

**AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, 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

**AXA EQUITABLE LIFE INSURANCE COMPANY**  
(hereinafter referred to as "[AXA]"),  
whose principal place of business is  
100 Madison Street  
Syracuse, New York 13202

**WHEREAS**, SBBC issued a Request For Proposal identified as RFP 15-010P 403(b)/457(b) Program for School Board Employees dated March 4, 2014 and amended by Addendum Number One dated March 26, 2014 (herein referred to as 'RFP') which is incorporated by reference herein, for the purpose of receiving proposals for 403(b)/457(b) Program for School Board Employee; and

**WHEREAS**, AXA offered a proposal dated April 16, 2014, (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to the RFP; and

**WHEREAS**, AXA desires to provide SBBC, and SBBC desires to receive from AXA, a 403(b)/457(b) Annuity Program for School Board Employees.

**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 initial term of this Agreement shall commence upon execution by all parties and

conclude on December 31, 2017. The term of the Agreement may be extended by two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial contract period or any one-year renewal option, SBBC may exercise its option to extend the contract for 180 days beyond the expiration date of the renewal period at a rate change not to exceed the CPI for the previous year.

2.02 **ACH Transactions.** AXA agrees that there is no fee for ACH transactions.

2.03 **Net Revenue Pricing.** AXA agrees to the net revenue pricing of 1.32%, and further agrees to provide SBBC of a full accounting of said net revenue pricing on a quarterly basis.

2.04 **Contract Minimum.** The contract minimum for the fixed and/or guaranteed interest account offered is 1%.

2.05 **Product Offerings/Marketing.** AXA agrees to only market group 403(b)/457(b) annuity products as more fully described in their Proposal as EQUI-VEST Strategies SM Series 901. In addition, AXA will offer plan features of ProNvest Managed Account Service, Enhanced Death Benefit, and Personal Income Benefit (PIB) to both the 403(b) and 457(b) products. If AXA offers a better product within the Florida K-12 market, SBBC will be given the option to move to this product.

2.06 **Buy-Out of Surrender Charges.** AXA agrees to explore the possibility of a three percent buy-out program, filing with the State within the first three (3) months of the Agreement and providing a response within three (3) months of such filing and provide an answer within three (3) months to buy-out existing carrier surrender charges for employees if the transaction is deemed suitable and limited to accumulated flow with no global limits on the amount of the transactions.

2.07 **Local Office.** AXA agrees to maintain a local office (in Broward, Miami-Dade and/or Palm Beach County) to service SBBC.

2.08 **Personnel.** AXA agrees to provide SBBC with a list of agents that are approved by AXA to sell AXA products more fully described in AXA's proposal. Further, AXA agrees that all utilized personnel will be compensated based on a salary and bonus structure. AXA also agrees that SBBC will have input in both qualitative and quantitative metrics used to establish such bonuses.

2.09 **Account Activity Statements.** AXA agrees to mail individual participant statements directly to each participant at a minimum of annually at no cost to SBBC. Further AXA agrees to provide a copy of the annual review form from each provider.

2.10 **Surrender Chargers.** AXA agrees to waive any surrender chargers for existing AXA policy holders that move to the new AXA products.

2.11 **Mortality, Expense, Administrative Charge.** AXA agrees to the lower M & E of 0.50% regardless of the number of awardees. Further AXA agrees that any surrender chargers are benefit-sensitive for five (5) years at a straight 5%.

2.12 **Education.** AXA agrees to provide an unlimited number of education seminars for SBBC employees. AXA agrees to develop and implement an initial communication campaign which would include at a minimum: FACT Cards, Director Mail Campaigns, Posters, Brochures and On-site visits. Further AXA agrees to develop these campaigns in conjunction with SBBC Benefits staff to determine the frequency and most appropriate marketing strategy. All marketing materials shall be reviewed and approved by the Benefits Department prior to being disseminated to employees, at no cost to SBBC.

2.13 **Communication Budget.** AXA agrees to provide, at a minimum, a communication budget of \$15,000 per year.

2.14 **Electronic Investment Advice.** AXA agrees to provide access to electronic investment advice to participants through AXA's online tools and/or AXA's third party money manager for an additional cost at 25 basis points.

2.15 **Performance Standards.** AXA agrees to all the performance standards as outlined in of the RFP without deviations. AXA further agrees to provide at a minimum annual reporting and metrics on each of the performance guarantees and understands that SBBC has the right to audit/validate any of the reported metrics.

2.16 **Insurance Requirements.** AXA agrees to comply with all insurance requirements as stated in the RFP.

2.17 **Contribution Amounts.** AXA agrees to calculate the allowable 15 year contribution amounts for those participants who request it and will take 100% of the responsibility for the calculations.

2.18 **Asset Allocation.** AXA agrees to provide access to asset allocation services through ProNvest for those employees who are interested in Managed Account services at an additional fee of 25 basis points per year.

2.19 **Florida Retirement System.** AXA agrees to install a Florida-specific pension modeling system tool for SBBC participants within the first 12 months of the Agreement.

2.20 **Partial Withdrawal Minimum.** AXA agrees to lower the partial withdrawal minimum to \$1.00.

2.21 **Interest Rate Changes.** AXA agrees to provide SBBC with a minimum of 30 days' advanced notice of any rate changes. AXA further agrees to provide a letter to SBBC announcing such changes prior to releasing it to SBBC's employees. AXA further agrees to post such changes to AXA's website.

2.22 **Fiduciary.** If an employee enrolls in the ProNvest Managed Account service, AXA and SBBC acknowledge and agree that ProNvest shall accept full fiduciary responsibility for the Managed Account services provided to each employee.

2.23 **Additional Data.** Upon request from SBBC, AXA will at a minimum, but not limited to, provide the following items:

- Declared Rates;
- Contract Minimums for all contracts;
- Index Option Methodology;
- Annual Maximum Credit for each product and length;
- Withdrawals provisions for all contracts and lengths;
- Ratings and credit quality for each product; and
- Market to book ratio for all accounts..

2.24 **Services.** AXA will provide SBBC with services as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda.

2.25 **M/WBE Participation.** AXA will provide for M/WBE participation during its performance of services under this contract agreement by utilizing an M/WBE approved vendor and agrees to allocate a total of \$25,000 annually. In addition AXA agrees to participate and partner with SBBC on a school-specific community involvement program and donate \$2,500 annually to the Broward Education Foundation for minority scholarships.

2.26 **Priority of Documents.** In the event of a conflict between the documents the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number One Dated, March 26, 2014; then
- Third: RFP 15-010P - "403(b)/457(b) Program for School Board Employees; then
- Fourth: The Proposal submitted by AXA in response to the RFP.

In case of any other doubts or difference of opinion, the decision of SBBC shall be final and binding on both parties.

2.27 **Inspection of AXA's Records by SBBC.** AXA 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 AXA's 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 AXA or any of AXA's payees pursuant to this Agreement. AXA's 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. AXA's 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) AXA's Records Defined. For the purposes of this Agreement, the term "AXA's Records" shall include, without limitation, any 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 AXA's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to AXA pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide AXA 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 AXA's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by AXA 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 AXA's 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 AXA in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by AXA. If the audit discloses billings or charges to which LSW is not contractually entitled, AXA 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. AXA 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 AXA 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 AXA pursuant to this Agreement and such excluded costs shall become the liability of AXA.

(h) Inspector General Audits. AXA 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.

2.28 **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, Benefits & Employment Services  
7770 W. Oakland Park Blvd.  
Sunrise, Florida 33351

To AXA: AXA Equitable  
100 Madison Street  
Syracuse, New York 13202

With a Copy to: Brayton Wicks, Director  
100 Madison Street  
Syracuse, New York 10302

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

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when

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

B. By AXA: AXA 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 AXA, its agents, servants or employees; the equipment of AXA, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of AXA or the negligence of AXA'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 AXA, 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. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) 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 Agreement 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 Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and 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 Sections 1002.22 and/or 1002.221, Florida Statutes.

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 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **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)

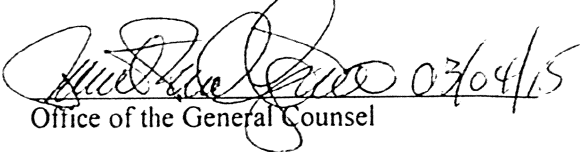
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

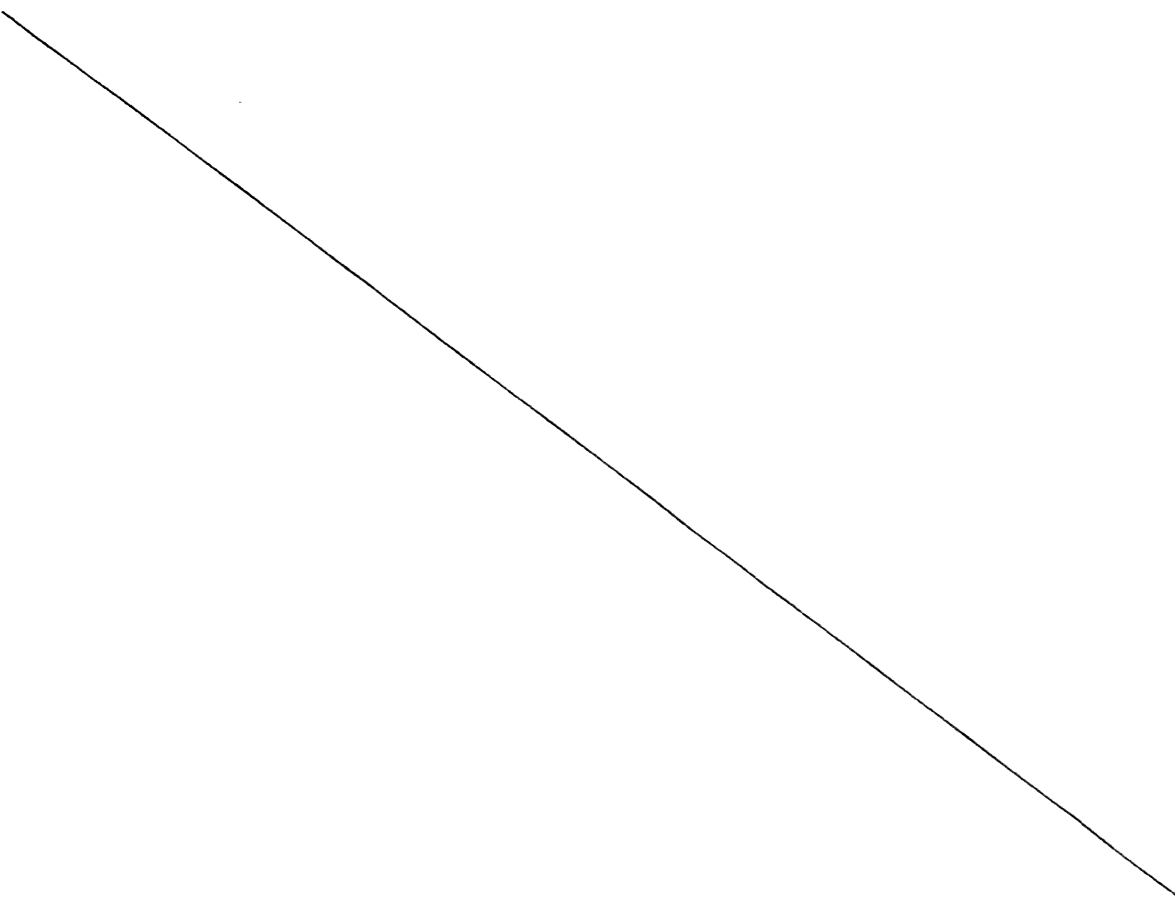
ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 03/04/15  
Office of the General Counsel

