

**AGENDA REQUEST FORM**  
**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

Meeting Date <div style="border: 1px solid black; padding: 2px; text-align: center;">3/05/13</div>	<div style="display: flex; justify-content: space-between;"> <div style="width:45%;"> <b>Open Agenda</b>  <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No         </div> <div style="width:45%;"> <b>Special Order Request</b>  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No         </div> </div>	Agenda Item Number <div style="border: 1px solid black; padding: 2px; text-align: center;">FF-1</div>
---	---	--

<b>TITLE:</b>	New Agreement between The School Board of Broward County, Florida and South Florida Manufacturer's Association, Inc.								
<b>REQUESTED ACTION:</b>	Approve the New Agreement between The School Board of Broward County, Florida and South Florida Manufacturer's Association, Inc. The contract period is March 6, 2013 through June 30, 2015.								
<b>SUMMARY EXPLANATION AND BACKGROUND:</b>	<p>The South Florida Manufacturer's Association, Inc. Apprenticeship agency operates a Registered Machining Apprenticeship Program.</p> <p>Broward County offers the largest Apprenticeship Program in the state, serving more than 1,000 apprentices in eighteen trade areas, including District Maintenance. Each program is registered with the state according to established apprenticeship standards. The apprenticeship programs provide an opportunity for students to learn by taking related training classes while working in the industry in a supervised environment. Apprentices who complete the program also qualify for 27 credits toward an Associate of Science Degree in Industrial Management Technology at Broward College. This collaboration assures that apprentices are college and career ready upon completion of the apprenticeship program.</p> <p>This agreement provides funding for program recruitment; instructional materials and supplies; equipment upgrade, replacement and repair; other supervisory and administrative costs to include, but not limited to, required funds to attend conferences and professional meetings; and instructors' salaries and benefits for the Industrial Cooperative Education (ICE) and Related Instruction (RI) components of the program.</p> <p>This New Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.</p>								
<b>SCHOOL BOARD GOALS:</b>	<input checked="" type="checkbox"/> •Goal 1:    High Quality Instruction <input type="checkbox"/> •Goal 2:    Continuous Improvement <input type="checkbox"/> •Goal 3:    Effective Communication								
<b>FINANCIAL IMPACT:</b>	<p>There is a financial impact of \$22,374 to the District. The source of funds is the Workforce Development Education Fund.</p> <p>There is no additional financial impact to the District.</p>								
<b>EXHIBITS: (List)</b>	New Agreement between The School Board of Broward County, Florida and South Florida Manufacturer's Association, Inc.								
<b>BOARD ACTION:</b>  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">APPROVED</div>	<b>SOURCE OF ADDITIONAL INFORMATION:</b> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Dr. Marie Wright</td> <td style="width:30%; text-align: right;">754-321-1850</td> </tr> <tr> <td>John Felser</td> <td style="text-align: right;">754-321-8401</td> </tr> <tr> <td>Bob Usefof</td> <td style="text-align: right;">754-321-8442</td> </tr> <tr> <td style="border-top: 1px solid black;">Name</td> <td style="border-top: 1px solid black; text-align: right;">Phone</td> </tr> </table>	Dr. Marie Wright	754-321-1850	John Felser	754-321-8401	Bob Usefof	754-321-8442	Name	Phone
Dr. Marie Wright	754-321-1850								
John Felser	754-321-8401								
Bob Usefof	754-321-8442								
Name	Phone								
(For Official School Board Records' Office Only)									

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

Chief Academic Officer  
 Office of Academics *MW for CAP*

Approved in Open Board Meeting on:

**MAR 05 2013**

By:

*Laurie Red Levinson*

School Board Chair

# AGREEMENT

**THIS AGREEMENT** is made and entered into as of this 5<sup>th</sup> day of March, 2013, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

And

**SOUTH FLORIDA MANUFACTURER'S ASSOCIATION, INC.**

(hereinafter referred to as "South Florida Manufacturer's Association, Inc.")  
whose principal place of business is  
1000 West McNab Road  
Pompano Beach, Florida 33069

**WHEREAS**, South Florida Manufacturer's Association, Inc. is authorized by the Department of Education to offer registered apprenticeship programs and

