

LICENSE AGREEMENT
GREATER FT. LAUDERDALE/BROWARD
COUNTY CONVENTION CENTER

C. 10539
Rev 3/19/14

This Agreement, *issued on the 7th day of January 2014* between SMG ("Operator") and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, IN CONJUNCTION WITH THE NATIONAL ASSOCIATION FOR COLLEGE ADMISSION COUNSELING (NACAC) ("Licensee")

☐ Corporation ☐ A Partnership ☒ Other EDUCATIONAL
(Joint Vent., Ind., Trust, Etc.)

WITNESSETH

Operator manages, operates and maintains the Greater Ft. Lauderdale/Broward County Convention Center ("Facility"), in the City of Ft. Lauderdale, on behalf of the County of Broward, Florida ("County"), under the rights granted and obligations imposed under and agreement between the County and Operator, for professional management services which include the authority and responsibility to enter into all agreements for the use of the Facility.

Licensee desires to use space in the Facility for the purpose and upon the terms hereinafter provided.

The Authorized Areas will be used by the Licensee and its authorized and approved exhibitors ("Exhibitors") for:

- ☐ A Convention or Trade Show available to other persons ("Invitees"), or*
- ☐ A Consumer Show available to paying and/or non-paying members of the public ("Patrons") and Invitees, or**
- ☒ Other LOCAL CONSUMER SHOW FOR HIGH SCHOOL STUDENTS

* A convention and/or trade show is an event which is limited to a well defined and narrow class of persons who normally belong to a trade or professional association. Operator's General Manager shall have full and final authority for defining whether and event is a convention and/or trade show.

** A Consumer show is an event which is open in whole or in part to members of the general public. Operator's General Manager shall have full and final authority for defining whether an event is a consumer show.

Licensee understands and recognizes that the Facility is one component of a planned complex that may include, but not be limited to, an on-site hotel, a retail shopping mall, a cruise/port terminal, and a parking garage. Licensee further understands that during construction of, but not limited to, above referenced projects, that Operator will use its best efforts to minimize inconvenience or disturbances to Licensee during such construction.

However, Operator assumes no liability or disruption, loss or damage that Licensee may incur as a result of any construction or expansion of the facility/complex. Operator's sole responsibility to Licensee for such construction or expansion shall be stated herein.

NOW, THEREFORE Operator hereby permits Licensee and Licensee agrees to use those areas of the Facility hereinafter described ("Authorized Areas") for the term, at the fees and upon the terms, covenants and conditions hereinafter set forth:

1. ***Authorized Areas and Terms:*** Operator grants to Licensee the peaceable, *quiet* use and enjoyment of the following described Authorized Areas in the Facility, including corridors for ingress and egress, designated lobbies and outdoor access and ingress areas as set forth below, during the time or times indicated. Operator will permit Licensee to utilize specific areas of the lobbies, by the decision of the Operator's General Manager, as necessary for the event.

October 20 (21), 2014

<u>Event</u>	<u>Areas</u>	<u>Date(s)</u>	<u>Hours (Approx.)</u>
Decorator Move In	Hall D	Oct. 20	7AM – 5PM
Exhibitor Move In	Hall D	Oct. 20 Oct. 21	3PM – 5PM 7AM – 8:30AM
College Fair	Hall D	Oct. 21	9AM – 1PM & 5PM – 8:30PM
Move Out	Hall D	Oct. 21	8:30PM – 11:59PM
Workshops	Rms. 113-114, 118- 119, 122-123, 124- 125, 220-221, 222/223	Oct. 21	9AM – 1PM & 5PM – 8:30PM

