

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2017, 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

AFLAC

(hereinafter referred to as "[AFLAC]"),
whose principal place of business is
1932 Wynnton Road
Columbus, GA 31999

WHEREAS, SBBC issued a Request For Proposal identified as RFP 18-010V, Voluntary Supplemental Insurance for School Board Employees dated December 15, 2016 and amended by Addendum Number One dated December 23, 2016 (herein referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Voluntary Supplemental Insurance for School Board Employees; and

WHEREAS, SBBC is in need of certain products and services and has selected AFLAC to provide such products and service; and

WHEREAS, AFLAC is willing to provide such products and services to SBBC, offered a proposal dated February 8, 2017 (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to the RFP; and

WHEREAS, SBBC and AFLAC desire to memorialize the terms and conditions of their Agreement.

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 on January 1, 2018 and conclude on December 31, 2020. The term of the Agreement may by mutual agreement between SBBC and AFLAC, upon the Superintendent's Insurance and Wellness Advisory Committee's recommendation and Board approval, be extended for 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.

2.02 **Self-Billing.** AFLAC agrees to accept SBBC's self-billing process without any deviations. AFLAC further agrees that there are no cost/fees for direct billing on any product.

2.03 **Premiums.** AFLAC agrees to guarantee premium rates for two (2) years.

2.04 **Commission Schedule.** Commissions will be paid using the Commission Schedule, which is more fully described in AFLAC's proposal.

2.05 **Marketing.** AFLAC agrees to only market to SBBC employees the following coverage – Critical Illness, Hospital Indemnity, Accident, Life Insurance and Short-Term Disability, as more fully described in their proposal.

2.06 **Participation.** AFLAC agrees to waive all participation requirements for all products. In addition Short Term Disability and Life Insurance will be offered on a guarantee issue basis.

2.07 **Domestic Partners.** AFLAC agrees to offer all products to domestic partners at the same rates offered to SBBC employees.

2.08 **Benefits.** AFLAC agrees to provide the following products:

- Accident
- Term Life
- Short Term Disability
- Hospital Indemnity
- Critical Illness

2.09 **Portability/Conversion.** AFLAC agrees to provide a portability option for all Plans offered upon employee termination. An employee and domestic partner may port the policy they are on at the same benefits and at the same rate.

2.10 **Performance Standards.** AFLAC agrees to all of the performance standards, as outlined in the Attachment L to the RFP, as negotiated. AFLAC 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 any of the reported metrics.

2.11 **Direct Billing Fees.** AFLAC agrees that there are no cost/fees for direct billing on any product.

2.12 **Section 125.** AFLAC agrees to offer all products on a post-tax basis.

2.13 **Exclusions and Limitations.** Exclusions and Limitations are fully described by each product in AFLAC's proposal.

2.14 **M/WBE.** AFLAC agrees to provide for M/WBE participation, as subsequently negotiated as follows:

- AFLAC agrees to allocate a total of \$2,000 per line of coverage (Critical Illness, Hospital Indemnity, Accident, Life Insurance and Short-Term Disability) for a total of \$10,000 annually.
- AFLAC also agrees to provide a 30-day written notice for substitution of an M/WBE AFLAC.

AFLAC further agrees to provide a total of \$1,000 per line of coverage (Critical Illness, Hospital Indemnity, Accident, Life Insurance and Short-Term Disability) for a total of \$5,000 annually to the Broward Education Foundation for Minority Scholarships.

2.15 **Minimum Eligibility.** AFLAC agrees to all the minimum eligibility requirements, as outlined in the RFP without any deviations.

2.16 **Eligibility.** AFLAC agrees to adjust the hours of eligibility to reflect SBBC hours.

2.17 **Certificate of Coverage.** AFLAC agrees to provide employees a copy of their certificate of coverage to each enrolled employee, at no cost to SBBC.

2.18 **Master Application.** AFLAC agrees to waive the completion of a Master Application Form.

2.19 **Premiums.** AFLAC agrees to provide SBBC with premium amounts, based on all payroll schedules.