**WHEREAS**, The SBBC is authorized to offer educational programs and

**WHEREAS**, South Florida Manufacturer's Association, Inc. has indicated its intent to offer its apprenticeship programs through Broward County Public Schools,

**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 March 6, 2013 and conclude on June 30, 2015.

2.02 **Program Coordination/Supervision.** The responsibility for day-to-day coordination and supervision of this educational program shall be vested in South Florida Manufacturer's Association, Inc. shall designate a person to act as liaison with the SBBC for all educational and training activities in connection with this program. The designated liaisons

(teacher/coordinators) will maintain all Department of Education required training records for the program, including on-the-job training (OJT) reports, classroom attendance and grades, registered apprenticeship records, etc.

2.03 **Program Instructors.** South Florida Manufacturer's Association, Inc. shall recruit and employ instructors that must meet the certification requirements as set forth in School Board Policy 4003.1 and 4107 and assign classes in accordance with the Florida Course Code Directory. The instructor must also meet all SBBC requirements for employment.

2.04 **Curriculum and Equipment.** South Florida Manufacturer's Association, Inc. shall provide the required curriculum and provide all necessary equipment for use in the classroom(s) and labs.

2.05 **Registered Standards.** South Florida Manufacturer's Association, Inc. will furnish to SBBC a copy of each program's registered standards as required by the Department of Education for operation.

2.06 **Student Recruitment.** South Florida Manufacturer's Association, Inc. will be responsible for recruiting and assigning all students to the SBBC instructional program.

2.07 **Basic Skills Testing.** South Florida Manufacturer's Association, Inc. agrees to the administration of a state-approved version of the Basic Skills Test to each program participant and will provide results to the SBBC. South Florida Manufacturer's Association, Inc. will arrange for, coordinate and monitor the remediation of any students requiring such assistance in order to pass the basic skill levels for their program as specified in the State Curriculum Frameworks.

2.08 **Program Documentation.** South Florida Manufacturer's Association, Inc. will provide to SBBC all appropriate and required documentation and data for each class: including, without limitation, registration forms, attendance rosters, and provide other information necessary to meet Florida Statutes or Department of Education Rules. South Florida Manufacturer's Association, Inc. will provide all paperwork necessary (WDIS reports) for documentation of occupational completion points (OCPs) for each apprentice as they progress from year to year. In accordance with Section 1002.22, Florida Statutes, South Florida Manufacturer's Association, Inc. will maintain the confidential nature of any student records.

2.09 **Student Work Assignments.** South Florida Manufacturer's Association, Inc. will assume responsibility for the placement of all student work assignments in conformance with its collective bargaining agreements and save harmless SBBC from any and all liability for the apprentices while they are training on the work site.

2.10 **On the Job Training Support.** SBBC will provide South Florida Manufacturer's Association, Inc. all the forms and letters necessary to support the OJT portion of the apprenticeship program.

2.11 **Monitoring Compliance.** SBBC reserves the right to monitor compliance with applicable Florida Statutes or Department of Education Rule(s) regarding the assignment of

students to the instructional program. To ensure that the SBBC is offering and reporting apprenticeship related instruction and coordinating activities in accordance with prescribed program review standards, the following requirements will be met:

- A. The apprenticeship program and all participants reported for funding must be registered with the Florida Department of Education (apprenticeship section) and the Employment Security of Federal Bureau of Apprenticeship Training if required.
- B. The classroom related instruction and OJT for apprentices are reported under the postsecondary occupational program title appropriate for the instruction being given. A minimum enrollment of 18 registered apprentices is required in both related classroom instruction and OJT.
- C. The funding reported per student for OJT will not exceed forty (40) hours per week, for a maximum of two thousand (2,000) hours per year.
- D. The OJT services provided should be consistent with the apprenticeship teacher/coordinator's job description as stated in the SBBC Apprenticeship Handbook.
- E. Supervised related classroom instruction in a formal setting must be provided to each apprentice for not less than 144 hours per year, and has been approved by South Florida Manufacturer's Association, Inc. and the SBBC.
- F. South Florida Manufacturer's Association, Inc. must insure that the capability exists in the instructional setting to accomplish the apprenticeship program objectives as evidenced by adequate facilities, equipment, supplies, and instructional materials.
- G. The ratio of each Apprenticeship Coordinator/Instructor to apprentices enables the effective delivery of OJT training and other services to the apprentices. This ratio must be in accordance with the requirements as stated in the SBBC Apprenticeship Coordinator's Handbook.
- H. South Florida Manufacturer's Association, Inc. must maintain all records that document coordination of related instruction with on-the-job training for each apprentice.
- I. The administration of the program and the general welfare of the apprentices are the responsibility of South Florida Manufacturer's Association, Inc.

