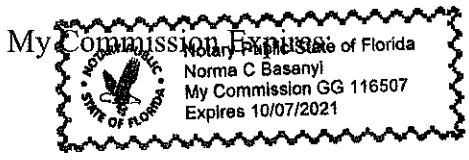
Witness

**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 by means of  physical presence or  online notarization, this May 1 2020 (date) by Terris Shermett (name of officer or agent, title of officer or agent) of Ann Storck Center (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if appropriate) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 1st day of May, 2020.



Norma C Basanyi  
Signature - Notary Public

Norma C Basanyi  
Notary's Printed Name

(SEAL)

118507  
Notary's Commission No.

**EXHIBIT A**

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and

\_\_\_\_\_ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



**2020 – 2021 SCHOOL CALENDAR**

**August 2020**

Wednesday, August 12, 2020 through Tuesday, August 18, 2020 – No School for Students  
Wednesday, August 19, 2020 – First Day of School

**September 2020**

Monday, September 7, 2020 – Schools and Administrative Offices Closed  
Friday, September 11, 2020 – Interim Reports Issued  
Monday, September 28, 2020 - Schools and Administrative Offices Closed

**October 2020**

Friday, October 16, 2020 - Early Release Day  
Monday, October 19, 2020 - Employee Planning (no school for students)

**November 2020**

Tuesday, November 3, 2020- Employee Planning (no school for students)  
Wednesday, November 11, 2020 - Schools and Administrative Offices Closed  
Thursday, November 12, 2020 - Report Cards Issued  
Tuesday, November 17, 2020- Interim Reports Issued  
Monday, November 23 through Friday, November 27, 2020 - School Thanksgiving Break

**December 2020**

Monday, December 21, 2020 through January 1, 2021 - School Winter Break

**January 2021**

Thursday, January 7, 2021 - Early Release Day  
Friday, January 8, 2021 - Employee Planning (no school for students)  
Monday, January 18, 2021 - Schools and Administrative Offices Closed

**February 2021**

Wednesday, February 3, 2021 - Report Cards Issued  
Tuesday, February 9, 2021 - Interim Reports Issued  
Monday, February 15, 2021 - Schools and Administrative Offices Closed  
Thursday, February 18, 2021 - Early Release Day



**2020 – 2021 SCHOOL CALENDAR**

**March 2021**

Thursday, March 18, 2021 - Early Release Day  
Friday, March 19, 2021 - Employee Planning (no school for students)  
Monday, March 22, 2021, through Friday, March 26, 2021 - School Spring Break

**April 2021**

Friday, April 2, 2021 - Schools and Administrative Offices Closed  
Thursday, April 8, 2021 - Early Release Day  
Wednesday, April 14, 2021 - Report Cards Issued  
Thursday, April 29, 2021 - Interim Reports Issued

**May 2021**

Monday, May 31, 2021 - Schools and Administrative Offices Closed

**June 2021**

Wednesday, June 9, 2021 - Last Day of School  
Wednesday, June 9, 2021 - Early Release Day  
Thursday, June 10, 2021 - Employee Planning (no school for students)  
Wednesday, June 30, 2021 - Report Cards Issued

**Hurricane makeup days in order of preference:**

Friday, October 16, 2020  
Thursday, January 7, 2021  
Thursday, February 18, 2021  
Thursday, March 18, 2021  
Thursday, April 8, 2021  
Wednesday, June 9, 2021



## AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

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

and

**ARC BROWARD, INC.**

(hereinafter referred to as "Provider"),  
a Florida Not For Profit Corporation whose principal place of business is  
10250 Northwest 53<sup>rd</sup> Street  
Sunrise, Florida 33351

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

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

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

### ARTICLE 1 - RECITALS

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

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2020**, and conclude on **June 30, 2021**.

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

2.03 **Teacher Certification.**

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

(b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten, Primary or Preschool Education with a request from the Principal.

(c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.

(d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent in-service points in instruction for teaching students with disabilities.

#### 2.04 **Administrative Responsibility.**

(a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.

(b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

(c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol is to SBBC within two weeks of the evaluation in order to be processed for the state.

#### 2.05 **Technical Assistance/Staff Training.**

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

(b) Provider shall provide twelve (12) hours of release time annually for the instructional staff to attend in-service training jointly approved by SBBC and the Provider.

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

#### 2.06 **Medically Related Health Practices.**

(a) SBBC shall provide guidelines for medically related health services practices and procedures.

(b) Provider shall purchase necessary supplies related to the implementation of the health services practices.

(c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.

(d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health-specific of these students.

#### 2.07 **SBBC Disclosure of Education Records.**

(a) SBBC shall provide the types of education records listed in this section for the development and implementation of an Individual Educational Plan (IEP).

(b) SBBC shall provide Provider with access to the EdPlan Electronic Records Management System, and additional records of the students' Provider serves. EdPlan access shall be limited only to records of SBBC students enrolled in the specified program and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EdPlan contains the following records:

- 1) Individual Educational Plan (IEP), which may include medical information;
- 2) Consent for Evaluation/Re-evaluation;
- 3) Functional Behavior Assessment/Positive Behavior Intervention Plan; and
- 4) Any other document necessary for the provision of Free Appropriate Public Education (FAPE).
- 5) Additional education records include:
  - i) Progress Notes;
  - ii) Progress Reports; and
  - iii) Medical records (including, but not limited to types of medication, diagnosed illness and diagnosed disabilities); and
  - iv) Any other information necessary to enroll the student.

(c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

#### 2.08 **Provider Confidentiality of Education Records.**

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

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

- 2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;
- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
- 4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
- 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
- 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and
- 11) securely erase education records from any media once that media equipment is no longer in use or is to be disposed; secure erasure shall be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Provider shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.09 **HIPAA Compliance.** VENDOR 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 **Attachment A**. PHI may be used and disclosed only in compliance with HIPAA.

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

2.11 **Program Review/Audit.**

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

(b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.12 **Transportation.**

(a) SBBC shall provide transportation for eligible students with disabilities, as defined in Section 2.02.

(b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six approved Early Release Days.

2.13 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.34, setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) calendar days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.14 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on **August 19, 2020** and ending on **June 9, 2021** for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of twenty-five (25) hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

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

2.16 **Parent Training.**

(a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

(b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

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

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

(a) Provider shall ensure that an IEP (students ages three to five) with specific, measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

(b) Provider shall review the IEP annually in accordance with the State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.

(c) Provider shall ensure that parents of students are invited to participate in IEP meetings, and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.19 **Special Programs and Procedures.**

(a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

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

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

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

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

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

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

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

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

- 1) Broward County Child Care Licensing Report
- 2) Fire Department Inspection
- 3) Broward County Food Services Inspection
- 4) State of Florida Sanitation Certification

(c) Since these inspections are conducted at different times throughout the year, Provider shall send SBBC an updated copy after each new inspection.

(d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

(e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

(f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

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

#### 2.25 Therapy Services.

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

(b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following:

- 1) training in policies and procedures,
- 2) in-service training,
- 3) participation in therapy program development, and
- 4) sharing information among therapists in both agency and school system programs.

(c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

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

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

#### 2.27 Food Services.

(a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

(b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

(c) Provider shall adhere to the disclosure restrictions of student meal eligibilities. Child Nutrition Programs (CNPs) are subject to disclosure restrictions imposed by Section 9(b)(6) of the National School Lunch Act (NSLA). Student eligibility information cannot be made available to all school officials as a general practice. A program or person may be authorized under the NSLA to receive free and reduced price eligibility information, however, there must be a legitimate "need to know" to provide a service or carry out an authorized activity.

2.28 Early Release. Provider shall provide six (6) early release days to coincide with SBBC's approved 2020-2021 calendar. Provider shall implement a program of staff development activities on those days as set forth on **Attachment B**.



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

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

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

2.32 **Payment.**

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

(b) If during the term of this Agreement, the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from **July 1, 2020 to June 30, 2021**. The projected total cost to SBBC not to exceed One Million, Nine Hundred Eighty-Two Thousand, Six Hundred Forty-two Dollars and 00/100 Cents (\$1,982,642.00) per school year, unless this Agreement is amended by the parties.

2.33 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's applicable 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 the applicable business records of Provider directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

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

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

(d) Failure to Permit Inspection. Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any Provider's claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider, shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, Provider shall require any and all subcontractors, insurance agents, and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to Provider pursuant to this Agreement, and such excluded costs shall become the liability of Provider.

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

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

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

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

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

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

2.35 **Background Screening.** Provider shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

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

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

2.37 **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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By Provider: Provider agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Provider, SBBC or otherwise.

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

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

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

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

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

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

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

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

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

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

(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.

2.39 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.

2.40 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.

2.41 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.

2.42 Incorporation by Reference. **Attachment A** and **Attachment B** 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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. 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) calendar 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, SBBC policies, 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.

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 \_\_\_\_\_  
Donna P. Korn, 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: ARC Broward, Inc.  
Date: 2020.05.08 21:00:39 -04'00'

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

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

**FOR PROVIDER**

(Corporate Seal)

ARC BROWARD, INC.

ATTEST:

By [Signature]

Print Name DENNIS HAAS

Print Title: PRESIDENT/CEO

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

-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 FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this May 8, 2020 (date) by Dennis Haas, President/CEO (name of officer or agent, title of officer or agent) of Arc Broward Inc (name of corporation acknowledging), a FLORIDA (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if applicable) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 8 day of May, 2020.

My Commission Expires: 03/17/2022

[Signature]  
Signature – Notary Public

Danielle C Johnson  
Notary's Printed Name

(SEAL)



DANIELLE C JOHNSON  
Commission # GG 178460  
Expires March 17, 2022  
Bonded Thru Budget Notary Services

GG 178460  
Notary's Commission No.

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("**Agreement**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the "**Effective Date**", by and between

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

and

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

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("**PHI**") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("**HITECH**"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "Business Associate Requirements"); and

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("**PHI**") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("**ePHI**").

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:
  - (a) "**Breach**" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

ARTICLE 1 – RECITALS

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**Electronic PHI**" or "ePHI", shall mean PHI that is transmitted by or maintained in electronic media.
- (f) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (g) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (h) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (i) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (j) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (k) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
- (l) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

**ARTICLE 2 – SPECIAL CONDITIONS****2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.

**ARTICLE 2 – SPECIAL CONDITIONS**

- h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

**3. Permitted Uses and Disclosures of PHI by "Business Associate".**

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

**5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (**as defined in 45 C.F.R. §160.103**) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS****6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

**7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

**8. Amendment.**

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

**9. Term and Termination.**

- (a) Term.* This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) Termination for Convenience.* This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) Termination for Cause by SBBC.* Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.



**ARTICLE 2 – SPECIAL CONDITIONS**

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

**10. Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's 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 Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

**11. No Waiver of Sovereign Immunity.**

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

**ARTICLE 3 – GENERAL CONDITIONS****12. 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. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

**ARTICLE 3 – GENERAL CONDITIONS****14. Records.**

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.

