

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

PHAMATECH, INC.

(hereinafter referred to as "VENDOR"),
whose principal place of business is
15175 Innovation Drive
San Diego, California 92128

WHEREAS, SBBC issued a Request for Proposal as RFP FY21-006, Drug and Alcohol Testing Services (hereinafter referred to as "RFP"), dated August 30, 2019, and amended by Addendum No. 1 dated September 16, 2019 each of which are incorporated by reference herein for the purpose of receiving proposals for drug and alcohol testing services;

WHEREAS, VENDOR offered a proposal dated September 30, 2019 (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to this RFP; and ;

WHEREAS, SBBC is desirous of obtaining, by VENDOR, controlled substance and alcohol testing services, including specimen collection for employees who perform work in safety-sensitive positions or who are required to hold commercial driver's license.

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 **April 1, 2020**, and conclude on **March 31, 2023**. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. SBBC's Procurement & Warehousing Services Department, will, if considering renewing, request a letter consenting to renewal from VENDOR, prior to the end of the term. Any renewal period shall be approved by an Amendment to this Agreement executed by both parties.

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

- First: This Agreement, then;
- Second: Addendum No. 1, then;
- Third: RFP FY21-006 – Drug and Alcohol Testing Services
- Fourth: Proposal submitted in response to RFP FY21-006 by VENDOR

2.03 **Scope of Services, Testing Requirements, and Specifications.** VENDOR shall provide SBBC with the scope of services, testing requirements, and specifications as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda and as specified in **Attachment A – Scope of Services** and **Attachment B – Testing Service Requirements and Specifications.**

2.04 **Cost of Services.** SBBC shall pay VENDOR for services rendered under this Agreement based upon the services below:

- (a) Urine Drug Testing, normal hours \$27.00 per test
- (b) Urine Drug Testing, after hours \$65.00 per test
- (c) Breath Alcohol Testing, normal hours \$27.00 per test
- (d) Breath Alcohol Testing, after hours \$45.00 per test
- (e) *Expert Witness service \$150.00 per hour

*Twenty hours of Expert Witness service will be at no charge to SBBC; after twenty hours, the cost will be billed at \$150.00 per hour.

- (f) Video conferencing or consulting No charge to SBBC

(g) These testing costs shall be all-inclusive of all out-of-pocket expenses. No travel costs shall be incurred under this contract. Upon satisfactory services rendered, payment for services shall be made Net 30 days from the date of the invoice.

(h) After services have been performed, the invoice shall be sent directly to The School Board of Broward County, Florida, Risk Management Department, 600 SE 3rd Avenue, 11th Floor, Fort Lauderdale, Florida 33301.

2.05 **SBBC Disclosure of Education Records.**

(a) SBBC will disclose the education records listed in this section to VENDOR to facilitate and complete drug and alcohol pre-employment testing or random testing for Commercial Driver License (CDL) students.

(b) SBBC will disclose the following education records to VENDOR:

1. Federal Drug Testing Custody and Control Form, including
 - a. Student's (donor's) first and last name
 - b. Student driver's license number or last four digits of Social Security Number
 - c. Student's phone number

2. Anti-Drug Program Passport, including:
 - a. Student's (donor's) first and last name
 - b. Student identification number
 - c. Reason for test (pre-employment or random)
 - d. Type of test (drug and alcohol)

(c) VENDOR is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes 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 in this section.

2.06 **VENDOR Safeguarding Confidentiality of Education Records.**

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

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

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

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

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

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

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

(c) VENDOR 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.

2.07 **SBBC Disclosure of Employee Records.**

(a) SBBC will disclose the employee records listed in this section to VENDOR to facilitate and complete drug and alcohol testing for both Commercial Drive License (CDL) employees and non-Department of Transportation (non-DOT). Types of testing include pre-employment, random, reasonable suspicion, return to duty, and follow-up.

(b) SBBC will disclose the following types of employee records to VENDOR:

- 1) For CDL employees – Federal Drug Testing Custody and Control Form, including;
 - a. Employee's (donor's) first and last name

- b. Employee's driver's license number or last four digits of Social Security Number
 - c. Employee's phone number
- 2) For non-DOT employees – Forensic Drug Testing Custody Form, including:
- a. Employee's (donor's) first and last name
 - b. Employee's driver's license number or last four digits of Social Security Number
 - c. Employee's phone number
- 3) For CDL as well as non-DOT employees – Anti-Drug Program Passport, including:
- a. Employee's (donor's) first and last name
 - b. Employee's identification number
 - c. Reason for test (pre-employment or random)
 - d. Type of test (drug and alcohol)

2.08 **VENDOR Safeguarding Confidentiality of Employee Records.** Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

(a) fully comply with the requirements of state and federal law or regulation regarding the confidentiality of employee records;

(b) hold the employee records in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law;

(c) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement;

(d) protect employee records through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;

(e) notify SBBC immediately upon discovery of a breach of confidentiality of employee records by telephone at 754-321-0300 (Manager, Information Security) and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com; and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes.

(f) 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; and

(g) be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law. This section shall survive the termination of all performance or obligations 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 are collectively referred to herein as “HIPAA”) protect the privacy of protected health information (“PHI”) and may be applicable to student and employee records in certain circumstances; and shall enter into SBBC’s HIPAA Business Associate Agreement (“BAA”) attached as **Attachment C**. PHI may be used and disclosed only in compliance with HIPAA.

