

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

NATIONAL ACADEMY FOUNDATION
(hereinafter referred to as “NAF”),
whose principal place of business is
1450 Northeast Second Avenue, Suite 352 Miami, Florida 33132

WHEREAS, SBBC and NAF mutually desire to have a 3-year Agreement to empower high school students to successfully go on to higher education through the use of small public school-based learning communities; and

WHEREAS, SBBC and NAF desire to engage, develop, implement and sustain an academy model that serves the needs of academy students, teachers and business partners.

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 upon the execution of all parties and shall conclude on June 30, 2021.

2.02 **NAF Services.** For over 30 years, NAF has partnered with school districts throughout the country to implement its acclaimed career-themed Academy model. Through partnerships between business leaders and educators, NAF's small public school-based learning communities empower high school students to successfully go on to higher education and professions of their choosing.

The NAF Educational Design embodies four (4) core principles for improving America's education system. These core principles are:

1. Academy Development and Structure;
2. Curriculum and Instruction;
3. Advisory Board; and
4. Work-based Learning.

This Agreement sets forth the roles and responsibilities of NAF and SBBC relating to the following NAF academies located at:

List of Academies:

#	Site/Academy	Theme	Status
1	Atlantic Technical High School	AOIT	Open
2	Blanche Ely High School	AOIT	Open
3	Blanche Ely High School	AOHS	Open
4	Blanche Ely High School	AOF	Open
5	Blanche Ely High School	AOHT	Open
6	Cooper City High School	AOF	Open
7	Cypress Bay High School	AOF	Open
8	Deerfield Beach High School	AOF	Open
9	Dillard High School	AOF	Open
10	Dillard High School	AOHT	Open
11	Dillard High School	AOHS	Open
12	Everglades High School	AOHS	Open
13	Hollywood Hills High School	AOF	Open
14	J.P. Taravella High School	AOF	Open
15	Marjorie Stoneman Douglas High School	AOF	Open
16	Monarch High School	AOHT	Open
17	Piper High School	AOF	Open
18	Piper High School	AOHT	Open
19	Piper High School	AOIT	Open
20	Plantation High School	AOF	Open
21	Plantation High School	AOHS	Open
22	South Broward High School	AOHT	Open
23	Stranahan High School	AOE	Open
24	Stranahan High School	AOHT	Open

NAF will provide the following services during the term of the Agreement:

Core Membership

SBBC will pay NAF an annual curriculum membership fee for twenty-four (24) Open NAF Academies at \$1,600.00 per Academy for the 2018-2019, 2019-2020, and 2020-2021 school years.

Scope of Work

NAF will provide support for SBBC to reach a high level of quality and to ensure that all academy students are Future Ready through the fidelity of implementation of NAF's Educational Design. NAF's proven model contains fifteen (15) standards of practice divided into four (4) elements as well as NAFTrack that includes:

Major NAFTrack Components:

NAF's Educational Design

- a) Academy Development and Structure;
- b) Advisory Board;
- c) Curriculum and Instruction; and
- d) Work-based Learning.

NAFTrack Certification (NTC) – NTC is the promise of access to opportunities with employers and networks, a credential for life, the platform for connections, and the ability to measure success. The three (3) components of NTC are:

- a) NAFTrack Certified – Students experiences;
- b) ^{my}NAFTrack - Vehicle that connects alumni to employers; and
- c) NAFTrack Certified Hiring – Opportunities for employers and alumni.

Selected scholarships for students and other national recognition awards on a competitive basis for students, instructors, school administrators and business partners involved in the local Academy team.

