

A G R E E M E N T

THIS AGREEMENT is made and entered into as of this ____ day of December, 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

**YOUNG MEN'S CHRISTIAN ASSOCIATION
OF BROWARD COUNTY, FLORIDA, INC.**

(hereinafter referred to as "Provider"),

whose principal place of business is
900 Southeast Third Avenue
Fort Lauderdale, Florida 33301

WHEREAS, SBBC applied for 21st Century Community Learning Center (21st CCLC) Grant funding to enhance the after-school academic enrichment and remediation activities offered at North Fork, Riverland and Walker Elementary Schools; and

WHEREAS, SBBC was awarded federal 21st CCLC Grant funding for five years through the Florida Department of Education; and

WHEREAS, SBBC 21st CCLC grant funding is in the second year for North Fork and Walker Elementary Schools and in the fifth year for Riverland Elementary School;

WHEREAS, the Provider desires to enter into this Agreement with SBBC, for the purposes of providing 21st CCLC services at North Fork, Riverland and Walker Elementary Schools, in compliance with applicable law, and the objectives and activities specified in the approved 21st CCLC Grant program application; and

WHEREAS, the Provider desires to enter into this Agreement with respect to its services to SBBC upon the terms and the conditions hereinafter set forth; and

WHEREAS, the Provider is specially trained and possesses the necessary skills, experience, competency and licenses to perform the required services; and

WHEREAS, the Provider has been approved by SBBC, and has met the qualifications to be an after-school service provider for the Before and After School Child Care Department; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other goods 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 3.06, the term of this Agreement shall be from August 1, 2013 – July 31, 2014 from the grant funds awarded from the Florida Department of Education.

2.02 **Provision of 21st CCLC Services:** The Provider agrees to deliver all 21st CCLC services specified in the approved grant program applications in partnership with the SBBC, these services will:

1. target low performing (score at or below the 40th percentile on the FCAT) and or behaviorally challenged 3rd – 5th grade students that qualify for the free and reduced lunch, live within the primary attendance boundaries of North Fork, Riverland and Walker Elementary Schools, and that are specifically recommended as program participants to the Provider by the school principal.
2. target at least 85% of the number of required attendees, as specified in the approved grant program application as follows:
 - North Fork Elementary School – 80 students after-school and 80 students during the summer,
 - Riverland Elementary School – 95 students after-school, 74 students during the summer and 27 students on Saturdays,
 - Walker Elementary School – 80 students after-school;
3. be delivered
 - after-school at North Fork Elementary School September 9, 2013 – June 4, 2014 for one hundred sixty four days, Riverland Elementary School September 9, 2013 – May 21, 2014 for one hundred twenty five days and at Walker Elementary School August 26, 2013 – June 5, 2014 for one hundred seventy days, and
 - six Saturdays [February 1, 2014, February 8, 2014, February 15, 2014, February 22, 2014, March 1, 2014 and March 8, 2014] at Riverland Elementary School
 - during the summer at North Fork Elementary School, June 16, 2014 – July 10, 2014 for sixteen days,
 - during the summer at Riverland Elementary School, June 16, 2014 – July 9, 2014 for fifteen days;
4. offered at
 - North Fork Elementary School, after-school 3 hours a day Monday through Friday and Monday through Thursday during the summer for 4 hours a day,

- Riverland Elementary School after-school 3 hours a day Monday through Thursday, 4 hours each day on designated Saturdays; and 4 hours a day during the summer,
- Walker Elementary School, after-school 3 hours a day Monday through Friday
- and closed on all official SBBC holidays, early release days, teacher planning days, and spring break; and

5. meet all grant requirements specified in the approved program application.

