



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:
E-3.

MEETING DATE: 2019-07-23 10:05 - Regular School Board Meeting

AGENDA ITEM: ITEMS

CATEGORY: E. OFFICE OF STRATEGY & OPERATIONS

DEPARTMENT: Procurement & Warehousing Services

Special Order Request
 Yes No

Time

Open Agenda
 Yes No

TITLE:
Direct Negotiation Agreement - FY20-112 – Digital Mathematics Curriculum Program (IMACS)

REQUESTED ACTION:
 Approve the recommendation for the above Agreement. Contract Term: July 23, 2019 through August 1, 2020, 1 Year; User Department: Secondary Learning; Award Amount: None; Awarded Vendor(s): Institute of Mathematics; Computer Science of South Florida, Inc. (IMACS); Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:
 IMACS of South Florida, Inc. provides a rigorous digital mathematics curriculum to qualified middle school students. After successful completion of this digital, self-paced, highly accelerated mathematics program, students will have developed an ability to think abstractly, quantitatively, and logically. This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
 There is no financial impact to the District.

EXHIBITS: (List)
 (1) Executive Summary (2) Agreement

BOARD ACTION:
APPROVED
 (For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:	
Name: Guy Barmoha	Phone: 754-321-2119
Name: Mary C. Coker	Phone: 754-321-0501

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
 Senior Leader & Title
 Maurice L. Woods - Chief Strategy & Operations Officer

Signature
 Maurice Woods
 7/15/2019, 1:57:45 PM

Electronic Signature
 Form #4189 Revised 06/05/2019
 RWR/ MLW/MCC/GB:kg

Approved In Open Board Meeting On: JUL 23 2019
 By: *Heather P. Burkwood*
 School Board Chair

EXECUTIVE SUMMARY

Direct Negotiation Agreement FY20-112 – Digital Mathematics Curriculum Program (IMACS)

Introduction

Responsible: Procurement & Warehousing Services (PWS)

This request is to approve the agreement between Institute of Mathematics and Computer Science of South Florida, Inc. (IMACS) and The School Board of Broward County, Florida (SBBC), for one (1) year, starting July 23, 2019 through August 1, 2020.

Goods/Services Description

Responsible: Secondary Learning

IMACS of South Florida, Inc. provides a rigorous digital mathematics curriculum to qualified middle school students. After successful completion of this digital, self-paced, highly accelerated mathematics program, students will have developed an ability to think abstractly, quantitatively, and logically.

A talented and motivated student who begins the Elements of Mathematics Foundations (EMF) program in sixth (6th) grade will, by the end of eighth (8th) grade, have completed all of middle and high school mathematics up to but not including Calculus.

Students are given access to a preliminary module prior to entrance in sixth (6th) grade. This will determine if each student has a positive experience with the digital EMF curriculum before officially enrolling as a sixth (6th) grade EMF student.

The contract provides details of support for SBBC students and teachers in the implementation of the accelerated EMF curriculum.

Schools Included

The proposed program would benefit mathematics students District-wide.

Alignment to Strategic Goals

EMF mathematics is aligned to the District's Strategic Plan under Goal 1: High-Quality Instruction, particularly middle school mathematics.

Procurement Method

Responsible: PWS

Direct negotiation was conducted with the vendor based on Purchasing Policy 3320. Pursuant to the Department of Education, Rule 6A-1.012, 11(b), Florida Administrative Code as authorized by Section 1010.04(4)(a), Florida Statutes, and Purchasing Policy 3320, Section II, H, the requirement for requesting competitive solicitation for commodities or contractual services from three (3) or more sources is hereby waived as for the SBBC's purchase of educational services.

Financial Impact

Responsible: PWS and Secondary Learning

There is no financial impact to the District.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 23rd day of July, 2019, 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

IMACS OF SOUTH FLORIDA, INC.

(hereinafter referred to as "IMACS"),
whose principal place of business is
7435 NW 4th St, Plantation, FL 33317

WHEREAS, IMACS agrees to provide accelerated digital math curriculum to qualifying students at the middle school level at no cost.

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 August 2, 2019 and conclude on August 1, 2020.