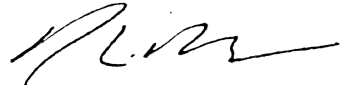


**FOR AXA**


(Corporate Seal)

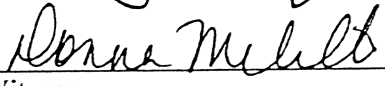
AXA EQUITABLE LIFE INSURANCE  
COMPANY

ATTEST:

By 

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

  
Witness

  
Witness

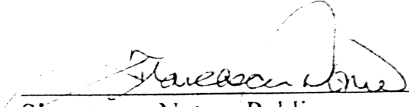
**The Following Notarization is Required for Every Agreement Without Regard to  
Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF New York

COUNTY OF New York

The foregoing instrument was acknowledged before me this 2nd day of MARCH, 2015 by KEVIN KELLY of AXA EQUITABLE LIFE INSURANCE COMPANY on behalf of the corporation/agency.  
Name of Person  
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:

  
Signature - Notary Public

(SEAL)

FRANCESCA DIVONE  
Printed Name of Notary

01DI6016725  
Notary's Commission No.

FRANCESCA DIVONE  
Notary Public in and for the State of New York  
Qualified to Perform Notary Public Duties  
Commission Expires November 30, 2018

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**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

**LIFE INSURANCE COMPANY OF THE SOUTHWEST**  
(hereinafter referred to as “ [LSW] ”),  
whose principal place of business is  
15455 Dallas Parkway, Suite 800  
Addison, Texas 75001

**WHEREAS**, SBBC issued a Request For Proposal identified as RFP 15-010P 403(b)/457(b) Program for School Board Employees dated March 4, 2014 and amended by Addendum Number One dated March 26, 2014 (herein referred to as ‘RFP’) which is incorporated by reference herein, for the purpose of receiving proposals for 403(b)/457(b) Program for School Board Employee (“Plan” or “Plans”); and

**WHEREAS**, LSW offered a proposal dated April 15, 2014, (hereinafter referred to as “Proposal”) which is incorporated by reference herein, in response to the RFP; and

**WHEREAS**, LSW desires to provide SBBC, and SBBC desires to receive from LSW, a 403(b)/457(b) Annuity Program for School Board Employees.

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conclude on December 31, 2017 . The term of the Agreement may be extended by two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial contract period or any one-year renewal option, SBBC may exercise its option to extend the contract for 180 days beyond the expiration date of the renewal period at a rate change not to exceed the CPI for the previous year.

2.02 **SBBC Annual Fee.** LSW agrees to provide SBBC during the term an annual fee of \$10 per active and inactive participant who has a LSW policy in the plan in accordance with Section 4.2.6 of the RFP.

2.03 **TPA Administration Fee.** LSW agrees to provide SBBC an annual fee of \$12 per active and inactive participant as of the first day of the Agreement year who has an LSW policy to fund third-party administration services in accordance with Section 4.2.7 of the RFP.

2.04 **Income Rider.** LSW agrees to offer the guaranteed lifetime income rider (GLIR) more fully described in the attached rider including the terms, conditions and cost of such rider in **Exhibit B** of this Agreement.

2.05 **Product Offerings/Marketing.** LSW agrees to only market 403(b)/457(b) products as more fully described in their Proposal as SecurePlus Paramount 5, SecurePlus Elite 3, RetireMax Millennium Flex and SecurePlus Marquee 8. In addition, LSW will offer a 457(b) program with the same investment options and plan features as those being offered through the 403(b) program. LSW further agrees to offer a Roth option. If LSW offers another product within the Florida K-12 market, SBBC will be given the option to add such product.

2.06 **Buy-Out of Surrender Charges.** LSW agrees to reimburse policyholders by a one-time interest credit at issue for contractually incurred withdrawals charges (this excludes changes in policy value due to market changes) upon the transfer of policy values from actively flowing 403(b)/457(b) policy(ies) to an actively flowing 403(b)/457(b) policy with LSW. The plan participant will provide LSW prior to the issue of a replacement policy with a certified statement as to the withdrawal charges incurred. This reimbursement is subject to the transaction being suitable pursuant to applicable federal laws and regulations. The interest credit should be equal to 100% of the withdrawal charge and that there is no reduction in interest crediting rates for any policy with this feature.

2.07 **Tax Instruments.** LSW will prepare and file all applicable regulatory and tax instruments, at no cost to SBBC.

2.08 **Local Office.** LSW agrees to maintain a local office (in Broward, Miami-Dade and/or Palm Beach County) to service SBBC.

2.09 **Personnel.** LSW agrees to provide SBBC with a list of agents that are approved by LSW to sell LSW products more fully described in LSW's proposal. Further, SBBC will have input in the development and review of LSW's certification program for agents servicing SBBC.

2.10 **Account Activity Statements.** LSW agrees to mail individual participant statements directly to each participant at a minimum of annually at no cost to SBBC. Further LSW agrees to provide a standard policyholder review and provide a copy of such review to each policyholder on an annual basis and will provide the standard policyholder review format for SBBC's review and approval.

2.11 **Commission Schedules.** LSW agrees to provide the writing agent commission schedules for each product being offered as more fully described in **Exhibit A** of this Agreement.

2.12 **Education.** LSW agrees to conduct no less than 12 education seminars each year for SBBC employees, with the location to be determined by SBBC upon mutual agreement. Presentation and materials are subject to SBBC approval. Further, LSW agrees to develop and provide newsletters to participants on an ongoing basis. All marketing materials and newsletters shall be reviewed and approved by the Benefits Department prior to being sent to employees.

2.13 **Communication Budget.** LSW agrees to provide, at a minimum, a communication budget of \$15,000 per year for LSW's production of SBBC specific materials.

2.14 **Electronic Retirement and Planning Advice.** LSW agrees to direct participants to LSW websites for the purpose of providing electronic retirement planning advice to participants in the LSW program.

2.15 **Performance Standards.** LSW agrees to all the performance standards as outlined in Attachment N of the RFP without deviations. LSW further agrees to provide at a minimum annual reporting and metrics on each of the performance guarantees and understands that SBBC has the right to audit/validate any of the reported metrics.

2.16 **Investment Revenue Sharing.** LSW agrees that there will be no investment revenue sharing with any third party.

2.17 **Disclosure.** LSW agrees to disclose to SBBC the policy owner bonus for all products, contract length and contribution amounts.

2.18 **Contribution Amounts.** LSW agrees to calculate the allowable 15 year contribution amounts for those participants who request it and will take 100% of the responsibility for the calculations provided LSW receives all required information for such calculations from the plans record keeper and subject to that information being correct.

2.19 **Service Center Calls.** LSW agrees to retain all SBBC related service center calls for a period of 7 years.

2.20 **Florida Retirement System.** LSW agrees to install a Florida-specific pension modeling system tool for SBBC participants within the first 12 months of the Agreement.



2.21 **Interest Rate Changes.** LSW agrees to provide advance notification to SBBC of any interest rate changes and/or bonus interest changes.

2.22 **Fiduciary.** If LSW or its agents provide investment advice or recommendations then LSW agrees to accept full fiduciary responsibility for those recommended strategies in accordance with any applicable Florida Law.

2.23 **Loans.** LSW agrees to provide loans to participant per the terms of the policy with no fees charged to SBBC or its participants, including providing amortization schedules to participant for any loan.

2.24 **Additional Data.** Upon request from SBBC, LSW will at a minimum, but not limited to, provide the following items:

- Declared Rates
- Contract Minimums for all contracts and lengths
- Index Option Methodology
- Annual Maximum Credit for each product and length
- Withdrawals provisions for all contracts and lengths
- Ratings and credit quality for LSW
- Methodology for any market value adjustment for any product having such adjustment
- Expense guaranteed period for each product
- Interest Credit Report (earning vs. crediting)
- Information will be provided on Crediting Rates History and New Money Rates

2.25 **Services:** LSW will provide SBBC with services as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda and as specified in **Exhibit A and Exhibit B.**

2.26 **M/WBE Participation.** LSW will provide for M/WBE participation during its performance of services under this contract agreement by utilizing an M/WBE approved vendor and agrees to allocate a total of \$10,000 annually. In addition LSW agrees to participate and partner with SBBC on a school-specific community involvement program annually.

2.27 **Priority of Documents.** In the event of a conflict between the documents the following priority of documents shall govern:

- |         |   |
|---------|---|
| First:  | This Agreement; then  |
| Second: | Addendum Number One Dated March 26, 2014; then                        |
| Third:  | RFP 15-010P - "403(b)/457(b) Program for School Board Employees; then |
| Fourth: | The Proposal submitted by LSW in response to the RFP.                 |

In case of any other doubts or difference of opinion, the decision of SBBC shall be final and binding on both parties.

2.28 **Inspection of LSW's Records by SBBC.** LSW 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 LSW's 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 LSW or any of LSW's payees pursuant to this Agreement. LSW's 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. LSW's 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) **LSW's Records Defined.** For the purposes of this Agreement, the term "LSW's Records" shall include, without limitation, any 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 LSW's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to LSW pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide LSW 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 LSW's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by LSW 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 LSW's 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 LSW in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by LSW. If the audit discloses billings or charges to which LSW is not

contractually entitled, LSW 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. LSW 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 LSW 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 LSW pursuant to this Agreement and such excluded costs shall become the liability of LSW.

(h) Inspector General Audits. LSW 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.

2.29 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 of Benefits and Employment Services 7770 W. Oakland Park Blvd., Sunrise, Florida 33351
To LSW:	Maryann Ellis, Vice President Retirement Field Operations Life Insurance Company of the Southwest 15455 Dallas Parkway, Suite 800, Addison, Texas 75001
With a Copy to:	Donna Kvapil, 403(b)/457(b) External Team Coordinator Life Insurance Company of the Southwest 15455 Dallas Parkway, Suite 800, Addison, Texas 75001

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

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By LSW: LSW 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 LSW, its agents, servants or employees; the equipment of LSW, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of LSW or the negligence of LSW'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 LSW, 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. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) 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 Agreement 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 Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and 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 Sections 1002.22 and/or 1002.221, Florida Statutes.