2.03 **Compliance with Policies and Laws.** Provider shall comply with all SBBC policies. Policies are located at www.broward.k12.fl.us/sbbcpolicies and incorporated herein. It shall be Provider's responsibility to comply with all SBBC policies as they may be modified during the term of this Agreement. Provider shall abide by all federal, state and local laws that are applicable, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

2.04 **Staff to Student Staffing Ratio:** Provider must maintain a staff to student ratio at North Fork and Walker Elementary School that does not exceed 1:15 and at Riverland Elementary School that does not exceed 1:20 for all academic enrichment and remediation services, and for non-academic enrichment activities (arts and music, health, wellness, fitness and sports). Provider must employ certified teachers to deliver the academic enrichment and remediation services. An Activity Counselor/paraprofessional may be employed for non-academic enrichment activities. Field trips are considered academic enrichment programming; however, when field trips are incorporated into the program, the Provider must adhere to the chaperone to student ratio in School Board Policy 6303 – Field Trip.

2.05 **Marketing Requirement.** Provider cannot use 21st CCLC funds to market or advertise the 21st CCLC program; however, Provider must work with the school to identify prospective students and distribute program information to these students and their respective parents/legal guardians. As determined by the school principals, the three participating schools may distribute program information via Parent Link, the schools' websites, the schools' marquees, flyers at the front offices and or passing out 21st CCLC information at the schools' sponsored family nights/events. Each school will allow the Provider to use a bulletin board to display 21st CCLC information and student work. All materials distributed to parents, students, staff, or community members about the 21st CCLC program must include:

1. the approved 21st CCLC logo,
2. the school name and or logo,
3. the unique name selected by the principal for their 21st CCLC program,
4. the program schedule and hours of operation,
5. a notation that program space is limited and that some participants may be placed on a waiting list if the program is full, and
6. the Provider's as well as the Site Facilitator's contact information.

2.06 **Staffing:** Provider will be responsible for hiring and paying the actual number of hours for each position at the hourly rate specified in the approved program application. Provider staff must wear SBBC Vendor Badges at all times during the delivery of services. Provider will need to hire the following staff:

1. Three SBBC Site Facilitators [one (1) at each school] who are instructional or administrative staff members at the school that is hosting the 21st CCLC program. The Site Facilitator will be selected by the school principal of the host school from a list of three candidates provided to them by the Provider, on or before August 1, 2013. The site facilitator will serve on the school's Leadership Team;
2. One SBBC Assistant Site Facilitator [one (1) at North Fork Elementary School] who is an instructional or administrative staff member at the school during the summer program;
3. SBBC Certified Teachers (preferably certified teachers working at the school hosting the 21st CCLC program) and SBBC Activity Counselors. These staff members must be assigned to deliver activities in accordance with the staff to student staffing ratio identified in Section 2.04 of this agreement and the approved budget;
4. Three SBBC Facilities Safety Staff [one person after-school at each school] and at Riverland Elementary School during the Saturday program;
5. A YMCA Program Manager working directly for Provider at North Fork, Riverland and Walker Elementary Schools supervising the after-school and summer; and
7. A Student YMCA Program Specialist (Quality Assurance) working at North Fork, Riverland and Walker Elementary Schools.

2.07 **Daily Attendance:** Provider will maintain daily individual student attendance (using the approved format provided by SBBC) for all students and will electronically deposit their daily attendance record along with the 21st CCLC Program Assurances Form/Monthly Attendance Report to the 21st CCLC District Coordinator and school principal by the fifth day of each month. The SBBC reserves the right to withhold monthly payment until the District Coordinator has received the month's attendance in question. The Provider will hire a school based clerical person, who has a TERMS password that allows them to enter and save the 21st CCLC attendance into the TERMS A23 panel. The TERMS attendance deadline dates are: November 5, 2013 for the August 27, 2013 through October 29, 2013 time period; December 20, 2013 for the October 30, 2013 – December 19, 2013 time period; April 6, 2014 for the January 6, 2014 – March 20, 2014 time period; and June 17, 2014 for the March 31, 2014 to June 5, 2014 time period.