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

- | | |
|---------|--|
| First: | This Agreement |
| Second: | Addendum Number One [dated December 23, 2016] to the RFP; |
| Third: | RFP 18-010V "Voluntary Supplement Insurance for School Board Employees"; |
| Fourth: | The Proposal submitted in response to the RFP by AFLAC |

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

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

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to *AFLAC* 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 *AFLAC* pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide *AFLAC* 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 *the AFLAC'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 *AFLAC* 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 *AFLAC* 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 *AFLAC* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *the AFLAC*. If the audit discloses billings or charges to which *the AFLAC* is not contractually entitled, the *AFLAC* 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. *AFLAC* 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 *AFLAC* 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 *AFLAC* pursuant to this Agreement and such excluded costs shall become the liability of *the AFLAC*.

(h) Inspector General Audits. *AFLAC* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.22 Notice: When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC:	Superintendent of Schools Broward County Public Schools 600 Southeast Third Avenue, 10 th Floor Fort Lauderdale, Florida 33301
With a Copy to:	Director, Benefits & Employment Services Broward County Public Schools 7770 W. Oakland Park Boulevard, 1 st Floor Sunrise, Florida 33351
To <i>AFLAC</i> :	Brad Bolick, Senior Group Representative Aflac Broker Channel 6801 River Road, Suite 205 Columbus 31904
With a Copy to:	Rhonda Russell, 2 nd Vice President Head of Group Underwriting 1932 Wynnton Road Columbus, GA 31999

2.23 **BACKGROUND SCREENING.** AFLAC 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 the AFLAC or its personnel providing any services under the conditions described in the previous sentence. AFLAC 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 the AFLAC and its personnel. The parties agree that the failure of AFLAC 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. To the extent permitted by law, AFLAC 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 AFLAC'S failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or AFLAC of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.24 **Insurance Requirements.**

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

(b) **Worker's Compensation.** Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease- each employee/disease-policy limit). Workers' Compensation Affidavit shall be required if less than four (4) employees and submit with Agreement.

(c) **Professional Liability/Technical Errors & Omissions.** Limits not less than \$1,000,000 per occurrence covering services provided under this contract

(d) **Auto Liability.** Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If AFLAC does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit signed by AFLAC must be furnished to SBBC indicating the following: AFLAC does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

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

(f) Verification of Coverage. Proof of the required insurance must be furnished by an Awardee to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.**

(g) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance: The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida. (Certificate Holder: The School Board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301)

(h) Cancellation of Insurance. AFLAC's are prohibited from providing services under this contract with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this agreement.

2.25 Payment Method. SBBC will not pay convenience fees, surcharges, or any additional costs for payments made by electronic payment.

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

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its 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 AFLAC: AFLAC 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 AFLAC, its agents, servants or employees; the equipment of AFLAC, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of AFLAC or the negligence of AFLAC'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 AFLAC, 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 **M/WBE Commitment.** Throughout the term of the Agreement, AFLAC shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE AFLACs who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE AFLACs to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. AFLAC agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE AFLACs for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE AFLAC participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 **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.

3.07 **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 3.06.

3.08 **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.

3.09 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.10 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. AFLAC shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, AFLAC shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. AFLAC shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the

Agreement if AFLAC does not transfer the public records to SBBC. Upon completion of the Agreement, AFLAC shall transfer, at no cost, to SBBC all public records in possession of AFLAC or keep and maintain public records required by SBBC to perform the services required under the Agreement. If AFLAC transfer all public records to SBBC upon completion of the Agreement, AFLAC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If AFLAC keeps and maintains public records upon completion of the Agreement, Insert Name shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

3.11 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of 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.

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

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

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

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

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

3.17 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.19 **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 **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 AFLAC: AFLAC 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 AFLAC, its agents, servants or employees; the equipment of AFLAC, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of AFLAC or the negligence of AFLAC'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 AFLAC, SBBC or otherwise.

3.27 **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.

