

## **PREMIUM SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018, 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

### **The City of Pembroke Pines**

(City of Pembroke Pines Charter Middle Schools – Loc. #5081)

A Florida not-for-profit organization (hereinafter referred to as “ School ”),

And having its principal place of business located at

601 City Center Way, 4<sup>th</sup> Floor, Pembroke Pines, FL 33025

**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 school agreement existing between the parties; and

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

**WHEREAS**, the School is a not-for-profit organization operating a public charter school in Broward County, FL.

**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 3.04 of this Agreement, the term of this Agreement shall commence upon the execution by all parties and shall conclude on **June 30, 2019**. 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:

**2.02.01 “FTE”** refers to Full Time Equivalent;

**2.02.02 “Work Order”** refers to the form prepared by the Innovative Programs Design/Support Department and executed by the School’s Principal, which includes an itemized list of ordered services and total amount of FTE funds that will be withheld from the School’s FTE distribution;

**2.02.03 “Premium Services Partner”** refers to one of a number of Schools receiving a pooled premium service;

**2.02.04 “Pooled Premium Services”** refers to services that are subject to a requirement that a minimum number of Premium Services Partners have been pooled together under separate contracts with SBBC to obtain such services in order for SBBC to secure appropriate personnel to provide the requested services;

**2.02.05 “Contracted Hours”** refers to the number of hours and the work schedule hours an SBBC employee is contracted to work;

**2.02.06 “Screening Duration”** refers to the total number of days necessary to screen all enrolled Kindergarten, First, Third, and Sixth grade students and students that are new to Broward County or required to receive Hearing and Vision Screening in accordance with the Response to Intervention/Multi-Tiered System of Supports process at the School;

**2.02.07 “WIDA”** refers to an organization that developed English Language Proficiency Standards;

**2.02.08 “Service Providers”** – individuals employed by or under contract with SBBC that provide premium service(s) directly to the School;

**2.02.09 “School Officials”** Service providers that have a “legitimate educational interest” in accessing personally identifiable information contained in education records; and

**2.02.10 “Before and After School Care Team”** refers to the School’s team of people, not to exceed five (5) staff members, that are responsible for administering the School’s Before and After School Program.

**2.03 Contract Deliverables.**

**2.03.01 Duties and Obligations of Each Party.**

**2.03.01.01 The School will:**

- (1)** Authorize a Work Order for services or products and, following guidelines communicated by SBBC, submit the Work Order to SBBC;

(2) Authorize withholding of FTE funds for services commencing upon approval of this Agreement and continuing throughout the terms of this Agreement;

(3) Communicate with SBBC in a timely manner to coordinate delivery of Premium Services and Products;

(4) Project the number of units needed for hourly and enrollment-based premium services and products including Speech Language Pathologists, Occupational Therapists, Physical Therapists, Exceptional Student Education (“ESE”) Counselors, School Nurse, and Assessments, if applicable;

(5) **Exceptional Student Learning and Support Department/Coordinated Student Health Services Department.** Obtain written parental consent prior to disclosure of personally identifiable information contained in education records, if necessary, prior to releasing such information to Service Providers;

(6) **Student Assessment and Research Department/Innovative Learning Department.**

- a. Assign to a School Assessment Coordinator the responsibility of picking up voluntary district-wide assessments from a designated area and returning all used and unused materials as directed for the particular assessment within two (2) business days of testing administration completion to the designated area;
- b. Refer and abide by SBBC’s 2018-2019 Student Assessment and Research District-wide Testing Calendar and notifications from the Student Assessment and Research (SAR) Department for mandatory session schedules of and procedures for voluntary district-wide assessments;

(7) **Student Services Department.** Submit referrals for Social Work Services through Behavioral and Academic Support Information System (“BASIS”);

(8) **Student Activities and Athletics Department.**

- a. Agree to Middle School Athletics Association (“MSAA”) Rules and Regulations and submit an Intent to Play form to SBBC by the stipulated date;
- b. Promote both a boys and a girls team and make an attempt to enroll both boys and girls into each MSAA sport that the School is offering;
- c. Maintain participation in three out of five available MSAA sports throughout the term of this Agreement. The five available MSAA sports include, but are not limited to: soccer, flag football, basketball, volleyball, and track and field. In addition to the three out of five available MSAA

sports, the School may also choose to participate in golf and/or cross country;

- d. Ensure that communication from the Student Activities and Athletics Department is accessible to the School's Athletic Director;

**(9) Graphics Department.**

- a. Submit artwork design in the requested format and size;
- b. Authorize a final proof of the selected product;
- c. Pick up completed orders at 6600 Nova Drive, Davie, FL 33317 when notified by SBBC;

**(10) Before and After School Child Care Services ("BASCC").**

- a. Allocate at least one (1) staff member for a minimum of two weeks prior to the initiation of the BASCC Program Database Management System for program set-up;
- b. May be required to purchase a site license for FileMaker Pro 16 and install prior to program setup;
- c. Request support from the BASCC Department through email, as needed; and
- d. Take action within a reasonable amount of time in response to recommendations from BASCC staff to ensure continuous maintenance and operation of the Program Database Management System.

**2.03.01.02 The SBBC will:**

- (1)** Receive requests for Premium Services from the School;
- (2)** Analyze resources available to deliver requested Premium Service;
- (3)** Coordinate, schedule and ensure delivery of Premium Services and Products;
- (4)** Coordinate withholding of FTE funds for services commencing upon approval of this Agreement and continuing throughout the term of this Agreement;

**(5) Student Assessment and Research Department.**

- a. Determine quantity of assessments for the School based on the most recent enrollment numbers at the time of assessment distribution;

- b. Package and/or prepare requested assessments for pick up by the School, if applicable;
- c. Scan and produce scores for all students who were correctly identified and tested for applicable assessments after receiving returned assessments from the School;

**(6) Student Athletics and Student Activities Department.**

- a. Coordinate scheduling of home and away games, including game dates, times and location, facility operations, security, and officials;
- b. Make every possible attempt to reschedule games that are cancelled due to weather. If a game cannot be rescheduled, the School will not receive a refund;

**(7) Before and After School Child Care Services Department.**

- a. Provide up to forty (40) hours of SBBC staff time to customize the Program Database Management System in collaboration with the School;
- b. Provide a secure server designated for the School in accordance with this Agreement;
- c. Provide a one-time web or phone based training in the Program Database Management System to the School's Before and After School Administrative Team;
- d. Provide technical assistance to the School's Before and After School Administrative Team for up to ten (10) hours in collaboration with the School; and
- e. Service providers that have a legitimate educational interest to the performance of the PDMS service under this Agreement will have access to the School's PDMS.