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 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **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)

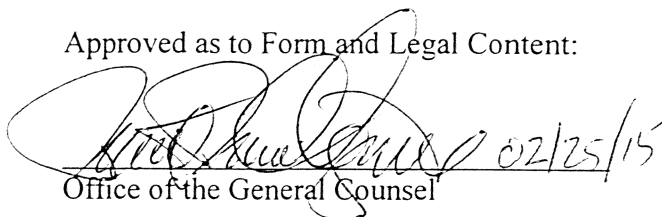
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 02/25/15  
Office of the General Counsel

**FOR LSW**

(Corporate Seal)

LIFE INSURANCE COMPANY OF THE  
SOUTHWEST

ATTEST:

By Wade Mayo

Kerry A. Jung  
Kerry A. Jung, Secretary  
-or-

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to  
Whether LSW Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Vermont

COUNTY OF Washington

The foregoing instrument was acknowledged before me this 18 day of  
February, 2015 by Wade Mayo of  
Name of Person

Life Insurance Company of the Southwest on behalf of the corporation/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: 5/10/19 Patricia Morrison  
Signature - Notary Public

(SEAL) Patricia L. Morrison  
Printed Name of Notary

5/10/2019  
Notary's Commission No.



# National Life Commission Schedule

Group<sup>®</sup>

Life Insurance Company of the Southwest (LSW)

15455 Dallas Parkway, Suite 800 • Addison, Texas 75001 • Sales Desk Hotline 800-906-3310

Table of First-Year and Renewal Commissions (Commissions under this schedule shall be immediately vested.)

Plan	Issue Age	Commissions†			Service Fees	
		First Year	Renewal	Years Applicable	Percent	Years Applicable
SecurePlus Paramount 5 TSA/457 Single Sum	0-75	7.0000	4.0000	2-10	2.2500	11+
	0-75	7.0000	4.0000	2		
			3.5000	3		
			2.2500	4-5		
			0.9000	6-7		
			0.0000	8+		
	All Premium	76-80	5.0000	1.8000	2	
			0.0000	3+		
SecurePlus Elite 3 TSA/457 Single Sum	0-57	8.0000	2.5000	2-5		
			2.5000	6-10	2.2500	11+
	0-57	7.0000	4.0000	2-3		
			2.5000	4		
			0.9000	5		
		0.0000	6+			
SecurePlus Marquee 8**	0-75	7.0000	NA	NA	NA	NA
	76-80	5.0000	NA	NA	NA	NA
RetireMax Millennium Flex Single Sum	0-65	6.5500	4.0000	2-5		
			3.7500	6-10	2.5000	11+
	66-70	6.5500	3.7500	2-5		
			3.7500	6-10	2.5000	11+
	71-75	5.1500	3.7500	2-5		
			3.7500	6-10	2.5000	11+
	0-70	6.5500	6.0000	2-4		
			4.0000	5		
			4.0000	6		
			2.5000	7-8		
		0.9000	9-10	0.9000	11+	
71-75	5.1500	4.0000	2-5			
		2.5000	6-8			
		0.9000	9-10	0.9000	11+	

**GUARANTEED LIFETIME WITHDRAWAL BENEFIT RIDER**

Life Insurance Company of the Southwest • [Addison, Texas 75001]  
 [www.NationalLifeGroup.com] • [Customer Relations 800-732-8939]

This Rider is part of the Policy to which it is attached and is subject to all terms, conditions, and provisions contained in the Policy. The provisions of this Rider begin on the Policy's Issue Date and apply in lieu of any Policy provision to the contrary. This Rider has no cash value or loan value. All terms not defined in this Rider refer to the terms as used in the Policy or other rider(s) attached to the Policy. In all other respects, the Policy's provisions remain unchanged.

This Rider provides You the right to elect withdrawals from the Policy to which the Rider is attached but with the guarantee that those payments will continue for the life of the Annuitant, even after the values of the Policy have been depleted. There are periodic charges for this Rider.

Base Policy Number:	[123456X]
Initial Rollup Rate for an ICB Segment established on the Issue Date:	[6.0%] per annum
Initial Rollup Rate Guarantee Period:	[10] Years
Minimum Rollup Rate:	[3.0%] per annum
Maximum Accumulation Years:	[20]
First Income Calculation Base Adjustment Date:	[June 28, 2018]
Rider Charge Rate:	
Prior to the [11th] Policy anniversary:	[0.70%]
On or after the [11th] Policy anniversary and prior to the [21st] Policy anniversary:	[0.80%]
On or after the [21st] Policy anniversary:	[0.90%]
Waiting Period:	[1 Year]
Minimum Benefit Age:	[60]
Annual Increase Percentage:	[3.0%]
Cancellation Period:	[5] Years

GUARANTEED WITHDRAWAL PERCENTAGE TABLE				
Attained Age	Single Life		Joint Life	
	Level	Increasing	Level	Increasing
[60]	[4.50]	[3.50]	[4.00]	[3.00]
[61]	[4.60]	[3.60]	[4.10]	[3.10]
[62]	[4.70]	[3.70]	[4.20]	[3.20]
[63]	[4.80]	[3.80]	[4.30]	[3.30]
[64]	[4.90]	[3.90]	[4.40]	[3.40]
[65]	[5.00]	[4.00]	[4.50]	[3.50]
[66]	[5.10]	[4.10]	[4.60]	[3.60]
[67]	[5.20]	[4.20]	[4.70]	[3.70]
[68]	[5.30]	[4.30]	[4.80]	[3.80]
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[70]	[5.50]	[4.50]	[5.00]	[4.00]
[71]	[5.60]	[4.60]	[5.10]	[4.10]
[72]	[5.70]	[4.70]	[5.20]	[4.20]
[73]	[5.80]	[4.80]	[5.30]	[4.30]
[74]	[5.90]	[4.90]	[5.40]	[4.40]
[75]	[6.00]	[5.00]	[5.50]	[4.50]
[76]	[6.10]	[5.10]	[5.60]	[4.60]
[77]	[6.20]	[5.20]	[5.70]	[4.70]
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[83]	[6.80]	[5.80]	[6.30]	[5.30]
[84]	[6.90]	[5.90]	[6.40]	[5.40]
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[86]	[7.10]	[6.10]	[6.60]	[5.60]
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[89]	[7.40]	[6.40]	[6.90]	[5.90]
[90+]	[7.50]	[6.50]	[7.00]	[6.00]

## TABLE OF CONTENTS

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	Page
<b>PART 1: Some Defined Terms and Measures</b>	
1.1. Attained Age.	1
1.2. Annuitant.	1
1.3. Joint Annuitant.	1
1.4. The Accumulation Period.	1
1.5. The Withdrawal Period.	1
1.6. The Income Calculation Base.	1
<b>PART 2: Guaranteed Lifetime Withdrawal Benefits</b>	
2.1. General.	2
2.2. Guaranteed Withdrawal Payment, Scheduled Withdrawal Payment, and Excess Withdrawals.	2
2.3. Start of Benefit Payments.	2
2.4. The Standard Benefit.	3
2.5. Withdrawals During the Withdrawal Period.	5
2.6. Impact of Excess Withdrawals.	5
2.7. Automatic Transfers to the Declared Interest Account.	5
2.8. Guaranteed Withdrawal Payment Step-Up.	6
<b>PART 3: Impact of a Change in the Annuitant</b>	
3.1. During the Accumulation Period.	6
3.2. During the Withdrawal Period – Contingent Annuitant.	6
3.3. During the Withdrawal Period – Single Life Option.	6
3.4. During the Withdrawal Period – Joint Life Option.	7
<b>PART 4: Rider Charges</b>	
4.1. Rider Charges.	7
4.2. Determination.	7
4.3. Allocation of Charges to the Accumulation Value.	7
<b>PART 5: Termination</b>	
5.1. Automatic Termination.	8
5.2. Cancellation.	8

# Part 1: Some Defined Terms and Measures

## 1.1. Attained Age.

A person's Attained Age on any date is that person's age as of his or her last birthday as of that date.

## 1.2. Annuitant.

"Annuitant" means the Annuitant as defined in the Policy.

## 1.3. Joint Annuitant.

If You elect a Joint Life Option under this Rider, the Joint Annuitant is the Annuitant's married spouse (see 2.4.2.2 Joint Life Option).

## 1.4. The Accumulation Period.

Prior to the date We make the first payment of a withdrawal benefit upon Your election of benefits under this Rider, the Rider is said to be in the Accumulation Period.

## 1.5. The Withdrawal Period.

On and subsequent to the date We make the first payment of a withdrawal benefit subsequent to Your election of benefits under this Rider, the Rider is said to be in the Withdrawal Period. Once the Withdrawal Period begins, the Rider may not re-enter the Accumulation Period. The Withdrawal Period ends when the Rider terminates.

## 1.6. The Income Calculation Base.

The Income Calculation Base is a calculated amount used in the determination of benefits provided by this Rider, and it exists only during the Accumulation Period. It is not a value to which You have direct access. The Income Calculation Base at any time equals the sum of the Income Calculation Base Segments (ICB Segments). The Income Calculation Base and ICB Segments cease to exist at the start of the Withdrawal Period.

### 1.6.1. ICB Segments.

New ICB Segments are established when You pay a premium, when Bonus Accumulation Value amounts transfer to the Accumulation Value (if applicable; not all policies have a Bonus Accumulation Value), and when an Income Calculation Base Adjustment occurs (see 1.6.4. Income Calculation Base Adjustments). An ICB Segment at any time is equal to:

- the Net Premium paid, if any, on the date the ICB Segment is established;
- plus the amount transferred from the Bonus Accumulation Value, if any, on the date the ICB Segment is established;
- plus the Income Calculation Base Adjustment, if any, on the date the ICB Segment is established;
- minus amounts deducted from the ICB Segment due to a withdrawal from the Accumulation Value (see 1.6.3. Reductions to the Income Calculation Base)

all accumulated daily at the ICB Segment's applicable Rollup Rate(s).

### 1.6.2. Rollup Rates.

We declare Rollup Rates for each ICB Segment. Rollup Rates are annual exponential growth rates.

- No Rollup Rate We declare will be less than the Minimum Rollup Rate, shown on Rider Coverage Page 1, subject to the following exception.  
If the Rider is still in the Accumulation Period at the end of the Maximum Accumulation Years, measured from the Issue Date, then all Rollup Rates for all ICB Segments for the remainder of the Accumulation Period will be zero regardless of whether any Rollup Rate guarantee period has expired. The Maximum Accumulation Years is shown on Rider Coverage Page 1.
- Initial Rollup Rates applicable to ICB Segments established on different dates may differ from each other. The Initial Rollup Rate for each ICB Segment will be guaranteed for the Initial Rollup Rate Guarantee Period shown on Rider Coverage Page 1 and measured from the date the ICB Segment is established, subject to the exception noted above. The Initial Rollup Rate for an ICB Segment established on the Issue Date is shown on Rider Coverage Page 1.
- We will apply Renewal Rollup Rates to ICB Segments subsequent to the expiry of the Initial Rollup Rate Guarantee Period. Such renewal Rollup Rates will be guaranteed for a period starting on the date of expiry of any previously-declared Rollup Rate for one year, subject to the exception noted above. Renewal Rollup Rates applicable to ICB Segments established on different dates may differ from each other.