2.08 **Dismissal:** Students must take the 21st CCLC school bus home from the program or be picked up by an adult identified on Provider's registration form that is signed by the student's parent/legal guardian. Provider may only dismiss students early from the program if they have permission to do so in writing from the student's parent/legal guardian. Provider must maintain dismissal sign out sheets that they will submit to the school at the end of the program

year. Students who leave the 21st CCLC program early, for other SBBC offered after school services (e.g. SES services, and counseling services), are eligible to return to the program by its regularly scheduled end time, so that they may take the 21st CCLC bus home.

2.09 Stop & Check Meetings: Representatives from Provider, the YMCA Area Director, SBBC Site Facilitator, YMCA Quality Assurance Monitor, school principal, and the SBBC 21st CCLC District Coordinator will meet three (3) times throughout the program year to discuss program implementation. The school principal will determine the conference method for the Stop & Check Meetings arranged by the SBBC 21st CCLC District Coordinator. These meetings may occur in person or via teleconference. The meetings will focus on logistics, academic rigor, and the required targeted measures. Stop & Check Meeting will be scheduled:

1. The fourth full week after the program's start date;
2. The second or third week of February 2014;
3. The first week of April 2014; and
4. The third or fourth week of May 2014.

2.10 Workspace: Provider will not be charged any fees or surcharges for the use of space at the schools to deliver 21st CCLC services during the program implementation schedule listed in the approved grant program application. However, if Provider is an approved SES provider and the school principal approves the Provider to deliver SES services at the school, all applicable leasing fees outlined in the Provider's approved SES Agreement with SBBC will apply for the delivery of SES services only. If the Provider uses the school location for any other known 21st CCLC activities (e.g. operating an additional after-school program or parent function) they will need to go through the proper SBBC channels to process a lease agreement. SBBC will make classroom, recreation, and cafeteria space available to the Provider to deliver the approved program services. SBBC will grant the Provider daily access to the computer lab and the Media Center, if needed, to deliver the services specified in the approved program application.

2.11 Confidentiality: In addition to the requirements of Section 3-11, all data and personally identifiable student and parent/guardian information and reports provided to the Provider by SBBC to faithfully implement the approved program are subject to the following:

1. Federal restrictions including Title 20 USC Section 1232g ("FERPA");
2. Florida statutory restrictions including Section 1002.22, Florida Statutes; and
3. All applicable adopted policies and procedures of SBBC.

2.12 Consultants and Subcontractors: The Provider may not employ consultants or subcontract out any part of the services specified in this Agreement without written permission from SBBC. The use of consultants or subcontractors to provide services or training to the Provider must be specifically written into the approved program application.

Any consultant or subcontractor shall be bound by all terms of this Agreement, including the insurance and indemnification provisions.

2.13 **Contracted Evaluation Services:** SBBC will utilize 21st CCLC funds to hire an outside evaluator to provide the evaluation services specified in the approved program application. Prior to the arrival of the outside evaluator the 21st CCLC District SBBC Coordinator, evaluator, and representatives from the Provider will meet to review the data requests and evaluation visit schedule of the outside evaluator. The Provider will provide all requested evaluation documentation, and allow the evaluator to conduct site visits and interview program staff as needed. The Provider will give all requested documentation to the evaluator within ten (10) days of the evaluator's request. The Provider agency does not have access to SBBC electronic tools. Therefore, the Provider is not required to provide data that is collected and maintained by the SBBC. This includes, but is not limited to attendance data, TERMS data and other data collected to meet the outlined objectives that is collected through these systems. Failing to do so will result in SBBC suspending the payment of the Provider's most recent invoice until the requested documentation has been delivered to the 21st CCLC District SBBC Coordinator.

2.14 **Additional Evaluation and Monitoring Requirements:** The Children's Forum and 21st CCLC District SBBC Coordinator will conduct regularly unannounced evaluation and monitoring visits. If requested, SBBC will give the Provider a copy of the Formative Evaluation tool used by the District. The SBBC is under no obligation to give the Provider a copy of the Evaluation and Monitoring tools used by The Children's Forum. The Provider will be required to work with SBBC to address all observed program growth edges by The Children's Forum. The Provider will be required to implement all corrective actions mandated by The Children's Forum or SBBC. Failing to address growth edges observed by The Children's Forum in the timeline specified in the written corrective action will result in SBBC suspending the payment of the Provider's most recent invoice until the corrective action is addressed.