2. *Use of Facilities:*

- (a) The Authorized Areas shall be used for an Event to be called **GREATER FT. LAUDERDALE NATIONAL COLLEGE FAIR** (the Event) and only for the purposes of a **LOCAL CONSUMER SHOW**. If requested by the Operator, Licensee shall provide Operator with a detailed, written description of the Event. The Operator's General Manager will have full and final authority for definition (i.e. consumer show, convention, trade show, etc.) of the Event.
- (b) *Notice of Event Requirement - Floor Plans* - Prior to the sale, lease or assignment of any exhibit space, Licensee shall provide Operator, for Operator's approval and fire marshal's approval, five (5) copies of a full and complete floor plan for the Event, and if requested, furnish a description of all electrical, communications systems, and plumbing work. At least four (4) weeks prior to the first day of the Event, Licensee shall provide Operator with updated floor plans and all other information required by Operator concerning the Event such as, but not limited to, room or hall set-up(s), staging, event personnel requirement, and food and beverage requirements. Licensee will be responsible for all labor costs and other fees arising from the late delivery of such information. Licensee will indemnify, defend and hold harmless Operator from any claims of any agent, employee or sub-licensee of License arising from the late delivery of such information. Operator shall be the sole judge of what additional labor or fees are required as a result of the delay.

Operator hereby reserves the right, by written notice within ten (10) days of receipt of the floor plan, to require Licensee to make such changes, deletions and additions in the floor plan as Operator deems reasonably necessary or desirable to insure the efficient operation of the Facility. Failure by Licensee to make such reasonable changes, deletions or additions requested by Operator within seven (7) days after receipt of notice thereof shall constitute default and Operator may deny access to Authorized Areas to Licensee.

- (c) Licensee shall not knowingly use the facility, or knowingly permit it to be used by any employee, agent, patron or invitee:
- (I) For any illegal purpose;
 - (II) In conflict with any applicable law, ordinance, rule or regulation of any governmental authority;
 - (III) In any manner which could void the insurance or increase the rate of insurance on the facility (i.e. use of hazardous materials in or around the building);

(IV) In any manner which causes injury to the Facility; or

(V) In violation of Operator's rules and regulations.

- (d) Licensee shall conduct business in the Authorized Areas in a dignified and orderly manner with full regard for public safety and in conformity with Operator's General Rules and Regulations, including fire and safety rules as dictated by Operator and/or local fire regulations, as such may exist from time to time. Licensee agrees that it will not allow any employee, agent, exhibitor or invitee at, in or about the Facility, who shall, upon reasonable, non-discriminatory grounds, be objected to by Operator and such person's right to use the Facility may be revoked immediately by Operator.

3. **Fees:** Licensee shall pay to Operator as rent for use of Authorized Areas as follows:

(A) **Rental Fee:**

Hall D: 1 Move in Day, 1 Event Day =	\$6,750
Rms. 113-125, 220-223 for use as Workshops 1 Day =	\$3,545

Special Consideration: The rental value of \$10,295.00 has been waived per an agreement with Nicki E. Grossman, President, Greater Ft. Lauderdale Convention & Visitors Bureau.

(B) **Other Fees:**

Any other equipment rental or labor services will be prevailing rate.

Minimum Balance for Determining Deposit	\$1,000
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ALL DEPOSITS ARE NON-REFUNDABLE.

STATE OF FLORIDA TAX EXEMPT NUMBER IF APPLICABLE:
85-8013140099C-8

4. **Mode of Payment:** Licensee agrees to pay Operator at its office in the Facility, by check payable to "Broward County Convention Center", in lawful currency of the United States or by certified or cashiers check, including 6% state sales tax, *unless otherwise exempted by Florida law*, as follows:

Purchase Order For **\$1,000.00**
Balance of Amount Per Paragraph 3:

Due by **February 10, 2014**

ALL DEPOSITS ARE NON REFUNDABLE.

