

**AGREEMENT**

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

**ALL STOP VENDING, LLC**  
(hereinafter referred to as "VENDOR"),  
a foreign limited liability company authorized to do business in Florida  
whose principal place of business is  
3149 John P Curci Drive Bay 4  
Pembroke Park, FL 33009

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

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

**ARTICLE 1 - RECITALS**

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

**ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2019 and conclude on December 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, ninety (90) calendar days beyond the expiration date of the final renewal period. SBBC's Procurement & Warehousing Services Department will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period.

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

- First: This Agreement, then;
- Second: Addendum 1, dated June 28, 2018, then;
- Third: ITB 19-044H – Healthy Vending Program, then;
- Fourth: Bid submitted in response to the ITB by VENDOR.

2.03 **Services:** VENDOR will provide SBBC with healthy vending machines services as proposed in its Bid and in compliance with this Agreement, the ITB and its Addendum.

2.04 **Commission Rates.** Commission Rates payable to SBBC by vendor shall be firm and fixed for the term of the Agreement as stated below:

- 2.04.1 Elementary Schools (Teacher's Lounges and After-Care Areas) thirty-two percent (32%)
- 2.04.2 Middle Schools & Combined K-8 Schools (Teacher's Lounges and Student Areas) thirty-two percent (32%)
- 2.04.3 High Schools & Combined 6-12 Schools (Teacher's Lounges and Student Areas) thirty-two percent (32%)
- 2.04.4 Technical Centers (Exempt from "Smart Snacks at School" program) thirty-eight percent (38%)
- 2.04.5 Administrative Sites (Exempt from "Smart Snacks at School" program) thirty-eight percent (38%)

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.06 **Inspection of VENDOR'S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of VENDOR'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose

of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

To SBBC:	Superintendent of Schools The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of Food and Nutrition Services The School Board of Broward County, Florida 7720 West Oakland Park Blvd., 2 <sup>nd</sup> Floor Sunrise, Florida 33351
To VENDOR:	General Manager All Stop Vending, LLC 3149 John P Curci Drive, Bay 4 Pembroke Park, FL 33009

**2.08 Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to

indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery

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

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

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

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

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

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

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

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

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.12 Nondiscrimination.

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

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

2.13 Annual Appropriation. The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC

shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every

other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.



There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel 08/30/18

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

**FOR VENDOR:**

(Corporate Seal)

**ALL STOP VENDING, LLC**

ATTEST:

[Signature]  
\_\_\_\_\_  
, Secretary

By [Signature]  
\_\_\_\_\_

-or-

[Signature]  
\_\_\_\_\_  
Witness  
[Signature]  
\_\_\_\_\_  
Witness

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 8/28/18 day of August 2018 by ALL STOP VENDING Michael Helfer of 3149 John P Curci Drive Bay 4 Pembroke Park, FL 33009 (954) 923-0444, on behalf of the corporation/agency. Name of Corporation or H413-540-61-270-0 as He/She is personally known to me or produced H413-540-61-270-0 as identification and did/did not first take an oath. Type of Identification

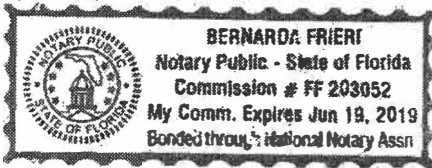
My Commission Expires:

[Signature]  
\_\_\_\_\_  
Signature - Notary Public

Bernarda Frieri  
\_\_\_\_\_  
Printed Name of Notary

FF 203052  
\_\_\_\_\_  
Notary's Commission No.

(SEAL)



## AGREEMENT

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**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

**BETTOLI TRADING, CORP. D/B/A BETTOLI VENDING**  
(hereinafter referred to as "VENDOR"),  
a Florida Profit Corporation  
whose principal place of business is  
6095 NW 167<sup>TH</sup> St, Unit D-4  
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**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

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of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

To SBBC:	Superintendent of Schools The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of Food and Nutrition Services The School Board of Broward County, Florida 7720 West Oakland Park Blvd., 2 <sup>nd</sup> Floor Sunrise, Florida 33351
To VENDOR:	General Manager Bettoli Trading, Corp. D/B/A Bettoli Vending 6095 NW 167 <sup>th</sup> Street, Unit D-4 Hialeah, FL 33015

**2.08 Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to

indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery



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

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

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

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

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

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

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

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

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.12 Nondiscrimination.