SBBC

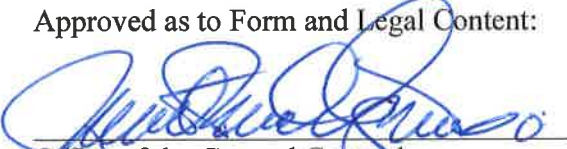
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:


Office of the General Counsel

FOR AFLAC

(Corporate Seal)

ATTEST:

AFLAC

By Rhonda L. Russell

_____, Secretary

-or-

Vicki Sweginnis
Witness

Andrew Altman
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 South Carolina

COUNTY OF Lexington

The foregoing instrument was acknowledged before me this 27 day of July, 2017 by Brad Bolick of AFLAC, on behalf of the corporation/agency.

Name of Person Name of Corporation
Rhonda or Agency
Russell

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

My Commission Expires:

Amy L. Smith
Signature – Notary Public

Amy L. Smith
Printed Name of Notary

(SEAL)

exp. 12-5-2023
Notary's Commission No.

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2017, 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

BMG MONEY, INC.

(hereinafter referred to as "BMG"),
whose principal place of business is
1221 Brickell Avenue, Suite 1170
Miami, Florida 33131

WHEREAS, SBBC issued a Request for Proposal, identified as RFP 18-010V – Voluntary Supplemental Insurance for School Board Employees, dated December 15, 2016 and amended by Addendum Number One dated December 23, 2016 (hereinafter referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Voluntary Supplemental Insurance for School Board Employees; and

WHEREAS, the SBBC is in need of certain products and services and has selected BMG to provide such products and services; and

WHEREAS, BMG is willing to provide such products and services to *SBBC*; offered a proposal dated February 9, 2017 (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to RFP; and

WHEREAS, the SBBC and BMG desire to memorialize the terms and conditions of their Agreement;

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

1.0 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.06 of this Agreement, the term of this Agreement shall commence on **January 1, 2018** and conclude on **December 31, 2020**. The term of the Agreement may by mutual agreement between SBBC and BMG, upon the Superintendent's Insurance & Wellness Advisory Committee's recommendation and Board approval, be extended for two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial or any one-year renewal option, institute an extension of 180 days beyond the expiration date of the renewal period at the same rates/fees as the previous twelve (12) months.

2.02 **Direct Billing.** BMG agrees to provide direct billing for all employees that leave SBBC and still have an outstanding loan until such loan is repaid in full, at no cost to SBBC.

2.03 **Broward Location.** BMG agrees to continue to maintain a walk-in Customer Service Center located within Broward County. Said location will be mutually agreed upon between SBBC and BMG.

2.04 **Staffing.** BMG agrees to share in the cost of providing one full-time SBBC employee to administer the Voluntary Supplemental Insurance, including benefits, office equipment, supplies, travel and professional dues. BMG further agrees to provide SBBC an annual fee of \$20.00 per active and inactive participant throughout the term of the initial Agreement with the Board, as well as subsequent Agreement renewals. The annual fee of \$20.00 per active and inactive participant will survive the termination of this Agreement.

2.05 **Self-Billing.** BMG agrees to accept SBBC's self-billing/remittance process without any deviations, provided however, that each payroll cycle, BMG will receive a form of deduction/reduction report, deduction register, or receipt file showing deductions made for employees enrolled in the Consumer Financial Product plan. The file format of such report will be subject to the prior approval of SBBC. It will be the responsibility of BMG to provide SBBC with any discrepancies within 10 business days.

2.06 **Payroll Deductions.** Payroll deductions will continue under this Agreement post termination or expiration of the agreement until such loans are repaid.

2.07 **Notification.** BMG agrees to mutually develop a notification process for refunds, cancellations, payroll deductions and other processes.

2.08 **Overage/Refunds.** BMG will make all refunds directly to employees for excess payroll deduction/loan repayments. In addition, BMG will provide notification to SBBC of such refunds made due to a BMG error of any kind.

2.09 **Application and Verification Process.** SBBC can either verify each applicant at the time of application or provide bi-weekly census data to BMG. This is at SBBC's sole option to determine the process.