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

(b) **Notice of Inspection.** SBBC’s agent or its authorized representative shall provide VENDOR 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 VENDOR’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 VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC’s denial of some or all of any VENDOR’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 VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC’s audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually entitled, VENDOR shall pay the said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

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

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

2.11 **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 | Director, Risk Management Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301 |
| To VENDOR | Dana Conde, Contract Manager
Phamatech, Inc.
15175 Innovation Drive
San Diego, California 92128 |
| With a Copy to | Tuan Pham, President
Phamatech, Inc.
15175 Innovation Drive
San Diego, California 92128 |

2.12 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel, providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the

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

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

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

2.14 **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 VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants, and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any

claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by VENDOR, its agents, servants or employees; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR's agents when acting within the scope of their employment, whether such claims, judgments, costs, and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by VENDOR, SBBC or otherwise.

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

(a) **General Liability.** VENDOR 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.** VENDOR 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.** VENDOR 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.** VENDOR 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 has 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 VENDOR 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 VENDOR to remedy any deficiencies. VENDOR 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. VENDOR 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.

2.16 Nondiscrimination.

(a) As a condition of entering into this Agreement, VENDOR represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, VENDOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of and creates no obligation to, any third party.

2.17 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.

2.18 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.

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

ARTICLE 3 – GENERAL CONDITIONS

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, 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:

Kathelyn Jacques Adams

Digitally signed by Kathelyn Jacques-
Adams, Esq. - kathelyn.jacques-
adams@gbrowardschools.com
Reason: Phamatech, Inc.
Date: 2020.02.12 11:10:02 -05'00'

Office of the General Counsel


[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

PHAMATECH, INC.

ATTEST:

By 

_____, Secretary

Print Name: Dana M Conde

-or-

Title: Contract Manager

Simon Bernal

Witness

Ian White

Witness

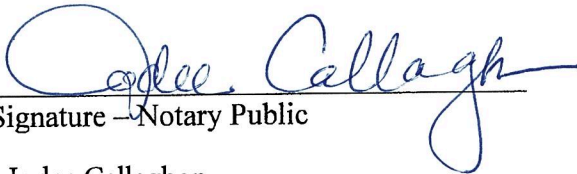
The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF California

COUNTY OF San Diego

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 31st of January 2020 (date) by Dana M Conde/Contract Manager (name of officer or agent, title of officer or agent) of Phamatech, Inc. (name of corporation acknowledging), a California (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced California Driver's License (type of identification) as identification and who did/ did not first take an oath this 31st day of January, 2020.

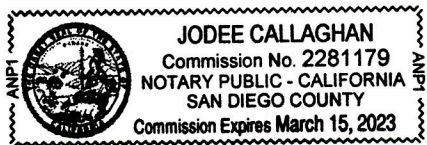
My Commission Expires:


Signature - Notary Public

Jodee Callaghan
Notary's Printed Name

(SEAL)

2281779
Notary's Commission No.



SCOPE OF SERVICES

1. SBBC requires random/follow-up drug specimen collections and breathe alcohol testing to be administered “on-site” (at employees’ location) to SBBC employees located in the Student Transportation and Fleet Services Department, Armed Guards; various locations, Physical Plant Operations, Procurement & Material Logistics Warehouse, Custodial Grounds and Sheridan Technical Center-SW Location-Driver Commercial Driver License (CDL) Training Curriculum and/or any other school designated to offer CDL training courses in the futures will be brought under the requirement for random/follow-up of DOT and Non-DOT testing-covered employees as well as SBBC departments or schools that have employees who perform work in safety-sensitive positions that must possess a current CDL or locations where there are reasonable suspicion testing and follow-up testing to be conducted.
2. SBBC requires that certain employees shall be subject to pre-employment, random, reasonable suspicion, post-accident, return-to-duty as well as follow-up testing. Reasonable suspicion, return-to-duty, and follow-up testing apply to all SBBC employees.
3. VENDOR shall have internet accessibility. SBBC must be able to retrieve testing results via a web-based retrieval system. Drug tests must be available within 24 hours of Medical Review Officer (MRO) determination, and breath alcohol results must be available within 48 hours of completed test. SBBC must have generated and access to quarterly management information statistical reports provided through the VENDOR’s website.
4. VENDOR shall provide immediate alerts for positive test results via telephone and secure Internet-based messaging to the Risk Management Department. VENDOR must submit quarterly and annual management reports and summaries, random employee lists, test results, and invoicing in a Microsoft (MS) Excel format or a spreadsheet format that is convertible to MS Excel.
5. VENDOR shall provide access to online supervisory level training to selected D.O.T. and Non-D.O.T SBBC employees with respect to reasonable suspicion of drug and alcohol abuse, how to spot the signs of abuse, and the methods of documenting, reporting, referral and the consequences of testing actions. VENDOR shall be required to provide this training at no additional cost to SBBC and in compliance with the applicable laws, listed above.
6. VENDOR shall promptly conduct the appropriate drug and/or alcohol testing on all individuals referred by the SBBC Risk Management Department in accordance with the above-referenced applicable laws, rules, statutes, and policies as well as the following requirements of these RFP Specifications.