- (a) **COST "ESTIMATE" WILL BE SENT 30 DAYS PRIOR TO YOUR EVENT LISTING ALL ANTICIPATED CHARGES FOR EQUIPMENT RENTAL OR SERVICES FOR YOUR REVIEW. NACAC PAYMENT IS DUE WITHIN 15 DAYS PRIOR TO YOUR EVENT**

****\$1000 DEPOSIT WILL BE APPLIED TO THESE CHARGES.***

- (b) Final settlement process between Licensee and Operator to account for all monies owing under this Agreement shall be effected upon receipt of invoice with either the Operator's Director of Finance and/or General Manager. No monies or compensation of any form should be paid to any other employee of Operator at any time.
- (c) Licensee shall pay the balance of all fees and charges under Paragraph 3 and 7, as determined in the final settlement process, immediately upon invoice.
- (d) Operator is not obliged to pay interest on any deposit called for by this Agreement.
- (e) If Licensee fails to pay any amounts when due under this Agreement, it shall pay Operator a late charge of 1.5% per 30 days on the unpaid balance, and any collection fees that are incurred by the Operator.
- (f) Operator may require Licensee to tender a deposit or deposits to cover special staffing prior to Event. Such deposit(s) shall be determined by the Operator's General Manager.
- (g) The rental rate quoted in this Agreement is guaranteed for a maximum period of 18 months from the date of execution thereof. If the Event takes place more than 18 months after the date of such execution, the actual rental rate will be the prevailing rate 18 months prior to the date of the first day of the event. Any waiver of this policy must be issued in writing by the Operator's General Manager.
5. ***Liquidated Damages/Cancellation Clause:*** Licensee agrees to pay Operator fees as outlined in Paragraph 3 and Paragraph 4 of License Agreement. If Licensee cancels any event covered by this agreement, Licensee agrees to pay Operator the following amounts as liquidated damages and not as a penalty and the parties agree that such amounts constitute reasonable provision for liquidated damages. Should the Licensee cancel this event or any part thereof, the Greater Ft. Lauderdale Convention & Visitors Bureau sponsorship is rendered void. The Licensee is solely responsible for the liquidated damage of the rental value listed in paragraph 3.

- (a) If Licensee cancels more than eighteen months before the first scheduled day of the event, Operator will retain the initial deposit as shown in Paragraph 4 of the License Agreement.
 - (b) If Licensee cancels more than 12 months before the first scheduled day of the event, but less than eighteen months before the first scheduled day of the event, Operator will retain one-half of the balance due as shown in paragraph 4 of the License Agreement.
 - (c) If Licensee cancels less than 12 months from the first scheduled day of the event, the entire minimum rental as shown in Paragraph 3(c) of the License Agreement shall be payable to Operator by the Licensee as liquidated damages, upon invoice.
6. ***Services Provided by Operator Included in Rental:*** Operator shall furnish, without cost to Licensee during Event show hours, normal air conditioning or heat, overhead lighting, restroom facilities and janitorial services consisting of cleaning of common public areas, not including aisle or exhibit booth cleaning, in accordance with Operator's General Rules and Regulations. Failure to furnish any of the foregoing due to circumstances beyond the control of the Operator shall not be construed a breach of Agreement. It is understood by Licensee that services will be provided only to the extent of existing available inventory and in consideration of other tenants.
7. ***Services Not Included in Rental:*** All services, equipment and personnel not provided for in Paragraph 6 shall be paid for by Licensee. Such other services, equipment and personnel include but are not limited to:
- (a) Guest Services: such as security, crowd, and traffic personnel;
 - (b) Nursing/medical personnel;
 - (c) Stagehand and stage lighting and operation;
 - (d) Sound set-up and operations including technicians;
(Other than normal house PA system)
 - (e) Insurance (See Item 13);
 - (f) Equipment as outlined on equipment rental list;
 - (g) Bulk trash removal;
 - (h) Food and beverage;
 - (i) Exhibit aisle and booth cleaning services;
 - (j) Move-in and move-out air conditioning and/or heat;

Operator reserves the right to determine the number of personnel required to perform any of the services described in this Facility License Agreement, whether any or all such functions are provided at Licensee's expense or by Licensee.