**15. 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.

**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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**17. Compliance with Laws.**

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

**18. Binding Effect.**

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

**19. 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.

**20. 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.

**21. 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.

**ARTICLE 3 – GENERAL CONDITIONS****22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301

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

Privacy Officer  
Risk Management Department  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301

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

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

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**ARTICLE 3 – GENERAL CONDITIONS****25. 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.

**26. No Waiver of Rights, Powers and Remedies.**

The parties agree that each requirement, duty, right 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.

**27. Regulatory References.**

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

**28. Governing Law.**

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

**29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

**FOR SBBC:**

(Corporate Seal)

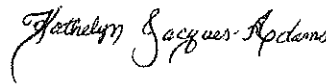
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By \_\_\_\_\_  
Donna P. Korn, Chair

ATTEST:

\_\_\_\_\_  
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: ARC Broward, Inc.  
Date: 2020.05.08 21:01:06 -04'00'

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

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

**FOR BUSINESS ASSOCIATE**

(Corporate Seal)

ARC BROWARD, INC.

ATTEST:

By [Signature]

Print Name: DENNIS HAAS

Title: PRESIDENT / CEO

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

-or-

[Signature]  
Witness

Witness

[Signature]  
Witness

Witness

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

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this May 8, 2020 (date) by Dennis Haas, President (name of officer or agent, title of officer or agent) of Arc Broward, Inc (name of corporation acknowledging), a FLORIDA (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if appropriate) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 8<sup>th</sup> day of May, 2020.

My Commission Expires: 03/17/2022

[Signature]  
Signature - Notary Public

Danielle C Johnson  
Notary's Printed Name

GG 178460  
Notary's Commission No.

(SEAL)



DANIELLE C JOHNSON  
Commission # GG 178460  
Expires March 17, 2022  
Bonded Thru Budget Notary Services

**EXHIBIT A**

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and \_\_\_\_\_

(Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_ breach:

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



**2020 – 2021 SCHOOL CALENDAR**

**August 2020**

Wednesday, August 12, 2020 through Tuesday, August 18, 2020 – No School for Students  
Wednesday, August 19, 2020 – First Day of School

**September 2020**

Monday, September 7, 2020 – Schools and Administrative Offices Closed  
Friday, September 11, 2020 – Interim Reports Issued  
Monday, September 28, 2020 - Schools and Administrative Offices Closed

**October 2020**

Friday, October 16, 2020 - Early Release Day  
Monday, October 19, 2020 - Employee Planning (no school for students)

**November 2020**

Tuesday, November 3, 2020- Employee Planning (no school for students)  
Wednesday, November 11, 2020 - Schools and Administrative Offices Closed  
Thursday, November 12, 2020 - Report Cards Issued  
Tuesday, November 17, 2020- Interim Reports Issued  
Monday, November 23 through Friday, November 27, 2020 - School Thanksgiving Break

**December 2020**

Monday, December 21, 2020 through January 1, 2021 - School Winter Break

**January 2021**

Thursday, January 7, 2021 - Early Release Day  
Friday, January 8, 2021 - Employee Planning (no school for students)  
Monday, January 18, 2021 - Schools and Administrative Offices Closed

**February 2021**

Wednesday, February 3, 2021 - Report Cards Issued  
Tuesday, February 9, 2021 - Interim Reports Issued  
Monday, February 15, 2021 - Schools and Administrative Offices Closed  
Thursday, February 18, 2021 - Early Release Day





**2020 – 2021 SCHOOL CALENDAR**

**March 2021**

Thursday, March 18, 2021 - Early Release Day  
Friday, March 19, 2021 - Employee Planning (no school for students)  
Monday, March 22, 2021, through Friday, March 26, 2021 - School Spring Break

**April 2021**

Friday, April 2, 2021 - Schools and Administrative Offices Closed  
Thursday, April 8, 2021 - Early Release Day  
Wednesday, April 14, 2021 - Report Cards Issued  
Thursday, April 29, 2021 - Interim Reports Issued

**May 2021**

Monday, May 31, 2021 - Schools and Administrative Offices Closed

**June 2021**

Wednesday, June 9, 2021 - Last Day of School  
Wednesday, June 9, 2021 - Early Release Day  
Thursday, June 10, 2021 - Employee Planning (no school for students)  
Wednesday, June 30, 2021 - Report Cards Issued

**Hurricane makeup days in order of preference:**

Friday, October 16, 2020  
Thursday, January 7, 2021  
Thursday, February 18, 2021  
Thursday, March 18, 2021  
Thursday, April 8, 2021  
Wednesday, June 9, 2021

## AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

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

and

**BROWARD CHILDRENS CENTER, INC.**

(hereinafter referred to as "Provider"),  
a Florida Not For Profit Corporation whose principal place of business is  
1801 East Atlantic Boulevard  
Pompano Beach, Florida 33060

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

**WHEREAS**, Provider has the capability of providing special education to prekindergarten students with disabilities and medically fragile kindergarten through 12 grade students attending the skilled nursing facility.

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

### ARTICLE 1 - RECITALS

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

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2020**, and conclude on **June 30, 2021**.

2.02 **Eligibility.** Prekindergarten students and medically fragile kindergarten through 12<sup>th</sup> grade with disabilities are eligible to attend the Provider's program in accordance with meeting the State Board of Education Rules.

2.03 **Teacher Certification.**

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

(b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten, Primary or Preschool Education, Exceptional Student Education, Elementary and/or Secondary with a request from the Principal.

(c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.

(d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent in-service points in instruction for teaching students with disabilities.

#### 2.04 **Administrative Responsibility.**

(a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.

(b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

(c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and Part B/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first thirty (30) calendar days of the child's eligibility. Provider also must evaluate all existing preschool students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

#### 2.05 **Technical Assistance/Staff Training.**

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

(b) Provider shall provide twelve (12) hours of release time annually for the instructional staff to attend in-service training jointly approved by SBBC and the Provider.

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

#### 2.06 **Medically Related Health Practices.**

(a) SBBC shall provide guidelines for medically related health services practices and procedures.

(b) Provider shall purchase necessary supplies related to the implementation of the health services practices.

(c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.

(d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health-specific of these students.

#### 2.07 **SBBC Disclosure of Education Records.**

(a) SBBC shall provide the types of education records listed in this section for the development and implementation of an Individual Educational Plan (IEP).

(b) SBBC shall provide Provider with access to the EdPlan Electronic Records Management System and additional records of the students Provider serves. EdPlan access shall be limited only to records of SBBC students enrolled in the specified program and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EdPlan contains the following records:

- 1) Individual Educational Plan (IEP), which may include medical information;
- 2) Consent for Evaluation/Rè-evaluation;
- 3) Functional Behavior Assessment/Positive Behavior Intervention Plan; and
- 4) Any other document necessary for the provision of Free Appropriate Public Education (FAPE).
- 5) Additional education records include:
  - i) Progress Notes;
  - ii) Progress Reports; and
  - iii) Medical records (including, but not limited to types of medication, diagnosed illness and diagnosed disabilities); and
  - iv) Any other information necessary to enroll the student.

(c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

#### 2.08 **Provider Confidentiality of Education Records.**

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

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

- 2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;
- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
- 4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
- 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
- 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and
- 11) securely erase education records from any media once that media equipment is no longer in use or is to be disposed; secure erasure shall be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose

of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Provider shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.09 **HIPAA Compliance.** VENDOR 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 Attachment A. PHI may be used and disclosed only in compliance with HIPAA.

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

2.11 **Program Review/Audit.**

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

(b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.12 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.34 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) calendar days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.13 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on **August 19, 2020** and ending on **June 9, 2021** for students with disabilities. Students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of twenty-five (25) hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct students with disabilities.

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

2.15 **Parent Training.**

(a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

(b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

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

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

(a) Provider shall ensure that an IEP with specific, measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

(b) Provider shall review the IEP annually in accordance with the State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.

(c) Provider shall ensure that parents of students are invited to participate in IEP meetings, and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.18 **Special Programs and Procedures.**

(a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

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

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

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

2.21 **Class Size.** Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen (18). Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class. The Provider's President/CEO and SBBC ESLS Executive Director or designee must mutually agree upon exceptions to this ratio.

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

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

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

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

- 1) Broward County Child Care Licensing Report
- 2) Fire Department Inspection
- 3) Broward County Food Services Inspection
- 4) State of Florida Sanitation Certification

(c) Since these inspections are conducted at different times throughout the year, Provider shall send SBBC an updated copy after each new inspection.

(d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

(e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

(f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

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

2.24 **Therapy Services.**

(a) Provider shall provide licensed occupational therapists (OTR) or certified occupational therapy assistants (COTA), physical therapists (PT) or physical therapy assistants (PTA), and speech-language pathologists (SLP) or speech-language pathology assistants (SLPA) as needed to implement IEPs, with no out-of-field waivers permitted. The supervising occupational, physical therapists, and certified and/or licensed SLPs must attend all IEP meetings and perform all evaluations deemed necessary as a result of a re-evaluation plan meeting.

(b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following:

- (1) training in policies and procedures,
- (2) in-service training,
- (3) participation in therapy program development, and



(4) sharing information among therapists in both agency and school system programs.

(c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

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

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

2.26 **Food Services.**

(a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

(b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

(c) Provider shall adhere to the disclosure restrictions of student meal eligibilities. Child Nutrition Programs (CNP) are subject to disclosure restrictions imposed by Section 9(b)(6) of the National School Lunch Act (NSLA). Student eligibility information cannot be made available to all school officials as a general practice. A program or person may be authorized under the NSLA to receive free and reduced price eligibility information, however, there must be a legitimate "need to know" to provide a service or carry out an authorized activity.

2.27 **Early Release.** Provider shall provide six (6) early release days to coincide with SBBC's approved 2020-2021 calendar. Provider shall implement a program of staff development activities on those days as set forth on **Attachment B**.

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

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

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

2.31 **Payment.**

(a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first

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

(b) If during the term of this Agreement, the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from **July 1, 2020** to **June 30, 2021**. The projected total cost to SBBC is not to exceed Three Million, Four Hundred Fifty-four Thousand One Hundred Ninety-four Dollars and 00/100 Cents (\$3,454,194.00) per school year, unless this Agreement is amended by the parties.

2.32 **Transportation**. SBBC shall contract with Provider to provide pupil transportation services for eligible exceptional students as defined in Section 2.02. SBBC shall pay Thirty-Six Dollars and 86/100 Cents (\$36.86) per student for students who physically rode the bus one day during the Florida Education Finance Program (FEFP) window and are enrolled in the program. Provider shall be paid for two invoicing periods; October and February. Provider shall organize, coordinate, administer, supervise, and operate pupil transportation services as follows:

1. Pupil transportation services for disabled prekindergarten students shall be provided from:
  - a. The student's official pickup point to the Provider.
  - b. Return from the Provider to the students' official pickup point or to a location specified and agreed to by the student's parents or guardian.
2. Pupil transportation services shall be provided in compliance with the following provisions:
  - a. Vehicles shall be operated by or contracted for by the Provider.
  - b. Drivers and attendants and/or any and all personnel who ride on or who shall be in attendance on the bus at the time students are on the bus shall be an employee of the Provider or a volunteer at the Providers and receive clearance from SBBC through fingerprinting and security check or go through the HRS security clearance procedures.
  - c. Individual employees assigned to drive at the time students are on the bus shall be licensed by the Florida State Department of Highway Safety and Motor Vehicles, Driver's License Division, to operate a vehicle of this size and type.
  - d. Provider shall develop policies and procedures concerning the transportation of students and ensure that appropriate personnel is given an orientation regarding these procedures. Policies and procedures shall not be in conflict with any policy or procedure of SBBC ([www.pupiltrans.org](http://www.pupiltrans.org)) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).

