

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2006, 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

KILLER TRACKS
A Division of BMG Music Publishing NA, Inc.
(hereinafter referred to as KT)
8750 Wilshire Boulevard
Beverly Hills, California 90211

WHEREAS, KT is the owner or administrator of certain rights in and to the musical compositions and sound recordings (hereafter referred to as COMPOSITIONS) in the Killer Latino (6 CDS), Killer Tracks (210 CDS) AND NJJ (84 CDS) BMG PRODUCTION MUSIC LIBRARIES as listed in Exhibit "A" (which is incorporated herein by reference and is hereafter referred to as LIBRARY);

WHEREAS, SBBC desires to license the music in the LIBRARY for the purpose of synchronization with SBBC's productions;

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 The non-exclusive right, license and authority to synchronize and embody those COMPOSITIONS in the LIBRARY with SBBC's productions, to make copies of such embodiments and to distribute such copies throughout the TERRITORY (as defined in 2.02

below) subject to the terms and conditions of this Agreement. SBBC may continue to distribute such copies in perpetuity after termination of this Agreement, so long as the production is not altered in any way (either its audio or visual parts) provided it embodies the COMPOSITIONS in the manner set forth in paragraph 4 herein.

2.02 The TERRITORY covered by this license is the Universe.

2.03 SBBC agrees that use of the productions embodying such COMPOSITIONS from LIBRARY will be limited to the following clearances:

Non Broadcast/Multi-Media (Presentations, Music on Hold, Intranet etc.) NOT FOR SALE TO THE GENERAL PUBLIC.

Broadcast (Free TV, Radio & Basic Cable) DOES NOT INCLUDE EPISODIC SERIES PRODUCTION OR THEME AGREEMENTS.

Productions requiring any clearances other than those listed above must be licensed separately from this Agreement. License application forms will be supplied upon request. SBBC acknowledges that any further or different uses of the COMPOSITIONS in the LIBRARY are infringements of KT's copyrights.

2.04 KT has made available to SBBC the music in the LIBRARY in the form of compact disc (CD) recordings EXHIBIT "A", which are on loan to SBBC during term hereof. Upon termination of this Agreement, all CD's must be returned in a timely fashion not to exceed 30 days, to KT at SBBC's expense. SBBC agrees to reimburse KT in the amount of Seventy-five (\$75.00) US Dollars for each missing CD.

2.05 SBBC may preview or audition CDs not listed in Exhibit "A" anytime during the term of this Agreement. SBBC shall have up to 30 days from receipt of preview CDs to decide if it would like to add such preview CDs to this Agreement. In the event SBBC would like to add any preview CDs above and beyond the (259) CDs and any new releases granted herein under this Agreement, each additional preview CD will be invoiced at a rate of \$20 per year, per CD. If SBBC does not wish to retain the preview CDs they must be returned to KT at SBBC's expense within the 30-day preview period. If preview CDs are not returned to KT within the 30 day preview period and no other arrangements have been made, SBBC will be billed at the aforementioned rate, regardless of whether or not SBBC has actually used the preview CD's. If SBBC uses any COMPOSITIONS during the 30-day preview period, SBBC shall notify KT of such usage and SBBC will be billed accordingly. All terms of this license shall apply to any additional preview CDs retained by SBBC during the term of this Agreement.

2.06 The LIBRARY is granted by the Agreement to SBBC solely for its usage. SBBC agrees that it shall not make any copies of the COMPOSITIONS other than for SBBC's use as permitted by this Agreement. SBBC shall not sell, lease, lend, give, physically convey or otherwise transfer the KT compact discs to any person, firm or corporation without KT's prior

written consent, except in the event of an assignment of the Agreement through merger or an acquisition of substantially all of SBBC's assets.

2.07 KT represents and warrants that it has the full right, power and authority to make this Agreement and grant the rights granted herein Other than such limited rights of synchronization and uses designated in Section 2.03. KT reserves to itself all rights and uses of every kind and nature whatsoever in and to the LIBRARY including, without limitation, the mechanical and the grand and small performing rights. All other rights or uses shall be negotiated separately with KT. With respect to the Performing Rights, SBBC shall negotiate directly with KT or with the appropriate performing rights society.

2.08 In the event that SBBC violates this Agreement or allegedly breaches any of its covenants contained herein, SBBC upon written notice from KT, shall have a period of Thirty (30) days to cure such claim. If claim is not resolved during such period, the license hereunder shall automatically terminate. KT shall thereafter be under no obligation to license to SBBC the use of the LIBRARY or any COMPOSITIONS contained therein for any purpose whatsoever. In addition to any other remedy available to KT, should SBBC be unable to cure such claim during the Thirty (30) days, KT shall thereupon be entitled to seek an injunction to enjoin SBBC from any new use of said LIBRARY produced after notification of alleged breach.