**2.03.02 Description of Premium Services.**

**2.03.02.01 Exceptional Student Learning Support.**

**(1) Speech Language Pathology Services** may be purchased from SBBC at a rate of Seventy-Five Dollars (\$75.00) per hour. Speech Language Pathologist Services will include planning for and providing therapy to students enrolled at the School that have been evaluated in accordance with the Code of Federal Regulations, Title 34, Section 300.8 as having a Speech Language Impairment and who need special education and related services. Speech Language Pathologist services include:

- a. Therapy activities include provisions of speech and language services for the habilitation or prevention of communicative impairments;
- b. Planning activities include, but are not limited to, preparing for student therapy sessions, counseling and guidance of parents, children, and teachers regarding speech and language impairments, and referrals for specific medical or other professional attention necessary for the habilitation of Speech Language Impairments;
- c. The School must provide curriculum materials, a system for students to report directly and on time to the Speech Language Pathologist at the time of their session, a point of contact at the School, electronic access to Easy Individual Education Plan (“IEP”) through an on-site device for purposes of logging services and progress, and a self-contained room with enough space for individual and group therapy sessions and a window for safety;
- d. The School will avoid scheduling the Speech Language Pathologist for mandatory planning meetings during the time of the Speech Language Pathologist’s scheduled student sessions. If the Speech Language Pathologist is scheduled for mandatory meetings that conflict with scheduled student sessions, the School is responsible for ensuring that the missed sessions are made-up if there is a denial of Free and Appropriate Public Education (“FAPE”) determined by the Individual Education Program (“IEP”) committee; and
- e. The School must follow the procedures for determining eligibility and educational need of students with a Speech Language Impairment;

**(2) Physical Therapy Services** may be purchased from SBBC at a rate of Seventy-Seven Dollars (\$77.00) per hour. Physical Therapy services will include planning for and providing therapy to students enrolled at the School that have been evaluated in accordance with the Code of Federal Regulations, Title 34, Section 300.34 as having a physical impairment and who need special education and related services. Physical Therapy services include:

- a. Therapy activities include provisions of physical therapy services for improving ability to perform tasks for independent functioning related to impairments;
- b. Planning activities include, but are not limited to, preparing for student therapy sessions, counseling and guidance of parents, children, and teachers regarding physical impairments;
- c. The School must provide adaptive equipment and/or materials, with the exception of child-specific adaptive equipment, a system for students to report directly and on time to the Physical Therapist at the time of their

session, a point of contact at the School, and electronic access to Easy IEP through an on-site device for purposes of logging services and progress; and

- d. The School will avoid scheduling the Physical Therapist for mandatory planning meetings during the time of the Physical Therapist's scheduled student sessions. If the Physical Therapist is scheduled for mandatory meetings that conflict with scheduled student sessions, the School is responsible for ensuring that the missed sessions are made-up if there is a denial of FAPE determined by the IEP committee.

**(3) Occupational Therapy Services** may be purchased from SBBC at a rate of Seventy-Eight Dollars (\$78.00) per hour. Occupational Therapy services will include planning for and providing therapy to students enrolled at the School that have been evaluated in accordance with the Code of Federal Regulations, Title 34, Section 300.34 as having a physical impairment and who needs special education and related services. Occupational Therapy services include:

- a. Therapy activities include provisions of Occupational Therapy services for improving ability to perform tasks for independent functioning related to physical impairments;
- b. Planning activities include, but are not limited to, preparing for student therapy sessions, counseling and guidance of parents, children, and teachers regarding physical impairments;
- c. The School must provide adaptive equipment and/or materials, with the exception of child-specific adaptive equipment, a system for students to report directly and on time to the Physical Therapist at the time of their session, a point of contact at the School, and electronic access to Easy IEP through an on-site device for purposes of logging services and progress; and
- d. The School will avoid scheduling the Occupational Therapist for mandatory planning meetings during the time of the Occupational Therapist's scheduled student sessions. If the Occupational Therapist is scheduled for mandatory meetings that conflict with scheduled student sessions, the School is responsible for ensuring that the missed sessions are made-up if there is a denial of FAPE determined by the IEP committee.

**(4) ESE Counseling Services** are available for counseling as a related service as indicated on a student's Individual Education Plan ("IEP") and may be purchased from SBBC at a rate of Ninety-Six Dollars (\$96.00) per hour. ESE Counselor services include:

- a. Planning for and providing counseling as a related service to students enrolled at the School who have counseling identified on the IEP as a related service to special education services in accordance with the Code of Federal Regulations, Title 34, Section 300.34 as having a need for social and emotional services as related to academics. ESE Counselor services include:
- b. Counseling as a related service activities include provision of counseling as a related service for improving ability to perform academic tasks;
- c. Planning activities include, but are not limited to, preparing for student counseling as a related service sessions, logging sessions, and communication with members of the IEP team regarding the student's progression toward an academic goal;
- d. Participation in the IEP team or Educational Plan ("EP") Team to assist in determining if counseling as a related service is required for a student to benefit from the educational program by considering, on a case-by-case basis, whether counseling services are necessary to facilitate the student's academic, social/interpersonal, or emotional/behavioral progress. The decision regarding the need for counseling as a related service may occur during the initial development of the IEP, annually at the IEP meeting, during reevaluation, or any other time members of the IEP team request that it be addressed;
- e. The School must provide a system for students to report directly and on time to the ESE Counselor at the time of their session, a point of contact at the School, and electronic access to Easy IEP through an on-site device for purposes of logging services and progress; and
- f. The School will avoid scheduling the ESE Counselor for mandatory planning meetings during the time of the ESE Counselor scheduled student sessions. If the ESE Counselor is scheduled for mandatory meetings that conflict with scheduled student sessions, the School is responsible for ensuring that the missed sessions are made-up if there is a denial of FAPE determined by the IEP committee.

**(5) ESE Specialist Training.** A four (4) hour training designed to provide customized support to new or existing Exceptional Student Education ("ESE") Specialists within charter schools for the implementation of information obtained at District-wide ESE Specialist meetings. Trainings are conducted by SBBC staff off the School's site. Offsite ESE Specialist Trainings are for up to Ten (10) participants and no less than three (3) participants and cost Three Hundred and Fifty Dollars (\$350.00) per participant.