3. All vehicles under the terms of this Agreement shall meet the following standards:
  - a. Provider shall meet all insurance requirements of SBBC and the State of Florida and agree to maintain insurance in accordance with the following:
    - 1) Auto Liability Insurance with bodily injury limits of no less than \$1,000,000.00 per occurrence. SBBC shall be named as an additional insured.
    - 2) Worker's Compensation and Employer's Liability Insurance with statutory limits.
    - 3) Hold harmless clause.
  - b. Equipped with seatbelts, car seats, or wheelchair securement devices (where appropriate), which are used at all times to secure students while being transported.
  - c. Maintained to Original Equipment Manufacturers (EOM) standards and comply with the requirements FMVSS, Department of Education, and SBBC.
  - d. All vehicles used by the provider must meet DOE transportation requirements ([www.fldoe.org/transportation](http://www.fldoe.org/transportation))
  
4. Special provisions for providing this transportation service shall be those listed below:
  - a. Provider shall provide for FTE survey counts using the same forms and providing the same information as that required of bus drivers serving the Public Schools.
  - b. If Provider purchases a management letter as part of an annual audit, the management letter must be received by SBBC one hundred and twenty (120) calendar days following the close of the Provider's fiscal year.
  - c. If at any time an employee of the Provider is aware of or suspects that child abuse or neglect has occurred, as defined in Chapter 415, F.S., that employee is required to immediately report such known or suspected abuse or neglect to the Department of Health and Rehabilitative Services by calling the Central Abuse Registry (1-800-96-ABUSE). Failure of Provider to immediately report known or suspected child abuse or neglect shall constitute a breach of contract and may result in termination.
  - d. The operating calendar shall be the same as the operating calendar of SBBC for elementary schools during the regular term and for summer school.
  - e. Provider shall accommodate the special needs of the students being transported. Special needs shall be defined but not limited to; baby seats, lifts, assistance in entering and exiting a vehicle and adequate care and supervision of all students while in the vehicle, and with attendants on the bus where appropriate. All special needs must be specified in the student's IEP.
  - f. Special care shall be given to assure the time limit spent on the vehicle is not excessive. No student should be required to spend time in excess of one hour on each one-way trip. Provider may be required to commission additional vehicles and employ additional drivers and attendants to ensure compliance with this provision.
  - g. Provider shall modify routes as student demographics change and shall notify students and parents of all route changes.
  - h. Termination of transportation services for a student shall be consistent with the requirements for termination from the education program for which SBBC is contracting.
  - i. Vehicles shall be maintained in a safe operating condition in accordance with FS 1006. SBBC reserves the right to halt all processing of payments due under this Agreement until deficiencies in the safety of vehicles are corrected.

- j. Drivers shall maintain on the vehicle an updated list of all students assigned to the vehicle. This list shall contain as a minimum the name, address, telephone number, emergency telephone number and address, and the special needs of the student.
  - k. Provider shall ensure that all students and their families are notified of all changes in the route.
  - l. Provider shall complete an SBBC, FTE transportation survey.
5. As it relates to motor vehicle records when hiring bus operators for the purpose of transporting students, Provider shall require bus operators:
    - a. License to be checked at the initial time of employment.
    - b. License checked prior to the first day of the fall semester.
    - c. License checked quarterly throughout the school year.
  6. As it relates to drug testing, when employing bus operators for the purpose of transporting students, Provider shall require bus operators to:
    - a. Pre-employment drug test.
    - b. Undergo random drug test.
    - c. Drug test as a result of reasonable suspicion.
  7. Provider shall require that bus operators meet DOT and/or DOE requirements for physical and dexterity testing.  
 (<http://www.flhsmv.gov/ddl/cdlmedicalcert.html>) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).
  8. As it relates to training, Provider shall require bus operators to go through:
    - a. The initial time of employment training based on vehicle and purpose of transportation.
    - b. Minimum of eight hours of in-service training annually.
  9. Provider shall complete bus evacuation drills within the first six (6) weeks of each semester, two (2) per school year.
  10. Schedule transportation services to accommodate SBBC six (6) approved Early Release Days.

2.33 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's applicable 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 the applicable business records of Provider directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

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

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

(d) Failure to Permit Inspection. Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any Provider's claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider, shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, Provider shall require any and all subcontractors, insurance agents, and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to Provider pursuant to this Agreement, and such excluded costs shall become the liability of Provider.

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

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

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

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

To Provider: Chief Executive Officer  
Broward Children's Center, Inc.  
200 SE 19<sup>th</sup> Avenue  
Pompano Beach, FL 33060

With a Copy to:

Operations Officer  
Broward Children's Center, Inc.  
200 SE 19<sup>th</sup> Avenue  
Pompano Beach, FL 33060

2.35 **Background Screening.** Provider shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

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

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

2.37 **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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By Provider: Provider agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Provider, SBBC or otherwise.

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

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

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

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

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

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

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

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

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

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

(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.

2.39 **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.

2.40 **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.

2.41 **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.

2.42 **Incorporation by Reference.** Attachment A and Attachment B 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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. 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) calendar 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, SBBC policies, 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.

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.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

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

Approved as to Form and Legal Content:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. -  
kathelyn.jacques-adams@gbrowardschools.com  
Reason: Broward Childrens Center, Inc. -  
PreKindergarten  
Date: 2020.06.11 17:06:53 -0400'

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

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

**FOR PROVIDER**

(Corporate Seal)

BROWARD CHILDRENS CENTER, INC.

ATTEST:

By Marjorie Evans CEO

Print Name: MARJORIE EVANS

Title: CEO

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

-or-

Mary Ann Anastasia  
Witness

Nora

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.**

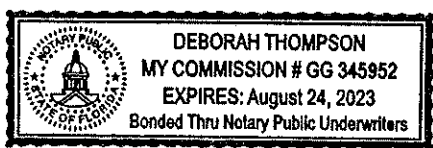
STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 6/11/2020 (date) by Marjorie Evans, CEO (name of officer or agent, title of officer or agent) of Broward Children's Center, Inc. (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if applicable) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 11 day of June, 2020.

My Commission Expires:

Deborah Thompson  
Signature – Notary Public



(SEAL)

Deborah Thompson  
Notary's Printed Name

GG 345952  
Notary's Commission No.

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the "**Effective Date**"), by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "**SBBC**" or "**Covered Entity**"),  
a body corporate and political subdivision of the State of  
Florida, whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**BROWARD CHILDRENS CENTER, INC.**

(hereinafter referred to as "**Business Associate**"),  
whose principal place of business is  
1801 East Atlantic Boulevard  
Pompano Beach, Florida 33060

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("**PHI**") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("**HITECH**"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "**Business Associate Requirements**"); and

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("**PHI**") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("**ePHI**").

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:
  - (a) "**Breach**" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

ARTICLE 1 – RECITALS

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**Electronic PHI**" or "ePHI", shall mean PHI that is transmitted by or maintained in electronic media.
- (f) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (g) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (h) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (i) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (j) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (k) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
- (l) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

**ARTICLE 2 – SPECIAL CONDITIONS****2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

**3. Permitted Uses and Disclosures of PHI by "Business Associate".**

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.



**ARTICLE 2 – SPECIAL CONDITIONS**

- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

**5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (as defined in 45 C.F.R. §160.103) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources, including Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS****6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

**7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

**8. Amendment.**

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

**9. Term and Termination.**

(a) *Term.* This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.

(b) *Termination for Convenience.* This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.

(c) *Termination for Cause by SBBC.* Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

**10. Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's 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 Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

**11. No Waiver of Sovereign Immunity.**

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

**ARTICLE 3 – GENERAL CONDITIONS****12. 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. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

**ARTICLE 3 – GENERAL CONDITIONS****14. Records.**

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.

**15. 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.

**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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**17. Compliance with Laws.**

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

**18. Binding Effect.**

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

**19. 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.

**20. 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.

**21. 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.

**ARTICLE 3 – GENERAL CONDITIONS****22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

Privacy Officer  
Risk Management Department  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301

To Business Associate: Chief Executive Officer  
Broward Children's Center, Inc.  
200 SE 19<sup>th</sup> Avenue  
Pompano Beach, FL 33060

With a Copy to: Operations Officer  
Broward Children's Center, Inc.  
200 SE 19<sup>th</sup> Avenue  
Pompano Beach, FL 33060

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**ARTICLE 3 – GENERAL CONDITIONS****25. 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.

**26. No Waiver of Rights, Powers and Remedies.**

The parties agree that each requirement, duty, right 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.

**27. Regulatory References.**

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

**28. Governing Law.**

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

**29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

**FOR SBBC:**

(Corporate Seal)

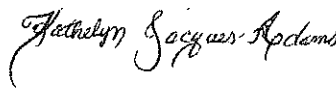
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, 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: Broward Childrens Center, Inc. -  
Prekindergarten  
Date: 2020.06.11 17:07:20 -04'00'

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

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

**FOR BUSINESS ASSOCIATE**

(Corporate Seal)

BROWARD CHILDRENS CENTER, INC.

ATTEST:

By Marjorie Evans, CEO

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

Print Name: MARJORIE EVANS

-or-

Title: CEO

Mary Ann Anastasia  
Witness

Nors

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.**

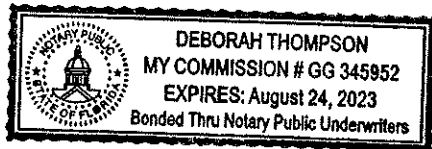
STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 6/11/2020 (date) by Marjorie Evans, CEO (name of officer or agent, title of officer or agent) of Broward Children's Center, Inc. (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if appropriate) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 11 day of June, 2020.

My Commission Expires:

Deborah Thompson  
Signature – Notary Public



(SEAL)

Deborah Thompson  
Notary's Printed Name

GG 345952  
Notary's Commission No.