2.10 **Loan Application/Notification.** BMG agrees to provide applicants, at the time of loan execution, a copy of their Promissory Note and submit payroll information to the Benefits Department within 15 days.

2.11 **Performance Standards.** BMG agrees to all of the performance standards, as outlined in Attachment L to the Proposal submitted in response to the RFP by BMG, with the exception of the negotiated modifications listed below:

- On average, 90% of all loan applications will be processed within one (1) business day. The turnaround time is calculated from the date the complete application and the census file or verification, as applicable, are received by BMG, to the date that it is processed.
- All written inquires or complaints, and other contacts with BMG by the Benefits Department, the Payroll Deduction Unit, or SBBC employees must have a written response within (10) calendar days of receipt by BMG.
- All loans will be processed with 97% accuracy.

BMG 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 any of the reported metrics.

2.12 **M/WBE.** BMG will provide for M/WBE participation, as subsequently negotiated as follows:

- BMG agrees to allocate a total of \$8,333 annually. BMG further agrees to provide 30 days written notice of and substitution of an M/WBE vendor.

2.13 **Student Scholarship.** BMG agrees to provide a total of \$5,000 annually towards Minority Student Scholarships, as defined by SBBC.

2.14 **Fees.** BMG agrees to reimburse SBBC of any ACH/Wire Transfer fees billed, as a result of transferring payroll deductions to BMG

2.15 **Cost Per Loan.** BMG agrees to waive the one-time loan fee for applicants requesting a loan.

2.16 **Annual Interest Rate.** The Annual Interest Rate for the period commencing on January 1, 2018 through December 31, 2020 shall be as follows: 23.99%.

The Annual Interest Rate for the first optional one-year renewal commencing on January 1, 2020 through December 31, 2021 shall be as follows: 23.99%.

BMG agrees to reduce the Annual Interest Rate, if a lower Annual Interest Rate is offered to employees of any other client in Florida during the term of this Agreement.

2.17 **Marketing.** BMG agrees to only market to SBBC employees the following product:

- Consumer Financial Product plans (LoansAtWork), as more fully described in their proposal.

2.18 **Annual Statements.** BMG agrees to prepare and provide annual statements to loan participants regarding the interest amount paid annually, as needed at no cost to SBBC or its affected employees.

2.19 **Loan Information.** BMG agrees to educate all applicants of loans that may be available at a lower interest rate, prior to processing a BMG loan.

2.20 **Financial Literacy Training.** BMG agrees to provide financial literacy training to SBBC employees at no cost. BMG further agrees to provide a financial literacy training informational notice in its annual employee statements.

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

- First: The Agreement; then
- Second: Addendum Number One [dated, December 23, 2016]; then
- Third: RFP 18-010V – Voluntary Supplemental Insurance for School Board Employees; then
- Fourth: The Proposal submitted in response to the RFP by BMG

2.20.1 **Disputes:** In the event of any dispute or difference of opinion concerning the interpretation of the Agreement and any documents incorporated therein, the decision of SBBC shall be final and binding upon all parties.

2.22 **Inspection of BMG Records by SBBC.** BMG 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 BMG 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 BMG or any of BMG'S payees pursuant to this Agreement. BMG 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. BMG 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) **BMG Records Defined.** For the purposes of this Agreement, the term "BMG Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and

software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to *BMG* 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 *BMG* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *BMG* 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 *the BMG'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 *BMG* 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 *BMG* 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 *BMG* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *the BMG*. If the audit discloses billings or charges to which *the BMG* is not contractually entitled, the *BMG* 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. *BMG* 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 *BMG* 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 *BMG* pursuant to this Agreement and such excluded costs shall become the liability of *the BMG*.

(h) Inspector General Audits. *BMG* 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.