**(6) ESE Specialist Consultations.** SBBC staff is available for customized, one-on-one, on-site consultations with ESE Specialists to assist the school with IDEA



and ESE compliance. Consultations are available to the School at a price of One Hundred Fifty Dollars (\$150.00) per hour.

**(7) Pooled Premium School Psychology Services** may be purchased from SBBC at a rate of Ten Thousand Four Hundred Twenty-One Dollars (\$10,421.00) per year. A School Psychologist will be assigned to serve three (3) charter schools and will provide services to each of the three (3) charter schools for no more than one hundred five (105) hours during the term of this Agreement. Total price for one academic year of School Psychologist services will be prorated based on the number of service weeks available in this Agreement's terms of service and upon approval of this Agreement. School Psychologist services may include:

- a. Consultations, on-site or via telephone, to address academic and/or behavior difficulties, develop social-emotional interventions, review Response to Intervention ("RtI") data, provide diagnostic assessment to assist with the collaborative problem solving process and inform intervention selection, participate in Collaborative Problem Solving Team meetings, and assist with review of data, evaluation, eligibility determination and plan development under Section 504 of the Americans with Disabilities Act;
- b. On-Site Staff Training are training modules developed by an SBBC School Psychologist to address the specific and unique needs of the School utilizing SBBC best practices of various classroom and school management techniques on topics such as Threat Assessment, Violence Prevention, Early Warning Signs, Silence Hurts, and RtI. Staff training must occur during the School Psychologists' contracted hours;
- c. Parent or Student Workshops presented by School Psychologists are available from SBBC to inform parents or students on a variety of topics including but not limited to mental health awareness, discipline, RtI, and homework tips, at the request of a charter school. Parent or student workshops must occur during the School Psychologists' contracted hours; and
- d. Crisis Intervention Teams: the School Psychologist may fulfill the need for a Crisis Intervention Team due to death of a student and/or school-based employee. The School Psychologist may respond to the crisis with school-wide support including group facilitation and individual counseling as needed. Hours utilized by the School Psychologist in response to a crisis will be deducted from the School's total purchased hours of School Psychologist services. Additional School Psychology services in excess of the one hundred five (105) hours may be purchased at a rate of One Hundred Fifteen Dollars (\$115.00) per hour. Availability of additional hours and/or personnel is subject to availability of SBBC resources at the time of the crisis.

**(8) Crisis Intervention Team-Psychology.** A School Psychologist may fulfill the need for a Crisis Intervention Team during times of crisis including, but not limited to, death of a student, staff or family member, natural disasters, terrorist activity, or any event in the school or home setting which may negatively affect student or staff functioning. The School Psychologist may respond to the crisis with school-wide support including group facilitation and individual counseling as needed. School Psychology services may be purchased at a rate of One Hundred Fifteen Dollars (\$115.00) per hour. Availability of additional hours and/or personnel are subject to availability of SBBC resources at the time of the crisis.

### **2.03.02.02      Coordinated Student Health Services.**

**(1) School Nursing Services** may be purchased from SBBC at a rate of Forty-Two Dollars (\$42.00) per hour for intermittent services and Thirty-Five dollars (\$35.00) per hour for full-time services. Intermittent services are defined as an amount of work that requires less than ten (10) days to complete. Full-time services are defined as an amount of work that requires more than ten (10) days to complete. Services may include:

- a. Consulting with teachers and parents, maintaining session and progress notes and professional reports, keeping individual treatment logs, facilitating triage in the School's clinic, administration of medication, and 911 assessments.
- b. Specific health condition consultation and coordination is available to assess health needs and create individualized health and emergency care plans for students with acute or chronic health conditions. Specific health condition consultation and coordination may include a review of student health records, a consult with the student's doctor, a health assessment, an interview with the parent and/or student, a meeting with the administrator, and the creation of a Plan of Care and an Emergency Action Plan.
- c. Specific health conditions on-site staff training to inform the School's staff about management of specific health conditions such as seizures, diabetes, asthma, and allergic reactions. Trainings may be scheduled on the School's campus for purposes of training staff about specific health needs of a child with a chronic condition.

**(2) Pooled Premium Health Support Technician ("HST") with Registered Nurse ("RN") Oversight** may be purchased from SBBC at a rate of One-Hundred Sixty Dollars (\$160.00) per day. This service provides the School with one on-site HST for up to six and one-half (6.5) hours of work per day with oversight from an RN that is assigned to serve a pool of no more than five (5) charter schools.

(3) **CPR, First Aid, and AED Certification Training** is a training to certify selected staff in CPR, First Aid, and AED skills. Participants will receive a CPR certification card at the completion of the training. The price of CPR, First Aid, and AED Certification Training is Sixty-Nine Dollars (\$69.00) per participant.

(4) **Hearing, Vision and BMI Screening** is available at a price of Five Hundred Eighty-Nine Dollars (\$589.00) per seventy-five (75) students. This service includes a team of health screeners that travel to the School to conduct health screenings on the School site for the Screening Duration requested by the School and authorized through a Work Order. The Screening Duration should allow for the screening of up to seventy-five (75) students per day, the calculation of student data, and documentation of health screening data onto individual student reports. The School is responsible for providing screening equipment for Health Screening, preparing individual student forms, and providing requested documentation to the health screening team so that they may fulfill their duty. Failure of the School to prepare individual student forms or provide the team of health screeners with necessary forms and information may result in a(n) extra day(s) added to the Screening Duration. The School is also responsible for entering student screening data into TERMS and providing documentation to The Florida Department of Health, Broward County.

(5) **Screening Follow-up** provides one health screener to re-screen up to twenty-five (25) screening units for students that 1) failed their first hearing screening, 2) were absent during the initial screening duration, or 3) require Hearing and Vision Screening data for the Response to Intervention Program. Screening Follow-up is available at a price of One Hundred Eighty Dollars (\$180.00) per twenty-five (25) screening units. Screening follow-up may also be utilized for initial health screenings.

(6) **Screening Equipment**, including the AAPOS Vision Screening Kit, the BMI Kit, and an Audiometer is available for rent at a flat fee of One Hundred Twenty Dollars (\$120.00) per Screening Duration if the School has purchased Hearing, Vision and BMI Screenings.