2.09 **Term of Agreement.** The term of this license is for a period of Two (2) years commencing on October 20, 2006 and ending on October 19, 2008.

2.10 **Fees.** SBBC agrees to pay KT for the rights granted herein the sum of Five Thousand Five Hundred Ninety US Dollars (\$5,590.00) payable within Thirty (30) days of the signing and acceptance of this agreement.

2.11 **Music Library.** At the end of each calendar quarter (March, June, September and December) SBBC agrees to supply KT with a listing of each music title used on CUE Sheets and/or Quarterly Usage Reports, indicating pertinent usage information for the COMPOSITIONS used during the quarter. The suggested form for such reporting is attached as Exhibit "B". Additional copies of this form will be supplied by KT to SBBC as requested.

2.12 **Copyright Infringement.** KT warrants, to the best of KT's knowledge, that SBBC's authorized use of the COMPOSITIONS and LIBRARY shall not infringe any third party's valid patent or copyright existing as of the Effective Date. In the event that it is determined by a final action of a court of competent jurisdiction that SBBC's authorized use of the COMPOSITIONS and LIBRARY is infringing on a third party's rights, then, at KT's sole option and discretion, KT shall use commercially reasonable efforts to: (a) obtain for SBBC the right to continue using the COMPOSITIONS and LIBRARY; or (b) replace or modify the COMPOSITIONS and LIBRARY so that they become non-infringing and retain substantial functional equivalency. KT shall hold harmless and defend SBBC against any and all suits based on any claim that the use of the COMPOSITIONS and LIBRARY by SBBC under this Agreement infringes on any United States patent right or copyright, provided KT is promptly notified in writing of any such suit or claim against SBBC, and further provided that SBBC permits KT to defend, compromise, or settle the same, and gives KT all available information,

enable KT to do so. This indemnity shall not apply to any infringement arising out of (i) the alteration or modification of the COMPOSITIONS and LIBRARY by SBBC; or (ii) any use of the COMPOSITIONS and LIBRARY which is not authorized herein.

2.13 **Background Screening.** KT agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that all of KT's personnel who (1) are to be permitted access to district school grounds when students are present, (2) will have direct contact with district school 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 KT or its personnel providing any services under the conditions described in the previous sentence. KT will 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 KT's personnel. The Parties agree that the failure of KT 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. KT 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 in KT's failure to comply with the requirements of this sections or Sections 1012.32 and 1012.465, Florida Statutes.

2.14 **Indemnification.**

A. SBBC party 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. KT 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 KT, its agents, servants or employees; the equipment of KT, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the 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 KT, SBBC or otherwise.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **Titles:** Section and paragraph titles used in this Agreement are for convenience only and are not a part of the text hereof.

3.02 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

3.03 **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 contract.

3.04 **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 race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

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.

3.06 **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.

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

3.08 **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.

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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.

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

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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 effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.18 **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, BECON
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Jamie Scales
Killer Tracks Production Music
A Division of BMG Music Publishing NA, Inc.
8750 Wilshire Boulevard
Beverly Hills, California 90211

3.19 **Captions.** The captions, section numbers, article 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.

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

3.21 **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 with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.22 **Relationship of the Parties.** The parties hereto are independent and neither party is the agent, joint venturer, partner, or employee of the other and, except as expressly provided herein, KT shall not be obligated by any agreement, representations, or warranties made by SBBC to any person, nor with respect to any other action of SBBC; nor shall KT be obligated for any damages to any person whether caused by SBBC's action, failure to act, negligence, or willful conduct.

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

SBBC

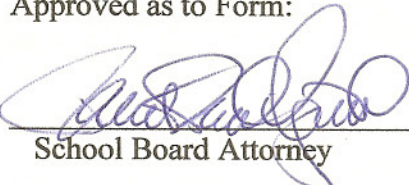
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Benjamin J. Williams, Chair

Franklin L. Till, Jr.,
Superintendent of Schools

Approved as to Form:


School Board Attorney

KILLER TRACKS

(Corporate Seal)

Killer Tracks, A Division of BMG Music Publishing NA, Inc.

ATTEST:

By Jamie Scales

_____, Secretary

-or-

Witness

Witness

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

STATE OF California

COUNTY OF LOS ANGELES

The foregoing instrument was acknowledged before me this 28 day of July, 2009 by Jamie Scales of Killer Tracks, on behalf of the corporation/agency.

He/She is personally known to me or produced identification and did did not first take an oath. CA ID # D4405184 as Type of Identification

My Commission Expires:

Michelle L Abbott
Signature - Notary Public

Michelle L Abbott
Printed Name of Notary

1668475
Notary's Commission No.

(SEAL)