**1.6.3. Reductions to the Income Calculation Base.**

Any time a withdrawal is made from the Accumulation Value during the Accumulation Period, We will reduce the Income Calculation Base in the same proportion as the Accumulation Value is reduced. Such reductions to the Income Calculation Base are subtracted from the ICB Segment established most recently, then from the ICB Segment with the next most recent established date, and so on until the required reduction is met.

**1.6.4. Income Calculation Base Adjustments.**

During the Accumulation Period, on each Income Calculation Base Adjustment Date, We will calculate the Income Calculation Base Adjustment.

The First Income Calculation Base Adjustment Date is shown on Rider Coverage Page 1.

Income Calculation Base Adjustment Dates, after the first, will be on five (5)-year anniversaries of the previous Income Calculation Base Adjustment Date while the Rider is in the Accumulation Period.

The Income Calculation Base Adjustment will be the amount, if any, by which the Accumulation Value exceeds the Income Calculation Base. If this amount is positive, then such amount will be applied to a new ICB Segment on that Income Calculation Base Adjustment Date. The Accumulation Value used in this calculation is determined after interest, if any, has been credited and after Rider Charges and any Partial Withdrawals have been deducted.

## **Part 2: Guaranteed Lifetime Withdrawal Benefits**

### **2.1. General.**

This section of the Rider details how, when, and the extent to which Rider withdrawal benefits are paid. We make all such benefit payments directly to You unless You direct Us otherwise.

### **2.2. Guaranteed Withdrawal Payment, Scheduled Withdrawal Payment, and Excess Withdrawals.**

**2.2.1. Guaranteed Withdrawal Payment.**

The Guaranteed Withdrawal Payment is the maximum annual Guaranteed Lifetime Withdrawal Benefit available.

**2.2.2. Scheduled Withdrawal Payment.**

The Scheduled Withdrawal Payment is the annual amount You choose to have Us pay You as a Guaranteed Lifetime Withdrawal Benefit under this Rider. The Scheduled Withdrawal Payment may be all or any portion of the Guaranteed Withdrawal Payment. You may receive the Scheduled Withdrawal Payment in annual, semi-annual, quarterly, or monthly installments. The amount of the semi-annual, quarterly, or monthly installment is the Scheduled Withdrawal Payment divided by two (2), four (4), or twelve (12) respectively. Each installment of the Scheduled Withdrawal Payment must be at least equal to the lesser of \$100 or the Guaranteed Withdrawal Payment.

You may start, stop, or change the Scheduled Withdrawal Payment at any time during the Withdrawal Period. If You change the Scheduled Withdrawal Payment, it cannot be greater than the Guaranteed Withdrawal Payment for the applicable Policy Year.

**2.2.3. Excess Withdrawals.**

An Excess Withdrawal is a withdrawal taken during the Withdrawal Period to the extent it and the sum of previous withdrawals in that Policy Year exceed the larger of the Guaranteed Withdrawal Payment for that Policy Year or the Required Minimum Distribution, the latter determined as described in this Rider (see 2.5. Withdrawals During the Withdrawal Period). Withdrawals taken in a Policy Year before the start of the Withdrawal Period will not be considered in the sum of previous withdrawals. If any portion of a withdrawal is an Excess Withdrawal, such Excess Withdrawal will reduce or may eliminate future Guaranteed Withdrawal Payments according to the provisions of this Rider (see 2.6. Impact of Excess Withdrawals). If the reduced Guaranteed Withdrawal Payment is less than the Scheduled Withdrawal Payment, then the Scheduled Withdrawal Payment will be set equal to the Guaranteed Withdrawal Payment.

### **2.3 Start of Benefit Payments.**

We will make the first Scheduled Withdrawal Payment after You make a request in writing for Us to do so, provided that, on the date of the first Scheduled Withdrawal Payment:



- The Waiting Period, shown on Rider Coverage Page 1 and measured from the Issue Date, has expired; and
- the Annuitant's Attained Age (and the Joint Annuitant's Attained Age, if You choose the Joint Life Option) is at least as great as the Minimum Benefit Age shown on Rider Coverage Page 1; and
- a withdrawal is permitted from the annuity under applicable law and regulations; and
- the Guaranteed Withdrawal Payment is at least \$100; and
- all Policy loans, if any, have been repaid.

You may not take any Policy loans after the Withdrawal Period begins. **You may not pay any more premiums to this Policy after the Withdrawal Period begins.**

Each Scheduled Withdrawal Payment and other withdrawals You request from the Policy will reduce the Accumulation Value, as defined in the Policy. If an installment of the Scheduled Withdrawal Payment results in the Accumulation Value being zero, then the following apply.

- If the Scheduled Withdrawal Payment is less than the Guaranteed Withdrawal Payment, We will increase the amount of the next semi-annual, quarterly, or monthly installment to an amount equal to the Guaranteed Withdrawal Payment divided by two (2), four (4), or twelve (12) respectively as appropriate. We will continue to pay the installments of the increased amount until the death of the Annuitant (or until the death of the survivor of the Annuitant and Joint Annuitant, if applicable) if the terms of this Rider so provide.
- If the Scheduled Withdrawal Payment is equal to the Guaranteed Withdrawal Payment, We will continue to pay the installments of the Scheduled Withdrawal Payment until the death of the Annuitant (or until the death of the survivor of the Annuitant and Joint Annuitant, if applicable) if the terms of this Rider so provide.
- We reserve the right to require proof that the Annuitant (and Joint Annuitant, if applicable) is (are) still living on the date each installment of the Scheduled Withdrawal Payment is made.
- No additional increases to the Guaranteed Withdrawal Payment or the Scheduled Withdrawal Payment will occur.
- All other riders attached to the Policy will terminate.

You have the right to withdraw any amount so provided by the Policy.

## 2.4 The Standard Benefit.

The Guaranteed Withdrawal Payment is determined at the beginning of the Withdrawal Period and on each Policy anniversary thereafter. The maximum amount that can be withdrawn in the applicable Policy Year without any amount being treated as an Excess Withdrawal is the larger of:

- the Guaranteed Withdrawal Payment for that Policy Year or
- the Required Minimum Distribution, the latter determined as described subsequently in this Rider (see 2.5. Withdrawals During the Withdrawal Period).

### 2.4.1. Calculation of the Guaranteed Withdrawal Payment for the Standard Benefit.

2.4.1.1. The Guaranteed Withdrawal Payment on the date the Withdrawal Period begins equals [ the greater of (a) or (b)] times (c), where:

- (a) is the Accumulation Value on the same date after any interest has been credited and after any Rider Charges have been deducted;
- (b) is the Income Calculation Base on the same date; and
- (c) is the Guaranteed Withdrawal Percentage, taken from the appropriate column of the Guaranteed Withdrawal Percentage Table on Rider Coverage Page 2.

The appropriate column for the Guaranteed Withdrawal Percentage is determined by Your choice of a either single-life payout or a joint-life payout (see 2.4.2 Single Life versus Joint Life Options) and either a level payout or an increasing payout (see 2.4.3 Level Payout Option versus Increasing Payout Option), using the row for the Annuitant's Attained Age (or the row for the Attained Age of the younger of the Annuitant and the Joint Annuitant if You choose the Joint Life Option).

2.4.1.2. The Guaranteed Withdrawal Payment on each Policy anniversary after the Withdrawal Period begins is the Guaranteed Withdrawal Payment for the Policy Year just ended, adjusted for the following:

- reduced for any Excess Withdrawals during the Policy Year just ended (see 2.6. Impact of Excess Withdrawals) and
- increased by any Increase Adjustment (see 2.4.3.2 The Increasing Payout Option).

On the concurrent or subsequent Policy Date anniversary, the Guaranteed Withdrawal Payment may be increased by any Step-Up Adjustment (see 2.8. Guaranteed Withdrawal Payment Step-Up).

#### 2.4.2. Single Life versus Joint Life Options.

##### 2.4.2.1. Single Life Option.

You may choose, at the beginning of the Withdrawal Period, to have the Guaranteed Withdrawal Payment based on the life of the Annuitant only. Under this option, the Guaranteed Withdrawal Payment is guaranteed to be available until the death of the Annuitant, subject to the terms of this rider.

##### 2.4.2.2. Joint Life Option.

The Joint Life option is not available if the Policy has been continued by a spouse as provided in the Death Benefit provision of the Policy. The Joint Life option is not available to a non-spousal beneficiary using inherited account options (as may be defined and permitted under Internal Revenue Code) for payment of the Policy's Death Benefit.

You may choose, at the beginning of the Withdrawal Period, to have the Guaranteed Withdrawal Payment based on the lives of the Annuitant and the Joint Annuitant, provided one of the following is true:

- You are a natural person and either You or Your spouse is the Annuitant; or
- You are Joint Owners, You are married spouses, and one of You is the Annuitant; or
- The Owner of the Policy is a qualified retirement plan.

If You elect a Joint Life Option, then the following apply.

- The naming of a Contingent Annuitant is voided.
- The Beneficiary of the Policy shall be the Joint Annuitant for as long as both the Annuitant and Joint Annuitant are living, if allowed by applicable law and regulation.
- The Guaranteed Withdrawal Payment is guaranteed to be available until the death of the survivor of the Annuitant and the Joint Annuitant, subject to the terms of this rider.
- The percentage from the Guaranteed Withdrawal Percentage Table is taken from the column for the appropriate Joint Life Option and is based on the Attained Age of the younger of the Annuitant and the Joint Annuitant.

#### 2.4.3. Level Payout Option versus Increasing Payout Option.

##### 2.4.3.1. Level Payout Option.

Payments with the Guaranteed Withdrawal Payment Level Option provide for a Guaranteed Withdrawal Payment that remains level, subject to adjustment for Excess Withdrawals (see 2.6. Impact of Excess Withdrawals) and Guaranteed Withdrawal Payment Step-Ups (see 2.8. Guaranteed Withdrawal Payment Step-Up). The Guaranteed Withdrawal Payment available with the Level Option starts at a higher amount than that available with the Increasing Option but is not subject to the annual increases that is the case for the Increasing Option.

##### 2.4.3.2. Increasing Payout Option.

Payments with the Guaranteed Withdrawal Payment Increasing Option provide for a Guaranteed Withdrawal Payment that will increase, on Policy anniversaries, by an adjustment amount equal to the Increase Adjustment, provided that:

- the Rider has been in the Withdrawal Period for at least one year; and
- the Accumulation Value is greater than zero.

The Increase Adjustment equals (a) multiplied by (b), where

- (a) is the Guaranteed Withdrawal Payment for the Policy Year just ended, reduced for any Excess Withdrawals during the Policy Year just ended; and
- (b) is the Annual Increase Percentage, shown on Rider Coverage Page 1.