SCOPE OF SERVICES

7. Drug testing, via urine specimen collection, shall be conducted using a scientifically reliable Health & Human Services (HHS) method and performed in accordance with HHS-approved procedures to determine the presence of the following, but not limited to, controlled substances; marijuana, cocaine, opioids, phencyclidines/PCP and amphetamines.
8. All urine specimens and breath collections for drug and alcohol testing services must be available 24 hours per day, 365 days per year for each type of testing whether scheduled for pre-employment, random, reasonable suspicion, post-accident, return-to-duty and/or follow-up testing. SBBC employees are on duty year-round. Breath collections for drug and urine samples may be completed during normal working hours will also include at least two testing times 6:15 am and one 5:15 pm.
9. Information concerning tested employees shall be kept in the strictest confidence and only be released in accordance with applicable laws. (Refer to Sections 2.06 and 2.07)
10. Pre-Employment Testing: Prior to the first time that an employee performs a safety function and/or operates a commercial motor vehicle, the employee shall undergo testing for potential drug or alcohol use. All applicants that require possession of a CDL shall be tested for controlled substances prior to employment. Pre-employment equivalent. Testing also includes any employee returning to duty from more than 30 days of any approved leave. There will be no third-party billing. VENDOR must establish a working relationship with Concentra and Care Spot Health Care locations in Broward County, Florida. SBBC utilizes these healthcare locations for individual pre-employment, random and post accidents when necessary. These activities have been selected due to their network of locations throughout Broward County, Florida and their knowledge of SBBC processes and a history of sound practices.
11. Random testing shall be at least the annual percentage required by the Federal Motor Carrier Safety Administration (FMCSA) for drugs and alcohol testing for SBBC employees performing safety-sensitive functions and/or required to hold a CDL shall be tested annually. Alcohol testing must occur just before, during or immediately after the time that an employee to be tested is on duty.
12. Random Testing:
 - (a) For alcohol use, no less than 10% of the average number of SBBC employees performing safety-sensitive functions and/or required to hold a CDL shall be tested annually. Alcohol testing must occur just before, during, or immediately after the time that an employee to be tested is on duty.

SCOPE OF SERVICES

- (b) For controlled substances, no less than 50% of the average number of SBBC Student Transportation and Fleet Services, and other employees performing safety-sensitive functions and/or required to hold a CDL, shall be tested annually. The percentage-testing requirement is subject to annual revision by the Federal Transit Administration (FTA).
13. Random follow-up testing is to be conducted a minimum of six (6) times per year on each SBBC employee who tested positive for drugs and/or alcohol. The actual number of follow-up tests and the duration of the test will be determined by a Substance Abuse Professional.
14. Quarterly, SBBC will supply VENDOR with a list of employees to be included within the random testing pool. From the quarterly list, VENDOR shall generate a subset of employees to be tested. The VENDOR's list shall be generated using a statistically valid method approved by the SBBC Risk Management Department.
15. Reasonable suspicion testing shall be conducted through urine specimen collection for controlled substance testing and alcohol testing based upon documentation received from a properly-trained SBBC administrator. The administrator shall make the assessment, under the reasonable suspicion guidelines, whether the employee is using, has used, or is under the influence of alcohol or a controlled substance while at work. In these cases, the VENDOR shall be available on an as-needed basis. VENDOR must establish a working relationship with a D.O.T. certified collection service that shall provide random drug testing collections at various District locations. SBBC's first choice for this collection service is USA Mobile Drug Testing. SBBC has established a working relationship with this local company and they have provided us with exceptional customer service and have consistently been rated by SBBC sites as "responsive and professional."
16. Each employee on the list shall have an equal chance of being selected for testing each time selections are made. Over-sampling by randomly selecting more employees than the number to be tested will be necessary in order to compensate for employees unavailable due to such events as vacations, sick, injury and/or family leave.
17. VENDOR shall keep the names and other information concerning employees selected for random testing in the strictest of confidence prior to testing. Information pertaining to SBBC's tested employees shall only be released to the designated representative in the Risk Management Department.
18. VENDOR shall assure employee privacy, in addition to confidentiality, by taking adequate steps to prevent the contamination of specimens and to protect the overall integrity of the urine collection process. This requirement applies to the VENDOR's testing services, processes, and procedures, as well as the VENDOR's testing facilities.

SCOPE OF SERVICES

19. The appropriate SBBC Department's Director or Designee must be promptly informed, by VENDOR, of any employee who tests at a 0.02 BAC or higher, or if the verified drug test result is negative dilute, canceled, positive, adulterated or substituted.
20. Testing will be administered at the designated SBBC sites possibly from 0 to five (5) times per month depending on the number of actual 0.02 BAC or higher (notified immediately by the collector or if the verified drug test result is negative dilute, cancelled, positive, adulterated or substituted by the MRO or MRO assistant with at least two of the scheduled testing times to begin at 6:15 am and another to be scheduled at 5:15 pm The minimum requirement of at least two times to begin at 6:15 am and two at 5:15 pm is considered part of normal business hours.
21. Key employees of the VENDOR shall be made available to serve as an expert witness in any court or administrative proceeding arising out of this drug and alcohol testing program.
22. VENDOR, acting as the agent for SBBC, must meet all record retention and confidentiality standards specified in applicable laws. Records shall be maintained in a secure location with controlled access.
23. VENDOR shall be responsible for the internet-based quarterly provision of management information statistical reports that will enable SBBC to meet the USDOT/FTA annual reporting requirements.
24. Records in the possession of the VENDOR shall be made available for inspection to the SBBC, Risk Management Department within two (2) business days after a request has been made by an authorized representative of the USDOT/FTA.
25. Analytical urine drug testing and breath alcohol testing may be conducted when circumstances warrant or as required by the applicable laws. All job applicants for SBBC positions that require a CDL shall be subject to testing prior to employment. All employees who possess a CDL will also be subject to testing following an accident that meets DOT guidelines or non-DOT testing if SBBC warrants. Also, all employees will be subject to reasonable suspicion, return-to-duty testing, and follow-up testing after the successful completion of a drug and/or alcohol rehabilitation treatment program. In every instance where the initial drug and/or alcohol test returns a positive result, a second specific confirmation testing procedure must follow.

