

## PREMIUM SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered into as of this 5th day of November, 2013, 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

**Somerset Academy, Inc.**

**(Somerset Academy Pompano - 5388)**

A Florida non-for-profit organization (hereinafter referred to as "School"),

And having its principal place of business located at

20801 Johnson Street

Pembroke Pines, FL 33029

**WHEREAS**, SBBC has the authority pursuant to Section 1002.33(20)(b), Florida Statutes, to make goods and/or services available to the school through a negotiated contract separate from the charter; and

**WHEREAS**, the School agrees to procure goods and/or services from SBBC; and

**WHEREAS**, the School is a not-for-profit organization.

**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 **November 5, 2013 and conclude on June 30, 2014**. SBBC shall not be obligated to provide any service to the school prior to the effective date of this Agreement.

**2.02 Definitions.** The following terms and definitions will apply to this agreement:

(a) "Assessments" refer to those assessments that are District offered, but not State-mandated;

**2.03 Contract Deliverables:** SBBC will provide the Premium Services described in the exhibits checked below and incorporated herein by reference:

- Before and After School Child Care (Exhibit A)
- Student Support Services (Exhibit B)
- Health Services (Exhibit C)
- Assessments (Exhibit D)
- Other Services (Exhibit E)

**2.04 Inspection of School Records by SBBC.** The School 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 School 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 any and all invoices, billings, payments and/or claims submitted by the School or any of the School's payees pursuant to this Agreement. The School's records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. The School's records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

**2.04.01 The School's Records Defined.** For the purposes of this Agreement, the term "The School's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

**2.05 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

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 the School, its agents, servants or employees; the equipment of the School, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of the School or the negligence of the School'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 the School, SBBC or otherwise.

### **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 contract.

**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, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

**3.04 Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the

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:                   The School Board of Broward County, Florida  
                                  Innovative Programs Design/Support Department  
                                  600 Southeast Third Avenue, 4<sup>th</sup> Floor  
                                  Fort Lauderdale, Florida 33301

To the School:           Somerset Academy Pompano (5388)  
                                  3311 Northwest 9th Avenue  
                                  Pompano Beach, FL 33064

**2.06   Background Screening:**

The School's Personnel: The School agrees to 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. The School shall ensure that, prior to entry into the School, and continuously during any period in which services are being provided, all staff shall be in compliance with the Jessica Lunsford Act and obtain Level 2 screening requirements at their own expense. The School 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 the School and its personnel. The parties agree that the failure of the School 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. The School 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 the School's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

**2.07   Indemnification.**   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.

**2.07.01   By SBBC:**   SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

**2.07.02   By the School:**   The School agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all

performance of the parties' respective duties, responsibilities and obligations under this Agreement.

**3.05 Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon Thirty (30) days written notice to the other party of its desire to terminate this Agreement. In the event that this occurs, the School agrees to the immediate termination of specified premium services.

**3.06 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. A default under this agreement does not constitute a default under any other agreements between the parties.

**3.07 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.

**3.08 Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement

in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

**3.09 Student Records:** These records shall include any and all documents, data, electronic or other media, written materials and records relating to any one or more students, which are required by applicable federal or state law or regulation or SBBC policies to be kept confidential. "Applicable federal or state laws, regulations and/or SBBC policies" include, but are not limited to, the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), Section 1002.22, Florida Statutes, and SBBC Student Records Policy 5100.1 and 5100.2.

**3.10 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.

**3.11 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.

**3.12 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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

**3.13 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.

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

**3.15 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.

**3.16 Incorporation by Reference.** Exhibit D is attached hereto and referenced herein, and shall be deemed to be incorporated into this Agreement by reference.

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

**3.18 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.

**3.19 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.

**3.20 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.

**3.21 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.

**3.22 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.

**3.23 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.

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



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

**FOR SBBC**

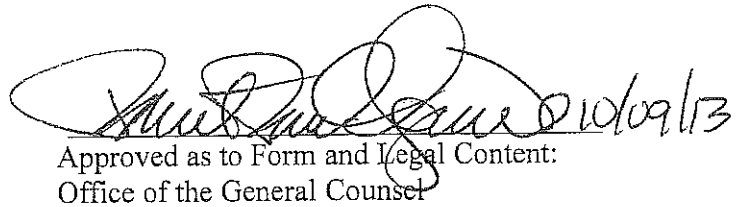
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Laurie Rich Levinson, Chair

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


  
Approved as to Form and Legal Content:  
Office of the General Counsel

**FOR SCHOOL**


(Corporate Seal)

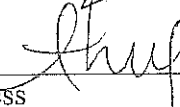
Somerset Academy, Inc.  
(Somerset Academy Pompano - 5388)

ATTEST:

By  \_\_\_\_\_  
Somerset Academy, Inc.  
(Somerset Academy Pompano - 5388),  
Secretary

-or-

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

Witness

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

STATE OF Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of September, 2013 by Andreina Figueroa  
Name of Person

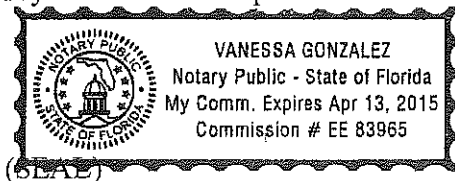
of Somerset Academy, Inc. (Somerset Company, on behalf of the  
Name of Corporation or Agency 5388)

corporation/agency.

He/She is personally known to me or produced \_\_\_\_\_  
as \_\_\_\_\_ Type of Identification

identification and did/did not first take an oath.