**EXHIBIT A**

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and

\_\_\_\_\_ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_ breach:

\_\_\_\_\_

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_

\_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_

\_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_

\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



**2020 – 2021 SCHOOL CALENDAR**

**August 2020**

Wednesday, August 12, 2020 through Tuesday, August 18, 2020 – No School for Students  
Wednesday, August 19, 2020 – First Day of School

**September 2020**

Monday, September 7, 2020 – Schools and Administrative Offices Closed  
Friday, September 11, 2020 – Interim Reports Issued  
Monday, September 28, 2020 - Schools and Administrative Offices Closed

**October 2020**

Friday, October 16, 2020 - Early Release Day  
Monday, October 19, 2020 - Employee Planning (no school for students)

**November 2020**

Tuesday, November 3, 2020- Employee Planning (no school for students)  
Wednesday, November 11, 2020 - Schools and Administrative Offices Closed  
Thursday, November 12, 2020 - Report Cards Issued  
Tuesday, November 17, 2020- Interim Reports Issued  
Monday, November 23 through Friday, November 27, 2020 - School Thanksgiving Break

**December 2020**

Monday, December 21, 2020 through January 1, 2021 - School Winter Break

**January 2021**

Thursday, January 7, 2021 - Early Release Day  
Friday, January 8, 2021 - Employee Planning (no school for students)  
Monday, January 18, 2021 - Schools and Administrative Offices Closed

**February 2021**

Wednesday, February 3, 2021 - Report Cards Issued  
Tuesday, February 9, 2021 - Interim Reports Issued  
Monday, February 15, 2021 - Schools and Administrative Offices Closed  
Thursday, February 18, 2021 - Early Release Day



**2020 – 2021 SCHOOL CALENDAR**

**March 2021**

Thursday, March 18, 2021 - Early Release Day  
Friday, March 19, 2021 - Employee Planning (no school for students)  
Monday, March 22, 2021, through Friday, March 26, 2021 - School Spring Break

**April 2021**

Friday, April 2, 2021 - Schools and Administrative Offices Closed  
Thursday, April 8, 2021 - Early Release Day  
Wednesday, April 14, 2021 - Report Cards Issued  
Thursday, April 29, 2021 - Interim Reports Issued

**May 2021**

Monday, May 31, 2021 - Schools and Administrative Offices Closed

**June 2021**

Wednesday, June 9, 2021 - Last Day of School  
Wednesday, June 9, 2021 - Early Release Day  
Thursday, June 10, 2021 - Employee Planning (no school for students)  
Wednesday, June 30, 2021 - Report Cards Issued

Hurricane makeup days in order of preference:

Friday, October 16, 2020  
Thursday, January 7, 2021  
Thursday, February 18, 2021  
Thursday, March 18, 2021  
Thursday, April 8, 2021  
Wednesday, June 9, 2021

## AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

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

and

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

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

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

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

### ARTICLE 1 - RECITALS

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

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2020**, and conclude on **June 30, 2021**.

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

2.03 **Teacher Certification.**

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

(b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten, Primary or Preschool Education with a request from the Principal.

(c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider shall also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.

(d) An applicant for renewal of a professional certificate shall earn at least one college credit or the equivalent in-service points in instruction for teaching students with disabilities.

#### 2.04 **Administrative Responsibility.**

(a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.

(b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

(c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider shall evaluate all the entering students utilizing the BDI-II within the first 30 calendar days of the child's eligibility. Provider also shall evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

#### 2.05 **Technical Assistance/Staff Training.**

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

(b) Provider shall provide twelve (12) hours of release time annually for the instructional staff to attend in-service training jointly approved by SBBC and the Provider.

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

#### 2.06 **Medically Related Health Practices.**

(a) SBBC shall provide guidelines for medically related health services practices and procedures.

(b) Provider shall purchase necessary supplies related to the implementation of the health services practices.

(c) Provider shall oversee their assigned nurses on their campus. All nursing services shall follow the Nurse Practice Act of Florida.

(d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility shall collaborate regarding the health-specific of these students.

#### 2.07 **SBBC Disclosure of Education Records.**

(a) SBBC shall provide the types of education records listed in this section for the development and implementation of an Individual Educational Plan (IEP).

(b) SBBC shall provide Provider with access to the EdPlan Electronic Records Management System and additional records of the students Provider serves. EdPlan access shall be limited only to records of SBBC students enrolled in the specified program and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EdPlan contains the following records:

- 1) Individual Educational Plan (IEP), which may include medical information;
- 2) Consent for Evaluation/Re-evaluation;
- 3) Functional Behavior Assessment/Positive Behavior Intervention Plan; and
- 4) Any other document necessary for the provision of Free Appropriate Public Education (FAPE).
- 5) Additional education records include:
  - i) Progress Notes;
  - ii) Progress Reports; and
  - iii) Medical records (including, but not limited to types of medication, diagnosed illness and diagnosed disabilities); and
  - iv) Any other information necessary to enroll the student.

(c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

#### 2.08 **Provider Confidentiality of Education Records.**

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

- 1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;
- 2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
- 4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
- 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
- 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and
- 11) securely erase education records from any media once that media equipment is no longer in use or is to be disposed; secure erasure shall be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Provider shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.09 **HIPAA Compliance.** VENDOR 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 Attachment A. PHI may be used and disclosed only in compliance with HIPAA.

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

2.11 **Program Review/Audit.**

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

(b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.12 **Transportation.**

(a) SBBC shall provide transportation for eligible students with disabilities, as defined in Section 2.02.

(b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six (6) approved Early Release Days.

2.13 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.34 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) calendar days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.



2.14 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on **August 19, 2020** and ending on **June 9, 2021** for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of twenty-five (25) hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

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

2.16 **Parent Training.**

(a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

(b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

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

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

(a) Provider shall ensure that an IEP (students ages three to five) with specific, measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

(b) Provider shall review the IEP annually in accordance with the State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.

(c) Provider shall ensure that parents of students are invited to participate in IEP meetings, and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.19 **Special Programs and Procedures.**

(a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

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

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

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

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

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

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

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

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

- 1) Broward County Child Care Licensing Report
- 2) Fire Department Inspection
- 3) Broward County Food Services Inspection
- 4) State of Florida Sanitation Certification

(c) Since these inspections are conducted at different times throughout the year, Provider shall send SBBC an updated copy after each new inspection.

(d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

(e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

(f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

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

2.25 **Therapy Services.**

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

(b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.

(c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

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

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

2.27 **Food Services.**

(a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

(b) For the purpose stated in section 2.26 (a), Provider shall hold confirmation from the Florida Department of Agriculture and Consumer Services that Provider is approved for the National School Lunch Program and School Breakfast Program.

(c) Provider shall ensure that refrigeration is available for students' lunches brought from home.

(d) Provider shall adhere to the disclosure restrictions of student meal eligibilities. Child Nutrition Programs (CNPs) are subject to disclosure restrictions imposed by Section 9(b)(6) of the National School Lunch Act (NSLA). Student eligibility information cannot be made available to all school officials as a general practice. A program or person may be authorized under the NSLA to receive free and reduced price eligibility information, however, there must be a legitimate "need to know" to provide a service or carry out an authorized activity.

2.28 **Early Release.** Provider shall provide six (6) early release days to coincide with SBBC's approved 2020-2021 calendar. Provider shall implement a program of staff development activities on those days as set forth on **Attachment B**.

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

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

2.31 **Payment.**

(a) SBBC shall provide funding annually for the 180-day program for each student who is determined eligible as a prekindergarten student with disabilities according to State Board of Education Rules and who is enrolled in membership and in attendance at the Provider's special education program

during each of the FTE survey periods. Payment shall be equal to 95% of the FTE revenue generated through the Florida Educational Finance Program (FEFP) base allocation, guarantee allocation, and categorical funding (instructional materials, discretionary local effort, proration, and discretionary lottery). Funding for the first semester shall begin with a projected allocation based on the student enrollment count taken on the tenth day of the 180-day school calendar for the August and September payments. The total first-semester allocation shall then be adjusted to the number of students eligible during the October FTE Survey week, and the October through December payments shall capture the increase or decrease in the allocation. Funding for the second semester shall begin with a projected allocation based on the number of students eligible during the October FTE Survey week for the January payment. The total second-semester allocation shall then be adjusted to the number of students eligible during the February FTE Survey week, and February through May payments shall capture the increase or decrease. Payments shall be made by SBBC within the time indicated by the Florida Prompt Payment Act. Payment shall be provided for the instructional program, which includes classroom instruction and therapy services for a maximum of twenty-five (25) hours per student. SBBC shall pay the amount agreed upon and named in this Agreement within thirty (30) calendar days of receipt of the invoice.

(b) If during the term of this Agreement, the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from **July 1, 2020** to **June 30, 2021**. The projected total cost to SBBC is not to exceed Four Hundred Sixteen Thousand Six Hundred Twenty-Two Dollars and 00/100 Cents \$416,622.00 per school year unless this Agreement is amended by the parties.

2.32 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's applicable 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 the applicable business records of Provider directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

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

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

(d) **Failure to Permit Inspection.** Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of

this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any Provider's claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider, shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, Provider shall require any and all subcontractors, insurance agents, and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to Provider pursuant to this Agreement, and such excluded costs shall become the liability of Provider.

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

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

- |                 |  |
|-----------------|--|
| To SBBC:        | Superintendent of Schools<br>The School Board of Broward County, Florida<br>600 Southeast Third Avenue<br>Fort Lauderdale, Florida 33301                                       |
| With a Copy to: | Executive Director<br>Exceptional Student Learning Support<br>The School Board of Broward County, Florida<br>1701 NW 23 <sup>rd</sup> Avenue<br>Fort Lauderdale, Florida 33311 |
| To Provider:    | President/CEO<br>North Lauderdale Educational Centers Inc.<br>6700 Horizon Lane<br>Margate, FL 33063   |
| With a Copy to: | Director of Operations<br>North Lauderdale Educational Centers Inc.<br>6700 Horizon Lane<br>Margate, FL 33063  |

2.34 Background Screening. Provider shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

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

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

**2.36 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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By Provider: Provider agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited

to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Provider, SBBC or otherwise.

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

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

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

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

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

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

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

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

- 1) The School Board of Broward County, Florida, its members, officers, employees, and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectible coverage maintained by The School Board of Broward County, Florida.

3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

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

(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.

2.38 **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.

2.39 **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.

2.40 **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.

2.41 **Incorporation by Reference.** Attachment A and Attachment B 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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. 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) calendar 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, SBBC policies, 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.

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 ~~effect~~ 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 IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

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

Approved as to Form and Legal Content:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. -  
kathelyn.jacques-adams@gbrowardschools.com  
Reason: North Lauderdale Educational Centers Inc.  
Date: 2020.06.09 16:08:03 -0400'

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

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

**FOR PROVIDER**

(Corporate Seal)

NORTH LAUDERDALE EDUCATIONAL  
CENTERS INC.

ATTEST:

By [Signature]

Print Name: Dave Wolnok

Print Title: CEO

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

-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 Florida

COUNTY OF Broward

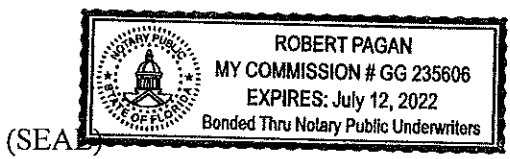
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 5/20/20 (date) by David Wolnok (name of officer or agent, title of officer or agent) of North Lauderdale Educational Centers Inc (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if applicable) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 20 day of May, 2020.

My Commission Expires:

[Signature]  
Signature - Notary Public

Robert Pagan  
Notary's Printed Name

66235606  
Notary's Commission No.



## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("*Agreement*") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the "*Effective Date*", by and between

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

and

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

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("*PHI*") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("*HITECH*"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "*Business Associate Requirements*"); and

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("*PHI*") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("*ePHI*").