2.12 **Payments to South Florida Manufacturer's Association, Inc.** Payments to South Florida Manufacturer's Association, Inc. will be from funds generated through the Workforce Education Program as reported to the Department of Education. There is no additional financial impact to the SBBC through this agreement.

2.13 **Compensation Rate.** SBBC will compensate South Florida Manufacturer's Association, Inc. at the rate of \$.90 per instructional hour for each registered apprentice. The

maximum amount to be paid per registered student in a fiscal year (July 1 – June 30) is as follows:

- Related Classroom Training - \$.90 per hour. South Florida Manufacturer's Association, Inc. will only be funded for the actual number of classroom training hours as specified in their apprenticeship standards. (This option is only available to Agencies having their own classroom/lab facilities.)
- ON-THE-JOB TRAINING - \$.90 per hour up to a maximum of \$2,000 (8 hours per day/40 hours per week/50 weeks per year) per the instructional calendar as specified in the SBBC Apprenticeship Coordinator's Handbook.

These funds must be used to pay for: instructors' salaries/benefits, program promotion; instructional materials and supplies, equipment, replacement and repair; other supervisory and administrative costs to include, but not limited to, lease expenses for classroom facilities and equipment, travel and mileage expenses, and expenses to attend conferences and professional meetings, etc. South Florida Manufacturer's Association, Inc. will assure the SBBC that all funds generated under this agreement will be maintained in a separate account, and that all expenditures shall be used to support the instructional programs that generated the funds. The financial compensation rate of this Agreement will be reviewed and adjusted if needed on an ongoing basis per legislative action. An increase or decrease to the base rate per hour may also be made dependent on state funding.

**2.14 Financial Reports.** South Florida Manufacturer's Association, Inc. will provide a semi-annual budget/financial status report of program expenditures and balances to the superintendent (designee). Reports are due January 31<sup>st</sup> – June 30<sup>th</sup> of each year. This report should reflect the SBBC allocation, which is allocated for operational expenses as outlined in number 2.13 above.

**2.15 Payment Schedule.** Payments to South Florida Manufacturer's Association, Inc. shall be based upon funds generated by full time equivalent students enrolled and counted in South Florida Manufacturer's Association, Inc.'s educational program. If, at any time during the term of this agreement, the Department of Education or SBBC adjusts the SBBC formula allocation of funds, said increase or decrease shall be passed along to South Florida Manufacturer's Association, Inc. on a pro rata basis. The SBBC will make payment to each South Florida Manufacturer's Association, Inc. by invoice received, three times per calendar year based on qualifying student enrollment in Survey 1, 2 and 3. The dates of these survey periods are established each year by the Workforce Education Information Management Department and specified in the SBBC Apprenticeship Handbook.

**2.16 Funding Surveys.** South Florida Manufacturer's Association, Inc.'s full time equivalent student membership shall be counted during the official survey periods (Survey 1, 2, and 3) as established by the Workforce Education Information Management Department of the SBBC. All registered apprentices submitted for funding must have a current apprenticeship agreement on file with the State of Florida. Students must be enrolled and in attendance by the last date of eligibility of each survey period to qualify for funding for that period of time.

2.17 **Collaboration.** Through their designated representatives, both parties shall collaborate in development of policies and operational procedures for the efficient management and operation of this program.

2.18 **Budget Limitations.** This agreement is conditional upon available state and local funds and may not exceed budgeted funds for each program.

2.19 **Property.** It is understood that all equipment supplies, and materials purchased under this agreement remain the property of the Board. Equipment over \$1000.00 in value must be numbered and accounted for per School Board policy.