2.15 **Budget Reports:** The Provider will submit all fiscal reports to the SBBC as supporting documentation of expenditures in accordance with grant requirements.

2.16 **Field Trips:** The Provider will abide by all SBBC and 21st CCLC policies and procedures governing field trips. The Provider must utilize SBBC field trip parental consent form, and the SBBC 21st CCLC field trip curriculum justification form. The Provider must seek SBBC will arrange field trip transportation and pay for the transportation with 21st CCLC grant funds. The Provider is responsible for planning, organizing and staffing all 21st CCLC field trips. The Provider will be reimbursed for field trip admission via 21st CCLC grant funds.

2.17 **Transportation Home:** SBBC will use available 21st CCLC funds to provide transportation home to students participating in the 21st CCLC program, and provide busing to and from the school during the summer program. The Provider must maintain a daily bus rider log that they will deposit with the school at the end of the program year to document students who ride the bus home.

2.18 **Invoicing:** The Provider may invoice the SBBC every two weeks for incurred salaries and expenses, but may not bill for more than one calendar month of salaries per invoice. Invoices must include back-up documentation reflecting actual expenses (hours billed, rate per hour, salary paid, and receipts for approved purchases) for the time period being invoiced. The Provider must submit a separate invoice for each school. Invoices and their supporting documentation can be sent electronically or mailed to: Career, Technical, Adult and Community Education Department, 1701 NW 23 Avenue, Fort Lauderdale, Florida 33311, Attn: Laurel Bifora, Curriculum Supervisor. Within ten (10) working days of receipt of the invoice and the back-up documentation, the Career, Technical, Adult and Community Education Department will send invoices that are accurate and complete to the SBBC Budget Department.

2.19 **Payment Schedule:** Invoices to the Provider will be paid within 30 days of submission. The parties agree that payment for services is dependent upon the SBBC receipt of the 21st CCLC grant monies for North Fork, Riverland, and Walker Elementary Schools. The SBBC is under no obligation to pay for services from the Provider from any funding source other than 21st CCLC Grant funds. The total amount of reimbursement will not exceed \$308,196, broken down as follows: North Fork Elementary School \$123,520 (August 1, 2013 – July 31, 2014), Riverland Elementary \$81,072 (August 1, 2013 – July 31, 2014) and Walker Elementary School \$103,604 (August 1, 2013 – July 31, 2014). Services will be paid at the following rates:

1. Site Facilitator

- North Fork Elementary School - \$27.50 per hour, up to 2 hours per day for Site Facilitator after-school, and up to 4.5 hours per day during the summer;
- Riverland Elementary School - \$27.50 per hour, up to 3 hours per day for Site Facilitator after-school, and for four hours per day on Saturdays for a maximum of 24 hours for Site Facilitator and up to 4 hours per day during the summer;
- Walker Elementary School - \$27.50 per hour, up to 2 hours per day for Site Facilitator after-school;

A maximum of 1,043 hours for all Site Facilitators after-school and a maximum of 132 hours for all Site Facilitators during the summer;

2. Assistant Site Facilitator

- North Fork Elementary School - \$15.00 per hour, up to 3 hours per day for Assistant Site Facilitator during the summer;

A maximum of 48 hours for one Assistant Site Facilitator during the summer;