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

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

2.13 Annual Appropriation. The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC

shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every

other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

**3.06 Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

**3.07 Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

**3.08 Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

**3.11 Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 Agreement Administration. SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)

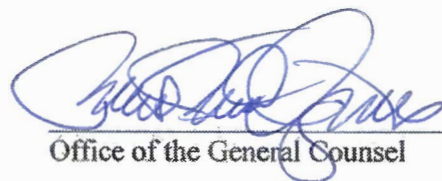
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

 09/30/12  
\_\_\_\_\_  
Office of the General Counsel

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

**FOR VENDOR:**

(Corporate Seal)

**BETTOLI TRADING, CORP.  
D/B/A BETTOLI VENDING**

ATTEST:

By *Maurizio Bettoli*

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

-or-

*Liana P. Mung*  
Witness

*[Signature]*  
Witness

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

STATE OF Florida  
COUNTY OF Miami Dade.

The foregoing instrument was acknowledged before me this 29 day of  
August, 2018 by Maurizio L. Bettoli of  
Name of Person  
Bettoli Trading Corp., on behalf of the corporation/agency.  
Name of Corporation or Agency

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

My Commission Expires: 2/28/21



*Monica L. Santana*  
Signature - Notary Public

Monica L. Santana  
Printed Name of Notary

GG065755  
Notary's Commission No.



**AGREEMENT**

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

**COMPASS GROUP USA, INC.**  
(hereinafter referred to as "VENDOR"),  
a foreign profit corporation authorized to do business in Florida  
whose principal place of business is  
2400 Yorkmont Rd.  
Charlotte, NC 28217

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

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

**ARTICLE 1 - RECITALS**

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

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2019 and conclude on December 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, ninety (90) calendar days beyond the expiration date of the final renewal period. SBBC’s Procurement & Warehousing Services Department will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period.

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

- First: This Agreement, then;
- Second: Addendum 1, dated June 28, 2018, then;
- Third: ITB 19-044H – Healthy Vending Program, then;
- Fourth: Bid submitted in response to the ITB by VENDOR.

2.03 **Services:** VENDOR will provide SBBC with healthy vending machines services as proposed in its Bid and in compliance with this Agreement, the ITB and its Addendum.

2.04 **Commission Rates.** Commission Rates payable to SBBC by vendor shall be firm and fixed for the term of the Agreement as stated below:

- 2.04.1 Elementary Schools (Teacher’s Lounges and After-Care Areas) five percent (5%)
- 2.04.2 Middle Schools & Combined K-8 Schools (Teacher’s Lounges and Student Areas) five percent (5%)
- 2.04.3 High Schools & Combined 6-12 Schools (Teacher’s Lounges and Student Areas) twenty-six percent (26%)
- 2.04.4 Technical Centers (Exempt from “Smart Snacks at School” program) twenty-six percent (26%)
- 2.04.5 Administrative Sites (Exempt from “Smart Snacks at School” program) ten percent (10%)

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.06 **Inspection of VENDOR’S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of VENDOR’S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC’s agent or

authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

- To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301
  
- With a Copy to: Director of Food and Nutrition Services  
The School Board of Broward County, Florida  
7720 West Oakland Park Blvd., 2<sup>nd</sup> Floor  
Sunrise, Florida 33351
  
- To VENDOR: Steve Luccia, Division President  
Compass Group USA, Inc. by and through its Canteen Division  
2400 Yorkmont Rd.  
Charlotte, NC 28217

**2.08 Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage

resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

**2.10 Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.12 **Nondiscrimination.**

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

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

2.13 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof.

Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.



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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)

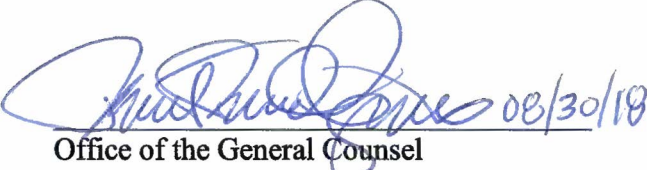
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

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

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

**FOR VENDOR:**

(Corporate Seal)

**COMPASS GROUP USA, INC.**

ATTEST:

By Steve P

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

-or-

Wacii J. Schaffer

Witness

[Signature]

Witness

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

STATE OF Florida

COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August, 2018 by Steve Luccia of

Name of Person

Compass Group USA, Inc. by and through its Canteen Division, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. \_\_\_\_\_

Type of Identification

My Commission Expires: 8/3/2021

[Signature]  
Signature - Notary Public



Nicola F. Pagley  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG097269  
Expires 8/3/2021

(SEAL)

Nicola F. Pagley  
Printed Name of Notary

GG097269  
Notary's Commission No.