National Activities

- A. NAF provides the NTC online system which is a rigorous and comprehensive assessment system created by education and business leaders to measure college and career readiness. Students will be evaluated for a broad range of skills by a multi-method assessment approach in which students are required to successfully complete a three (3) to four (4) year program of study and a compensated one hundred fifty (150) hour internship, and graduate high school in order to achieve NAFTrack Certification.
- Benefits of NAFTrack Certification for Students
 - 1. Qualify for NAFTrack Certified Hiring, a commitment made by a growing number of top companies to give special consideration to NAFTrack Certified job applicants
 - Benefits include but are not limited to:
 - Pre-interview and resume support;
 - Priority hiring among equally qualified applicant pools; and
 - Paid high school and college internships.
 - 2. Experience culminating projects, end-of-course examinations, and compensated one hundred twenty (120) hour internships designed to prepare students for college and career.
 - 3. Experience opportunities to better understand the connection between their high school coursework and future.
 - 4. Gain proficiency in taking online assessments that are becoming more prevalent in higher education.

5. Participate in ^{my}NAFTrack, an online professional network connecting NAF students, alumni and NAFTrack Certified Hiring employers.

- **Benefits to SBBC**

1. Ability to measure students' college and career readiness;
2. Access student-performance data to create data-driven action plans and to improve student, school and district-wide performance;
3. Obtain reports that show status and outcomes of courses and internships and student progress toward certification for a cohort of students;
4. Acquire a more holistic view of student performance and college and career readiness by receiving student-performance measurements not only through end-of-course exams, but also through culminating projects and internships assessments; and
5. Ability to track students' post-graduation endeavors and measure college and career success through ^{my}NAFTrack.

- **Employer Benefits**

1. Cultivate interest in industry themes through internships;
2. Ensure our nation's future workforce has the skills necessary to succeed in industry themes; and
3. Help to build a highly skilled and diverse talent pipeline.

Student success because of NAFTrack Certification and NAFTrack Certified Hiring can lead to increased community support, including business partner engagement and funding.

- B. NAF Next conference that includes workshops for teachers, administrators, alumni and business partners and the issuance of two (2) vouchers assigned per Academy in good standing to cover the cost of one-half (1/2) of the hotel room for two (2) people for up to four(4) nights;
- C. Newsletters and other marketing activities;
- D. Web-based resources;
- E. Selected scholarships for students and other national recognition awards on a competitive basis for students, instructors, school administrators and business partners involved in the local Academy team;
- F. Technical assistance for a Customized Training Session;
- G. Payment for end-of-course exams for non-NAF students;
- H. Training for site coordinators and district personnel;
- I. Customized virtual GoToMeeting sessions for academy teams and district personnel; and
- J. Training webinars.

As a NAF Member

NAF and the SBBC will engage in a partnership to develop, implement and sustain an academy model that serves the needs of the students, teachers and business partners of the

ACADEMY. NAF will be provided permission to access and engage in all aspects of the model created and utilize it in the development and support of all NAF Academies.

The Academies will:

I. Design Implementation

- A. Implement a rigorous career-themed Program of Study appropriate for the academy theme that is open to all students based on interest and provides students the opportunity to attain NAFTrack Certification;
- B. Use the NAF curriculum or other curricular material aligned with NAF curriculum standards;
- C. Infuse all courses with project-based learning activities, preparation for internship and other work-based learning experiences, reading and writing experiences, oral communication and problem-solving skill development;
- D. Designate a NAF Academy Director (a district staff person, an onsite school administrator, or a NAF Academy teacher with release time);
- E. Maintain the district NAF Advisory Board;
- F. Maintain a four (4) year sequencing of work-based learning activities for students in NAF Academies culminating with a compensated internship;
- G. Provide ongoing data and reports to NAF by established deadline to gauge Academy performance and impact including but not limited to:
 1. Academy Demographic;
 2. High School and District Profile;
 3. Advisory Board Membership, Structure and Activities;
 4. Academy Internship Reports;
 5. Graduation Reports; and
 6. Yearly Assessments.
- H. Complete the annual Data Center submission and Academy Assessment or Roll Forward option by the annual deadline defined by NAF.
- I. Participate in NAF's student assessment and certification system, referred to as NAFTrack Certification and the myNAFTrack platform that provides lifetime access to NAFTrack Certified Hiring.

SBBC will:

- II. Pay to NAF, upon receipt of appropriate invoice, an annual network membership fee based on the number of Academies in SBBC schools.