2.23 **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
Broward County Public Schools
600 Southeast Third Avenue, 10th Floor
Fort Lauderdale, Florida 33301

With a Copy to: Dr. Dildra Martin-Ogburn, Director
Benefits & Employment Services
7770 W. Oakland Park Blvd.
Sunrise, FL 33351

To BMG: Thomas C. McCormick, Chief Growth Officer
BMG Money, Inc.
1221 Brickell Avenue, Suite 1170
Miami, FL 33131

With a Copy to: Ricardo Janini, Chief Executive Officer
BMG Money, Inc.
1221 Brickell Avenue, Suite 1170
Miami, FL 33131

2.24 **BACKGROUND SCREENING.** For Non-Governmental Agencies. BMG 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 the BMG or its personnel providing any services under the conditions described in the previous sentence. BMG 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 the BMG and its personnel. The parties agree that the failure of BMG 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. BMG 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 BMG's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.25 Insurance Requirements.

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

(b) Worker's Compensation. Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit). Workers' Compensation Affidavit shall be required if less than four (4) employees and submit with Agreement.

(c) Professional Liability/Technical Errors & Omissions. Limits not less than \$1,000,000 per occurrence covering services provided under this contract

(d) Auto Liability. Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If BMG does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit signed by BMG must be furnished to SBBC indicating the following: BMG does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

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

(f) Verification of Coverage. Proof of the required insurance must be furnished by an Awardee to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.**

(g) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance: The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida. (Certificate Holder: The School board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301)

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

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this agreement.

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.

3.09 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. BMG shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, BMG shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. BMG shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if BMG does not transfer the public records to SBBC. Upon completion of the Agreement, BMG shall transfer, at no cost, to SBBC all public records in possession of BMG or keep and maintain public records required by SBBC to perform the services required under the Agreement. If BMG transfer all public records to SBBC upon completion of the Agreement, BMG shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If BMG keeps and maintains public records upon completion of the Agreement, BMG shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

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

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

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

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

B. By BMG: BMG 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 BMG, its agents, servants or employees; the equipment of BMG, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of BMG or the negligence of BMG'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 BMG, SBBC or otherwise.

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

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

FOR SBBC

(Corporate Seal)

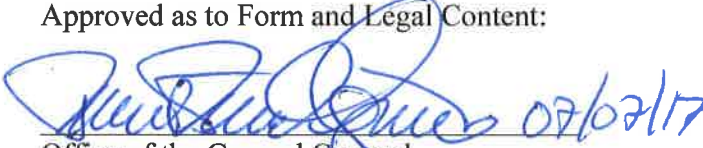
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:


Office of the General Counsel

FOR BMG

(Corporate Seal)

ATTEST:

BMG Money, Inc.

By [Signature]
Thomas McCormick, Chief Operating Officer
Growth

_____, 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 Florida

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 13 day of June, 2017 by **Thomas McCormick** of **BMG MONEY, INC.**, on behalf of the corporation/agency.

Name of Person Name of Corporation or Agency

He/She is personally known to me or produced Fl. Dr. Lic as identification
Type of Identification

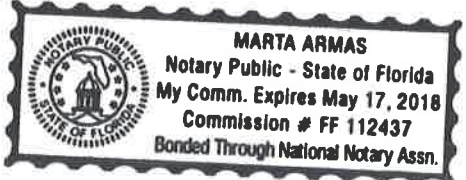
and did not first take an oath.

My Commission Expires:

[Signature]
Signature - Notary Public

Marta Armas
Printed Name of Notary

(SEAL)



FF112437
Notary's Commission No.

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2017, 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

TEXAS LIFE INSURANCE COMPANY
(hereinafter referred to as "TEXAS"),
whose principal place of business is
900 Washington Ave.
Waco, Texas 76701

WHEREAS, SBBC issued a Request for Proposal, identified as RFP 18-010V – Voluntary Supplemental Insurance for School Board Employees, dated December 15, 2016 and amended by Addendum Number One dated December 23, 2016 (hereinafter referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Voluntary Supplemental Insurance for School Board Employees; and

WHEREAS, TEXAS is willing to provide such products and services to *SBBC*; offered a proposal dated February 3, 2017 (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to RFP; and

WHEREAS, the SBBC and TEXAS desire to memorialize the terms and conditions of their Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 – RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on January 1, 2018 and conclude on December 31, 2020. The term of the Agreement may by mutual agreement between SBBC and TEXAS, upon the Superintendent's Insurance & Wellness Advisory Committee's recommendation and Board approval, be extended for two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial or any one-year renewal option, an extension of 180 days beyond the expiration date of the renewal period at the same rates/fees as the previous twelve (12) months.