**AGREEMENT**

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

**FRESH START VENDING, INC.**  
(hereinafter referred to as "VENDOR"),  
a Florida Profit Corporation  
whose principal place of business is  
5374 NW 126 Drive  
Coral Springs, FL 33076

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

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

**ARTICLE 1 - RECITALS**

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

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2019 and conclude on December 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, ninety (90) calendar days beyond the expiration date of the final renewal period. SBBC's Procurement & Warehousing Services Department will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period.

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

- First: This Agreement, then;
- Second: Addendum 1, dated June 28, 2018, then;
- Third: ITB 19-044H – Healthy Vending Program, then;
- Fourth: Bid submitted in response to the ITB by VENDOR.

2.03 **Services:** VENDOR will provide SBBC with healthy vending machines services as proposed in its Bid and in compliance with this Agreement, the ITB and its Addendum.

2.04 **Commission Rates.** Commission Rates payable to SBBC by vendor shall be firm and fixed for the term of the Agreement as stated below:

- 2.04.1 Elementary Schools (Teacher's Lounges and After-Care Areas) twenty percent (20%)
- 2.04.2 Middle Schools & Combined K-8 Schools (Teacher's Lounges and Student Areas) twenty-five percent (25%)
- 2.04.3 High Schools & Combined 6-12 Schools (Teacher's Lounges and Student Areas) thirty percent (30%)
- 2.04.4 Technical Centers (Exempt from "Smart Snacks at School" program) thirty percent (30%)
- 2.04.5 Administrative Sites (Exempt from "Smart Snacks at School" program) twenty-five percent (25%)

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.06 **Inspection of VENDOR'S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of VENDOR'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose

of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

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

With a Copy to: Director of Food and Nutrition Services  
The School Board of Broward County, Florida  
7720 West Oakland Park Blvd., 2<sup>nd</sup> Floor  
Sunrise, Florida 33351

To VENDOR: General Manager  
Fresh Start Vending  
5374 NW 126 Drive  
Coral Springs, FL 33076

2.08 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no

further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses



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

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

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

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

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

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

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

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

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

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

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

2.13 Annual Appropriation. The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC

shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every

other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

 09/05/2019  
\_\_\_\_\_  
Office of the General Counsel

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

**FOR VENDOR:**

(Corporate Seal)

**FRESH START VENDING, INC.**

ATTEST:

By *Vicki Dandes*

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

-or-  
Witness *Jean Gano*

Witness *Michael Ando*

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

STATE OF Florida

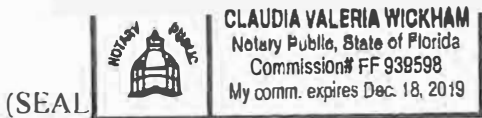
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 01<sup>st</sup> day of September, 2018 by Vicki K. Dandes of Fresh Start Vending, Inc on behalf of the corporation/agency.

He/She is personally known to me or produced Driver's License as identification and did/did not first take an oath. Type of Identification

My Commission Expires: 12/18/2019

*Claudia Valeria Wickham*  
Signature - Notary Public



Claudia Valeria Wickham  
Printed Name of Notary

FF939598  
Notary's Commission No.



**AGREEMENT**

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

**GILLY VENDING, INC.**  
(hereinafter referred to as "VENDOR"),  
a Florida Profit Corporation  
whose principal place of business is  
990 NW 166<sup>th</sup> Street  
Miami, FL 33169

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

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

**ARTICLE 1 - RECITALS**

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

**ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2019 and conclude on December 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, ninety (90) calendar days beyond the expiration date of the final renewal period. SBBC's Procurement & Warehousing Services Department will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period.

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

- First: This Agreement, then;
- Second: Addendum 1, dated June 28, 2018, then;
- Third: ITB 19-044H – Healthy Vending Program, then;
- Fourth: Bid submitted in response to the ITB by VENDOR.

2.03 **Services:** VENDOR will provide SBBC with healthy vending machines services as proposed in its Bid and in compliance with this Agreement, the ITB and its Addendum.