Licensee agrees that all services at or in the Facility shall be performed in conformity with the Facility General Rules & Regulations as in effect at the time of the Convention or Trade Show and Licensee agrees that it shall adhere to such Facility General Rules and Regulations as a condition of all contracts, agreements, and directives for shipments and services connected with the Convention or Trade Show.

Licensee must use the following Operator furnished exclusive services & personnel: Security, Utilities, EMT, Telecommunications, Technical Services Personnel, Box Office, Catering and Concessions.

COST "ESTIMATE" WILL BE SENT 30 DAYS PRIOR TO YOUR EVENT LISTING ALL ANTICIPATED CHARGES FOR EQUIPMENT RENTAL OR SERVICES FOR YOUR REVIEW. NACA PAYMENT IS DUE WITHIN 15 DAYS PRIOR TO YOUR EVENT.

8. **Security:** Operator reserves the right to review, in advance of the Event, proposed security staffing levels and may request Licensee to increase or change its security arrangements, and Licensee shall promptly comply with such request. The cost of such changes will be borne by Licensee.
9. **Utilities:** Operator reserves the exclusive right to provide all utility services in the Facility, i.e. electric, plumbing and compressed air.
10. **Telecommunications:** Operator reserves the exclusive right to provide all telecommunications services in the Facility.
11. **Concessions:** Operator reserves the exclusive right to sell, at its discretion, foods, non-alcoholic beverages, alcoholic beverages, merchandise of all types including programs, photographs and novelties, and operate checkrooms. Operator may provide such items as it deems appropriate either directly or through independent contractors. Operator may utilize any unused space within the Facility for this purpose.
12. **Catering:** Operator reserves the exclusive right to provide any and all catering services in the Facility. Operator may provide such catering through an independent contractor. If Licensee desires to utilize an outside caterer for any services, Licensee must notify Operator in writing and such outside caterer will be allowed to provide services within the Facility upon approval by Operator following the signing of a contract acceptable to Operator and payment of all applicable fees.
13. **Insurance:** *Licensee shall maintain in full force and effect during the Term public liability and property damage insurance with respect to injury, death or damage occurring at the Premises or arising out of Licensee's use of the Premises or otherwise arising out of any act or occurrence at the Premises or Center. Said insurance shall be in an amount of at least One Million Dollars (\$1,000,000) combined single limit per occurrence. The policies for the foregoing insurance shall name Owners, Manager*

and their partners, beneficiaries, trustees, officers, directors, agents and employees and such other parties as Owner may designate as additional insured. At least one week prior to the first day of the Term, Licensee shall furnish a certificate of insurance evidencing that such insurance is in effect.

Licensee hereby waives all subrogation rights of its insurance carriers in favor of Owner and Manager and their partners, beneficiaries, trustees, officers, directors, agents and employees and such other parties as Owner may designate as additional insured.

- (a) *Comprehensive General Liability* - Said coverage shall have limits of not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for personal injury, contractual liability, operation of mobile equipment, products/completed operations and liquor law liability.
 - (b) *Workers' Compensation* - Coverage shall comply with all State and federal requirement and will be in the statutory required limits. All employees of the Licensee must be covered by Workers' Compensation.
 - (c) *Employers Liability* - Coverage shall be placed with limits not less than \$1,000,000 per incident.
 - (d) *Automobile Liability* - Coverage shall be acquired for all owned, non-owned, hired and leased vehicles of Licensee, including the loading and unloading thereof. Limits of not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage shall be maintained.
14. **Indemnification:** *Each party shall assume responsibility for the negligence of its own employees or agents. Each party shall indemnify, defend and hold the other harmless from any damage for acts of omission of its own agents, officers, or employees to the extent provided by law.*
15. **Waiver of Subrogation:** Licensee hereby waives any and every claim which arises or may arise in its favor and against Operator and County during the term of this Agreement or any extension or renewal thereof, for any and all loss or damage covered by valid and collectible insurance policies, to the extent that such loss or damage is covered under such insurance policies. Such waiver shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of Licensee. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person).