(7) **Scoliosis Screenings** are available at a price of One Hundred Eighty-Two Dollars (\$182.00) per one hundred twenty (120) students.

(8) **AAPOS Vision Screening Kit**. The AAPOS Vision Screening Kit includes LEA symbols for grades K-2 and Sloan letters for Grades 3-6 and may be purchased at a price of Ninety-Six Dollars (\$96.00) per kit;

(9) **BMI Screening Kit**. The BMI Screening Kit includes a scale and a tape measure for purposes of calculating Body Mass Index (BMI) during health screenings. BMI Screening Kits may be purchased at a price of Forty-One Dollars (\$41.00);

**(10) Audiometer Rental.** An audiometer may be rented by the School from SBBC for up to five (5) consecutive days. The fee for renting an Audiometer is Two Hundred Dollars (\$200.00). The School is responsible for picking up the machine and returning the machine by the end of the fifth day. The audiometer must be used by a trained hearing screener. Inspection of the Audiometer machine will be conducted with a representative from the SBBC and the School prior to rental. Both representatives will sign off and agree on any noted damage to the machine. Upon return, a second inspection of the audiometer will be conducted in the presence of both representatives. Damage to the audiometer will result in the School incurring the cost of repair or replacement.

**2.03.02.03 Diversity, Prevention and Intervention** services are developed by SBBC staff based on the specific and unique needs of the School utilizing SBBC best practices of Multi-Tiered System of Supports/Response to Intervention/ Positive Behavior Intervention System frameworks.

**(1) MTSS/RtI Consultation.** Consultations are available to the School at a price of Ninety Dollars (\$90.00) per hour.

**(2) MTSS/RtI Staff Training.** Training consists of a one (1) hour module, designed using information provided by the School in a comprehensive needs assessment, a fifteen (15) minute question and answer session, and a fifteen (15) minute consultation. The price of one (1) MTSS/RtI Staff Training for up to twenty-five (25) participants is Three Hundred Dollars (\$300.00).

**(3) Pre-Referral RtI Consultation.** Intensive consultation on the RtI Program designed to assist the School with procedures for evaluation referrals. Pre-referral RtI Consultations may be purchased at a price of Seven Hundred and Fifty dollars (\$750.00) per referral.

**2.03.02.04 Student Assessment and Research Department.** Voluntary District-wide Assessments are available as a Premium Service. Cancellation of Assessments must be in writing and placed with the Innovative Programs Design/Support Department forty-five (45) days prior to the first day of the assessment's administration date. The School will be charged a fee for canceling requested assessments. If the School cancels a request for assessments after forty-five (45) days before the first day of the assessment's administration, the School will be charged the full-cost of the requested assessments.

**(1) Interim Assessment** is an assessment designed to monitor progress of students towards mastery of the Florida Standards. Data from Interim Assessments enable classroom teachers to modify instruction in order to provide additional support and interventions to students. The School agrees to purchase all subtests assigned to each chosen grade level. The price of each Interim Assessment is Three Dollars (\$3.00) per assessment per student.

(2) **Primary Reading End-of-Year (EOY)** is designed to assess Florida Standards and may be utilized as promotion criteria in Grades One (1) and Two (2). The School is required to score and enter student assessment data within two weeks after testing. The price of the Primary Reading EOY is Two Dollars (\$2.00) per assessment per student.

(3) **Universal Screening Abilities Test** may be available through the Student Assessment and Research Department. It is designed to measure students' learned reasoning abilities in verbal, quantitative and nonverbal areas. The School shall agree to the price(s) of the component(s) of the Universal Screening Abilities Test through the approval of a work order.

### **2.03.02.05      Student Support Services.**

(1) **Pooled Premium School Social Work Services** may be purchased from SBBC at a rate of Six Thousand Nine Hundred Sixty-Nine Dollars (\$6,969.00) per year for a maximum of sixty-eight (68) hours during the term of this Agreement. A School Social Worker will be assigned to serve fifteen (15) charter schools. Total price for one academic year of School Social Work services will be prorated based on the number of service weeks available in this Agreement's terms of service and upon approval of this Agreement. School Social Work services include:

- a. Liaison services between the School, a student's home and the community. Liaisons act as advocates for students and their families in obtaining necessary school and community services;
- b. Assessments including family, psycho-socials that are not associated with Child Find, and behavior scales. Assessment referrals may take up to ten (10) hours to complete. Completion of assessment referrals is contingent upon the School providing adequate notice to the Social Worker and scheduling a required amount of time with the Social Worker.
- c. Consultation in the areas of Tier 1 attendance processes, educational planning consultations, mental health, and cultural, developmental and environmental factors affecting students and families including, but not limited to, teenage pregnancy and parenting, child abuse, neglect, and homelessness.
- d. Intervention/Counseling is available for short-term individual and group counseling for students. Students with long-term therapeutic needs are referred to appropriate agencies for follow up;
- e. Crisis Intervention Team is available to schools during times of crisis including, but not limited to, death of a student, staff or family member, natural disasters, terrorist activity, or any event in the school or home setting which may negatively affect student or staff functioning. Hours and/or personnel available for Crisis Intervention Team services are

subject to availability of SBBC resources at the time of the crisis. Hours utilized by the Social Worker in response to a crisis will be deducted from the School's total purchased hours of Social Work services. The Social Worker may respond to the crisis with school-side support including group facilitation and individual counseling; and

- f. Non-attendance and truancy interventions to assist schools in assessing the causes of non-attendance/truancy problems of students referred and in the recommendation of family, community, and school-based interventions.

**(2) Additional Social Work Services** are available to Premium Service Partners for an additional fee. Additional social work services include:

- a. **Broward Truancy Intervention Program (BTIP).** The need for the Broward Truancy Intervention Program arises when a student exhibits behaviors consistent with a pattern of nonattendance. If the School chooses to request BTIP services, the School must have documentation of implemented interventions that have been unsuccessful in remediating patterns of nonattendance. School staff will contact the Student Services Office for questions and consultation regarding best practices, policy clarification and intervention to remediate the above issues. Many levels of services and personnel, as well as a menu of strategies, are required to implement the BTIP process with fidelity. The price for referring one student to the BTIP process is Three Hundred Thirty-Seven Dollars (\$337.00).
- b. **Parent or Student Workshops** presented by Social Workers may be available after contracted hours from SBBC to inform parents, students, or school staff on a variety of topics, at the request of a charter school. The price of a one (1) hour workshop is Two Hundred Seventy-Six Dollars (\$276.00).
- c. **Additional Crisis Intervention Team Services.** Additional Social Work services in excess of the sixty-eight (68) hours purchased under this Pooled Premium Services, and up to six (6) hours of services from an SBBC Family Counselor may be purchased at a rate of Ninety-Five Dollars (\$95.00) per hour. Additional hours and/or personnel are subject to availability of SBBC resources at the time of the crisis.