SCOPE OF SERVICES

26. The testing shall be performed by an HHS-Certified laboratory and shall be conducted in a manner to assure a high degree of accuracy and reliability, using techniques, equipment, and laboratory facilities, which have been HHS-approved and consistent with the procedures put forth in applicable laws. All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40. Procedures are to be in place to protect the employee and integrity of the drug testing process, safeguard the validity of the test results and ensure the test results are attributed to the correct employee.
27. Drug testing laboratory results shall be reviewed by a qualified Medical Review Officer (MRO) to verify and validate test results. The MRO will be a licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an employee's test result together with their medical history and other relevant biomedical information. The MRO must report all positives and refusal to test determinations to the FMCSA Drug & Alcohol Clearinghouse as required by FMCSA regulation 49 CFR part 382, Subpart G, beginning January 6, 2020.
28. Any SBBC employee that has a verified positive, adulterated, or substituted drug or alcohol test must be reported to the SBBC, Risk Management Department, for the potential result of disciplinary action up to and including termination.
29. VENDOR and all service agents (e.g. laboratories, specimen collection services, MRO, alcohol testing technicians) used in providing testing services to SBBC are required to maintain SBBC employee records in confidence. Disclosure of test result information shall be only to parties specified in 49 CFR Part 40.
30. VENDOR is to coordinate and have the resources to conduct reasonable suspicion testing 24/7; on-site, if necessary, or at a reasonably located testing facility in the event SBBC needs the testing completed.
31. VENDOR shall respond promptly to complete DOT-mandated post-accident, including coordinating testing at a medical facility where an injured SBBC employee may have been transported for medical treatment.
32. VENDOR's laboratory is required to maintain SBBC employee records in confidence. The laboratory shall disclose information related to any positive drug test solely to the SBBC employee so tested and the SBBC, Risk Management Department only.
33. In cases of post-U.S. D.O.T. defined post-accident testing, urine collection for controlled substances testing and breath alcohol must be available on an as-needed and be subject to a breath alcohol test no later than eight (8) hours following an accident and to controlled substance testing no later than 32 hours following an accident.

SCOPE OF SERVICES

34. VENDOR shall assure employee privacy, in addition to confidentiality by taking adequate steps to prevent the contamination of specimens and to protect the overall integrity of the urine collection process. This requirement applies to the VENDOR's testing services, processes, and procedures, as well as the VENDOR's testing facilities.
35. VENDOR shall assure employee privacy, in addition to confidentiality by taking adequate steps to prevent the contamination of specimens and to protect the overall integrity of the urine collection process. This requirement applies to the VENDOR's testing services, processes, and procedures, as well as the VENDOR's testing facilities.
36. For each quarter there will be two (2) test times for random testing to be conducted at our PPO/Warehouse location at 6:15 am and two (2) test times to be conducted at Sheridan SW for (DOT Pre-Employment Students) at 5:00 pm is considered part of the normal business hours. Follow-up testing may include scheduled testing to begin at 6:30 am.
37. Pre-employment testing will be performed on all job applicants for positions that require a CDL. Applicants shall undergo urine drug testing prior to the date-of-hire. SBBC, Risk Management Department shall be advised, by VENDOR, of both negative and positive test results prior to employment in order to determine fitness for duty or disqualification for employment.
38. Post-accident Testing: In the cases of fatal accidents, SBBC employees possessing a CDL shall be required to undergo drug and alcohol testing if they are involved in an accident that results in a fatality. This testing requirement includes a requirement that all employees on duty possessing a CDL in the vehicle and any other personnel whose performance could have contributed to the accident.
39. VENDOR shall respond promptly to complete DOT-mandated post-accident, including coordinating testing at a medical facility where an injured SBBC employee may have been transported for medical treatment.
40. It will be necessary for the VENDOR to provide updates to the above-referenced Federal and State regulations that may affect the parameters and scope of services of this Agreement. VENDOR shall designate an account manager responsible for SBBC's account. VENDOR shall provide a detailed quarterly and annual summary of testing results such as types of tests, quantity, whether DOT or non-DOT, where warranted, and so on.