2.04 **Commission Rates.** Commission Rates payable to SBBC by vendor shall be firm and fixed for the term of the Agreement as stated below:

- 2.04.1 Middle Schools & Combined K-8 Schools (Teacher's Lounges and Student Areas) twenty-three percent (23%)
- 2.04.2 High Schools & Combined 6-12 Schools (Teacher's Lounges and Student Areas) thirty-six percent (36%)
- 2.04.3 Technical Centers (Exempt from "Smart Snacks at School" program) twenty-three percent (23%)
- 2.04.4 Administrative Sites (Exempt from "Smart Snacks at School" program) twenty-three percent (23%)

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.06 **Inspection of VENDOR'S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of VENDOR'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of

this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

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

With a Copy to: Director of Food and Nutrition Services  
The School Board of Broward County, Florida  
7720 West Oakland Park Blvd., 2<sup>nd</sup> Floor  
Sunrise, Florida 33351

To VENDOR: Gilda Rosenberg  
President  
Gilly Vending, Inc.  
990 NW 166<sup>th</sup> Street  
Miami, FL 33169

With a Copy to: Amit Biegun  
CFO  
Gilly Vending, Inc.  
990 NW 166<sup>th</sup> Street  
Miami, FL 33169

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

1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

**2.10 Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when

acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

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

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

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

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

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

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

(f) **Verification of Coverage.** Proof of the required insurance must be furnished by **VENDOR** to **SBBC**'s Risk Management Department by Certificate of Insurance within fifteen (15) calendar days of the date of this Agreement. To streamline this process, **SBBC** has partnered with **EXIGIS** Risk Management Services to collect and verify insurance

documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.12 Nondiscrimination.

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

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

2.13 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar calendar days written notice to cure the default. However, in the event said

default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

**3.06 Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

**3.07 Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

**3.08 Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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



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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)


THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

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

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

**FOR VENDOR:**

(Corporate Seal)

**GILLY VENDING, INC.**

ATTEST:

By [Signature]

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

Witness [Signature]

Witness \_\_\_\_\_

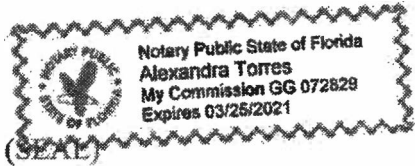
**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Florida  
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August, 2016 by [Signature] of [Signature] Name of Person, on behalf of the corporation/agency. Name of Corporation or Agency

He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. Type of Identification

My Commission Expires:



[Signature]  
Signature - Notary Public

[Signature]  
Printed Name of Notary

66072829  
Notary's Commission No.

**AGREEMENT**

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

**RHO CONSULTING, CORP.**  
(hereinafter referred to as "VENDOR"),  
a foreign profit corporation authorized to do business in Florida  
whose principal place of business is  
2629 Ariane Drive,  
San Diego, CA 92117

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

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

**ARTICLE 1 - RECITALS**

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

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2019 and conclude on December 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, ninety (90) calendar days beyond the expiration date of the final renewal period. SBBC's Procurement & Warehousing Services Department will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period.

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

- First: This Agreement, then;
- Second: Addendum 1, dated June 28, 2018, then;
- Third: ITB 19-044H – Healthy Vending Program, then;
- Fourth: Bid submitted in response to the ITB by VENDOR.

2.03 **Services.** VENDOR will provide SBBC with healthy vending machines services as proposed in its Bid and in compliance with this Agreement, the ITB and its Addendum.

2.04 **Commission Rates.** Commission Rates payable to SBBC by vendor shall be firm and fixed for the term of the Agreement as stated below:

- 2.04.1 Elementary Schools (Teacher's Lounges and After-Care Areas) fifteen percent (15%)
- 2.04.2 Middle Schools & Combined K-8 Schools (Teacher's Lounges and Student Areas) fifteen percent (15%)
- 2.04.3 High Schools & Combined 6-12 Schools (Teacher's Lounges and Student Areas) fifteen percent (15%)
- 2.04.4 Technical Centers (Exempt from "Smart Snacks at School" program) fifteen percent (15%)
- 2.04.5 Administrative Sites (Exempt from "Smart Snacks at School" program) fifteen percent (15%)

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.06 **Inspection of VENDOR'S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of VENDOR'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose

of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

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

With a Copy to: Director of Food and Nutrition Services  
The School Board of Broward County, Florida  
7720 West Oakland Park Blvd., 2<sup>nd</sup> Floor  
Sunrise, Florida 33351

To VENDOR: President  
RHO Consulting, Corp  
2629 Ariane Drive,  
San Diego, CA 92117

2.08 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no

further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses



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

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

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

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

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

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

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

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

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.12 Nondiscrimination.