- III. Continue to provide and support:
 1. Dedicated personnel supporting the Academies
 2. High level of implementation fidelity of NAF's Educational Design in all Academies

2.03 **Payment by SBBC.** SBBC will make payment to NAF for services provided under this Agreement.

2.04 **SBBC Disclosure of Education Records**

(a) SBBC will provide NAF the records listed in 2.04 (b) for the purpose of enrolling the students into the NAF data center to (1) score end of course assessments, (2) verify completion of culminating projects, and (3) verify completion of summer internships; to complete NAFTrack certification process.

(b) SBBC will provide NAF with the following education records: student last name, student first name, student identification number, date of birth, gender, ethnicity, email address, graduation year, end of course assessments (to be scored by NAF), student work samples (of culminating projects), and summer internship documentation.

(c) NAF is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes listed above. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above.

(d) This agreement supersedes any of NAF's privacy policies re: collecting and using student information.

2.05 **NAF Confidentiality of Education Records.**

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

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

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

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

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

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

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

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

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

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

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

(c) NAF shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer,

employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.06 **Inspection of NAF's Records by SBBC.** NAF shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All NAF's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of NAF directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to NAF's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to NAF pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide NAF reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to NAF's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(d) **Failure to Permit Inspection.** Failure by NAF to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any NAF's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by NAF in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by NAF. If the audit discloses billings or charges to which NAF is not contractually entitled, NAF shall pay said sum to SBBC within twenty (20) calendar days of receipt unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, NAF shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of

this section by insertion of such requirements in any written subcontract. Failure by NAF to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to NAF pursuant to this Agreement and such excluded costs shall become the liability of NAF.

(g) Inspector General Audits. NAF 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
The School Board of Broward County, Florida
1701 Northwest 23rd Avenue
Fort Lauderdale, Florida 33311

And a Copy to: Curriculum Supervisor
The School Board of Broward County, Florida
1701 Northwest 23rd Avenue
Fort Lauderdale, Florida 33311

To NAF: Angela Watson
218 West 40th Street, 5th Floor
New York, NY 10018

2.08 Background Screening. NAF shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468, 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 NAF or its personnel providing any services under the conditions described in the previous sentence. NAF 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 NAF and its personnel. The parties agree that the failure of NAF 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. NAF 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 NAF's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467 and 1012.468, Florida Statutes.

2.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. NAF 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, NAF 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. NAF 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 NAF does not transfer the public records to SBBC. Upon completion of the Agreement, NAF shall transfer, at no cost, to SBBC all public records in possession of NAF or keep and maintain public records required by SBBC to perform the services required under the Agreement. If NAF transfers all public records to SBBC upon completion of the Agreement, NAF shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If NAF keeps and maintains public records upon completion of the Agreement, NAF shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

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

2.10 **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 NAF: NAF 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 NAF, its agents, servants or employees; the equipment of NAF, its agents, servants or employees while such equipment is on premises owned or

controlled by SBBC; or the negligence of NAF or the negligence of NAF's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by NAF, SBBC or otherwise.

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

(a) **General Liability.** NAF 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.** NAF 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.** NAF 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.** NAF 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 NAF to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit NAF to remedy any deficiencies. NAF 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.** NAF 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 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

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 days 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.

FOR SBBC:

(Corporate Seal)


THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Nora Rupert, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel

FOR NAF:

(Corporate Seal)

ATTEST:

National Academy Foundation

By

Ira Berkowitz

_____, Secretary

-or-

Brooke Buchanan

Witness

Cassandra Soler

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 NEW YORK

COUNTY OF KING

The foregoing instrument was acknowledged before me this 18th day of October, 2018 by Ira Berkowitz of NAF 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: 12/8/18

Sarina Mathai

Signature - Notary Public
SARINA MATHAI
Printed Name of Notary

(SEAL)

01MA6315942

Notary's Commission No.

SARINA MATHAI
Notary Public, State of New York
Registration #01MA6315942
Qualified In Kings County
Commission Expires Dec. 8, 2018