2.02 **SBBC Responsibilities.** SBBC shall:

(a) facilitate grade reporting and exam scheduling for students participating in Elements of Mathematics Curriculum ("EMF");

(b) disclose to IMACS the following education records for each qualifying student that will participate in EMF only after, first, obtaining consent from each student's parent/guardian or student age 18 or older:

- 1) student Name;
- 2) parent Name(s);
- 3) residential address;
- 4) phone number;
- 5) personal email address;
- 6) grade level;

- 7) provide IMACS with the FSA scores of prospective students and the math FSA and EOC scores of students enrolled in the program;
- (c) monitor EMF student progress and contact parents and students as necessary to encourage satisfactory performance in the program;
- (d) record interim and quarter grades of EMF students;
- (e) provide IMACS with access to visit SBBC'S EMF students in their assigned classrooms;
- (f) provide IMACS with access to prospective and current EMF parent information meetings; and

2.03 **IMACS Responsibilities.** IMACS shall:

- (a) provide SBBC access to the EMF Curriculum, at no charge, for all qualifying students as determined by SBBC;
- (b) provide SBBC with online grade books for each cohort of EMF students, at no charge;
- (c) provide reasonable updates to the EMF software to implement features necessary for SBBC students and staff to effectively use and administer EMF, respectively, at no charge;
- (d) provide reasonable professional development support to SBBC staff so they may effectively administer the EMF program for SBBC students, at no charge;
- (e) provide end progress reports to Parents, Students, and District Secondary Learning Department at no charge;
- (f) visit SBBC EMF students in their assigned classrooms as needed.
- (g) Adhere to the following safeguards, notwithstanding any provision to the contrary within this Agreement:

- 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 and reporting de-identified summary data on the overall performance

of EMF students 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 and email at 754-321-0300, itsecurity@browardschools.com and 754-321-1900, 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 that 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).

(h) 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.

(i) IMACS 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 by IMACS, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.04 **Confidentiality.**

(a) **Definition.** Unless such items are considered public records pursuant to Chapter 119, Florida Statutes, “**Confidential Information**” means any information that is considered a trade secret pursuant to Sections 119.071(1)(f) and 812.081(1)(c), Florida Statutes disclosed by a party to the other party, directly or indirectly, which, (i) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (ii) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be “confidential” or “proprietary” within 30 calendar days of such disclosure. IMACS software is considered Confidential Information pursuant to this Agreement.

(b) **Confidentiality.** Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement, and shall not disclose such Confidential Information to any third party, unless required by law. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party’s Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party. In the event of a breach of confidential information, IMACS will work with SBBC staff to cure the breach in a timely manner, provide notification to affected individuals and entities as required by law, and implement measures to prevent future breaches.

(c) **Exceptions.** Confidential Information excludes information that: (i) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (ii) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (iii) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose the existence of this Agreement and the relationship of the parties, but agrees that the specific terms of this Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and

investors. Under no circumstances shall student records fall under the exceptions to Confidential Information.

2.05 Studies Conducted for SBBC: Under the terms of this Agreement, IMACS will be conducting studies for, or on behalf of SBBC, to: (a) develop, validate or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. The purposes and scope of the study/studies are described as follows: To meet the needs of Broward County students for acceleration and in depth study of high level mathematics. SBBC may disclose personally identifiable information from an education record of a student to IMACS in order for it to conduct said study. The type of personally identifiable student information to be disclosed by SBBC to IMACS is described as follows: Student Name, Parent Name(s), address, phone number, email, grade level, and Mathematics FSA/EOC results for participating students only. IMACS agrees that the study shall be conducted in a manner that does not permit personal identification of parents and students by individuals other than the representatives of IMACS that have legitimate interests in the information. The study shall commence January 1, 2018 and conclude when this Agreement is terminated for any reason and access is no longer available to SBBC students. IMACS agrees that any disclosed information will be destroyed or returned to SBBC when no longer needed for the purposes for which the study is to be conducted. IMACS acknowledges and agrees that it may use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in this Agreement. IMACS agrees to comply with all requirements of the District's IRB and Research Review Process, which may be accessed at: <http://www.broward.k12.fl.us/sar/irb/index.htm>.