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions**. When used in this Agreement and capitalized, the following terms have the following meanings:
  - (a) "***Breach***" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

ARTICLE 1 – RECITALS

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**Electronic PHI**" or "ePHI", shall mean PHI that is transmitted by or maintained in electronic media.
- (f) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (g) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (h) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (i) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (j) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (k) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
- (l) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

**ARTICLE 2 – SPECIAL CONDITIONS****2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including subcontractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.



**ARTICLE 2 – SPECIAL CONDITIONS**

- (h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

3. **Permitted Uses and Disclosures of PHI by "Business Associate".**

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

**5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (as defined in 45 C.F.R. §160.103) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS****6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

**7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

**8. Amendment.**

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

**9. Term and Termination.**

- (a) **Term.** This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) **Termination for Convenience.** This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) **Termination for Cause by SBBC.** Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

**10. Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's 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 Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

**11. No Waiver of Sovereign Immunity.**

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

**ARTICLE 3 – GENERAL CONDITIONS****12. 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. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

**ARTICLE 3 – GENERAL CONDITIONS****14. Records.**

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.

**15. 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.

**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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**17. Compliance with Laws.**

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

**18. Binding Effect.**

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

**19. 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.

**20. 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.

**21. 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.

**ARTICLE 3 – GENERAL CONDITIONS****22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

Privacy Officer  
Risk Management Department  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301

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

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

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**ARTICLE 3 – GENERAL CONDITIONS****25. 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.

**26. No Waiver of Rights, Powers and Remedies.**

The parties agree that each requirement, duty, right 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.

**27. Regulatory References.**

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

**28. Governing Law.**

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

**29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

**FOR SBBC:**

(Corporate Seal)

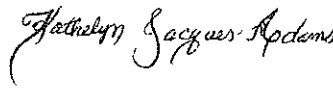
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, 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: North Lauderdale Educational Centers Inc.  
Date: 2020.06.09 16:09:24 -04'00'

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

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



**FOR BUSINESS ASSOCIATE**

(Corporate Seal)

NORTH LAUDERDALE EDUCATIONAL CENTERS INC.

ATTEST:

By [Signature]

Print Name: DAVE WOLNEK

Title: CEO

[Signature], Secretary

Witness [Signature]  
Witness [Signature]

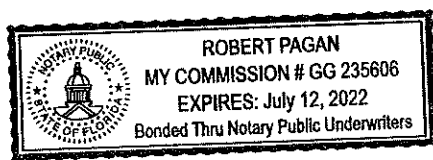
**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Florida  
COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 5/20/20 (date) by David Wolnek (name of officer or agent, title of officer or agent) of North Lauderdale Educational Centers (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if appropriate) or has produced [Signature] (type of identification) as identification and who  did/ did not first take an oath this 20 day of May, 2020.

My Commission Expires:

[Signature]  
Signature - Notary Public



(SEAL)

Robert Pagan  
Notary's Printed Name

GG235606  
Notary's Commission No.

**EXHIBIT A**

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



**2020 – 2021 SCHOOL CALENDAR**

**August 2020**

Wednesday, August 12, 2020 through Tuesday, August 18, 2020 – No School for Students  
Wednesday, August 19, 2020 – First Day of School

**September 2020**

Monday, September 7, 2020 – Schools and Administrative Offices Closed  
Friday, September 11, 2020 – Interim Reports Issued  
Monday, September 28, 2020 - Schools and Administrative Offices Closed

**October 2020**

Friday, October 16, 2020 - Early Release Day  
Monday, October 19, 2020 - Employee Planning (no school for students)

**November 2020**

Tuesday, November 3, 2020- Employee Planning (no school for students)  
Wednesday, November 11, 2020 - Schools and Administrative Offices Closed  
Thursday, November 12, 2020 - Report Cards Issued  
Tuesday, November 17, 2020- Interim Reports Issued  
Monday, November 23 through Friday, November 27, 2020 - School Thanksgiving Break

**December 2020**

Monday, December 21, 2020 through January 1, 2021 - School Winter Break

**January 2021**

Thursday, January 7, 2021 - Early Release Day  
Friday, January 8, 2021 - Employee Planning (no school for students)  
Monday, January 18, 2021 - Schools and Administrative Offices Closed

**February 2021**

Wednesday, February 3, 2021 - Report Cards Issued  
Tuesday, February 9, 2021 - Interim Reports Issued  
Monday, February 15, 2021 - Schools and Administrative Offices Closed  
Thursday, February 18, 2021 - Early Release Day



**2020 – 2021 SCHOOL CALENDAR**

**March 2021**

Thursday, March 18, 2021 - Early Release Day  
Friday, March 19, 2021 - Employee Planning (no school for students)  
Monday, March 22, 2021, through Friday, March 26, 2021 - School Spring Break

**April 2021**

Friday, April 2, 2021 - Schools and Administrative Offices Closed  
Thursday, April 8, 2021 - Early Release Day  
Wednesday, April 14, 2021 - Report Cards Issued  
Thursday, April 29, 2021 - Interim Reports Issued

**May 2021**

Monday, May 31, 2021 - Schools and Administrative Offices Closed

**June 2021**

Wednesday, June 9, 2021 - Last Day of School  
Wednesday, June 9, 2021 - Early Release Day  
Thursday, June 10, 2021 - Employee Planning (no school for students)  
Wednesday, June 30, 2021 - Report Cards Issued

Hurricane makeup days in order of preference:

Friday, October 16, 2020  
Thursday, January 7, 2021  
Thursday, February 18, 2021  
Thursday, March 18, 2021  
Thursday, April 8, 2021  
Wednesday, June 9, 2021

## AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

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

and

**NOVA SOUTHEASTERN UNIVERSITY, INC.**  
(hereinafter referred to as "Provider"),  
a Florida not for profit corporation whose principal place of business is  
3301 College Avenue  
Fort Lauderdale, Florida 33314

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

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

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

1.1 **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

2.1 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2020 and conclude on June 30, 2021.

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

2.3 **Teacher Certification.**

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

(b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten, Primary or Preschool Education with a request from the Principal.

(c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the SBBC's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the SBBC's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.

(d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent in-service points in instruction for teaching students with disabilities.

#### 2.4 **Administrative Responsibility.**

(a) The Executive Director of the SBBC's Exceptional Student Learning Support (ESLS) Division shall assign a designee (the name of such person to be furnished in writing to the Provider) to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.

(b) Provider shall supervise its instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

(c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and Part B/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first thirty (30) calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

#### 2.5 **Technical Assistance/Staff Training.**

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

(b) Provider shall provide twelve (12) hours of release time annually for the instructional staff to attend in-service training jointly approved by SBBC and the Provider.

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

## 2.6 **Medically Related Health Practices.**

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

## 2.7 **SBBC Disclosure of Education Records.**

- (a) SBBC shall provide the types of education records listed in this section for the development and implementation of an Individual Educational Plan (IEP).
- (b) SBBC shall provide Provider with access to the EdPlan Electronic Records Management System and additional records of the students Provider serves. EdPlan access shall be limited only to records of SBBC students enrolled in the specified program and limited to staff involved in developing and implementing the IEP and providing the services listed in this Agreement. EdPlan contains the following records:
  - 1) Individual Educational Plan (IEP), which may include medical information;
  - 2) Consent for Evaluation/Re-evaluation;
  - 3) Functional Behavior Assessment/Positive Behavior Intervention Plan; and
  - 4) Any other document necessary for the provision of Free Appropriate Public Education (FAPE).
  - 5) Additional education records include:
    - i.) Progress Notes;
    - ii) Progress Reports; and
    - iii) Medical records (including, but not limited to types of medication, diagnosed illness and diagnosed disabilities); and
    - iv) Any other information necessary to enroll the student.
- (c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

## 2.8 **Provider Confidentiality of Education Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement, Provider shall:

- 1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;
- 2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law or court order unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;
- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
- 4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
- 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
- 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and



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

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Provider shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.9 **HIPAA Compliance.** VENDOR 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 **Attachment A**. PHI may be used and disclosed only in compliance with HIPAA.

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

2.11 **Program Review/Audit.**

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

(b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.12 **Transportation.**

(a) SBBC shall provide transportation for eligible students with disabilities as defined in Section 2.02.

(b) SBBC shall schedule transportation services for students with disabilities to accommodate SBBC's six (6) approved Early Release Days.

2.13 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.34 setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) calendar days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.14 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on **August 19, 2020** and ending on **June 9, 2021** for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of twenty-five (25) hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

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

2.16 **Parent Training.**

(a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

(b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

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

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

(a) Provider shall ensure that an IEP (students ages three to five) with specific measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

(b) Provider shall review the IEP annually in accordance with State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.

(c) Provider shall ensure that parents of students are invited to participate in IEP meetings and drafts of the IEP are provided at least five (5) days prior to the scheduled IEP meeting.

2.19 **Special Programs and Procedures.**

(a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document. Provider shall comply with SBBC's current Special Programs and Procedures

document, procedures for due process, procedural safeguards, and the protection of confidentiality of student records and assure that parents are provided with access to and copies of their child's records.

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

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

2.22 **Class Size**. Provider shall adhere to the Florida Department of Education's Class Size Reduction Amendment. Such amendment sets the maximum number of students assigned to each teacher in prekindergarten at eighteen (18). Provider shall ensure that pupil/teacher ratios do not exceed three-to-one for prekindergarten students with disabilities with intensive needs in a self-contained class, six-to-one for prekindergarten students with disabilities with specialized needs in a self-contained class, or nine-to-one for prekindergarten students with disabilities in an integrated class. The Dean of the Provider's Abraham S. Fischler College of Education and School of Criminal Justice and SBBC's ESLS Executive Director or designee of the ESLS Division must agree upon exceptions to these ratios.

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

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

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

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

- 1) Broward County Child Care Licensing Report
- 2) Fire Department Inspection
- 3) Broward County Food Services Inspection
- 4) State of Florida Sanitation Certification

(c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.

(d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

(e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

(f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

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

#### 2.25 **Therapy Services.**

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

(b) Provider shall send therapists or therapists with assistants to a minimum of one scheduled District meeting annually for any or all of the following:

- (1) training in policies and procedures,
- (2) in-service training,
- (3) participation in therapy program development, and
- (4) sharing information among therapists in both agency and school system programs.

(c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

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

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

#### 2.27 **Food Services.**

(a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

(b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

(c) Provider shall adhere to the disclosure restrictions of student meal eligibilities. Child Nutrition Programs (CNPs) are subject to disclosure restrictions imposed by Section 9(b)(6) of the National School Lunch Act (NSLA). Student eligibility information cannot be made available to all school officials as a general practice. A program or person may be authorized under the NSLA to receive free and reduced price eligibility information, however, there must be a legitimate "need to know" to provide a service or carry out an authorized activity.

2.28 **Early Release.** Provider shall provide six (6) early release days to coincide with SBBC's approved **2020-2021** calendar. Provider shall implement a program of staff development activities on those days as set forth on **Attachment B** attached hereto and made a part hereof.