3. SBBC Certified Teachers - \$25.00 per hour for up to 2 hours per day for maximum of 4,006 hours for all certified teachers after-school at the three schools; \$25.00 per hour for up to 4 hours per day for a maximum of 500 hours for all summer teachers at North Fork and Riverland Elementary Schools, and for 4 hours per day for a maximum of 48 hours for all Saturday teachers and teacher planning for up to 1 hour for 25 weeks for a maximum of 100 hours at Riverland Elementary School;
4. SBBC Activity Counselors - \$12.00 per hour for up to 2 hours per day after-school at the three schools for a maximum of 2,754 hours for all counselors after-school and \$12.00 per hour for up to 3 hours per day during the summer for a maximum of 264 hours for all counselors during the summer at North Fork and Riverland Elementary Schools, and at Riverland Elementary School for 4 hours per day for a maximum of 48 hours for all Saturday activity counselors;
5. SBBC Facilities Safety - \$22.50 per hour for up to 1 hour per day after-school at the three schools for a maximum of 459 hours and at Riverland Elementary School on Saturdays for a maximum of 24 hours;
6. A YMCA Program Manager - working at North Fork, Riverland and Walker Elementary Schools for a maximum of \$45,088 during the period of this Agreement;
7. A part time YMCA Program Specialist (Quality Assurance) - working at North Fork, Riverland and Walker Elementary Schools for a maximum of \$22,130 during the period of this Agreement;
8. The fringe benefit rate for SBBC employees is 11.2%. The fringe benefit rate for YMCA employees is 25%. The total amount of fringe billed for all employees cannot exceed \$29,302 after-school, and during the summer or throughout the course of this Agreement;
9. Field Trip Admission – actual costs must be approved by SBBC three (3) weeks prior to trip departure, and the maximum amount reimbursed will be up to \$9,328;
 - North Fork Elementary School - Allocation of up to \$5,468
 - Riverland Elementary School – Allocation of up to \$1,000
 - Walker Elementary School - Allocation of up to \$2,860
10. 21st CCLC Program Supplies and Instructional Materials will be reimbursed up to \$19,597, 80% of the money \$15,678 must be spent by April 1, 2014, the remaining 20% of the funds \$3,919 must be spent by May 9, 2014; and
 - North Fork Elementary School - Allocation of up to \$10,470
 - Riverland Elementary School – Allocation of up to \$1,823
 - Walker Elementary – Allocation of up to \$7,304
11. The Student Liability Insurance rate of \$20 per student at North Fork and Walker Elementary Schools will be reimbursed for 80 students at each school. The total amount cannot exceed \$3,200.

2.20 **Written Progress Report:** At the end of each program month [months the program operates eight or more days] the Provider will submit a written progress report to the 21st CCLC District SBBC Coordinator that details the activities accomplished by each program component/teacher. The written progress reports can be teacher lesson plans and or photographs showing the delivery of services, and do not need to be more than one paragraph of information per program component/teacher. The written progress reports will be submitted to SBBC within fifteen (15) days of the last program day of the month's activities being described.

2.21 **Conflict of Interest.** Provider agrees to furnish to SBBC (upon request) a valid copy of the most recent adopted partnership agreements or bylaws of the corporation and also a completed and accurate list of the Governing Board of Directors (or Trustees or Partners) and to timely update said information as changes in such governance occur. Provider shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including but not limited to, employment with SBBC.

2.22 **Disputes.** Disputes between SBBC and Provider concerning the meaning, requirements or performance of this Agreement shall be submitted in writing and delivered in person or by certified mail to Director, Career, Technical, Adult and Community Education Department, 1643 North Harrison Parkway, Building H, Sunrise, Florida 33323. The determination of SBBC shall be made by the Superintendent's designee, and shall be made in writing and shall be binding for both parties.

2.23 **Accident/Incident Report.** Provider agrees to notify SBBC within twenty-four (24) hours of an accident or incident when a pupil suffered an injury, or injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel. Provider agrees to submit a written accident report to SBBC within three (3) days of an accident or incident.

2.24 **Child Abuse Reporting:** Provider assures SBBC that all staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures under Florida law, including but not limited to, Section 39.2001, Florida Statutes. Provider agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children. Provider agrees that all staff members will abide by such laws in a timely manner.

Provider shall submit immediately by facsimile and mail, within twenty-four (24) hours, an accident or incident report to SBBC when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, and or missing children under Provider's supervision.