**(3) Crisis Intervention Team Services-Social Work.** Crisis support from a School Social Worker or Family Therapist is available to schools during times of crisis including, but not limited to, death of a student, staff or family member, natural disasters, terrorist activity, or any event in the school or home setting which may negatively affect student or staff functioning. Hours and/or personnel available for Crisis Intervention Team services are subject to availability of SBBC resources at the

time of the crisis. Response to a crisis may include school-wide support such as group facilitation and individual counseling as needed. Crisis Intervention Team-Social Work services may be purchased at a rate of Ninety-Five Dollars (\$95.00) per hour.

**(4) Behavior Intervention Program** is a structured assignment process for students who, according to the most recent Behavior Intervention Program Handbook, “exhibit severe, unmanageable behavior that cannot be adequately controlled in a traditional school setting” to attend an SBBC Behavior Intervention Site. For the purposes of this Agreement, a “traditional school setting” means enrollment in the School’s regular educational program. The School has requested that the Sponsor (SBBC) provide this service to determine appropriate student assignment as a premium service. Students are usually assigned to the Behavior Intervention Site for ninety (90) days to one hundred eighty (180) days, with stays generally not to exceed two (2) school years. The price of referring one student to the Behavior Intervention Program is either Two Thousand Eighteen Dollars (\$2,018.00) or Seven Hundred and Four Dollars (\$704.00), depending on the referred student’s educational program referral history and current educational program placement. Total price will be agreed upon between the School’s Principal and Innovative Programs Design/Support Department prior to initiation of services. Referral to the Behavior Intervention Program does not ensure recommendation for placement into a Behavior Intervention Site. If the recommendation is to refer a student to a Behavior Intervention Site, the School will communicate this information to the parent or guardian who ultimately will decide if the student will withdraw from the School and enroll in the Behavior Intervention Site. Possible types of referrals to the Behavior Intervention Program include:

- a. Traditional referrals that are a result of repeated behavioral infractions with documented interventions that have had minimal or no success;
- b. Off-Campus Offender referrals that are a result of behaviors that would qualify for an expulsion if committed on campus;
- c. Returning from Residential Juvenile Justice Programs referrals that are a result of a student registering for regular school setting placement after documented completion of a Department of Juvenile Justice residential program, not including the detention center;
- d. Transitional referrals that are a result of a student recently returning to the School from a Behavior Intervention Site and demonstrating behavior problems with failed interventions; and
- e. Emergency referrals that are a result of behavior by an elementary student that would qualify for expulsion if committed by the students at the secondary level.

**2.03.02.06      English Speakers of Other Languages/Bilingual Services.**

**(1) ELLevation Platform Subscription.** The ELLevation Platform Subscription is an online English Language Learners (ELL) program management system for use by school administrators and ESOL Coordinators to inform instruction and manage reporting. The ELLevation Platform Subscription offered through this Agreement is in addition to the ELLevation Platform Subscription(s) offered to the School as a sponsor provided service. Additional ELLevation Platform Subscriptions may be purchased at a rate of Three Hundred Sixty Dollars (\$360.00) per user. Additional ELLevation products may be available.

**(2) ESOL WIDA Framework Training.** Training programs developed by ESOL staff for the purpose of supporting teachers in learning, applying, and integrating WIDA standards and philosophy into the School's curriculum. ESOL WIDA Framework Training for up to twenty-five (25) participants may be purchased in packages of three (3) hours for Five Hundred Dollars (\$500.00); six (6) hours for Eight Hundred Dollars (\$800.00), or twelve (12) hours, for One Thousand Five Hundred Dollars (\$1,500.00).

**2.03.02.07      Athletics and Student Activities Services.** Participation in MSAA sports is available to schools that are unable to host visiting teams at home due to lack of access to home team facilities and, therefore, must play all games at away facilities. The School is obligated to arrive at all scheduled games on time and with an adequate number of players, in accordance with MSAA guidelines. Failure by the School to arrive at a game on time or with an adequate number of players throughout the term of this Agreement will result in a forfeiture of remaining participation in all MSAA sports for the term of this Agreement. The School will not receive a refund for forfeited games.

**(1) Middle School Athletic Association Dues** in the amount of Two Hundred Fifty Dollars (\$250.00) will be withheld from the School's FTE distribution, as authorized on the Work Order for participation in MSAA sports.

**(2) Soccer** participation includes a maximum of eight (8) games, four (4) home and four (4) away games, and may be purchased at a rate of One Thousand Six Hundred Seventy One Dollars (\$1,671.00) per year. A minimum of seven (7) soccer players per team are required to start a game, and each team must have no less than seven (7) players to continue the game.

**(3) Basketball** participation includes a maximum of ten (10) games, five (5) home and five (5) away games, and may be purchased at a rate of Two Thousand One Hundred Eighty Four Dollars (\$2,184.00) per year. A minimum of five (5) basketball players per team are required to start a game, a team cannot continue to play with fewer than three (3) players.



(4) **Volleyball** participation includes a maximum of eight (8) games, four (4) home and four (4) away games, and may be purchased at a rate of One Thousand One Hundred Twenty Four Dollars (\$1,124.00) per year. A minimum of six (6) volleyball players per team is required to start a game, a team cannot continue to play with fewer than five (5) players.

(5) **Flag Football** participation includes a maximum of eight (8) games, four (4) home and four (4) away games, and may be purchased at a rate of One Thousand Five Hundred Seventeen Dollars (\$1,517.00) per year. A minimum of seven (7) flag football players per team is required to start a game, and each team may have no less than five (5) players to continue a game.

**2.03.02.08 Graphics.** The Graphics Department offers the following printed products. The School must submit final artwork in the approved format prior to printing.