TESTING SERVICE SPECIFICATIONS

1. **Overview of Testing Requirements**

- (a) SBBC requires random drug and alcohol testing services to be administered to SBBC employees located in the Student Transportation and Fleet Services Department, Physical Plant Operations Department, Instructional Materials, Materials Logistics Warehouse, Custodial Grounds and the Sheridan Technical Center Commercial Drivers License Driver (CDL) Training curriculum and/or any other school designated to offer CDL training courses in the future will be brought under the requirement for random testing as well as SBBC departments or schools that have employees who perform work in safety-sensitive positions that must possess a current CDL or at locations where there is a request for reasonable suspicion testing.
- (b) SBBC requires that certain employees will be subject to pre-employment, random, reasonable suspicion, post-accident, return-to-duty as well as follow-up testing. Reasonable suspicion, return-to-duty, and follow-up testing apply to all SBBC employees.
- (c) VENDOR shall have internet accessibility. SBBC must be able to retrieve testing results within 48 hours via both Internet and phone access. SBBC must be able to generate quarterly management information statistical reports through the VENDOR's website.
- (d) VENDOR shall be capable of providing immediate alerts for positive test results via telephone and secure internet-based messaging. VENDOR must be capable of submitting quarterly and annual management reports and summaries, random employee lists, test results and invoicing in an MS Excel format, or a spreadsheet format that is convertible to MS Excel.
- (e) VENDOR shall provide periodic supervisory level training to selected D.O.T. and Non-D.O.T SBBC employees with respect to reasonable suspicion of drug and alcohol abuse, how to spot the signs of abuse and the methods of documenting, reporting, referral and the consequences of testing actions. VENDOR shall be required to provide this training at no additional cost to SBBC and in compliance with the applicable laws, listed above.

2. **Testing Service Specifications**

- (a) VENDOR shall promptly conduct the appropriate drug and/or alcohol testing on all individuals referred by the SBBC, Risk Management Department in accordance with the above-referenced applicable laws, rules, statutes, and policies as well as the following requirements of the RFP and Agreement specifications.

TESTING SERVICE SPECIFICATIONS

- (b). Alcohol testing is to be conducted by a Breath Alcohol Technician (BAT), or any other person approved by the USDOT, using an Evidential Breathing Testing Device (EBT) as specified by and conforms with the applicable laws to measure the amount of Breath Alcohol Concentration (BAC) in a volume of breath or any other test used to detect the bodily presence of alcohol that is approved by the USDOT/FTA.
 - (c). Drug testing, via urine specimen collection, must be conducted using a scientifically reliable method in a Department of Health and Human Services (HHS)-certified laboratory and performed in accordance with the HHS-approved procedures to determine the presence of the following, but not limited to, controlled substances: marijuana, cocaine, opiates, phencyclidine/PCP and amphetamines.
 - (d). All urine specimens and breath collections for drug and alcohol testing services must be available 24 hours per day, 365 days per year for each type of testing whether scheduled for pre-employment, random, reasonable suspicion, post-accident, return-to-duty and/or follow-up testing. SBBC employees are on duty year-round at all times. Laboratory testing or urine samples may be completed during the laboratory's normal working hours. Normal working hours will also include at least one monthly 6:15 a.m.- and one 5:15 p.m.-testing time for the locations listed in Testing Service Specification 11, below.
3. **Confidentiality** - Information concerning tested employees shall be kept in the strictest confidence and only be released in accordance with applicable laws.
4. VENDOR provided drug and alcohol testing services shall be completed under the following circumstances:
- (a). **Pre-Employment Testing:**
 - 1) Prior to the first time that an employee performs a safety sensitive function and/or operates a commercial motor vehicle, the employee shall undergo testing for potential drug or alcohol use. All applicants that require possession of a CDL shall be tested for controlled substances prior to employment. VENDOR shall establish a working relationship with US HealthWorks.
 - 2) Pre-employment equivalent testing also includes any employee returning to duty from more than 30 days of any approved leave.
 - (b). **Random Testing:**
 - 1) For alcohol use, no less than 10% of the average number of SBBC employees performing safety-sensitive functions and/or required to hold a CDL shall be tested annually. Alcohol testing must occur just before, during or immediately after the time that an employee to be tested is on duty.

TESTING SERVICE SPECIFICATIONS

- 2) For controlled substances, no less than 50% of the average number of SBBC Student Transportation and Fleet Services, and other employees performing safety-sensitive functions and/or required to hold a CDL, shall be tested annually. The percentage-testing requirement is subject to annual revision by FTA.
 - (c) Reasonable suspicion testing shall be conducted through urine specimen collection for controlled substance testing and alcohol testing based upon documentation received from a properly-trained SBBC administrator. The administrator will make the assessment, under the reasonable suspicion guidelines, whether the employee is using, has used or is under the influence of alcohol or a controlled substance while at work. In these cases, the Awardee must be available on an as-needed basis. VENDOR shall establish a working relationship with US Mobile Drug Testing.
 - (d) In cases of post-U.S. D.O.T. defined post-accident testing, urine collection for controlled substance testing and breath alcohol must be available on an as-needed basis and be conducted as soon as possible. Employees involved in accidents shall be subject to a breath alcohol test no later than eight hours following an accident and to controlled substance testing no later than 32 hours following an accident.
 - (e) Random follow-up testing is to be conducted a minimum of six (6) times per year on each SBBC employee who tested positive for drugs and/or alcohol. The actual number of follow-up tests and the duration of the tests will be determined by substance abuse professionals.
5. Quarterly, SBBC will supply the VENDOR with a list of employees to be included within the testing pool. From the quarterly list, the VENDOR shall generate a subset of employees to be tested. The VENDOR's list shall be generated using a statistically valid method approved by the SBBC, Risk Management Department.
6. Each employee on the list shall have an equal chance of being selected for testing each time selections are made. Over-sampling by randomly selecting more employees than the number to be tested will be necessary in order to compensate for employees unavailable due to such events as vacations, sick, injury and/or family leave.
7. It is estimated that approximately 1,400 SBBC employees are subject to random testing. The scheduled times and the number of the tests for SBBC specified employees shall be determined by the Risk Management Department.
8. VENDOR shall keep the names and other information concerning employees selected for random testing in the strictest of confidence prior to testing. Information pertaining to SBBC's tested employees shall only be released to the designated representative in the Risk Management Department.