2.06 Inspection of IMAC's Records by SBBC. IMACS shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of IMACS's Records related to this Agreement, 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 IMACS'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 IMACS pursuant to this Agreement. SBBC's agent or its authorized representative shall provide IMACS 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 IMACS'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. IMACS 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, Secondary Learning
Secondary Learning Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To IMACS: Terry Kaufman
IMACS
7435 NW 4th Street
Plantation, Florida 33317

With a Copy to: Iain Ferguson
IMACS
7435 NW 4th Street
Plantation, Florida 33317

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

2.09 **Required Insurance Coverages.** IMACS shall comply with the following insurance requirements throughout the term of this Agreement.

(a) **General Liability.** Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Workers' Compensation. Florida Statutory limits in accordance with Chapter 440, Florida Statutes; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(c) Acceptability of Insurance Carriers. The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(d) Verification of Coverage. Proof of Insurance must be furnished within 15 business days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit IMACS time to remedy any deficiencies. Please verify your account information and provide contact details for your company's Insurance Agent via the link provided in the email upon award.

(e) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included 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.

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

2.10 Publicity. IMACS may include SBBC's name and logo in its customer list and on its website customer list. Subsequent to the execution of this Agreement by both parties, should IMACS wish to issue a press release(s) regarding SBBC and its use of the EMF Curriculum, it must first coordinate its efforts with appropriate School District staff to obtain the approval of the School District's Chief Public Information officer prior to issuance of same press release.

ARTICLE 3 – GENERAL CONDITIONS

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

3.02 No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this

Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

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

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

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar days written notice to the other parties of its desire to terminate this Agreement. 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 **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.

3.07 **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.

3.08 **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.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. IMACS 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, IMACS 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. IMACS 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 IMACS does not transfer the public records to SBBC. Upon completion of the Agreement, IMACS shall transfer, at no cost, to SBBC all public records in possession of IMACS or keep and maintain public records required by SBBC to perform the services required under the Agreement. If IMACS transfers all public records to SBBC upon completion of the Agreement, IMACS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If IMACS keeps and maintains public records upon completion of the Agreement, IMACS 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.

3.10 **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.

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

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

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

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

3.15 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

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

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

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

3.20 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be

deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

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

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

3.23 **Contract 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.

3.24 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.25. **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 IMACS: IMACS 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 IMACS, its agents, servants or employees; the equipment of IMACS, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of IMACS or the negligence of IMACS' agents when acting within the scope of

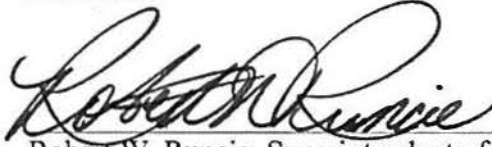
their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by IMACS ,SBBC or otherwise.

3.26 **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.

(Corporate Seal)

ATTEST:


Robert W. Runcie, Superintendent of Schools

FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
Heather P. Brinkworth, Chair

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@gbrowardschools.com
Reason: IMACS of South Florida, Inc.
Date: 2019.06.12 16:47:54 -04'00'

Office of the General Counsel

FOR IMACS

(Corporate Seal)

IMACS OF SOUTH FLORIDA, INC.

ATTEST:

By Terry Kaufman
Terry M. Kaufman, President

_____, 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 FL
COUNTY OF Proceard

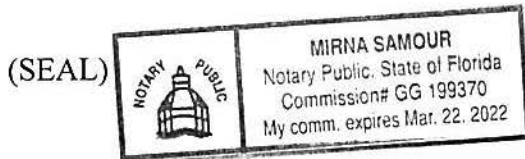
The foregoing instrument was acknowledged before me this 06 day of June, 2019 by Terry M Kaufman of Imacs of south Florida Name of Person
Name of Corporation or Agency, on behalf of the corporation/agency.

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

My Commission Expires:
March 22, 2022

[Signature]
Signature - Notary Public

MIRNA SAMOUR
Printed Name of Notary



GG 199370
Notary's Commission No.