(1) **Signs** may be printed for the School for purposes of directing traffic, event announcements, or other communication. Full color, eighteen inches by twenty-four inches (18" x 24") foam core signs are available for short-term indoor use at a price of Fourteen Dollars (\$14.00). Full-color, eighteen inches by twenty-four inches (18" x 24") double-sided corrugated plastic signs are available for short-term outdoor use at a price of Twenty-Seven Dollars (\$27.00) each.

(2) **Retractable Banners** may be printed for the School for display purposes during presentations, at open houses, conferences and workshops. Full color banner with display stand, thirty-three inches by eighty-four inches (33" x 84"), are available at a price of One Hundred Thirty Eight Dollars (\$138.00) each.

(3) **Banners** with metal grommets may be printed for the School for indoor or outdoor display purposes. Full color, five feet by two feet (5' x 2') banners are available at a price of Thirty Dollars (\$30.00) each. Full color, five feet by three feet (5' x 3') banners are available at a price of Forty-Six Dollars (\$46.00) each. Full color, five feet by four feet (5' x 4') banners are available at a price of Sixty-One Dollars (\$61.00) each. Full color, five feet by eight feet (5' x 8') banners are available at a price of One Hundred Twenty One Dollars (\$121.00) each.

(4) **Posters** are full color, one sided, digital prints for indoor display purposes. eighteen inches by twenty-four inches (18" x 24") oversized posters are available at a price of Twelve Dollars (\$12.00) each. Twenty-four inches by thirty-six inches (24" x 36") oversized posters are available at a price of Eighteen Dollars (\$18.00) each.

(5) **A-Frame Sidewalk Stands** are plastic, freestanding sidewalk signs with two full color exchangeable panels. This product is ideal for indoor, outdoors and walkways. Twenty-four inches by thirty-six inches (24" x 36") A-frame sidewalk stands are available at a price of One Hundred Thirty-Nine Dollars (\$139.00) each.

(6) **Table Throws** are four-sided closed-back to cover a six (6) foot table. Eighty-eight inches by one hundred thirty inches (88"x130") Table Throws are available at a price of Two Hundred Sixty-Three Dollars (\$263.00).

(7) **Floor Graphics and Decals** are full color textured, non-slip vinyl graphics that measure two feet by two feet (2' x 2') and used to promote information in high traffic areas. Floor Graphics and Decals are available at a price of Twenty Dollars (\$20.00) each.

(8) **Personalized Buttons** are custom printed 1.25" round buttons. Buttons may be purchased at a price of Thirty-Six Cents (\$0.36) each.

(9) **Feather Flags** are double-sided, full-color Thirty-six inches by Eighty-four inches (36" x 84") custom designed banners with a display stand and a carrying case. The standing height is thirteen and a half feet (13.5') tall. Feather Flags are available at a price of Three Hundred and Nine Dollars (\$309.00).

(10) **Design Services** may be utilized by the School to design a promotional item and to format artwork into a print quality version. Design Services are available at a price of Twenty-five Dollars (\$25.00) per piece of art.

#### **2.03.02.09      Innovative Learning.**

(1) **Vocabulary.com.** A subscription to Vocabulary.com includes access to Vocabulary.com for students in Grades five (5) through twelve (12) through June 30, 2019. The School is required to submit a valid Work Order for Vocabulary.com to the Innovative Programs Department and enter into a Premium Services Agreement with SBBC to renew the subscription the following year. Included in the subscription is a username and password for designated staff members and students, access to district-wide Vocabulary.com professional development sessions, access to qualifying participation in the District's annual Vocabulary.com event, scheduled professional development webinars, and technical support from Vocabulary.com. In order for the School to maintain continued access to Vocabulary.com beyond the term of this Agreement and for the duration of any contract the School may enter into with Vocabulary.com, the School acknowledges that it will be necessary for it to timely enter into successive Premium Services Agreements with SBBC through which the School would obtain work orders for access to that system. A subscription to Vocabulary.com may be purchased at a rate of Three Dollars and Thirty Cents (\$3.30) per student.

(2) **Canvas Learning Management System.** Canvas Learning Management System through SBBC provides the School with activation of an instance. Once established, the instance allows the School to create courses and enroll students. The School is required to enter into a Contract with Canvas separate from this Agreement in order for the instance to be activated. In order for the School to access Premium Services aligned with the Canvas Learning Management System beyond the term of this Agreement and for the duration of any Contract the School may enter into with

Canvas, the School acknowledges that it will be necessary for it to timely enter into successive Premium Services Agreements with SBBC through which the School would obtain work orders for access to that system. Access to Canvas Learning Management System through SBBC may be purchased at a price of Three Hundred Dollars (\$300.00) per year.

**(3) Additional Canvas Premium Services.**

- a. **Canvas Professional Development.** On-site professional development for up to thirty (30) teachers includes twelve (12) hours of direct instruction customized to the School's unique Canvas instance. The cost of one Canvas Professional Development session is Two Thousand Five Hundred Dollars (\$2,500.00). Other Professional Development topics aligned with digital classroom pedagogy may also be available under this service.
- b. **SBBC Content.** Fully developed courses and access to digital textbook materials may be available. Available content is dependent on licensing requirements and is up to the sole discretion and deployment schedule of SBBC. Price(s) of SBBC Content will be established and communicated to the School by SBBC during the term of this Agreement. The School shall agree to the price(s) of SBBC Content through the approval of a Work Order.

**2.03.02.10      Before and After School Care Services.**

**(1) Program Database Management System ("PDMS").** A FileMaker Pro database developed by SBBC to manage student registrations, financials, and student data in before and after school programs. The purchase of the PDMS system will provide the School with up to forty (40) hours of SBBC staff for initial development and set-up and up to ten (10) hours of ongoing technical support throughout the term of this Agreement and for every year thereafter that the School chooses to purchase PDMS through a Premium Services Agreement with SBBC. The School may purchase additional hours of technical assistance during the term of this Agreement at a rate of Eighty Dollars (\$80.00) per hour. At the request of the School and upon termination of the PDMS service in writing, all data contained within the PDMS system will be exported into a Comma Separated Value ("CSV") file and delivered to the School. The School shall agree to the price of PDMS through the approval of a Work Order.