Licensee is advised to provide each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

16. ***Waiver of Claims:*** Licensee assumes full responsibility to safeguard display booths, advertising material, goods held for display or sale and all other property owned or used by Licensee, or any of its Exhibitors, or Invitees, in accordance with the Facility's General Rules and Regulations. LICENSEE HEREBY WAIVES ANY AND ALL CLAIMS AGAINST OPERATOR AND THE PERSONS AND INDEMNITEES DESCRIBED IN PARAGRAPH 14 FOR DAMAGE TO OR LOSS OF THE PROPERTY ENUMERATED ABOVE, UNLESS SUCH DAMAGE OR LOSS RESULTS SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF OPERATOR.
17. ***Repair and Return of Facility:*** Licensee shall have the right, upon request to Operator, to conduct an inspection with Operator of the Authorized Areas to be used by Licensee, as set forth herein, and any existing damages or problems found in the inspection shall be noted in writing. All damages or problems noted during inspection will be the sole responsibility of the Operator.

If the Facility or any portion thereof is damaged by any act, omission, default or negligence of Licensee or Licensee's agents, subcontractors, employees, patrons, invitees, guests or any person admitted to Facility by Licensee, then Licensee will pay to Operator, upon demand, in cash, a sum equal to the cost of repairing and restoring Facility to its condition as of the commencement of this Agreement; or Licensee will, at the option and approval of Operator, make or cause to be made such restoration and repairs at its own expense.

18. ***Taxes and Fees:*** Licensee agrees to pay promptly all sales, use, excise and any other taxes and any license fees which are required to be paid by Licensee to any governmental authority. Licensee shall be solely responsible for complying with the provisions of 212.18(3)(a) and (b), Florida Statutes, dealing with the registration of exhibitors at conventions or trade shows as dealers and taxes due the State of Florida from such dealers. Licensee hereby agrees to indemnify and hold Operator harmless for the payment of all taxes and fees paid or required to be paid by Licensee or its exhibitors under this Agreement.
Licensee further acknowledges that Operator shall have no duty or responsibility whatsoever to Licensee or its exhibitors relating to registering exhibitors, enforcing compliance with tax laws, or notifying Licensee or its exhibitors of any changes in laws, regulations or ordinances concerning the payment of taxes and fees.
19. ***Non-Discrimination:*** *The parties shall not discriminate against any employee or participant in this Agreement because of race, age, religion, color, gender, national*

origin, marital status, disability or sexual orientation.

20. ***Force Majeure:*** Operator may terminate or suspend its obligations under this Agreement if such obligations are delayed, prevented or rendered impractical by any of the following events to the extent such event is beyond the reasonable control of the Operator:

- Fire, flood, riot, earthquake, civil commotion, insurrection, Act of God, labor disputes, strikes, wars, shortage of or inability to obtain materials, supplies or utilities, or any law, ordinance, rule or regulation.

In any such event Operator shall not be liable to Licensee for delay or failure to perform its obligations, except there shall be a pro-rated reduction in the consideration which would otherwise be due and payable under this Agreement.

21. ***Operator's Right of Entry:*** In permitting Licensee the use of the Authorized Areas, Operator does not relinquish and does hereby retain the right to enforce all rules for the management and operation of such space. Representatives of Operator and the County shall at all reasonable times have the right to enter into Authorized Areas without providing notice to Licensee. All space relative to the Facility shall at all times be subject to Operator's right to control.

22. ***Non-Exclusive Use:*** Operator shall have the right to use or permit the use of any portion of the Facility not granted to Licensee under this Agreement to any person, firm, or entity regardless of the nature of the use of such other space. The Operator's General Manager shall have full and final authority as to the use of such space.