TESTING SERVICE SPECIFICATIONS

9. VENDOR shall assure employee privacy, in addition to confidentiality, by taking adequate steps to prevent the contamination of specimens and to protect the overall integrity of the urine collection process. This requirement applies to the VENDOR's testing services, processes, and procedures, as well as the VENDOR's testing facilities.
10. The appropriate SBBC Department's Director or designee must be promptly informed, by VENDOR, of any employee who tests at a 0.02 BAC or higher, or if the results report a dilute, invalid or positive drug result. The Director, Risk Management or the designated Risk Management representative must also be advised of any driver/CDL operator who will be delayed due to an inability or refusal to provide a sufficient breath or urine specimen in order to properly adjust the affected Department's work schedules. Moreover, given the State of Florida's "zero tolerance" standard, SBBC Department's Director or the designated representative of the affected department must be promptly informed of any employee testing other than 0.00 BAC.
11. Testing is conducted at the designated locations below at least one (1) time per month for each location. The scheduled testing times to begin at 6:15 a.m. and another to be scheduled at 5:15 p.m. The minimum requirement of at least one 6:15 a.m. and one 5:15 p.m. scheduled testing is to be considered part of normal business hours on the Bid Summary Sheet. In certain circumstances, such as, but not limited to, how the fiscal school year calendar is determined. There may be two (2) test dates in the same month at the same location. Testing will be administered at the following locations:

Instructional Materials Warehouse
3901 NW 10 Avenue
Fort Lauderdale, FL 33309

Material Logistics Central Warehouse
3800 NW 10 Avenue
Fort Lauderdale, FL 33309

Physical Plant Operations
3897 NW 10 Avenue
Fort Lauderdale, FL 33309

Sheridan Technical Center Annex
20251 Sterling Road
Pembroke Pines, FL 33332

Student Transportation and Fleet Services (five locations)

Central Bus Terminal and Transportation Offices
3831 NW 10 Avenue
Fort Lauderdale, FL 33309

TESTING SERVICE SPECIFICATIONS

Central West Bus Terminal
2320 College Avenue
Davie, FL 33317

North Bus Terminal
2300 NW 18 Street
Pompano Beach, FL 33062

South Bus Terminal
900 South University Drive
Pembroke Pines, FL 33025

Southwest Bus Terminal
20251 Sterling Road
Pembroke Pines, FL 33332

Additional sites may be added or deleted to this contract at any time during the contract period. SBBC will not accept site selection from VENDOR.

12. Key employees of VENDOR shall be made available to serve as an expert witness in any court or administrative proceeding arising out of this drug and alcohol testing program.

FEDERAL REPORTING REQUIREMENTS, RECORD RETENTION AND ACCESS

13. VENDOR, acting as the agent for SBBC, must meet all record retention and confidentiality standards specified in applicable laws. Records shall be maintained in a secure location with controlled access.
14. VENDOR shall be responsible for Internet-based quarterly provision of management information statistical reports that will enable SBBC to meet the USDOT/FTA annual reporting requirements.
15. Records in the possession of VENDOR shall be made available for inspection to the Risk Management Department within two (2) business days after a request has been made by an authorized representative of the USDOT/FTA.

TESTING FOR PROHIBITED SUBSTANCES

16. Analytical urine drug testing and breath alcohol testing may be conducted when circumstances warrant or as required by the applicable laws. All job applicants for SBBC positions that require a CDL shall be subject to testing prior to employment. All employees who possess a CDL will also be subject to testing following an accident that meets DOT guidelines or non-DOT testing if SBBC warrants. In addition, all employees will be subject to reasonable suspicion, return-to-duty testing, and follow-up testing after the successful completion of a drug and/or alcohol rehabilitation treatment program. In every instance where the initial drug and/or alcohol test returns a positive result, a second specific confirmation testing procedure must follow.
17. The testing will be performed by an HHS-certified laboratory and shall be conducted in a manner to assure a high degree of accuracy and reliability, using techniques, equipment, and laboratory facilities, which have been HHS-approved and consistent with the procedures put forth in the applicable laws. All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40. Procedures are to be in place to protect the employee and the integrity of the drug testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct employee. These procedures include split specimen collection method, USDOT Chain of Custody and Control Form with a unique identification number, initial screen, and confirmatory tests. Every initially apparent positive drug and alcohol test must be followed by a second, specific confirmation testing procedure.
18. Drug testing laboratory results will be reviewed by a qualified Medical Review Officer (MRO) to verify and validate test results. The MRO will be a licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an employee's test result together with their medical history and other relevant biomedical information.
19. The drugs that will be tested will include, but not be limited to, marijuana, cocaine, opiates, phencyclidine/PCP and amphetamines. An initial drug screen will be conducted on each specimen. For those specimens that are not negative, a Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40. The Federally-mandated screens and cut-off limits for the minimum quantity of drug or alcohol that must be detected in the initial test and also in the confirming test: marijuana (s50 c15); cocaine (s300 c150); opiates (s2000 c2000); PCP (s25 c25); and amphetamines (s1000 c500).