**2.03.03      Payments.**

**(1) Payments.** The price of the mutually agreed upon Premium Services will be deducted from the School's monthly distribution of FTE funds upon approval of this Agreement and as authorized by the Work Order. For Speech Language Pathology, Occupational Therapy, Physical Therapy and Full-time School Nursing

services, the School will project the number of hours needed and authorize withholding of the projected amount from FTE Distributions as authorized on the Work Order. The projected amount will be withheld from FTE Distributions prior to each month that the service will be rendered and reconciled on an ongoing basis. For Intermittent School Nursing and ESE Counseling services, the cost of services will be withheld from the School's FTE Distribution, as services are determined. For Student Assessment and Research Department Services, the School agrees to pay the per unit price of each assessment ordered as defined on the work order unless cancelled in accordance with Section 2.03.02.04 of this Agreement. FTE will be withheld prior to administration for the projected amount of assessments to be administered.

**(2) Pooled Premium Services Partners.** Any services requested by the School under Sections 2.03.02.01(7), 2.03.02.02(2), and 2.03.02.05(1), Pooled Premium School Psychologist Services are subject to a requirement that three (3) charter schools ("Premium Services Partners"), Pooled Premium Social Work Services are subject to a requirement that fifteen (15) charter schools ("Premium Services Partners"), and Pooled Premium HST with RN Oversight are subject to the requirement that five (5) charter schools ("Premium Services Partners"), have been pooled together under separate contracts with SBBC to obtain such services in order for SBBC to secure appropriate personnel to provide the requested services. If the Premium Services Agreement between SBBC and one of the School's Pooled Premium Services Partners is terminated during the term of this Agreement, then the premium services available to the School will terminate without refund or any additional notice or action from SBBC. The School agrees that it is entirely within SBBC's discretion to identify those available Premium Services Partners with whom the School will be pooled in order for SBBC to provide premium services.

**2.04 Non-refundable Services Deposit.** SBBC is authorized to retain a Five Hundred Dollar (\$500.00) non-refundable services deposit from the School's FTE distribution upon the execution of this Agreement by all parties. This deposit shall be applied to the services ordered by the School through a Work Order during the term of this Agreement. SBBC shall be entitled to retain any remaining portion of the deposit in the event that the School fails to order available services totaling in the amount of the deposit during the term of the Agreement.

**2.05 Confidentiality of Student Records.**

**(1)** Notwithstanding any provision to the contrary within this Agreement, each party participating in this Agreement agrees to:

- a. 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;

- b. 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;
- c. ensure that, at all times, all employees and/or school agents who have access to any education records during the term of their service or 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;
- d. 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;
- e. 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;
- f. notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com), and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;
- g. 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;
- h. 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;
- i. be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- j. 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

- (2)** All education records shall remain the property of the School, and 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 the School's request, return to the School or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide the School with a written acknowledgment of said disposition.

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

City of Pembroke Pines Middle Central  
Sean Chance, Principal  
12350 Sheridan Street  
Pembroke Pines, FL 33026

With a copy to: Samuel S. Goren, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308

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in which services are provided, such personnel shall have successfully completed background screening by SBBC and shall be in compliance with The Jessica Lunsford Act, Section 1012.465, 1012.467 and 1012.468, Florida Statutes and all current SBBC Level 2 screening requirements at no expense to the School.

**2.08 Indemnification.** Each party agrees to be fully responsible 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. 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.

**2.09 Availability of Services.** All services available through this Agreement are limited and based on current availability of SBBC resources required to render such service. Execution of this Agreement does not ensure availability of a service. In addition, Pooled Premium Services that may be sought by the School have additional requirements for participation by a sufficient number of charter schools in order for SBBC to make appropriate staff available to provide the requested services. The Principal of the School and SBBC staff will confirm the availability of service after execution of the Work Order Form. Pooled Premium Services requested will be available to participating charter schools subject to the availability of SBBC qualified staff to perform the service.

**2.10 Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

### **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.** Notwithstanding any other provisions in this Agreement including, without limitation, Section 3.04 or Pooled Premium Services, 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 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 such event, no further premium services will be provided by SBBC after the effective date of termination. In addition, termination of the School's Charter Agreement with SBBC will result in the immediate termination of this Agreement without the necessity of any additional notice or action from SBBC. Furthermore, any services requested by the School under Pooled Premium Services are subject to a requirement that fifteen (15) charter schools ("Premium Services Partners") for Social Work services, three (3) charter schools for School Psychologist services ("Premium Services Partners"), and five (5) charter schools ("Premium Services Partners") have been pooled together under separate contracts with SBBC to obtain such services in order for SBBC to secure appropriate personnel to provide the requested services. If the Premium Services Agreement between SBBC and one of the School's pooled Premium Services Partners is terminated during the term of this Agreement, then the premium services available to the School under Pooled Premium Services may terminate without refund or any additional notice or action from SBBC.

**3.05 Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party, thirty (30) business days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) business 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) business 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 3.04. A default under this Agreement does not constitute a default under any other agreements between the parties.

**3.06 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.

**3.07 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.

**3.08 Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222 Florida Statutes, FERPA, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to 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, 1002.221 and/or 1002.222 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 or as the student records are destroyed in accordance with the Florida Retention Schedules or are returned to SBBC, whichever is earlier.

**3.09 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.

**3.10 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.

**3.11 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.

**3.12 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.

**3.13 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 Incorporation by Reference.** Any exhibit attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

**3.16 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.

**3.17 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.

**3.18 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.

**3.19 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.

**3.20 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.

**3.21 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.

**3.22 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.

**3.23 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 \_\_\_\_\_  
Nora Rupert, Chair

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

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

**FOR SCHOOL**

The City of Pembroke Pines  
(City of Pembroke Pines Charter Middle  
Schools – Loc. #5081)

ATTEST:

By

\_\_\_\_\_  
CHARLES F. DODGE  
CITY MANAGER

\_\_\_\_\_  
MARLENE D. GRAHAM  
CITY CLERK

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**"), by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
(hereinafter referred to as "**Business Associate**" or "**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

**The City of Pembroke Pines**  
(City of Pembroke Pines Charter Middle Schools – Loc. #5081)  
(hereinafter referred to as "**Covered Entity**")  
whose principal place of business is

601 City Center Way, 4<sup>th</sup> Floor, Pembroke Pines, FL 33025

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

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

**WHEREAS**, Covered Entity 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**, Covered Entity 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**, Covered Entity and Business Associate understand and agree that the Covered Entity requirements require Covered Entity and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of 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.
- (b) “**Business Associate**” shall mean Business Associate named above and shall include all successors and 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) “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996.
- (f) “**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (g) “**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).
- (h) “**Minimum Necessary**” means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (i) “**Omnibus Rule**” means the HIPAA Omnibus Rule of 2013.
- (j) “**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth at 45 C.F.R. Parts 160 and 164, subparts A and E.
- (k) “**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 Covered Entity.
- (l) “**Required by Law**” shall have the same meaning as the term “required by law” in 45 C.F.R. §164.103.
- (m) “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (n) “**Security Rule**” shall mean the Standards for Security of ePHI as set forth at 45 C.F.R. Parts 160 and 164 Subpart C.