2.25 **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 Provider: President/CEO
Young Men's Christian Association of Broward County,
Florida, Inc.
900 Southeast Third Avenue
Fort Lauderdale, Florida 33316

With a Copy Executive Director
Young Men's Christian Association of Broward County,
Florida, Inc.
900 Southeast Third Avenue
Fort Lauderdale, Florida 33316

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
Career, Technical, Adult and Community Education
1701 NW 23 Avenue
Fort Lauderdale, Florida 33311

2.26 **Background Screening:** Provider agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and Provider 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 and fingerprint 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 Provider or its personnel providing any services under the conditions described in the previous sentence. Provider will 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 Provider and its personnel. SBBC reserves the right to prohibit any employee of Provider from having contact with students on District property if SBBC has reason to believe that the safety or health of the students might be in jeopardy.

Provider employees already listed in the Security Clearance Database and existing SBBC employees will not need to be re-fingerprinted as they are already in the background clearance database. If Provider hires a SBBC employee, they will need to submit the name and work location of the employee to the District Coordinator. If Provider hires a non-SBBC employee already listed in the Security Clearance Database, they will need to submit a clear copy of vendor badge to the District Coordinator.

The Parties agree that the failure of Provider to perform any of the duties described in this section shall constitute a material breach of the Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Provider 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 Provider's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

2.27 **Insurance:** During the entire term of this Agreement and during any extension or modification thereof, Provider shall keep in effect a policy or policies of Commercial General Liability Insurance of at least one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) general aggregate. Commercial General Liability shall be on an occurrence form covering the risks associated or arising out of services provided under this contract. Provider shall keep in effect a policy or policies of Professional Liability Insurance of at least one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) general aggregate. Provider shall keep in effect a policy or policies of Worker's Compensation for all of its employees in compliance with chapter 440, Florida statutes. Provider shall keep in effect a policy or policies of Auto Liability of at least one million dollars (\$1,000,000) each occurrence, one million dollars (\$1,000,000) general aggregate including coverage of owned and non-owned vehicles used in the performance of service(s) by provider. Auto Liability insurance will provide coverage against bodily injury and property damage. Not later than the effective date of this Agreement, Provider shall provide SBBC with satisfactory evidence of insurance, naming SBBC as additional insured and certificate holder, including a provision for thirty (30) calendar days written notice to SBBC before cancellation or material change, evidencing the above specific coverage. Provider shall at its own cost and expense, procure and maintain insurance under Worker's Compensation Laws of the state of Florida, if applicable. SBBC reserves the right to revise the requirements of this provision at any time. If SBBC determines that additional insurance coverage is necessary, SBBC will reopen negotiations with Provider to modify the terms of this Agreement.

2.28 **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 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. Nothing herein shall be construed as a waiver of sovereign immunity by SBBC or as a waiver of right or limits to liability by section 768.28 Florida Statutes.

B. By Provider: Provider 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 Provider, its agents, servants or employees; the equipment of Provider, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Provider or the negligence of Provider's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including the SBBC property, and injury or death of any person whether employed by Provider, 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.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **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.

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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.

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

3.16 **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.

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

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

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

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

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FOR PROVIDER

**YOUNG MEN'S CHRISTIAN ASSOCIATION
OF BROWARD COUNTY, FLORIDA, INC.**

By 
David W. Cash, Chief Financial Officer

DATE: 11/18/13

Approved as to form by:

Telephone: (954) 623-5555

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Corporate Seal)

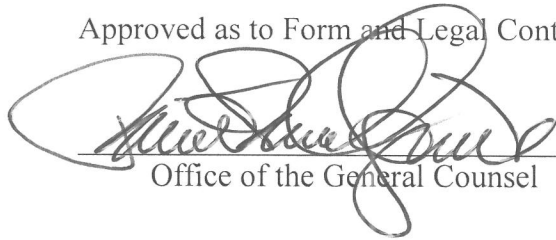
THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

ATTEST:

By _____
Patricia Good, Chair

Robert W. Runcie
Superintendent of Schools

Approved as to Form and Legal Content:

 11/18/13
Office of the General Counsel