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

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

2.13 Annual Appropriation. The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC

shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every

other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

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

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

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

(Corporate Seal)

**FOR SBBC:**

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


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

**FOR VENDOR:**

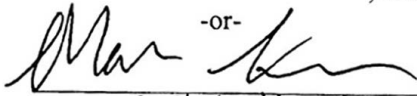
(Corporate Seal)

**RHO CONSULTING, CORP.**

ATTEST:

By   
Ryan O'Keefe

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

-or-  
  
Witness Makela Kramer

  
Witness Bronwyn Landry

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_

Name of Person \_\_\_\_\_, on behalf of the corporation/agency.  
Name of Corporation or Agency \_\_\_\_\_

He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. \_\_\_\_\_ Type of Identification

My Commission Expires:

\_\_\_\_\_  
Signature - Notary Public

(SEAL)

\_\_\_\_\_  
Printed Name of Notary

\_\_\_\_\_  
Notary's Commission No.

6R



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Diego )

On August 31, 2018 before me, Olga Abuaita, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Ryan Okeefe  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *[Handwritten Signature]*  
*Signature of Notary Public*

Place Notary Seal Above

attached to agreement with RHO Consulting, CORP.

## AGREEMENT

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

**QIXI GROUP, LLC**  
(hereinafter referred to as "VENDOR"),  
a Florida limited liability company  
whose principal place of business is  
13421 South Shore Blvd. Ste 203  
Wellington, FL 33414

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as "BID") which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

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

### ARTICLE 1 - RECITALS

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

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2019 and conclude on December 31, 2022. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods and, if needed, ninety (90) calendar days beyond the expiration date of the final renewal period. SBBC's Procurement & Warehousing Services Department will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period.

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

- First: This Agreement, then;
- Second: Addendum 1, dated June 28, 2018, then;
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- Fourth: Bid submitted in response to the ITB by VENDOR.

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- 2.04.1 Elementary Schools two percent (2%)  
(Teacher's Lounges and After-Care Areas)
- 2.04.2 Middle Schools & Combined K-8 Schools five percent (5%)  
(Teacher's Lounges and Student Areas)
- 2.04.3 High Schools & Combined 6-12 Schools ten percent (10%)  
(Teacher's Lounges and Student Areas)
- 2.04.4 Technical Centers ten percent (10%)  
(Exempt from "Smart Snacks at School" program)
- 2.04.5 Administrative Sites ten percent (10%)  
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of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

To SBBC:	Superintendent of Schools The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of Food and Nutrition Services The School Board of Broward County, Florida 7720 West Oakland Park Blvd., 2 <sup>nd</sup> Floor Sunrise, Florida 33351
To VENDOR:	Manager Qixi Group, LLC 13421 South Shore Blvd, Ste. 203 Wellington, FL 33414

**2.08 Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to

indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery

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

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

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

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

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

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

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

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

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.12 Nondiscrimination.

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

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

2.13 Annual Appropriation. The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC

shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every



other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

**3.06 Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

**3.07 Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

**3.08 Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

**3.11 Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

  
09/04/2019  
\_\_\_\_\_  
Office of the General Counsel

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

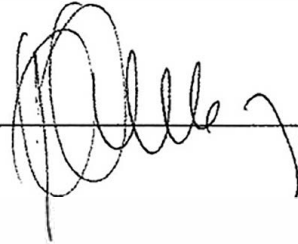
**FOR VENDOR:**

(Corporate Seal)

**QIXI GROUP, LLC**

ATTEST:

By



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

-or-

Jal  
Witness Jennine Cabanellas

Jal Cabanellas  
Witness Javier Cabanellas

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

STATE OF Florida

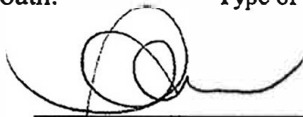
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of Aug, 2018 by Sam Gonzalez of

QIXI Group LLC, on behalf of the corporation/agency.