Licensee understands that the Facility will make available, for use by others, such portions and areas that are not subject to this Agreement. Licensee agrees to cooperate in good faith with Operator and personnel of the Facility and with those persons using other portions and areas of the Facility, especially during periods of ingress and egress, in order to make mutual use of the Facility harmonious and agreeable.

23. ***Advertising Displays:*** Licensee shall not display any advertising matter of any description inside, on front of, or on any part of the Facility except upon regular billboards provided for such purpose. Any advertising matter must be approved by the Operator's General Manager. Unauthorized advertising matter will be removed by Operator, and any costs associated with such removal will be charged to Licensee. Licensee agrees that all advertising of the Event will be honest and true and will include accurate information on show times and ticket prices.

Licensee agrees that all printed materials and electronic mediums including, but not limited to, advertising, literature, hand-outs, etc. promoting the Event and/or the Facility shall utilize the Facility logo and colors approved by Operator. Operator shall furnish Licensee such Facility logo in camera ready format. Additionally, Facility shall always be referenced as the "Greater Ft. Lauderdale/Broward County Convention Center" in all print and electronic mediums.

24. ***Abandonment or Vacation of Facility:*** If any part of the Facility covered by the Agreement becomes vacant or is not used by Licensee, Operator may offer such space to others. In that event, all income from the re-licensed space shall belong to Operator.
25. ***Emergency Powers to Vacate Premises:*** Operator may extinguish all lights in the leased premises, cease operation of the air conditioning system, terminate service of any other utilities within the Facility, order evacuation of all or any portion of the Authorized Areas, or cause to be removed there from any person, any materials, equipment or other items if, in Operator's judgment, circumstances of a dangerous or unusual nature have occurred, or Operator reasonably believes, in its own judgment, are about to occur, and such action is necessary to secure the safety and welfare of persons and/or property. Licensee waives any right and/or claim for damages against Operator, the County, their agents or servants, in such eventuality. *Licensee shall receive a pro-rated reduction in the consideration which would otherwise be due and payable under this Agreement, provided the emergency vacation of the premises is not the fault of the Licensee.*
26. ***Default:*** If Licensee defaults in the performance of the terms and conditions of this Agreement, or any other agreement between Licensee and Operator, including payment of fees and maintenance of required insurance in strict accordance of this Agreement, and said default is not cured within fifteen (15) days (except as in paragraph 26 with seven (7) days notice for auction) after Operator provides written notice of the default to Licensee, then Operator, at its option, may immediately terminate this Agreement by written notice to Licensee, wherein Licensee's rights and privileges under this Agreement shall immediately terminate. Operator may also terminate any other contracts with Licensee. In addition, Licensee shall be liable for all damages caused by such default, including liquidated damages.

In the event COUNTY terminates OPERATOR'S Contract to manage, operate and maintain the Facility in accordance with the Internal Revenue Service guidelines (Rev. Proc. 82-14) and the Tax Reform Act of 1983 (Sec. 1301 (e)), or for any other reason not the fault of the Operator, Operator shall not be responsible or liable to Licensee for any delay, inconvenience or damages of whatever nature suffered by Licensee under this Agreement.

27. ***Suit to Enforce:*** If either party institutes suit or other proceeding against the other party for the fees provided herein or otherwise to enforce or seek damages with respect to a default under this Agreement, the prevailing party shall be entitled to recover all

damages provided by law or under this Agreement, including all costs and reasonable attorney's fees (including appeal). Venues for any litigation arising out of or in connection with this Agreement shall be in Broward County, Florida.

28. **Cumulative Remedies:** All rights, powers and privileges conferred hereunder upon Operator shall be cumulative and shall not be restricted to those given by law.
29. **Assignment:** Licensee may not assign this Agreement or any other interest therein or permit the use of Authorized Areas or any part thereof, without the prior written consent of the Operator. Any attempted assignment without the prior written consent of Operator shall be null and void.
30. **Notices:** All notices required or permitted to be given to any party pursuant to this Agreement shall be in writing and delivered personally, or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally or refused by those individuals or entities addressed below. The designation of the individuals to be so notified and the addresses of such persons or entities for the purpose of notice may be changed from time to time by written notice to the other party, in a manner provided herein for giving notice, which shall be deemed effective ten (10) days after such written notice of change is furnished to the other party.