2.20 **Adherence to Florida Statutes.** Each party agrees that any amendments to existing Florida Statutes or to the Department of Education or Labor policies pertaining to apprenticeship which affect the subject matter of this agreement and which come into effect after the signing of this agreement shall be binding to all parties through the term of this agreement.

2.21 **Inspection of South Florida Manufacturer's Association, Inc. Records by SBBC.** *South Florida Manufacturer's Association, Inc.* 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 *South Florida Manufacturer's Association, Inc.* Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by *South Florida Manufacturer's Association, Inc.* or any of *South Florida Manufacturer's Association, Inc.* payees pursuant to this Agreement. *South Florida Manufacturer's Association, Inc.* Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. *South Florida Manufacturer's Association, Inc.* Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

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

(b) **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 *South Florida Manufacturer's Association, Inc.* Records from the effective date of Agreement with *South Florida Manufacturer's Association*

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 *South Florida Manufacturer's Association, Inc.* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *South Florida Manufacturer's Association, Inc.* reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to *South Florida Manufacturer's Association, Inc.* 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.

(e) Failure to Permit Inspection. Failure by *South Florida Manufacturer's Association, Inc.* 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 the denial of some or all of any *South Florida Manufacturer's Association, Inc.* claims for payment by SBBC.

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

(g) Inspection of Subcontractor's Records. *South Florida Manufacturer's Association, Inc.* 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 *South Florida Manufacturer's Association, Inc.* 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 Payee's costs from amounts payable by SBBC to *South Florida Manufacturer's Association, Inc.* pursuant to this Agreement and such excluded costs shall become the liability of *South Florida Manufacturer's Association, Inc.*

(h) Inspector General Audits. *South Florida Manufacturer's Association, Inc.* 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.

2.22 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  
Atlantic Technical Center  
4700 Coconut Creek Parkway  
Coconut Creek, FL 33063

To South Florida Manufacturer's Association, Inc.:  
Business Manager  
1000 West McNab Road  
Pompano Beach, Florida 33069

2.23 **Background Screening:** South Florida Manufacturer's Association, Inc. 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 *South Florida Manufacturer's Association, Inc.* or its personnel providing any services under the conditions described in the previous sentence. *South Florida Manufacturer's Association, Inc.* 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 *South Florida Manufacturer's Association, Inc.* and its personnel. The parties agree that the failure of *South Florida Manufacturer's Association, Inc.* 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. *South Florida Manufacturer's Association, Inc.* agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in *South Florida Manufacturer's Association, Inc.*'s failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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 agent's acts of negligence when acting



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

B. By South Florida Manufacturer's Association, Inc.: South Florida Manufacturer's Association, Inc. 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 *South Florida Manufacturer's Association, Inc.*, its agents, servants or employees; the equipment of *South Florida Manufacturer's Association, Inc.*, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of *South Florida Manufacturer's Association, Inc.* or the negligence of *South Florida Manufacturer's Association, Inc.*'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 *South Florida Manufacturer's Association, Inc.*, SBBC or otherwise.

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

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

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

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

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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 with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.10 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.11 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, 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.

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

3.13 **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.

3.14 **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.

3.15 **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.

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

3.17 **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.

3.18 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.

3.26 **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.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By Laurie Rich Levinson  
Laurie Rich Levinson, Chair

ATTEST:

Robert W. Runcie

Robert W. Runcie,  
Superintendent of Schools

Approved as to Form and Legal Content:

[Signature]  
Office of the General Counsel

**FOR South Florida Manufacturer's Association**

(Corporate Seal)

ATTEST:

By

David Gonzalez

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

-or-

Deer Battistella  
Witness

Wain Ravall as  
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 10<sup>th</sup> day of January, 2013 by David Gonzalez of \_\_\_\_\_  
Name of Person

South Florida Manufacturer's Association, 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:

NOTARY PUBLIC-STATE OF FLORIDA  
Roseanne Farino  
Commission #DD971204  
Expires: MAR. 15, 2014  
BONDED THRU ATLANTIC BONDING CO., INC.

(SEAL)

Roseanne Farino  
Signature – Notary Public

Roseanne Farino  
Printed Name of Notary

DD971204  
Notary's Commission No.