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

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

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

2.32 **Payment.**

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

(b) If during the term of this Agreement the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from **July 1, 2020** to **June 30, 2021**. The projected total cost to SBBC is not to exceed Four Million, One Hundred Sixty-Nine Thousand, Seven Hundred Eighty Dollars and 00/10 Cents (\$4,169,780.00) per school year, unless this Agreement is amended by the parties.

2.33 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's applicable records solely relating to the services provided under this Agreement, 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 employee(s), agent(s) 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 the applicable business records of Provider directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's employee(s), agent(s), or authorized representative shall have access to Provider's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

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

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

(d) **Failure to Permit Inspection.** Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any Provider's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, Provider shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to Provider pursuant to this Agreement and such excluded costs shall become the liability of Provider.

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

2.34 **Notice.** When any of the parties desire to give notice to the other pursuant to the terms of this Agreement, 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: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

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

With a Copy to: Dean  
Abraham S. Fischler College of Education and  
School of Criminal Justice  
3301 College Avenue  
Fort Lauderdale, Florida 33314

2.35 **Background Screening.** Provider shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

2.36 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Provider shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, Provider shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Provider shall ensure that public

records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Provider does not transfer the public records to SBBC. Upon completion of the Agreement, Provider shall transfer, at no cost, to SBBC all public records in possession of Provider or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Provider transfers all public records to SBBC upon completion of the Agreement, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Agreement, Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

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

2.37 **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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By Provider: Provider agrees to indemnify, hold harmless and defend SBBC, its agents, and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorneys' fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, and employees may pay or become obligated to pay on account of any or all claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the services furnished by Provider, its agents or employees; the equipment of Provider, its agents or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment in connection with the services provided under this Agreement, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Provider, SBBC or otherwise.

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

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



\$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Professional Liability/Errors & Omissions. Provider shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per claim or occurrence covering services provided under this Agreement. Provider agrees to keep its professional liability coverage continuously in effect through prior acts coverage in renewal policies, tail coverage or otherwise.

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

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

(e) Acceptability of Insurance Carriers. Such coverage provided by Provider may be offered via commercial insurance, self-insurance, or some combination thereof. Coverage provided via commercial insurance carrier shall be provided by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

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

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

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

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

(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.

2.39 **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.

2.40 **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.

2.41 **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.

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

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

3.1 **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.

3.2 **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.

3.3 **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.

3.4 **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 thirty (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within

said thirty (30) calendar days 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. 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 3.5.

3.5 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar 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.

3.6 **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. Additionally, SBBC shall require that its employees, agents and representatives who enter upon Provider's premises during the term of this Agreement comply with Provider's policies provided such policies do not conflict with SBBC policies.

3.7 **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.

3.8 **Governing Law, Jurisdiction 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.

3.9 **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.

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, epidemics, pandemics, quarantine requirements, 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, Multiple Originals, and Signatures.** 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. An electronic signature of a party done pursuant to law, or a signature of a party transmitted by electronic means, shall be deemed an original signature for the purposes of this 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 IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]**

**FOR SBBC**

(Corporate Seal)

**THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA**

ATTEST:

By \_\_\_\_\_  
**Donna P. Korn, Chair**

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

**Approved as to Form and Legal Content:**

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams,  
Esq. - kathelyn.jacques-  
adams@gbrowardschools.com  
Reason: Nova Southeastern University, Inc. -  
PreKindergarten  
Date: 2020.06.15 12:49:24 -04'00'

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

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

(Corporate Seal)

FOR PROVIDER:

NOVA SOUTHEASTERN UNIVERSITY, INC.

ATTEST:

[Signature]  
-or- Asst. Secretary

By: [Signature]  
Harry K. Moon, M.D.,  
EVP/COO

By: [Signature]  
Ronald J. Chenail, Ph.D..  
Interim University Provost and EVP for  
Academic Affairs

Witness

By: [Signature]  
Kimberly Durham, Psy.D.  
Dean, Abraham S. Fischler College of  
Education and School of Criminal  
Justice

Witness

APPROVED AS TO LEGAL FORM  
By: [Signature]  
Rebecca S. Rosenthal, Esq.  
Senior Assoc. Counsel, Office for Legal Affairs

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 by means of  physical presence or  online notarization, this 6-15-2020 (date) by Harry K. Moon, M.D. (name of officer or agent, title of officer or agent) of Nova Southeastern University (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation.  He/she  is personally known to me or has produced (type of identification) as identification and who  did/ did not first take an oath this 15 day of June, 2020.

My Commission Expires:



[Signature]  
Signature - Notary Public  
Shawn Hall  
Notary's Printed Name  
GG 909945  
Notary's Commission No.

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("*Agreement*") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the "*Effective Date*", by and between

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

and

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

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("*PHI*") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("*HITECH*"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "*Business Associate Requirements*"); and

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("*PHI*") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("*ePHI*").

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:

- (a) "***Breach***" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.



ARTICLE 1 – RECITALS

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**Electronic PHI**" or "ePHI", shall mean PHI that is transmitted by or maintained in electronic media.
- (f) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (g) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (h) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (i) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (j) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (k) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
- (l) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

**ARTICLE 2 – SPECIAL CONDITIONS****2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business Associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for its failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI in connection with the attached agreement for special education services ("Services Agreement") available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

**3. Permitted Uses and Disclosures of PHI by "Business Associate".**

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

**5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (as defined in 45 C.F.R. §160.103) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS****6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

**7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

**8. Amendment.**

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

**9. Term and Termination.**

- (a) ***Term.*** This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) ***Termination for Convenience.*** This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) ***Termination for Cause by SBBC.*** Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that Business Associate receives notice of such breach from SBBC, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement as referenced above in this subsection without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate's knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that SBBC receives notice of such breach from Business Associate, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

**10. Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its employee's 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 Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorneys' fees, reasonable investigative and discovery costs, court costs and all other related, reasonable sums which SBBC, its agents and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents or employees under the Service Agreement; the equipment of Business Associate, its agents or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

**11. No Waiver of Sovereign Immunity.**

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

**ARTICLE 3 – GENERAL CONDITIONS****12. 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. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

**ARTICLE 3 – GENERAL CONDITIONS****14. Records.**

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 attorneys' fees for non-compliance with that law.

**15. 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.

**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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**17. Compliance with Laws.**

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

**18. Binding Effect.**

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

**19. 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.

**20. 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, epidemic, pandemic, quarantine requirements, 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.

**21. 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.

**ARTICLE 3 – GENERAL CONDITIONS****22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301

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

Privacy Officer  
Risk Management Department  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301

To Business Associate: Provost and EVP for Academic Affairs  
Nova Southeastern University  
3301 College Avenue  
Fort Lauderdale, Florida 33314

With a Copy to: Dean  
Abraham S. Fischler College of Education and  
School of Criminal Justice  
Nova Southeastern University  
3301 College Avenue  
Fort Lauderdale, Florida 33314

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.



**ARTICLE 3 – GENERAL CONDITIONS****25. 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.

**26. No Waiver of Rights, Powers and Remedies.**

The parties agree that each requirement, duty, right 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.

**27. Regulatory References.**

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

**28. Governing Law.**

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

**29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**30. Counterparts and Signatures.**

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. An electronic signature of a party done pursuant to law, or a signature of a party transmitted by electronic means, shall be deemed an original signature for the purposes of this Agreement.

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

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

**FOR SBBC:**

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

(Corporate Seal)

By \_\_\_\_\_  
Donna P. Korn, Chair

ATTEST:

\_\_\_\_\_  
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: Nova Southeastern University, Inc. - PreKindergarten  
Date: 2020.06.15 12:50:15 -04'00'

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

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

**FOR BUSINESS ASSOCIATE**

(Corporate Seal)

NOVA SOUTHEASTERN UNIVERSITY, INC.

ATTEST:

[Signature]  
\_\_\_\_\_  
Secretary  
-or-

By: [Signature]  
\_\_\_\_\_  
Harry K. Moon, M.D.,  
EVP/COO

By: [Signature]  
\_\_\_\_\_  
Ronald J. Chenail, Ph.D..  
Interim Provost and EVP for  
Academic Affairs

Witness

By: [Signature]  
\_\_\_\_\_  
Kimberly Durham, Psy.D.  
Dean, Abraham S. Fischler College of  
Education and School of Criminal  
Justice

Witness

APPROVED AS TO LEGAL FORM  
By: [Signature]  
\_\_\_\_\_  
Rebecca S. Rosenthal, Esq.  
Senior Assoc. Counsel, Office for Legal Affairs

**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 by means of  physical presence or  online notarization, this 6-15-2020 (date) by Harry K. Moon, M.D. (name of officer or agent, title of officer or agent) of Nova Southeastern University (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He is  personally known to me (underline, if appropriate) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 15 day of June, 2020.

My Commission Expires:

[Signature]  
Signature - Notary Public



Shawn Hall  
Notary's Printed Name

GG 909945  
Notary's Commission No.

(SEAL)

**EXHIBIT A**

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY,  
FLORIDA ABOUT A BREACH OF UNSECURED PROTECTED HEALTH  
INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



**2020 – 2021 SCHOOL CALENDAR**

**August 2020**

Wednesday, August 12, 2020 through Tuesday, August 18, 2020 – No School for Students  
Wednesday, August 19, 2020 – First Day of School

**September 2020**

Monday, September 7, 2020 – Schools and Administrative Offices Closed  
Friday, September 11, 2020 – Interim Reports Issued  
Monday, September 28, 2020 - Schools and Administrative Offices Closed

**October 2020**

Friday, October 16, 2020 - Early Release Day  
Monday, October 19, 2020 - Employee Planning (no school for students)

**November 2020**

Tuesday, November 3, 2020- Employee Planning (no school for students)  
Wednesday, November 11, 2020 - Schools and Administrative Offices Closed  
Thursday, November 12, 2020 - Report Cards Issued  
Tuesday, November 17, 2020- Interim Reports Issued  
Monday, November 23 through Friday, November 27, 2020 - School Thanksgiving Break

**December 2020**

Monday, December 21, 2020 through January 1, 2021 - School Winter Break

**January 2021**

Thursday, January 7, 2021 - Early Release Day  
Friday, January 8, 2021 - Employee Planning (no school for students)  
Monday, January 18, 2021 - Schools and Administrative Offices Closed

**February 2021**

Wednesday, February 3, 2021 - Report Cards Issued  
Tuesday, February 9, 2021 - Interim Reports Issued  
Monday, February 15, 2021 - Schools and Administrative Offices Closed  
Thursday, February 18, 2021 - Early Release Day



**2020 – 2021 SCHOOL CALENDAR**

**March 2021**

Thursday, March 18, 2021 - Early Release Day  
Friday, March 19, 2021 - Employee Planning (no school for students)  
Monday, March 22, 2021, through Friday, March 26, 2021 - School Spring Break

**April 2021**

Friday, April 2, 2021 - Schools and Administrative Offices Closed  
Thursday, April 8, 2021 - Early Release Day  
Wednesday, April 14, 2021 - Report Cards Issued  
Thursday, April 29, 2021 - Interim Reports Issued

**May 2021**

Monday, May 31, 2021 - Schools and Administrative Offices Closed

**June 2021**

Wednesday, June 9, 2021 - Last Day of School  
Wednesday, June 9, 2021 - Early Release Day  
Thursday, June 10, 2021 - Employee Planning (no school for students)  
Wednesday, June 30, 2021 - Report Cards Issued

**Hurricane makeup days in order of preference:**

Friday, October 16, 2020  
Thursday, January 7, 2021  
Thursday, February 18, 2021  
Thursday, March 18, 2021  
Thursday, April 8, 2021  
Wednesday, June 9, 2021

## AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between

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

and

**UNITED CEREBRAL PALSY OF BROWARD, PALM BEACH  
AND MID-COAST COUNTIES, INC**  
(d/b/a **United Community Options of Broward, Palm Beach and Mid Coast Counties**)  
(hereinafter referred to as "Provider"),  
a Florida Not For Profit Corporation whose principal place of business is  
3117 Southwest 13<sup>th</sup> Court  
Fort Lauderdale, Florida 33312

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

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

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

### ARTICLE 1 - RECITALS

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

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on **July 1, 2020**, and conclude on **June 30, 2021**.