We will increase the Scheduled Withdrawal Payment in the same proportion as the Guaranteed Withdrawal Payment is increased by any Increase Adjustment.

## 2.5. Withdrawals During the Withdrawal Period.

During the Withdrawal Period, We first treat a withdrawal You request as being for a Guaranteed Withdrawal Payment. Any withdrawal that is treated as being for a Guaranteed Withdrawal Payment will not be subject to the limits on minimum Partial Withdrawals and on required minimum values remaining in the Policy after Partial Withdrawals that may be imposed by the Policy's Partial Withdrawals provision.

A Scheduled Withdrawal Payment is first made from the Premium Account, then from the Declared Interest Accounts, to the extent there is sufficient value in the Premium Account and in the Declared Interest Accounts. Any insufficiency is then taken from each type of Indexed Interest Account in proportion to its value. During each full Policy Year starting on or after the beginning of the Withdrawal Period, withdrawals are not subject to Withdrawal Charges to the extent their cumulative total during a Policy Year does not exceed the Maximum Free Withdrawal. The Maximum Free Withdrawal is the greatest of:

- the Guaranteed Withdrawal Payment for that Policy Year; or
- the Free Withdrawal Amount specified in the Policy for that Policy Year; or
- an amount equal to the Required Minimum Distribution for that Policy Year as defined below.

Withdrawals will be reduced by Withdrawal Charges when the sum of all withdrawals in a Policy Year, including Scheduled Withdrawal Payments, exceeds the Maximum Free Withdrawal.

If the Withdrawal Period begins on any date that is not a Policy anniversary, then all withdrawals in that Policy Year, including Scheduled Withdrawal Payments, are subject to Withdrawal Charges to the extent that they exceed the Free Withdrawal Amount.

The Accumulation Value and the Policy Value will be reduced by all withdrawals, whether Guaranteed Withdrawal Payment or otherwise.

If not specified in the Policy, the Required Minimum Distribution is defined as follows. A Required Minimum Distribution is determined:

- annually as of the end of the calendar year ending immediately prior to the beginning of the current Policy Year;
- in accordance with applicable tax law and regulations in effect at the time the Required Minimum Distribution is determined; and
- as if the Policy were the only annuity owned by the Owner.

If specified in the Policy, the definition of the Required Minimum Distribution is not changed by this Rider.

## 2.6. Impact of Excess Withdrawals.

Each Excess Withdrawal in a Policy Year during the Withdrawal Period may be subject to Withdrawal Charges as defined in the Policy (see 2.5. Withdrawals During the Withdrawal Period). The Guaranteed Withdrawal Payment for subsequent Policy Years will be reduced by the ratio of each Excess Withdrawal (including any Withdrawal Charges) to the Accumulation Value immediately prior to such withdrawal. **Each Excess Withdrawal can reduce future benefits by more than the dollar amount of the Excess Withdrawal.**

## 2.7. Automatic Transfers to the Declared Interest Account.

On each Reset Date during the Withdrawal Period, We will determine if the sum of the values of the Declared Interest Accounts is less than the Guaranteed Withdrawal Payment. We will do so:

- after interest is credited,
- after Rider Charges are deducted,
- after any requested transfers between and among Interest Accounts have been transferred, and
- after any Partial Withdrawals have been made.

If, on such Reset Date, the sum of the values of the Declared Interest Accounts is less than the Guaranteed Withdrawal Payment then in effect, We will transfer amounts from the Indexed Interest Accounts with Reset Dates on that day to the Declared Interest Accounts in order to increase the sum of the value of the Declared Interest Accounts to the amount of the Guaranteed Withdrawal Payment. The amount transferred will be transferred from each Indexed Interest Account type in proportion to its value. If the cumulative value of the

Indexed Interest Accounts for such Reset Date is insufficient to increase the Declared Interest Accounts to the amount of the Guaranteed Withdrawal Payment, the entire values of the Indexed Interest Accounts for such Reset Date will be transferred to the Declared Interest Accounts.

## **2.8. Guaranteed Withdrawal Payment Step-Up.**

On each Policy Date anniversary during the Withdrawal Period, We will increase the Guaranteed Withdrawal Payment by the Step-Up Adjustment. The Step-Up Adjustment equals (a) multiplied by (b) minus (c), but not less than zero, where:

- (a) is the Accumulation Value on the Policy Date anniversary, after interest has been credited and Rider Charges have been deducted;
- (b) is the Guaranteed Withdrawal Percentage, taken from the appropriate column of the Guaranteed Withdrawal Percentage Table on Rider Coverage Page 2, using the Annuitant's Attained Age on the Policy Date anniversary (or the Attained Age of the younger of the Annuitant and the Joint Annuitant as of the Policy Date anniversary); and
- (c) is the Guaranteed Withdrawal Payment after any Increase Adjustment and adjustments for Excess Withdrawals have been applied.

If the Scheduled Withdrawal Payment equals the Guaranteed Withdrawal Payment, then We will increase the Scheduled Withdrawal Payment by the amount of any Step-Up Adjustment.

If the Scheduled Withdrawal Payment is less than the Guaranteed Withdrawal Payment, then We will notify You of any increase to the Guaranteed Withdrawal Payment. We will increase the Scheduled Withdrawal Payment if You make a request in writing for Us to do so.

# **Part 3: Impact of a Change in the Annuitant**

## **3.1. During the Accumulation Period.**

If the Owner, the Joint Owner, or the Annuitant dies during the Accumulation Period and the Policy is continued with a successor Annuitant, then all Rider benefits will be based on the successor Annuitant.

## **3.2. During the Withdrawal Period – Contingent Annuitant.**

If the Contingent Annuitant becomes the Annuitant during the Withdrawal Period, then this Rider will terminate, Rider Charges will cease, and withdrawal benefits under this Rider will stop.

## **3.3. During the Withdrawal Period – Single Life Option.**

If:

- the Owner, the Joint Owner, or the Annuitant dies during the Withdrawal Period; and
- the Guaranteed Withdrawal Payment is based on a Single Life Option; and
- the Policy is continued with a successor Annuitant,

then Rider Charges cease and in each Policy Year You may withdraw, without incurring Withdrawal Charges, an amount equal to the largest of:

- the Guaranteed Withdrawal Payment as of the date of death; or
- the Free Withdrawal Amount; or
- the Required Minimum Distribution, determined as described earlier in this Rider (see 2.5. Withdrawals During the Withdrawal Period)

You may do so while and to the extent the Accumulation Value is positive. When the Accumulation Value becomes zero:

- We will pay the Policy Value, if it is positive, in a lump sum; and
- The Policy and this Rider will terminate.

### 3.4. During the Withdrawal Period – Joint Life Option.

If:

- the Owner, the Joint Owner, or the Annuitant dies during the Withdrawal Period;
- the Guaranteed Withdrawal Payment is based on a Joint Life Option; and
- the Policy is continued with a successor Annuitant,

then You may continue to withdraw the Guaranteed Withdrawal Payment each Policy Year. All adjustments to the Guaranteed Withdrawal Payment continue as defined in this Rider. Rider benefits and Rider Charges continue, and the Policy and Rider do not terminate until the successor Annuitant dies.

## Part 4: Rider Charges

### 4.1. Rider Charges.

We make charges for this Rider, called the Rider Charges, deducting them from the Accumulation Value. If, due to a Policy loan, there is not enough unimpaired Accumulation Value for Rider Charges to be deducted, this Rider will terminate (see Part 5).

### 4.2. Determination.

The Rider Charge is determined separately for each Interest Account at the end of each Account Year. The Rider Charge for an Interest Account equals the Rider Charge Rate times the value of the Interest Account at the end of the Account Year, including any impaired value due to an unpaid Policy loan, if applicable, and determined after any interest has been credited to the Interest Account and before any Partial Withdrawals are taken on that date.

The Rider Charge Rate, which is shown on Rider Coverage Page 1, is determined depending on whether the Rider is in the Accumulation Period or the Withdrawal Period. If the Rider is in the Accumulation Period, the Rider Charge Rate varies by how long the Policy has been in force. If the Rider is in the Withdrawal Period, the Rider Charge Rate is the rate that was in effect at the beginning of the Withdrawal Period and continues unchanged until the Rider terminates.

### 4.3. Allocation of Charges to the Accumulation Value.

If there are no unpaid Policy loans, the Rider Charge calculated for each Interest Account is deducted from the value of that Interest Account.

If there are unpaid Policy loans, the Rider Charges for all Interest Accounts for a given Reset Date are summed and then deducted from the Accumulation Value in the following manner:

- First, We will deduct the Rider Charges from the value, if any, in the Premium Account.
- If there is insufficient value in the Premium Account, We will deduct the remaining Rider Charges from the value in the Declared Interest Accounts to the extent there is value in the Declared Interest Accounts. If there is insufficient value in the Declared Interest Accounts, We will deduct any remaining Rider Charges from the value of each type of Indexed Interest Account in proportion to its unimpaired value. When deducting Rider Charges within each type of Interest Account, We will deduct first from the Accounts with the most recent Reset Date, then from the Accounts with the next most recent Reset Date, and so on until the required portion of the Rider Charge has been met.

# Part 5: Termination

## 5.1. Automatic Termination.

This Rider will automatically terminate at the earliest of the following events:

- the termination of this Policy under its provisions
  - *except if:*
    - this Rider is in the Withdrawal Period and the Policy would otherwise terminate as a result of the payment of the Required Minimum Distribution or the Guaranteed Withdrawal Payment,
  - *in which case:*
    - the Policy and Rider will remain in force and the withdrawal payments will continue, as provided in this Rider, until
      - the death of the Annuitant, if there is no Joint Annuitant, or
      - the latter death of the Annuitant and the Joint Annuitant,at which time the Policy and Rider will both terminate.
- an Excess Withdrawal, including any applicable Withdrawal Charges, results in the Accumulation Value being zero; or
- there does not exist sufficient unimpaired Accumulation Value in the Policy as a result of a Policy loan for deduction of the Rider Charges; or
- any death benefits are paid upon Your death or the Annuitant's death; or
- the Contingent Annuitant becomes the Annuitant during the Withdrawal Period; or
- You exercise Your right to receive a periodic income under the Annuity Benefits provision or the Cash Value provision of the Policy.

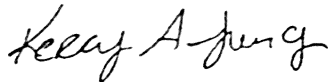
## 5.2. Cancellation.

You may cancel this Rider after completion of the Cancellation Period shown on Rider Coverage Page 1 and measured from the Issue Date. You must notify Us in writing at least thirty (30) days prior to the Policy anniversary on which the termination is to take effect. If You do so, the Rider will terminate, and

- no future benefits will be payable under the Rider and
- no future Rider Charges will be made.

We will not reinstate the Rider after We have cancelled it at Your request.