TESTING FOR PROHIBITED SUBSTANCES

20. Test for alcohol concentration will be conducted utilizing a National Highway Safety Administration (NHTSA)-approved EBT operated by a trained BAT. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will result in removal from employment for 24 hours unless a re-test results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test in violation of the employment contract. Alcohol testing shall be accomplished while the employee is performing safety-sensitive functions; immediately prior to the employee is to perform safety-sensitive functions, or immediately after the employee has ceased performing such job functions.
21. Any SBBC employee that has a confirmed positive drug or alcohol test must be reported to the SBBC, Risk Management Department for the potential result of disciplinary action up to and including discharge.
22. VENDOR's laboratory is required to maintain SBBC employee records in confidence. The laboratory shall disclose information related to any positive drug test solely to the SBBC employee so tested and the Risk Management Department only.

APPLICATION OF TESTING SERVICES

23. Pre-employment testing will be performed on all job applicants for positions that require a CDL. Applicants shall undergo urine drug testing prior to the date-of-hire. The Risk Management Department must be advised of both negative and positive test results prior to employment in order to determine fitness for duty or disqualification for employment.
24. Reasonable suspicion testing is required when two trained supervisors can document physical, behavioral and/or performance indicators of probable drug use or alcohol abuse when observing the appearance, behavior, speech or body odors of an SBBC employee. A reasonable suspicion referral for drug and alcohol testing will be made on the basis of documented objective facts and circumstances. Examples of reasonable suspicion include, but are not limited to, the following:
 - (a) Currently, discernible on-the-job behavior that may include physical signs and symptoms consistent with prohibited substance use.
 - (b) Evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, drugs, alcohol or other prohibited substances.
 - (c) An occurrence of a serious or potentially serious accident that may have been caused by human error.
 - (d) Flagrant disregard or violations of established safety, security or other operating procedures.

APPLICATION OF TESTING SERVICES

Reasonable suspicion determinations will be made by two (2) SBBC supervisors who are trained to detect signs and symptoms of drug and alcohol use and who reasonably conclude that an SBBC employee may be adversely affected and/or impaired in their work performance due to prohibited substance abuse or misuse.

25. Post-accident Testing:

- (a) In the cases of fatal accidents, SBBC employees possessing a CDL will be required to undergo drug and alcohol testing if they are involved in an accident that results in a fatality. This testing requirement includes all employees on duty possessing a CDL in the vehicle and any other personnel whose performance could have contributed to the accident.
- (b) In the cases of non-fatal accidents, drug and alcohol testing will be conducted if an accident results in injuries requiring transportation to a medical treatment facility or where one or more vehicles incurs disabling damage that requires towing from the site and the employee receives a citation from State or local law enforcement for a moving traffic violation arising from the accident. In non-fatal accidents, a post-accident test does not need to be conducted if it is determined, using the best information available at the time of the decision, that the SBBC employee's performance can be completely discounted as a contributing factor in the accident. In some cases, the technician will need to perform a test at the hospital setting if the employee has been transferred there.
- (c) Following either type of accident, an SBBC employee will be tested as soon as possible (not to exceed eight hours for alcohol testing and 32 hours for drug testing). Any SBBC employee involved in an accident must refrain from alcohol use for eight hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first. Any SBBC employee who leaves the scene of the accident without appropriate authorization prior to submission to drug and alcohol testing will be considered to have refused the test and their employment will be recommended for termination. Employees tested under this provision will include not only the operations personnel but any other covered employees whose performance could have contributed to the accident.

26. Random testing will be unannounced. SBBC employees in safety-sensitive positions and/or those required to hold a CDL will be subject to random, unannounced testing. The testing goal is to annually complete tests equivalent to 50% of the number of covered employees for the use of drugs and 10% for alcohol. The dates for administering random, unannounced testing of selected employees will be determined by the designated representative of the Risk Management Department.

APPLICATION OF TESTING SERVICES

27. Return-to-duty testing will be conducted on all SBBC employees who previously tested positive on a drug or alcohol test must be evaluated by a DOT-certified Substance Abuse Professional (SAP). The SAP is to be a licensed physician, a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor that has been certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) or the International Committee of the Red Cross (ICRC). Employees will be required to undergo return-to-duty testing prior to returning to their work assignment.
28. Random follow-up testing is to be conducted a minimum of six (6) times per year on each employee who has tested positive for drug and/or alcohol use. The actual number of follow-up tests and the duration of the testing period will be determined by an SAP for each employee. Follow-up testing shall not exceed the duration specified by the SAP after the employee's return to duty.
29. Reasonable suspicion testing may be conducted on all employees based on SBBC Policy 2400 – Drug-Free Work Place (**Exhibit 1**).