- (o) “**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 Covered Entity, 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 B hereto.
- (e) Business Associate shall promptly inform Covered Entity of a Breach of Unsecured PHI following the first day on which Business Associate knows of such Breach or following the first day on which Business Associate should have known 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 Covered Entity 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 Covered Entity any direct costs incurred by Covered Entity for doing so.

3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to by Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI 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 access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set that is not also in Covered Entity's possession, to Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.524.
  - (i) Business Associate agrees to make PHI available for amendment and incorporate all amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual in the time and manner designated by Covered Entity. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to Covered Entity, or at a request of Covered Entity to the Secretary, in a time and manner as designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from Covered Entity.
  - (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 Covered Entity 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 Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (j) above, to permit Covered Entity 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 Covered Entity; provided, however, that Covered Entity 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 Covered Entity.
  - (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 Covered Entity with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

### **3. Permitted Uses and Disclosures of PHI by “Business Associate”.**

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as previously agreed to by the parties (the “Service Agreement”) provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (b) Except as otherwise limited in 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 in 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 in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

### **4. Obligations of Covered Entity Regarding PHI.**

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) Covered Entity 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 permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

- (d) Covered Entity and its representatives shall be entitled with ten (10) business days prior written notice to Business Associate to audit Business Associate from time-to-time to verify Business Associate compliance with the terms of this Agreement. Covered Entity shall be entitled and enabled to inspect the records and other information relevant to Business Associate compliance with the terms of this Agreement. Covered Entity 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 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 Covered Entity complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to Covered Entity all Security Incidents (as defined 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 Covered Entity as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) Covered Entity agrees and understands that Covered Entity 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, on behalf of Covered Entity, it will perform all transactions for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its functions on behalf of Covered Entity.

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 in general shall be deemed to amend this Agreement to incorporate said changes without further action.

## **8. Amendment.**

The parties agree to take any and all actions necessary to amend this Agreement from time to time so that Covered Entity is in compliance with the Privacy Rule, the Security Rule, the HITECH Act and HIPAA in general. The parties may agree to amend this Agreement from time to time in any other respect that 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 as of the Effective Date and shall remain in effect until such time as Covered Entity 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) calendar days written notice to Covered Entity.
- (c) ***Termination for Cause.***\_\_\_\_ Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity 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 Covered Entity provides notice of such breach to Business Associate, Covered Entity shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) calendar days advance written notice of such termination to Business Associate.

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

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

- (d) ***Effect of Termination.*** Except as set forth in this Section 9(d), upon termination of this Agreement for any reason, at the request of Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall not retain any copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is infeasible, such as in the use of data aggregation, Business Associate shall provide to Covered Entity

written notification of the conditions that make return or destruction infeasible. If 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 make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

#### **10. Indemnification.**

- (a) By Business Associate: Business Associate 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 Covered Entity: Covered Entity agrees to indemnify, hold harmless and defend Business Associate, 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 Business Associate, 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 Covered Entity, its agents, servants or employees; the equipment of Covered Entity, its agents, servants or employees while such equipment is on premises owned or controlled by Business Associate; or the negligence of Covered Entity 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 Covered Entity property, and injury or death of any person whether employed by Business Associate, Covered Entity or otherwise.

### **ARTICLE 3 – GENERAL CONDITIONS**

#### **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.

#### **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.

#### **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 Business Associate:	Superintendent of Schools The School Board of Broward County, Florida 600 Southeast 3 <sup>rd</sup> Avenue Fort Lauderdale, FL 33301
With a Copy to:	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
	Privacy Officer Risk Management Department The School Board of Broward County, Florida 600 S.E. 3 <sup>rd</sup> Avenue, 11 <sup>th</sup> Floor Ft. Lauderdale, FL 33301
To Covered Entity:	City of Pembroke Pines Middle West Michael Castellano, Principal 18500 Pembroke Road Pembroke Pines, Florida 33029
	City of Pembroke Pines Middle Central Sean Chance, Principal 12350 Sheridan Street Pembroke Pines, FL 33026
With a Copy to:	Charles F. Dodge, City Manager City of Pembroke Pines 601 City Center Way, 4 <sup>th</sup> Floor Pembroke Pines, FL 33025
	Samuel S. Goren, City Attorney Goren, Cherof, Doody & Ezrol, P.A. 3099 East Commercial Boulevard, Suite 200 Fort Lauderdale, Florida 33308



### **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. The person signing on behalf of "Business Associate" has authority to bind "Business Associate" with respect to all provisions contained in this Agreement.

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

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure there from granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

### **27. Regulatory References.**

A reference in this Agreement to a section in the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA in general means the referenced section or its successor, and for which compliance is required.

### **28. Governing Law.**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this

Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

**29. Entire Agreement.**

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

**30. Interpretation.**

Any ambiguity in this Agreement shall be interpreted in a manner that permits SBBC to comply with the Privacy Rule, Security Rule, the HITECH Act, HIPAA in general and any subsequent legislation or regulations otherwise affecting Business Associates.

**IN WITNESS WHEREOF**, the parties have executed this Business Associate Agreement as of the Effective Date.

**COVERED ENTITY:**

The City of Pembroke Pines  
(City of Pembroke Pines Charter Middle  
Schools -5081)

By: \_\_\_\_\_  
Charles F. Dodge, City Manager

**BUSINESS ASSOCIATE**

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By: \_\_\_\_\_  
Nora Rupert, Board Chair

Attest:

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

\_\_\_\_\_  
Approved as to Form and Legal Content:

Office of the General Counsel

Date: \_\_\_\_\_

**Exhibit B**

**NOTIFICATION TO THE COVERED ENTITY**

**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 ("Business Associate") and \_\_\_\_\_ (Covered Entity).

Business Associate hereby notifies Covered Entity 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: \_\_\_\_\_