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

2.03 **Teacher Certification.**

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

(b) SBBC, if necessary, shall provide out-of-field waiver approval for teachers holding a Florida educator's certificate in an area other than Prekindergarten, Primary or Preschool Education with a request from the Principal.

(c) Provider shall ensure that the contracted teacher be fingerprinted through FieldPrint and, if the contracted teacher does not already hold a valid Florida educator's certificate, that a Certificate Issuance Request form be submitted to the District's Talent Acquisition & Operations (Instructional Certification) Department. If the contracted teacher is not certified in one of the aforementioned areas of certification, the Provider must also submit a fully executed Out-of-Field Agreement form to the District's Talent Acquisition & Operations (Instructional-Certification) Department so Board approval can be obtained.

(d) An applicant for renewal of a professional certificate must earn at least one college credit or the equivalent in-service points in instruction for teaching students with disabilities.

#### 2.04 **Administrative Responsibility.**

(a) SBBC shall assign an Exceptional Student Learning Support (ESLS) designee to be responsible for reporting the instructional full-time equivalent (FTE) and maintaining necessary audit documentation. The ESLS designee shall authorize payment to the Provider on a monthly basis for eligible students with disabilities and be responsible for maintaining an audit file for funds paid to the Provider from the generated FTE.

(b) Provider shall administrate supervision of the instructional and program staff, including providing the ESLS designee responsible for reporting the instructional and transportation FTE with the documentation necessary to generate FTE and to fulfill audit requirements for eligible students.

(c) Provider shall adhere to the Office of Special Education Programs (OSEP) Child Outcomes Reporting Requirements for Part C and PartB/619 Programs. The Florida Department of Education has adopted the Battelle Developmental Inventory – Second Edition (BDI-II) as the instrument to gather the outcomes for state reporting. Provider must evaluate all the entering students utilizing the BDI-II within the first thirty (30) calendar days of the child's eligibility. Provider also must evaluate all exiting students utilizing the BDI-II by the end of their last year of preschool or before dismissal of the program, whichever comes first. Provider shall give a photocopy of the BDI-II protocol to SBBC within two weeks of the evaluation in order to be processed for the state.

#### 2.05 **Technical Assistance/Staff Training.**

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

(b) Provider shall provide twelve (12) hours of release time annually for the instructional staff to attend in-service training jointly approved by SBBC and the Provider.

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



2.06 **Medically Related Health Practices.**

(a) SBBC shall provide guidelines for medically related health services practices and procedures.

(b) Provider shall purchase necessary supplies related to the implementation of the health services practices.

(c) Provider shall oversee their assigned nurses on their campus. All nursing services must follow the Nurse Practice Act of Florida.

(d) Regarding SBBC contracted agency nurses providing services to students in Provider's facility, Provider shall conduct the orientation of that nurse to their policies and procedures. All nurses within the Provider's facility must collaborate regarding the health-specific of these students.

2.07 **SBBC Disclosure of Education Records.**

(a) SBBC shall provide the types of education records listed in this section for the development and implementation of an Individual Educational Plan (IEP).

(b) SBBC shall provide Provider with access to the EdPlan Electronic Records Management System, and additional records of the student's Provider serves. EdPlan access shall be limited only to records of SBBC students enrolled in the specified program and limited to staff involved in developing and implementing the IEP and providing the services listed in this agreement. EdPlan contains the following records:

- 1) Individual Educational Plan (IEP), which may include medical information;
- 2) Consent for Evaluation/Re-evaluation;
- 3) Functional Behavior Assessment/Positive Behavior Intervention Plan; and
- 4) Any other document necessary for the provision of Free Appropriate Public Education (FAPE).
- 5) Additional education records include:
  - i) Progress Notes;
  - ii) Progress Reports; and
  - iii) Medical records (including, but not limited to types of medication, diagnosed illness and diagnosed disabilities); and
  - iv) Any other information necessary to enroll the student.

(c) Provider is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed in this section. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

2.08 **Provider Confidentiality of Education Records.**

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

- 1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;
- 2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;
- 3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
- 4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;
- 5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;
- 6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

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

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Provider shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.09 **HIPAA Compliance.** VENDOR 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 **Attachment A**. PHI may be used and disclosed only in compliance with HIPAA.

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

2.11 **Program Review/Audit.**

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

(b) Provider shall allow appropriate staff of SBBC to formally audit Provider's instructional program, records, and bookkeeping procedures in compliance with this Agreement.

2.12 **Dispute Process.** In the event a dispute arises between the parties regarding this Agreement during its term, the aggrieved party shall send a notice to the other party pursuant to Section 2.34, setting forth the basis of the dispute. The parties shall arrange for appropriate administrators to meet within thirty (30) calendar days of the service of said notice to attempt to amicably resolve the pending dispute. In the event such efforts do not resolve the dispute, the aggrieved party may take such action, as it deems appropriate.

2.13 **Preschool Program Design.** Provider shall provide a 180-day instructional program starting on **August 19, 2020** and ending on **June 9, 2021** for prekindergarten students with disabilities. Prekindergarten students shall attend the instructional program as specified on their IEP. Full-time programs are scheduled for a minimum of twenty-five (25) hours per week (unless the vacation schedule prohibits a full week's instruction). SBBC and Provider shall mutually agree on the methodology, curriculum, and assessment used to instruct preschool students with disabilities.

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

2.15 **Parent Training.**

(a) SBBC shall disseminate information to Provider about parent education programs and support groups for parents of students with disabilities.

(b) Provider shall disseminate information and notify parents/guardians of the availability of training opportunities and parent support groups.

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

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

(a) Provider shall ensure that an IEP (students ages three to five) with specific, measurable educational goals and objectives has been established for each student with disabilities and implemented within a developmentally appropriate educational curriculum to meet each student's individualized needs.

(b) Provider shall review the IEP annually in accordance with the State Board of Education Rules. Additional meetings to review and revise a student's IEP may be initiated by SBBC, Provider, or the parent/guardian and conducted upon notification to all parties.

(c) Provider shall ensure that parents of students are invited to participate in IEP meetings, and drafts of the IEP are provided at least five days prior to the scheduled IEP meeting.

2.18 **Special Programs and Procedures.**

(a) SBBC shall provide the Provider with a current copy of SBBC's Special Programs and Procedures document.

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

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

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

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

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

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

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

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

- 1) Broward County Child Care Licensing Report
- 2) Fire Department Inspection
- 3) Broward County Food Services Inspection
- 4) State of Florida Sanitation Certification

(c) Since these inspections are conducted at different times throughout the year; Provider shall send SBBC an updated copy after each new inspection.

(d) Provider shall abate any violations cited in the aforementioned reports within the time limits prescribed by the inspecting agency.

(e) Provider shall prohibit smoking at the site to be in compliance with the Pro-Children Act of 1994.

(f) Provider shall comply with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, Section 504 of the Rehabilitation Act of 1973.

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

#### 2.24 **Therapy Services.**

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

(b) Provider shall send therapists and assistants to a minimum of one scheduled District meeting annually for any or all of the following: (1) training in policies and procedures, (2) in-service training, (3) participation in therapy program development, and (4) sharing information among therapists in both agency and school system programs.

(c) Provider shall ensure that new therapists and assistants participate in an orientation and training session prior to attending staffings.

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

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

#### 2.26 **Food Services.**

(a) SBBC shall make available to the Provider the District's food services program for students to purchase or to participate in the free and reduced breakfast and lunch program when eligible.

(b) Provider shall ensure that refrigeration is available for students' lunches brought from home.

(c) Provider shall adhere to the disclosure restrictions of student meal eligibilities. Child Nutrition Programs (CNPs) are subject to disclosure restrictions imposed by Section 9(b)(6) of the National School Lunch Act (NSLA). Student eligibility information cannot be made available to all school officials as a general practice. A program or person may be authorized under the NSLA to receive free and reduced price eligibility information, however, there must be a legitimate "need to know" to provide a service or carry out an authorized activity.

2.27 **Early Release.** Provider shall provide six (6) early release days to coincide with SBBC's approved 2020-2021 calendar. Provider shall implement a program of staff development activities on those days as set forth on **Attachment B**.

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

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

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

2.31 **Payment.**

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

(b) If during the term of this Agreement, the State of Florida reduces the amount the District receives under the Florida Educational Finance program by more than 3%, a pro-rata reduction shall be passed on to the contracting agency. In the event Provider violates any state law, State Board of Education rule, or SBBC policy, Provider shall reimburse SBBC for the full amount of the loss. This provision shall remain in force, even if this Agreement is terminated. This Agreement shall have effect from **July 1, 2020** to **June 30, 2021**. The projected total cost to SBBC is not to exceed Nine Hundred Eighty-Eight Thousand Five Hundred Four Dollars and 00/100 Cents (\$988,504.00) per school year unless this Agreement is amended by the parties.

2.32 **Transportation.** SBBC shall contract with Provider to provide pupil transportation services for eligible exceptional students as defined in Section 2.02. SBBC shall pay Thirty-Six Dollars and 86/100 Cents (\$36.86) per student for students who physically rode the bus one day during the Florida Education Finance Program (FEFP) window and are enrolled in the program. Provider shall be paid for two

invoicing periods; October and February. Provider shall organize, coordinate, administer, supervise, and operate pupil transportation services as follows:

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



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

5. As it relates to motor vehicle records when hiring bus operators for the purpose of transporting students, Provider shall require bus operators:

- a. License to be checked at the initial time of employment.
- b. License checked prior to the first day of the fall semester.
- c. License checked quarterly throughout the school year.

6. As it relates to drug testing, when employing bus operators for the purpose of transporting students, Provider shall require bus operators to:

- a. Pre-employment drug test.
- b. Undergo random drug test.
- c. Drug test as a result of reasonable suspicion.