Signed for Life Insurance Company of the Southwest by



Secretary

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, 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

Metropolitan Life Insurance Company  
(hereinafter referred to as "[MetLife]"),  
whose principal place of business is  
200 Park Avenue  
New York, NY 10166

**WHEREAS**, SBBC issued a Request For Proposal identified as RFP 15-010P 403(b)/457(b) Mutual Fund Program for School Board Employees dated March 4, 2014 and amended by Addendum Number One dated March 26, 2014 (herein referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Mutual Fund Program for School Board Employee; and

**WHEREAS**, MetLife offered a proposal dated April 15, 2014, (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to the RFP; and

**WHEREAS**, MetLife desires to provide SBBC, and SBBC desires to receive from MetLife, Mutual Fund Program for School Board Employees.

**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 initial term of this Agreement shall commence upon execution by all parties and

conclude on December 31, 2017. The term of the Agreement may be extended by two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial contract period or any one-year renewal option, SBBC may exercise its option to extend the Agreement for 180 days beyond the expiration date of the renewal period at a rate change not to exceed the CPI for the previous year.

2.02 **SBBC Annual Fee.** MetLife agrees to provide SBBC an annual fee of \$10 per active and inactive participant in accordance with Section 4.2.6 of the RFP without deviations.

2.03 **TPA Administration Fee.** MetLife agrees to provide SBBC an annual fee of \$12 per active and inactive participant to fund third-party administration services in accordance with Section 4.2.7 of the RFP without deviations.

2.04 **Contract Minimum.** The contract minimum for the fixed and/or guaranteed account offered will be at a minimum current net credit rate of 1%.

2.05 **Product Offerings/Marketing.** MetLife agrees to only market group Mutual Fund products as more fully described in their Proposal. In addition, MetLife will offer plan features of Triple Solutions - Managed Account Services and Self-Directed Brokerage Account and Roth 403/457 through TD Ameritrade, Inc. MetLife further agrees that the 457(b) program will have the same cost and structure as the 403(b) program. If MetLife offers a better product within the Florida K-12 market, SBBC will be given the option to move to this product.

2.06 **Buy-Out of Surrender Charges.** MetLife agrees to offer a 90-day surrender charge free window period for existing MetLife participants to transfer into the new Mutual Fund platform. MetLife agrees to provide a full accounting of the activity that occurs during the 90-day window. Transfers will be permitted if deemed suitable and will be limited to accumulated flow with no global limits on the amounts of the transactions.

2.07 **Personnel.** MetLife agrees to provide SBBC with a list of agents that are approved by MetLife to sell MetLife Mutual Funds products more fully described in MetLife proposal. Further, MetLife agrees that all utilized personnel will be compensated based on a percentage of one-half of one percent on the contributions.

2.08 **Account Activity Statements.** MetLife agrees to mail individual participant statements directly to each participant at a minimum of annually at no cost to SBBC.

2.09 **Service Agreement.** MetLife agrees to modify the service agreement so there's no conflict with SBBC.

2.10 **Electronic Investment Advice.** MetLife provides access to investment advisory services the Triple Solutions Program, which is provided by Advised Assets Group (AAG), for a fee. Any such applicable fees to the Triple Solutions Program, if lowered, SBBC will receive notification of said lower fees and lowered fees will be applied immediately.



2.11 **Emergency and Hardship Withdrawals.** MetLife agrees to wave all fees associated with qualifying unforeseen emergency and hardship withdrawals, as deemed and outlined by the IRS.

2.12 **Education.** MetLife agrees to provide a minimum of twelve (12) education seminars for SBBC employees. MetLife agrees to develop and implement an initial communication campaign which would include at a minimum: Direct Mail Campaigns, Posters, Brochures and On-site visits. Further MetLife agrees to develop these campaigns in conjunction with SBBC Benefits staff to determine the frequency and most appropriate marketing strategy. All marketing materials and communication pieces shall be reviewed and approved by the Benefits Department prior to being disseminated to employees, at no cost to SBBC.

2.13 **Performance Standards.** MetLife agrees to all the performance standards as outlined in of the RFP without deviations. MetLife further agrees to provide at a minimum annual reporting and metrics on each of the performance guarantees and understands that SBBC has the right to audit/validate any of the reported metrics.

2.14 **Contribution Amounts.** Based on available data, MetLife agrees to calculate the allowable 15 year contribution amounts for those participants who request it and will take 100% of the responsibility for the calculations.

2.15 **Florida Retirement System.** MetLife agrees to integrate with the Florida-specific pension modeling system tool for SBBC participants.

2.16 **Partial Withdrawal Minimum.** MetLife agrees to lower the partial withdrawal minimum to \$1.00, subject to MetLife's contract requirements.

2.17 **Interest Rate Changes.** To the extent possible and consistent with the contract, MetLife agrees to provide SBBC with a minimum of 5 business days' notice of any rate changes. MetLife further agrees to provide a letter to SBBC announcing such changes prior to releasing it to SBBC's employees. MetLife further agrees to post such changes to MetLife's website.

2.18 **Fiduciary.** If an employee enrolls in the Morningstar and/or AAG's Triple Solution Managed Account service, MetLife and SBBC acknowledge and agree that Morningstar and/or AAG shall accept full fiduciary responsibility for the Managed Account services provided to each employee.

MetLife also agrees that in the event of an error by MetLife in performing its obligations under this Agreement, MetLife will correct, without additional charge to SBBC, any such errors in service.

2.19 **Additional Data.** Upon request from SBBC, MetLife will at a minimum, but not limited to, provide the following items that are publicly available and not provided elsewhere:

- Declared Rates
- Contract Minimums for all contracts and lengths
- Index Option Methodology
- Annual Maximum Credit for each product and length

Withdrawals provisions for all contracts and lengths  
Expense reconciliation for annuity and mutual funds  
Quarterly report regarding the spread on the investment product for any  
Guaranteed or Fixed Account provided  
Ratings and credit quality for each product  
Market to book ratio for all accounts

2.20 **Services.** MetLife will provide SBBC with all administrative functions/services and maintain all required paperwork as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda.

2.21 **Transmission of Data.** MetLife agrees to accept and transfer data in an electronic format acceptable to SBBC and the Third Party Administrator (TPA).

2.22 **Look-Back Period.** MetLife agrees to a one-year look back period for reconciliation and billing.

2.23 **M/WBE Participation.** MetLife will provide for M/WBE participation during its performance of services under this contract agreement by utilizing an M/WBE approved vendor and agrees to allocate a minimum of \$5,000 per year, preferable to a local Broward County vendor. As enrollment increases, the annual allocation will increase. MetLife also agrees to allocate \$2,500 annually to the District's Broward Education Foundation for minority scholarships.

2.24 **Local Telephone Access:** MetLife agrees to provide 754/954 and a toll free customer service phone numbers.

2.25 **Program Administration.** MetLife agrees to administer and maintain the 403(b) and 457(b) programs in accordance with all appropriate federal and state statutes in effect.

2.26 **Variations in Enrollment.** MetLife agrees that variations in actual enrollment/assets will have no effect on MetLife's fee structure.

2.27 **Enrollment Process.** MetLife agrees to accept SBBC's enrollment form and electronic enrollment process.

2.28 **Disclosure of Potential Interest and Conflict.** MetLife acknowledges that there are no such conflicts as outlined in Attachment H of the RFP.

2.29 **Participant Services.** MetLife agrees to the following services through its local and/or the toll free number:

- Change in beneficiary information
- Participant address information and changes
- Vested percentage

2.30 **Benefits Video.** MetLife agrees to assist in creating and maintaining a benefits portion of the SBBC's benefits video and is responsible for providing information, presentations and speakers to be included in the video.

2.31 **Tax Documents.** MetLife agrees, if requested to prepare and file all applicable regulatory and tax instruments (such as 1099's), provide discrimination testing semi-annually, provide and update available MetLife plan document, as needed at no additional cost to SBBC.

2.32 **Open Enrollment Materials.** MetLife agrees to participate and share in the cost of the materials for Open Enrollment.

2.33 **Employee Satisfaction Survey.** MetLife, if requested, agrees to participate and share in the cost of an independent Employee Satisfaction Survey.

2.34 **Target Date.** MetLife agrees to utilize other fund families if proposed fund family is not performing.

2.35 **Compensation and Reconciliation.** MetLife agrees to receive only 60 basis points on the Mutual Fund Accounts and will conduct and semi-annual reconciliation on such compensation. MetLife further agrees that as enrollment increases to revisit compensation structure.

2.36 **General Conditions.** MetLife agrees to section 7.0 General Conditions of the RFP with no deviations.

2.37 **Priority of Documents.** In the event of a conflict between the documents the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number One Dated, March 26, 2014; then
- Third: RFP 15-010P - "403(b)/457(b) Program for School Board Employees; then
- Fourth: The Proposal submitted by MetLife in response to the RFP
- Fifth: MetLife's Service Agreement.

In case of any other doubts or difference of opinion, the decision of SBBC shall be final and binding on both parties.

2.38 **Inspection of MetLife's Records by SBBC.** MetLife 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 MetLife's 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 MetLife or any of

MetLife's payees pursuant to this Agreement. MetLife's 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. MetLife's 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) MetLife's Records Defined. For the purposes of this Agreement, the term "MetLife's Records" shall include, without limitation, any 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 MetLife's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to MetLife pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide MetLife 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 MetLife's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by MetLife 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 MetLife's 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 MetLife in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by MetLife. If the audit discloses billings or charges to which MetLife is not contractually entitled, MetLife 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. MetLife 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 MetLife 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 MetLife pursuant to this Agreement and such excluded costs shall become the liability of MetLife.

(h) Inspector General Audits. MetLife 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.

2.39 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, Benefits & Employment Services 7770 W. Oakland Park Blvd. Sunrise, Florida 33351
To METLIFE:	Metropolitan Life Insurance Company 200 Park Avenue New York, NY 10166 To the Attention of the Office of the General Counsel
With a Copy to:	Derrick Kelson, Vice President MetLife Premier Client Group Metropolitan Life Insurance Company Gragg Building 11225 North Community House Road Charlotte NC 28277
With a Copy to:	Anthony Agentowicz, Divisional Marketing Director 1255 Drummers Lane, Suite 300 Wayne, PA 19087

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

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By MetLife: MetLife 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 MetLife, its agents, servants or employees; the equipment of MetLife, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of MetLife or the negligence of MetLife'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 MetLife, 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. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) 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 Agreement 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 Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and 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 Sections 1002.22 and/or 1002.221, Florida Statutes.