To Operator: General Manager
Greater Ft. Lauderdale/Broward County Convention Center
Administration Office – 2nd Floor
1950 Eisenhower Blvd.
Ft. Lauderdale, FL 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, Facility Planning and Real Estate
The School Board of Broward County, Florida
600 Southeast Third Avenue – 8th Floor
Fort Lauderdale, Florida 33301

Unless and until written notice is received, the last address stated herein shall be deemed to continue in effect for all purposes hereunder.

31. **Rules & Regulations:** Operator's Facility Rules and Regulations, including but not limited to fire rules and regulations, are hereby incorporated into this Agreement by reference. Operator reserves the right to amend such rules and regulations in writing from time to time and will provide Licensee with written notice of such amended Rules and Regulations. Licensee agrees to be bound by all amended Rules and Regulations so

RECEIPT OF RULES:

Licensee hereby acknowledges receipt of Operator's Facility General Rules and Regulations, including all applicable fire safety rules and regulations, and agrees to be bound by such rules and regulations.

32. **Entire Agreement:** This Agreement contains the complete and exclusive agreement between the parties and is intended to be a final expression of their agreement. No promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by any party. Each party has relied upon its own examination of the full Agreement and the provisions thereof, the counsel of its own advisors, and the warranties, representation and the covenants expressly contained herein. No modification or amendment of this Agreement shall be in force unless in writing executed by all parties hereto.
33. **Headings:** The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.
34. **Waiver:** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
35. **Severability:** In the event any provision of this Agreement or the application thereto to any person or circumstance shall be inapplicable, invalid, illegal or unenforceable in any respect, the remainder of this Agreement and application of such provision to other persons or circumstances shall not be effected thereby and shall be enforced to the fullest extent permitted by law.
36. **Governing Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.
 - A. **Authority Provision:** *Each person signing this Agreement on behalf of either party individually warrants that he or she has the 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.*

37. **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.

- B. **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 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.
- C. **No Waiver of Sovereign Immunity:** Nothing contained in this Agreement was intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

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.

APPROVAL OF CONTRACT: This Agreement is not binding upon Operator until signed on behalf of the Operator. It will be effective on the date that it is executed by Operator.

LICENSEE

**NATIONAL ASSOCIATION FOR COLLEGE
ADMISSIONS COUNSELING (NACAC)**

By: Gregory Ferguson
Gregory Ferguson

Title: Director of College Fairs, Programs
& Services

Date: 1/22/14

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

(Corporate Seal)

ATTEST:

By: _____
Patricia Good, Chair

Date: _____

Approved as to Form:

Robert Runcie
Superintendent of Schools

School Board Attorney

OPERATOR

SMG

By: _____
Mark Gatley
General Manager

Witness

Date: _____

STATE OF FLORIDA}
COUNTY OF BROWARD}

The foregoing instrument was acknowledged before me this _____ day of _____ by _____. He/she took an oath and is personally known to me or has produced _____ as identification.

My commission expires:

(Seal)

Signature – Notary Public

FOR SBBC

(Corporate Seal)

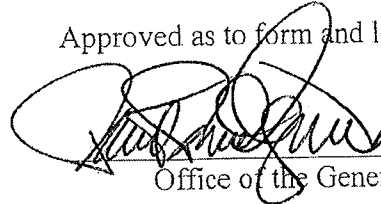
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: _____
Patricia Good, Chair

ATTEST:

Robert W. Runcie
Superintendent of Schools

Approved as to form and legal content:

 04/29/14

Office of the General Counsel