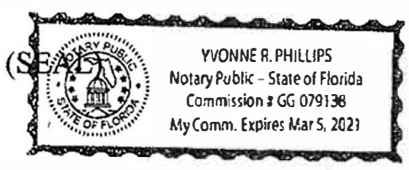
He/She is personally known to me or produced FL Dr. License as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

  
\_\_\_\_\_  
Signature – Notary Public

Yvonne R. Phillips  
\_\_\_\_\_  
Printed Name of Notary

GG 079138  
\_\_\_\_\_  
Notary's Commission No.



## AGREEMENT

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

**RIGHT CHOICE VENDING/COFFEE, LLC**  
(hereinafter referred to as “VENDOR”),  
a Florida limited liability company  
whose principal place of business is  
1440 SW 31<sup>st</sup> Ave.  
Pompano Beach, FL 33069

**WHEREAS**, SBBC issued Invitation to Bid 19-044H for Healthy Vending Program (hereinafter referred to as ITB), dated June 14, 2018 and amended by Addendum 1 dated June 20, 2018 all which are incorporated by reference herein, for the purpose of receiving bids for healthy vending machine services, and;

**WHEREAS**, VENDOR offered a bid dated July 18, 2018 (hereinafter referred to as “BID”) which is incorporated by reference herein, in response to this ITB; and

**WHEREAS**, VENDOR is willing to provide a healthy vending machine program for Broward County Schools, centers and offices of SBBC; and

**WHEREAS**, SBBC desires to obtain goods and services from VENDOR to provide a vending machine services program.

**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:

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- |   |                           |
|---|---------------------------|
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| 2.04.2 Middle Schools & Combined K-8 Schools<br>(Teacher's Lounges and Student Areas) | twenty-nine percent (29%) |
| 2.04.3 High Schools & Combined 6-12 Schools<br>(Teacher's Lounges and Student Areas)  | thirty-one percent (31%)  |
| 2.04.4 Technical Centers<br>(Exempt from "Smart Snacks at School" program)            | thirty-one percent (31%)  |
| 2.04.5 Administrative Sites<br>(Exempt from "Smart Snacks at School" program)         | nineteen percent (19%)    |

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

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of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR'S Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement. SBBC's agent or its authorized representative shall provide VENDOR with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

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

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

With a Copy to: Director of Food and Nutrition Services  
The School Board of Broward County, Florida  
7720 West Oakland Park Blvd., 2<sup>nd</sup> Floor  
Sunrise, Florida 33351

To VENDOR: Jim Ferraro  
General Manager  
Right Choice Vending/Coffee, LLC  
1440 SW 31<sup>st</sup> Avenue  
Pompano Beach, FL 33069

With a Copy to: Elie Tornheim  
Right Choice Vending/Coffee, LLC  
1440 SW 31<sup>st</sup> Avenue  
Pompano Beach, FL 33069

**2.08 Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence.



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

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

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

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when

acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

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

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

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

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

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

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

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

(f) **Verification of Coverage.** Proof of the required insurance must be furnished by **VENDOR** to **SBBC**'s Risk Management Department by Certificate of Insurance within fifteen (15) calendar days of the date of this Agreement. To streamline this process, **SBBC** has partnered with **EXIGIS** Risk Management Services to collect and verify insurance

documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

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

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

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

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

## 2.12 Nondiscrimination.

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

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

2.13 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** Exhibit[s] attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

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

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

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

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default

cannot be cured within said thirty (30) calendar 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) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

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

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

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

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

  
Office of the General Counsel

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



**FOR VENDOR:**

(Corporate Seal)

**RIGHT CHOICE VENDING/  
COFFEE, LLC**

ATTEST:

By [Signature]

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

-or-

[Signature]  
Witness

[Signature]  
Witness

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

STATE OF Florida

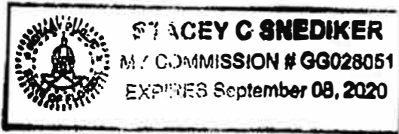
COUNTY OF Broward



The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September, 2018 by Elke Reinheim of Right Choice Vending/Coffee LLC on behalf of the corporation/agency.

He/She is personally known to me or produced identification and did/did not first take an oath. \_\_\_\_\_ as  
Type of Identification

My Commission Expires:



(SEAL)

[Signature]  
Signature - Notary Public

Stacey Snediker  
Printed Name of Notary

GG028051  
Notary's Commission No.