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 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **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

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

  
\_\_\_\_\_  
Office of the General Counsel

**FOR METLIFE**

(Corporate Seal)

ATTEST:

METLIFE

By

[Handwritten Signature]

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

-or-

Witness

[Handwritten Signature]

Witness

[Handwritten Signature]

**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 North Carolina

COUNTY OF Mecklenburg

The foregoing instrument was acknowledged before me this 27th day of February, 2015 by Derrick Kelson of

MetLife, 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. \_\_\_\_\_ as Type of Identification

My Commission Expires:

[Handwritten Signature]

Signature – Notary Public

Michelle J Antinore

Printed Name of Notary

(SEAL)

20082701004  
Notary's Commission No.

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, 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

**THE VARIABLE ANNUITY LIFE INSURANCE COMPANY**  
(hereinafter referred to as “[VALIC] ”),  
whose principal place of business is  
2929 Allen Parkway,  
Houston, Texas 77019

**WHEREAS**, SBBC issued a Request For Proposal identified as RFP 15-010P 403(b)/457(b) Program for School Board Employees dated March 4, 2014 and amended by Addendum Number One dated March 26, 2014 (herein referred to as ‘RFP’) which is incorporated by reference herein, for the purpose of receiving proposals for 403(b)/457(b) Program for School Board Employees; and

**WHEREAS**, VALIC offered a proposal dated April 15, 2014, (hereinafter referred to as “Proposal”) which is incorporated by reference herein, in response to the RFP; and

**WHEREAS**, VALIC desires to provide SBBC, and SBBC desires to receive from VALIC, a 403(b)/457(b) Annuity and Mutual Funds Programs for School Board Employees.

**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 initial term of this Agreement shall commence upon execution by all parties and

conclude on December 31, 2017. The term of the Agreement may be extended by two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial contract period or any one-year renewal option, SBBC may exercise its option to extend the contract for 180 days beyond the expiration date of the renewal period at a rate change not to exceed the CPI for the previous year.

2.02 **Net Revenue Pricing.** VALIC agrees to the annuity net revenue pricing range of .55 to 1.05 basis points, and further agrees to provide SBBC of a full accounting of said net revenue pricing on a quarterly basis.

2.03 **Contract Minimum.** The contract minimum for both annuity and mutual funds for the fixed and/or guaranteed account offered will be at a minimum of 1% **for the term of all products sold during the contract period.**

2.04 **Product Offerings/Marketing.** VALIC agrees to only market group 403(b)/457(b) annuity and mutual fund products as more fully described in their Proposal as Portfolio Director 5.2. In addition, VALIC will offer plan features of Guided Portfolio Services, Self-Directed Brokerage to both the 403(b) and 457(b) products and additional target dates and investment options from different mutual fund entities with no impact on price. VALIC further agrees to offer a Roth option. If VALIC offers a better product within the Florida K-12 market, SBBC will be given the option to move to this product. Any such applicable fees to the Self-Directed Brokerage Account, if lowered, SBBC will receive notification of said lower fees and lowered fees will be applied immediately.

2.05 **Buy-Out of Surrender Charges.** VALIC agrees to explore the possibility of a three percent buy-out program, with a 180-day open window with no impact to the cost for the annuity program. VALIC also agrees to a Mutual fund 3% buy-up program with a 180-day window. The cost of the mutual fund will increase by 10 basis points. After the 180-day window, VALIC will review the pricing and the utilization of the program and make final adjustments to cost. To buy-out existing carrier surrender charges for employees if the transaction is deemed suitable and limited to accumulated flow with no global limits on the amount of the transactions.

2.06 **Personnel.** VALIC agrees to provide SBBC with a list of agents that are approved by VALIC to sell VALIC products more fully described in VALIC's proposal. Further, VALIC agrees that all utilized personnel, including agents, will be compensated based on a salary and bonus structure. VALIC also agrees that SBBC will have input in both qualitative and quantitative metrics used to establish such bonuses.

2.07 **Account Activity Statements.** VALIC agrees to mail individual participant statements directly to each participant at a minimum of annually at no cost to SBBC.

2.08 **Guided Portfolio Services Fee.** VALIC agrees to waive the \$25.00 Guided Portfolio Services Fee.

2.09 **Customer Service.** VALIC has an advice line staffed by licensed financial advisors that are available to answer questions around planning. VALIC also agrees to provide a mobile app. technology for noted services.

2.10 **Education.** VALIC agrees to provide an unlimited number of education seminars for SBBC employees. VALIC agrees to develop and implement an initial communication campaign which would include at a minimum: Direct Mail Campaigns, Posters, Brochures and On-site visits. Further VALIC agrees to develop these campaigns in conjunction with SBBC Benefits staff to determine the frequency and most appropriate marketing strategy. All marketing materials shall be reviewed and approved by the Benefits Department prior to being disseminated to employees, at no cost to SBBC.

2.11 **Communication Budget.** VALIC agrees to provide, at a minimum, a communication budget of \$15,000 per year for customized SBBC materials.

2.12 **Performance Standards.** VALIC agrees to all the performance standards as outlined in of the RFP without deviations. VALIC further agrees to provide at a minimum annual reporting and metrics on each of the performance guarantees and understands that SBBC has the right to audit/validate any of the reported metrics.

2.13 **Contribution Amounts.** VALIC agrees to calculate the allowable 15-year contribution amounts for those participants who request it and will take 100% of the responsibility for the calculations.

2.14 **Florida Retirement System.** VALIC agrees to integrate with the Florida-specific pension modeling system tool for SBBC participants.

2.15 **Partial Withdrawal Minimum.** VALIC agrees to lower the partial withdrawal minimum to \$1.00.

2.16 **Interest Rate Changes.** VALIC agrees to provide SBBC with a minimum of 30 business days' notice of any rate changes. VALIC further agrees to provide a letter to SBBC announcing such changes prior to releasing it to SBBC's employees. VALIC further agrees to post such changes to VALIC's website.

2.17 **Fiduciary.** VALIC agrees to accept full fiduciary for the recommended strategy provided by any VALIC tools and/or representative.

2.18 **Additional Data.** Upon request from SBBC, VALIC will at a minimum, but not limited to, provide the following items:

- Declared Rates
- Contract Minimums for all contracts and lengths
- Index Option Methodology
- Annual Maximum Credit for each product and length
- Withdrawals provisions for all contracts and lengths
- Expense reconciliation for annuity and mutual funds

- Quarterly reporting regarding the spread on the investment product for any guaranteed or fixed investment option
- Ratings and credit quality for each product
- Market to book ratio for all accounts

2.19 **Services.** VALIC will provide SBBC with all administrative functions/services and maintain all required paperwork as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda.

2.20 **Transmission of Data.** VALIC agrees to accept and transfer data in an electronic format acceptable to SBBC and the Third Party Administrator (TPA).

2.21 **Look-Back Period.** VALIC agrees to a one-year look back period for reconciliation on billing.

2.22 **Employee Satisfaction Surveys.** VALIC agrees to participate and share in the cost of an independent SBBC employee satisfaction survey.

2.23 **M/WBE Participation.** VALIC will provide for M/WBE participation during its performance of services under this contract agreement by utilizing an M/WBE approved vendor and agrees to allocate a total of \$50,000 per initial contract period, preferable to a local Broward County vendor. VALIC also agrees to provide SBBC with a 30-day written notice of any M/WBE vendor substitution.

2.24 **Priority of Documents.** In the event of a conflict between the documents the following priority of documents shall govern:

- |         |   |
|---------|---|
| First:  | This Agreement; then  |
| Second: | Addendum Number One Dated, March 26, 2014; then                       |
| Third:  | RFP 15-010P - "403(b)/457(b) Program for School Board Employees; then |
| Fourth: | The Proposal submitted by VALIC in response to the RFP.               |

In case of any other doubts or difference of opinion, the decision of SBBC shall be final and binding on both parties.

2.25 **Inspection of VALIC's Records by SBBC.** VALIC 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 of VALIC's 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 VALIC or any of VALIC's payees pursuant to this Agreement. VALIC's 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.



VALIC's 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) VALIC's Records Defined. For the purposes of this Agreement, the term "VALIC's Records" shall include, without limitation, any 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 VALIC's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VALIC pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VALIC 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 VALIC's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VALIC 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 VALIC's 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 VALIC in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VALIC. If the audit discloses billings or charges to which LSW is not contractually entitled, VALIC 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. VALIC 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 VALIC 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 VALIC pursuant to this Agreement and such excluded costs shall become the liability of VALIC.

(h) Inspector General Audits. VALIC 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.

2.26 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, Benefits & Employment Services  
7770 W. Oakland Park Blvd.  
Sunrise, Florida 33351

To VALIC: The Variable Annuity Life Insurance Company  
2929 Allen Parkway  
Houston, Texas 77019

With a Copy to: Darlene Flagg, Vice President, Business Case Development  
The Variable Annuity Life Insurance Company  
2929 Allen Parkway  
Houston, Texas 77019

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

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By VALIC: VALIC 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 VALIC, its agents, servants or employees; the equipment of VALIC, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VALIC or the negligence of VALIC'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 VALIC, 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. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) 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 Agreement 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 Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and 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 Sections 1002.22 and/or 1002.221, Florida Statutes.

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 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **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)

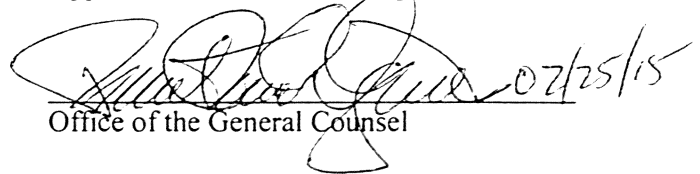
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 07/25/15  
\_\_\_\_\_  
Office of the General Counsel



FOR VALIC

(Corporate Seal)

THE VARIABLE ANNUITY LIFE  
INSURANCE COMPANY

ATTEST:

By Kathy Busa

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

-or-

Brenda Bradley  
Witness

Wm R. By  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to  
Whether VALIC Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF TEXAS

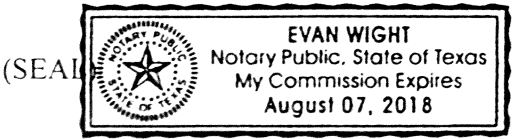
COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of  
FEBRUARY, 2015 by KATHY BUSA of  
Name of Person

The Variable Annuity Life Insurance Company on behalf of the corporation/agency.

He/She is personally known to me or produced TEXAS DRIVERS LICENSE as  
identification and did/did not first take an oath. Type of Identification

My Commission Expires: [Signature]  
Signature - Notary Public



EVAN L. WIGHT  
Printed Name of Notary

12991228-2  
Notary's Commission No.

S:/v/allwork-use/contracts/review/1415year/150205valic

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015 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

**VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY**  
(hereinafter referred to as “VRIAC”),  
whose principal place of business is  
One Orange Way  
Windsor, Connecticut 06095

**WHEREAS**, SBBC issued a Request For Proposal identified as RFP 15-010P 403(b)/457(b) Program for School Board Employees dated March 4, 2014 and amended by Addendum Number One dated March 26, 2014 (herein referred to as RFP”) which is incorporated by reference herein, for the purpose of receiving proposals for 403(b)/457(b) Program for School Board Employee; and

**WHEREAS**, ING offered a proposal dated April 16, 2014, (hereinafter referred to as “Proposal”) which is incorporated by reference herein, in response to the RFP; and

**WHEREAS**, ING Life Insurance and Annuity Company changed its name to Voya Retirement Insurance and Annuity Company (“VRIAC”) as of September 1, 2014, as part of a rebranding effort undertaken in connection with the divestiture by ING Group of its U.S.-based insurance and investment operations and the launch of Voya Financial, Inc. as a standalone public company following its IPO; and

**WHEREAS**, VRIAC desires to provide SBBC, and SBBC desires to receive from VRIAC, a 403(b)/457(b) Annuity Program and Mutual Fund for School Board Employees.