7. Provider shall require that bus operators meet DOT and/or DOE requirements for physical and dexterity testing.

(<http://www.flhsmv.gov/ddl/cdlmedicalcert.html>) ([www.fldoe.org/transportation](http://www.fldoe.org/transportation)).

8. As it relates to training, Provider shall require bus operators to go through:
  - a. Initial time of employment training based on vehicle and purpose of transportation.
  - b. Minimum of eight hours of in-service training annually.
9. Provider shall complete bus evacuation drills within the first six (6) weeks of each semester two (2) per school year.
10. Schedule transportation services to accommodate SBBC six (6) approved Early Release Days.

2.33 **Inspection of Provider's Records by SBBC.** Provider shall establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Provider's applicable 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 the applicable business records of Provider directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Provider's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Provider pursuant to this Agreement.

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

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

(d) **Failure to Permit Inspection.** Failure by Provider to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any Provider's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by Provider in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Provider. If the audit discloses billings or charges to which Provider is not contractually entitled, Provider shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, Provider shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion

of such requirements in any written subcontract. Failure by Provider to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to Provider pursuant to this Agreement and such excluded costs shall become the liability of Provider.

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

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

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

With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311

To Provider: Executive Director  
United Cerebral Palsy of Broward Palm Beach and Mid-Coast  
Counties, Inc. d/b/a United Community Options of Broward,  
Palm Beach and Mid Coast Counties  
3117 SW 13<sup>th</sup> Court  
Fort Lauderdale, FL 33312

With a Copy to: Director, Preschool  
United Cerebral Palsy of Broward Palm Beach and Mid-Coast  
Counties, Inc. d/b/a United Community Options of Broward,  
Palm Beach and Mid Coast Counties  
3117 SW 13<sup>th</sup> Court  
Fort Lauderdale, FL 33312

2.35 Background Screening. Provider shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Provider and its personnel. The parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities

or duties to perform under this Agreement. Provider agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Provider's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

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

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

2.37 **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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By Provider: Provider agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be

for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Provider, SBBC or otherwise.

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

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

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

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

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

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

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

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

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

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

(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.

2.39 **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.

2.40 **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.

2.41 **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.

2.42 **Incorporation by Reference.** **Attachment A** and **Attachment B** 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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. 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) calendar 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, SBBC policies, 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.

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 IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, 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: United Cerebral Palsy of Broward, Palm Beach  
and Mid-Coast Counties, Inc d/b/a United Community  
Options of Broward, Palm Beach and Mid Coast Counties  
Date: 2020.05.07 15:14:16 -0400'

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

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

**FOR PROVIDER**

(Corporate Seal)

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

ATTEST:

\_\_\_\_\_  
Secretary

-or-

Witness

Witness

By [Signature]

Print Name: Leigh Kapps

Title: Chief Operating Officer

**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 by means of  physical presence or  online notarization, this 05/04/2020 (date) by Leigh Kapps (name of officer or agent, title of officer or agent) of United Community Options (name of corporation acknowledging), a corporation (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if applicable) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 4th day of May, 2020.

My Commission Expires:

\_\_\_\_\_  
Signature – Notary Public

Misty Oliver  
Notary's Printed Name

GG 203553  
Notary's Commission No.

(SEAL)



## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("*Agreement*") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 the "*Effective Date*", by and between

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

and

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

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined in 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("*PHI*") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("*HITECH*"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "*Business Associate Requirements*"); and

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("*PHI*") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of Electronic PHI ("*ePHI*").

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:

- (a) "***Breach***" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

ARTICLE 1 – RECITALS

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors, assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**Electronic PHI**" or "ePHI", shall mean PHI that is transmitted by or maintained in electronic media.
- (f) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (g) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (h) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (i) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (j) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (k) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164, subparts A and E.
- (l) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (m) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (n) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth in 45 C.F.R. Parts 160 and 164 Subpart C.
- (p) "**Unsecured PHF**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

ARTICLE 2 – SPECIAL CONDITIONS**2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI within the next business day of when Business Associate knows of such Breach
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (h) Business Associate agrees to provide SBBC access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set, in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.
- (i) Business Associate agrees to amend PHI in a Designated Record Set at SBBC's, or an Individual's, direction pursuant to 45 C.F.R. § 164.526, in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at the request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

**3. Permitted Uses and Disclosures of PHI by "Business Associate".**

- (a) Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC pursuant to any Agreements for services between the parties provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (c) Except as otherwise limited by this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

**4. Obligations of SBBC Regarding PHI.**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. SBBC shall provide Business Associate written notice at least ten (10) business days prior to the audit described in this paragraph. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate's normal operations.

**5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of "electronic protected health information" (as defined in 45 C.F.R. §160.103) ("ePHI") on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI in 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI pursuant to 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including Business Associate.



**ARTICLE 2 – SPECIAL CONDITIONS****6. Compliance with EDI Rule.**

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

**7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA shall be deemed to amend this Agreement and be incorporated without further action of the parties.

**8. Amendment.**

The parties shall amend this Agreement, as is necessary, so that SBBC remains in compliance with any future changes to the Privacy Rule, the Security Rule, the HITECH Act and HIPAA. The parties may amend this Agreement for any other reasons as they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

**9. Term and Termination.**

- (a) *Term.* This Agreement shall be effective upon the execution of all parties and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) *Termination for Convenience.* This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) *Termination for Cause by SBBC.* Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to SBBC.

**ARTICLE 2 – SPECIAL CONDITIONS**

- (d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI except to the extent that the destruction or return of the PHI is infeasible. Business Associate shall provide to SBBC written notification of the conditions that make return or destruction of the PHI infeasible. If it is determined by SBBC that the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that SBBC explicitly authorizes in writing for so long as Business Associate maintains such PHI.

**10. Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's 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 Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate's property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

**11. No Waiver of Sovereign Immunity.**

Nothing contained 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 as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

**ARTICLE 3 – GENERAL CONDITIONS****12. 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. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

**ARTICLE 3 – GENERAL CONDITIONS****14. Records.**

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.

**15. 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.

**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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**17. Compliance with Laws.**

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

**18. Binding Effect.**

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

**19. 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.

**20. 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.

**21. 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.

**ARTICLE 3 – GENERAL CONDITIONS****22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301
- With a Copy to: Executive Director  
Exceptional Student Learning Support  
The School Board of Broward County, Florida  
1701 NW 23<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33311
- Privacy Officer  
Risk Management Department  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301
- To Business Associate: Executive Director  
United Cerebral Palsy of Broward Palm Beach and Mid-Coast  
Counties, Inc. d/b/a United Community Options of Broward,  
Palm Beach and Mid Coast Counties  
3117 SW 13<sup>th</sup> Court  
Fort Lauderdale, FL 33312
- With a Copy to: Director, Preschool  
United Cerebral Palsy of Broward Palm Beach and Mid-Coast  
Counties, Inc. d/b/a United Community Options of Broward,  
Palm Beach and Mid Coast Counties  
3117 SW 13<sup>th</sup> Court  
Fort Lauderdale, FL 33312

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**ARTICLE 3 – GENERAL CONDITIONS****25. 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.

**26. No Waiver of Rights, Powers and Remedies.**

The parties agree that each requirement, duty, right 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.

**27. Regulatory References.**

A reference in this Agreement to any part of the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA shall refer to the most current form of legislation, and shall incorporate any future amendments.

**28. Governing Law.**

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

**29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

FOR SBBC:

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

(Corporate Seal)

By \_\_\_\_\_  
Donna P. Korn, Chair

ATTEST:

\_\_\_\_\_  
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: United Cerebral Palsy of Broward, Palm  
Beach and Mid-Coast Counties, Inc d/b/a United  
Community Options of Broward, Palm Beach and  
Mid Coast Counties  
Date: 2020.05.07 15:15:09 -04'00'

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

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

**FOR BUSINESS ASSOCIATE**

(Corporate Seal)

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

ATTEST:

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

-or-

Witness

Witness

By [Signature]

Print Name: Leigh Kapps

Title: Chief Operating Officer

**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 by means of  physical presence or  online notarization, this 05/04/20 (date) by Leigh Kapps (name of officer or agent, title of officer or agent) of United Community Options (name of corporation acknowledging), a corporation (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if appropriate) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 4th day of May, 2020.

My Commission Expires:

[Signature]  
Signature – Notary Public

Misty Oliver  
Notary's Printed Name

GG283553  
Notary's Commission No.

(SEAL)



**EXHIBIT A**

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and

\_\_\_\_\_ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_





**2020 – 2021 SCHOOL CALENDAR**

**August 2020**

Wednesday, August 12, 2020 through Tuesday, August 18, 2020 – No School for Students  
Wednesday, August 19, 2020 – First Day of School

**September 2020**

Monday, September 7, 2020 – Schools and Administrative Offices Closed  
Friday, September 11, 2020 – Interim Reports Issued  
Monday, September 28, 2020 - Schools and Administrative Offices Closed

**October 2020**

Friday, October 16, 2020 - Early Release Day  
Monday, October 19, 2020 - Employee Planning (no school for students)

**November 2020**

Tuesday, November 3, 2020- Employee Planning (no school for students)  
Wednesday, November 11, 2020 - Schools and Administrative Offices Closed  
Thursday, November 12, 2020 - Report Cards Issued  
Tuesday, November 17, 2020- Interim Reports Issued  
Monday, November 23 through Friday, November 27, 2020 - School Thanksgiving Break

**December 2020**

Monday, December 21, 2020 through January 1, 2021 - School Winter Break

**January 2021**

Thursday, January 7, 2021 - Early Release Day  
Friday, January 8, 2021 - Employee Planning (no school for students)  
Monday, January 18, 2021 - Schools and Administrative Offices Closed

**February 2021**

Wednesday, February 3, 2021 - Report Cards Issued  
Tuesday, February 9, 2021 - Interim Reports Issued  
Monday, February 15, 2021 - Schools and Administrative Offices Closed  
Thursday, February 18, 2021 - Early Release Day



**2020 – 2021 SCHOOL CALENDAR**

**March 2021**

Thursday, March 18, 2021 - Early Release Day  
Friday, March 19, 2021 - Employee Planning (no school for students)  
Monday, March 22, 2021, through Friday, March 26, 2021 - School Spring Break

**April 2021**

Friday, April 2, 2021 - Schools and Administrative Offices Closed  
Thursday, April 8, 2021 - Early Release Day  
Wednesday, April 14, 2021 - Report Cards Issued  
Thursday, April 29, 2021 - Interim Reports Issued

**May 2021**

Monday, May 31, 2021 - Schools and Administrative Offices Closed

**June 2021**

Wednesday, June 9, 2021 - Last Day of School  
Wednesday, June 9, 2021 - Early Release Day  
Thursday, June 10, 2021 - Employee Planning (no school for students)  
Wednesday, June 30, 2021 - Report Cards Issued

Hurricane makeup days in order of preference:

Friday, October 16, 2020  
Thursday, January 7, 2021  
Thursday, February 18, 2021  
Thursday, March 18, 2021  
Thursday, April 8, 2021  
Wednesday, June 9, 2021