2400**DRUG-FREE WORKPLACE**

IT IS THE INTENT OF THE BOARD TO COMPLY WITH THE DRUG-FREE WORKPLACE ACT OF 1988 AND OTHER APPLICABLE LAW WHICH REQUIRES THE BOARD TO MAINTAIN A DRUG-FREE WORKPLACE. THE BOARD AUTHORIZES THE SUPERINTENDENT TO DEVELOP PROCEDURES TO CARRY OUT THIS POLICY

AUTHORITY: F.S. 230.22 (1) (2)
 F.S. 322.62
 DRUG-FREE WORKPLACE ACT OF 1988, P. L. 100-690 POLICY
 ADOPTED: 6/22/89
 RULES AMENDED: 9/4/90;10/6/92;12/20/94;7/18/95, 3/6/01:

RULES

1. The Superintendent shall provide each permanent Board employee with a statement indicating that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including alcohol, is prohibited on all school board property and at school sponsored activities. Employees are strictly prohibited from reporting to work or being on duty while under the influence of alcohol or a controlled substance.
 - a. School board property shall be defined as school grounds, building, school bus, or vehicle provided for transportation by the school system.
 - b. School sponsored activities shall be defined as any approved school board event or official school board business, on or off school board property.
2. The Superintendent shall continue to provide district employees with information regarding the dangers of drug and alcohol abuse, the availability of drug counseling and the Employee Assistance Program.
3. Each Board employee must refrain from the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including alcohol, in the workplace.
4. The Board must take appropriate disciplinary action against affected employees who violate this policy, up to and including termination of employment, or require the affected employee(s) to participate satisfactorily in a state licensed drug and/or alcohol abuse program. Employees who violate this policy are subject to referral for criminal prosecution.
5. Upon request of the Executive Director of Professional Standards & Special Investigative Unit and/or his/her designee the employee shall submit to testing for the purpose of determining the alcohol content or the presence of controlled substances when reasonable suspicion is determined under applicable laws. The test should be performed in a reasonable manner through Risk Management. (F.S. 440.101) (F.S. 112.0455)
 An employee who tests positive shall be recommended for discipline action up to and including termination of employment. An employee who refuses to submit to testing will be recommended for termination of employment.
6. Drug and alcohol testing for applicants and employees who must hold a Commercial Driver's License. (CDL)
 - a. Applicants for employment (permanent and temporary) and Board employees (permanent or temporary) who are required to have a Commercial Driver's License (CDL) as a condition of employment shall be required to participate in a drug and alcohol testing program.
 - b. A CDL licensed employee (permanent and temporary) who does not submit to the required drug and/or alcohol test shall be terminated immediately.
 - c. Applicants who test positive for drugs/alcohol shall no longer be considered for employment. School Board employees who test positive shall be recommended for disciplinary action up to and including termination of employment to the Superintendent.
 - d. The Board authorizes the Superintendent to charge applicants for the drug/alcohol test. However, the Superintendent may waive this fee during periods of critical staff shortages as determined by the Superintendent.

7. Rule number 6 above shall be effective commencing on January 1, 1995.
8. Any employee who voluntarily self reports alcohol/drug/ dependence not connected to a criminal arrest will be referred to the Employee Assistance Program.
9. Switching, tampering with or adulterating any specimen or sample collected under the company's policy for the purpose of testing for drugs or alcohol, or attempting to do so, or assisting another in an attempt to do so, is prohibited. Any such effort may result in disciplinary action up to and including termination.

AUTHORITY: F.S. 230.22 (1) (2)

Drug-Free Workplace Act of 1988, P. L... 100-690 Rules Adopted:
6/22/89

Rules Amended: 9/4/90;10/6/92;12/20/94;7/18/95, 3/6/01

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

PHAMATECH, INC.
(hereinafter referred to as "*Business Associate*"),
whose principal place of business is
15175 Innovation Drive
San Diego, California 92128

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.

ARTICLE 2 – SPECIAL CONDITIONS

- (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.
- (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.

ARTICLE 2 – SPECIAL CONDITIONS**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.
- (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.

ARTICLE 2 – SPECIAL CONDITIONS

- (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.

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.

ARTICLE 2 – SPECIAL CONDITIONS

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.

- (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.

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.

ARTICLE 3 – GENERAL CONDITIONS**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.

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 3rd Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, Risk Management Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

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

To Business Associate: Dana Conde, Contract Manager
Phamatech, Inc.
15175 Innovation Drive
San Diego, California 92128

With a Copy to: Tuan Pham, President
Phamatech, Inc.
15175 Innovation Drive
San Diego, California 92128

ARTICLE 3 – GENERAL CONDITIONS**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.

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.

ATTACHMENT C

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: Phamatech, Inc.
Date: 2020.02.12 11:10:51 -05'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR BUSINESS ASSOCIATE

PHAMATECH, INC.

[Signature]

Signature

By: Dana M Conde/Contract Manager

Print Name and Title

[Signature]
Simon Bernal
Witness

[Signature]
Ian White
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 California

COUNTY OF San Diego

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 31st day of January 2020 (date) by Dana M Conde/Contract Manager (name of officer or agent, title of officer or agent) of Phamatech, Inc. (name of corporation acknowledging), a California (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced California Driver's License (type of identification) as identification and who did/ did not first take an oath this 31st day of January, 2020.

My Commission Expires:

[Signature]
Signature - Notary Public

Jodee Callaghan
Notary's Printed Name

(SEAL)

2281179
Notary's Commission No.

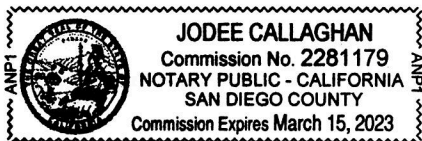


EXHIBIT A

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: _____