My Commission Expires:



(SEAL)

[Signature]  
Signature - Notary Public

Vanessa Gonzalez  
Printed Name of Notary

EE 83965  
Notary's Commission No.

**Exhibit D**  
**Assessment**

**A. Description of Goods and Services:**

The School will:

- 1) Submit a request for assessments and disclose accurate grade level enrollment numbers through an online request form;
- 2) Authorize withholding of FTE funds on a per semester basis;
- 3) Assign to a School Assessment Coordinator the responsibility of picking up all assessments from 4200 NW 10<sup>th</sup> Avenue, Oakland Park, FL 33309 and returning all used and unused BAT materials and CoGAT answer documents and all scored Primary Reading and Mathematics End of Year assessment materials to Student Assessment Department located at 4200 NW 10<sup>th</sup> Avenue, Oakland Park, FL 33309;
- 4) Maintain the security of the assessments. School personnel are prohibited from examining or copying the test items and/or the contents of the test. The security of all test materials must be maintained before, during, and after the test administration. After any administration, initial or make-up, materials must be returned immediately to the school assessment coordinator and placed in locked storage. Secure materials should not remain in classrooms or be taken out of the building overnight. The use of untrained test administrators increases the risk of test invalidation due to test irregularities or breaches in test security. Inappropriate actions by school personnel will result in further investigation, possible loss of teaching certification, and termination of this agreement;
- 5) Refer and abide by SBBC's Student Assessment and Research District-wide Testing Calendar for mandatory assessment session schedules; and
- 6) Securely package and return all used and unused BAT and scored Primary Reading and Mathematics End of Year assessment materials, and all CoGAT answer documents to the Student Assessment Department located at 4200 NW 10<sup>th</sup> Avenue, Oakland Park, FL 33309 within 2 days of testing administration completion.

The SBBC will:

- 7) Determine quantity of assessments for the School based on enrollment numbers;
- 8) Coordinate withholding of FTE funds on a per semester basis;

9) Package and prepare requested assessments for pick up by the School; and

10) After receiving returned BAT and CogAT assessments from the School, will scan and produce scores for all students who were correctly identified and tested.

**B. Assessments will include:**

1) **Benchmark Assessment Test (BAT):** Developed through close cooperation between staff, the Office of School Performance and Accountability (OSPA), and other District departments to evaluate progress of students towards mastery of the Next Generation Sunshine State Standards and Common Core Standards. Data from the BAT enables classroom teachers to modify instruction in order to provide additional support and remediation to students.

There are Two (2) BAT administrations available for Grades 3-10 in various subjects. One (1) BAT administration is available for Civics and U.S. History. The School may choose which grade levels will participate in the BAT. The School agrees to purchase all BAT subtests (Reading and Math, Science and enrollment-based End Of Course Assessments) assigned to each chosen grade level. The price of a BAT subtest is Three Dollars (\$3.00) per assessment per student;

2) **Primary Reading Mid-Year and End-of-Year (EOY) and Primary Mathematics EOY Assessments:** The District developed these assessments to assess Next Generation FCAT Standards and developed the EOYs to be used as the primary promotion criteria in grades 1 and 2 in 2013-2014. Schools that opt to participate in the Primary Reading and Mid-Year and End-of-Year and the Mathematics EOY Assessments will incur a fee of Two Dollars (\$2.00) per assessment per student. Schools are required to score and enter these assessments within two weeks after testing, in order for results to be uploaded to TERMS;

3) **Stanford Diagnostic Mathematics Test (SDMT) & Stanford Diagnostic Reading Test (SDRT):** Assessments used to provide elementary school students seeking promotion through an alternative testing option. The SDMT and the SDRT are administered at the end of the school year to students in grades 1, 2, 4 and 5 who are at risk of being retained. The SBBC does not own the SDMT and the SDRT assessment tools and materials. Pearson Education Measurement owns and publishes these assessments and has agreed to sell the corresponding materials to The School Board of Broward County, Florida. The agreement with Pearson will permit Charter Schools to use test materials purchased by the District if the charter school opts to participate. Schools that opt to participate in the SDMT and/or SDRT Assessments will incur a fee of ten dollars (\$10.00) per assessment per student. Schools are required to score and enter the scores for the Stanford Diagnostic Tests; and

4) **Cognitive Abilities Test (CogAT):** The purpose of the CogAT is to assess the level and pattern of cognitive development of students at various grade

levels and pre-screen for eligibility for gifted services. Riverside publishing owns and publishes the CogAT and has agreed to sell these materials to The School Board of Broward County, Florida. Charter schools may choose to participate in the CogAT for an initial fee of Six Dollars (\$6.00) per assessment per student. The initial fee includes re-useable test booklets, answer sheets, scanning and scoring of student answer documents and reporting test results. After the first administration, each subsequent administration will incur a subsequent fee of Two Dollars (\$2.00), unless additional test books are ordered, in which case a Six Dollar (\$6.00) fee per student will be incurred for those students for whom test booklets were ordered. The Two Dollar (\$2.00) fee includes answer sheets, scanning and scoring of student answer documents and reporting test results.

**D. Cancellation:**

1) Cancellation of requested assessments must be in writing and placed with the Innovative Programs Design/Support Department Forty-five Days (45) prior to the first day of the assessment's administration date. The School will be charged a fee for canceling requested assessments. The cancellation fee is Twenty-five Cents (.25¢) per assessment that the School requested through the online request form. If the School cancels a request for assessments after Forty-five Days (45) before the first day of the assessment's administration, the School will be charged the full-price of the requested assessments.