**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 initial term of this Agreement shall commence upon execution by all parties and

conclude on December 31, 2017. The term of the Agreement may be extended by two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial contract period or any one-year renewal option, SBBC may exercise its option to extend the contract for 180 days beyond the expiration date of the renewal period at the same rates and fees as the previous twelve (12)-month period.

**2.02 Committed Credited Rates.** VRIAC agrees to credit interest under the fixed accounts under the VRIAC Products as follows: (1) 3.50% for the first calendar year of this Agreement, (2) 3.15% for second calendar year of this Agreement, (3) 2.80% for the third calendar year of this Agreement, (4) the greater of (i) 2.35% or (ii) our declared rates for the fourth calendar year of this Agreement, and (5) the greater of (i) the contract minimum of 1.00% or (ii) the declared rate for any period thereafter.

**2.03 Product Offerings/Marketing.** VRIAC agrees to make available, as soon as administratively feasible, the group Voya Retirement Choice II and Voya Retirement Plus II 403(b)/457(b) mutual fund and annuity products as more fully described in their Proposal (the "VRIAC Products") to participants in the SBBC 403(b) and 457(b) programs. VRIAC agrees to allow a Roth contribution feature in the VRIAC Products. VRIAC also agrees to only market the VRIAC Products as available investment options under the SBBC 403(b) and 457(b) programs. In addition, VRIAC will offer the Wealth Management for Retirement program to the participants in the SBBC 403(b) program and, following execution of the necessary agreements, to participants in the SBBC 457(b) program, and a self-direct brokerage account through TD Ameritrade to both the 403(b) and 457(b) products. If VRIAC offers a better product within the Florida K-12 market, SBBC will be given the option to move to this product.

**2.04 Buy-Out of Surrender Charges.** In accordance with the DSC Buyout program as outlined in the RFP, VRIAC agrees to buy-out existing carrier surrender charges for a period of six (6) months following the implementation of the VRIAC Products for an additional annual asset-based charge as set forth in Section 2.09. Following the expiration of such period, VRIAC will review the DSC Buyout program and will provide results to SBBC in connection with potential future price reduction with respect to the VRIAC Products

**2.05 Personnel.** VRIAC agrees to provide SBBC with a list of agents that are approved by VRIAC to sell VRIAC products more fully described in VRIAC proposal. Further, VRIAC agrees that all utilized personnel will be compensated based on a salary and bonus structure for enrollment and ongoing servicing. VRIAC also agrees that SBBC will have input in both qualitative and quantitative metrics used to establish such bonuses.

**2.06 Services.** VRIAC agrees that no part of VRIAC's administrative responsibilities be subcontracted without SBBC and VRIAC prior written approval. Additionally VRIAC will provide SBBC with services as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda.

**2.07 Withdrawal Request.** VRIAC agrees to process withdrawal requests received in good order within three (3) to five (5) days.

**2.08 Personal Rate of Return/Loans.** VRIAC has the capabilities to provide this information via their website.

**2.09 Mortality & Expense and Administrative Charges.** VRIAC requires revenue of 0.82% annually from mutual fund/variable investment options for each VRIAC Product. This revenue is derived from a 0.50% mortality and expense risk charge or asset-based fee, depending on the product, and assumes a target revenue of 0.32% from the investment menu. VRIAC requires an additional 0.08% of revenue in connection with the DSC Buyout program described in Section 2.03 and outlined in the RFP response. This additional revenue may be derived through an increase in the mortality and expense risk charge/asset-based fee or an increase in our target revenue from the investment menu. Expenses are guaranteed for the life of the contract.

**2.10 Education.** VRIAC agrees to provide onsite educational days monthly for education seminars for SBBC employees. Further VRIAC agrees to develop these campaigns in conjunction with SBBC Benefits staff to determine the frequency and most appropriate marketing strategy. All marketing materials shall be reviewed and approved by the Benefits Department prior to being disseminated to employees, at no cost to SBBC.

**2.11 Electronic Investment Advice.** VRIAC agrees to provide an electronic interface for use in connection with the investment advice provided to participants through its Wealth Management for Retirement program.

**2.12 Performance Standards.** VRIAC agrees to all the performance standards as outlined in of the RFP without deviations. VRIAC further agrees to provide at a minimum annual reporting and metrics on each of the performance guarantees and understands that SBBC has the right to audit/validate any of the reported metrics.

**2.13 Contribution Amounts.** VRIAC agrees to calculate the allowable 15 year contribution amounts for those participants who request it and will take 100% of the responsibility for the calculations. SBBC acknowledges that VRIAC will rely on the information provided to VRIAC by the participant to perform such calculation.

**2.14 Asset Allocation.** Subject to Section 2.03, VRIAC agrees to provide asset allocation through its Wealth Management for Retirement program for those employees who are interested in managing the accounts, at an additional annual fee of 50 basis points on assets in the Wealth Management for Retirement program.

**2.15 Florida Retirement System.** VRIAC agrees to install My Retirement Outlook®, a Florida-specific calculator for SBBC participants which incorporates the Florida State Retirement System along with their 403b, 457(b), Social Security and any personal savings into a holistic analysis, within the first twelve (12) months of the Agreement.

**2.16 Interest Rate Changes.** VRIAC agrees that fund performance reports and statements made available to SBBC and plan participants on the VRIAC's sponsor and participant websites will include interest rate information relating to the VRIAC Products. Advance notice, at a minimum of three business days, will be provided to SBBC on the interest rate for the 5<sup>th</sup> year of the Agreement.

**2.17 Fiduciary.** In its capacity as a non-discretionary provider of bundled administrative, recordkeeping and investment services, VRIAC agrees to adhere to the prudent

man standard of care that is required of fiduciaries. VRIAC also agrees to perform our responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a reasonably prudent person acting in a like capacity and familiar with such matters would use in an enterprise of like character. VRIAC acknowledges that, as an investment adviser registered under the Investment Advisers Act, Voya Financial Advisors, Inc. has a fiduciary duty to SBBC employees with respect to recommendations provided under the Wealth Management for Retirement program.

**2.18 Loan Fee.** The loan origination fee is \$75.00.

**2.19 SBBC Information Security Guidelines.** VRIAC agrees to the RFP wording with no deviations. It is the understanding of the parties that VRIAC may archive SBBC information under its document retention policy to comply with state, federal and other document retention regulatory requirements.

**2.20 Additional Data.** Upon request from SBBC, VRIAC will at a minimum, but not limited to, provide the following items:

- Declared Rates
- Contract Minimums for all contracts and lengths
- Withdrawals provisions for all contracts and lengths
- Ratings and credit quality for each product
- Market to book ratio for general account products
- Net Revenue Reporting

**2.21 Target Date Investments.** Upon SBBC's reasonable request, VRIAC agrees to make available an alternative fund family in the Voya Retirement Plus II product that meets VRIAC's revenue targets. In addition, the Voya Retirement Choice II product provides access to alternative fund families through an open architecture investment structure.

**2.22 M/WBE Participation.** VRIAC will provide for M/WBE participation during its performance of services under this Agreement by utilizing an M/WBE approved vendor and agrees to allocate the greater of either \$15,000 or 10 to 15 percent of printing annually. In addition VRIAC agrees to participate and partner with SBBC on a school-specific community involvement program and donate \$2,500 annually to the Broward Education Foundation for minority students' scholarships with respect to each of the VRIAC Products, for a total of \$5,000.

**2.23 Priority of Documents.** In the event of a conflict between the documents the following priority of documents shall govern:

First:	This Agreement; then
Second:	Addendum Number One Dated, March 26, 2014; then
Third:	RFP 15-010P - "403(b)/457(b) Program for School Board Employees; then
Fourth:	The Proposal submitted by VRIAC in response to the RFP
Fifth:	Master Application and Custodial/Trust Agreement

In case of any other doubts or difference of opinion, the decision of SBBC shall be final and

binding on both parties.

2.24 **Inspection of VRIAC's Records by SBBC.** VRIAC 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 VRIAC's 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 VRIAC or any of VRIAC's payees pursuant to this Agreement. VRIAC's 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. VRIAC's 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) **VRIAC's Records Defined.** For the purposes of this Agreement, the term "VRIAC's Records" shall include, without limitation, any 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 VRIAC's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VRIAC pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide VRIAC 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 VRIAC's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by VRIAC 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 VRIAC's 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 VRIAC in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VRIAC. If the audit discloses billings or charges to which VRIAC is not contractually entitled, VRIAC 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. VRIAC 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 VRIAC 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 VRIAC pursuant to this Agreement and such excluded costs shall become the liability of VRIAC.

(h) Inspector General Audits. VRIAC 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.

**2.25 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 SBBC:

Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue, 10<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

With a Copy to:

Director, Benefits & Employment Services  
7770 W. Oakland Park Blvd.  
Sunrise, Florida 33351

| To VRIAC:

Voya Retirement Insurance and Annuity Company  
One Orange Way  
Windsor, CT 06095  
Attn: Carol Keen, Vice President, Product Management

With a Copy to:

Scott Satalino, Regional Vice President  
1715 North Westshore Blvd, Ste.300  
Tampa, FL 33607

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

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By VRIAC: VRIAC 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 VRIAC, its agents, servants or employees; the equipment of VRIAC, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VRIAC or the negligence of VRIAC'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 VRIAC, 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. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) 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 Agreement 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 Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and 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 Sections 1002.22 and/or 1002.221, Florida Statutes.

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 **Contract Administration**: SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **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)

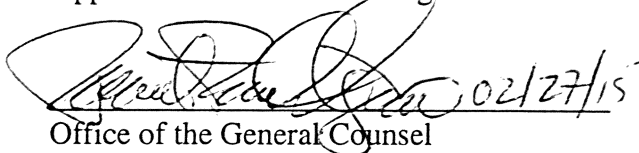
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

  
\_\_\_\_\_  
Office of the General Counsel

**FOR VRIAC**

(Corporate Seal)

VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY

ATTEST:

By Libby J. Soong  
Libby Soong, Vice President

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

-or-

[Signature]

Witness

[Signature]  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Connecticut

COUNTY OF Hartford

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of February, 2015 by Libby J. Soong of Voya Retirement Insurance and Annuity Company on behalf of the corporation/agency.

He/She is personally known to me or produced Company I.D. as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

**JULIE D RELPH**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES JAN 31, 2017

[Signature]  
Signature - Notary Public

Juliet D. Relph  
Printed Name of Notary

(SEAL)

\_\_\_\_\_  
Notary's Commission No.