2.02 **Performance Standards.** TEXAS agrees to all of the performance standards as outlined in Attachment L to the Proposal submitted in response to the RFP by TEXAS, with no deviations.

TEXAS 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 any of the reported metrics.

2.03 **M/WBE.** TEXAS will provide for M/WBE participation, as subsequently negotiated as follows:

- TEXAS agrees to allocate a total of \$15,000 annually.
- TEXAS further agrees to provide 30 days written notice of an M/WBE vendor substitution.

2.04 **Student Scholarship.** TEXAS agrees to provide \$10,000 annually to the Broward Education Foundation towards Minority Student Scholarships, as defined by SBBC.

2.05 **Application.** TEXAS agrees to provide the participant a copy of the signed application and policy within two (2) to four (4) weeks of application.

2.06 **Commission.** TEXAS agrees to pay its agents' commissions at 90% for the first year, 20% for the second year and zero commission thereafter.

2.07 **Dedicated Account Manager.** TEXAS agrees to dedicate an Account Manager solely to SBBC.

2.08 **Marketing.** TEXAS agrees to only market to SBBC employees the following products/services: Voluntary Permanent Life Insurance

2.09 **Fees.** TEXAS agrees to reimburse SBBC of any ACH/Wire Transfer fees billed, as a result of transferring payroll deductions to TEXAS.

2.10 **Underwriting.** TEXAS agrees to only ask employees three (3) work health related underwriting questions.

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

- First: The Agreement; then
- Second: Addendum Number One (dated, December 23, 2016); then
- Third: RFP 18-009V – “Voluntary Supplemental Insurance for School Board Employees”
- Fourth: The Proposal submitted in response to the RFP by TEXAS

2.11.1 Disputes: In the event of any dispute or difference of opinion concerning the interpretation of the Agreement and any documents incorporated therein, the decision of SBBC shall be final and binding upon all parties.

2.12 Inspection of TEXAS Records by SBBC: TEXAS 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 TEXAS 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, upon reasonable prior written notice 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 TEXAS or any of TEXAS’ payees pursuant to this Agreement. TEXAS’ 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. TEXAS’ 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) TEXAS Records Defined. For the purposes of this Agreement, the term “TEXAS Records” shall mean books, records related only to SBBC and as related to SBBC ONLY include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement. The term “TEXAS Records” should not include the individual policy contracts or associated policyholder correspondence or records for SBBC insureds.

(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 TEXAS 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 TEXAS pursuant to this Agreement.

(c) Notice of Inspection. SBBC’s agent or its authorized representative shall provide TEXAS reasonable advance written 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 *the TEXAS'S* facilities during normal operating hours and to any and all TEXAS 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 *TEXAS* 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 *TEXAS* claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses undisputed overcharges or unauthorized charges to SBBC by *TEXAS* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *TEXAS*. If the audit discloses undisputed billings or charges to which *TEXAS* is not contractually entitled, *TEXAS* 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. *TEXAS* 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 *TEXAS* 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 *TEXAS* pursuant to this Agreement and such excluded costs shall become the liability of *the TEXAS*.

(h) Inspector General Audits. *TEXAS* 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.

2.13 **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
Broward County Public Schools
600 Southeast Third Avenue, 10th Floor
Fort Lauderdale, Florida 33301

With a Copy to: Dr. Dildra Martin-Ogburn, Director
Benefits & Employment Services
Broward County Public Schools
7770 W. Oakland Park Blvd., 1st Floor
Sunrise, FL 33351

To TEXAS: Carrol W. Fadal, Vice President, Sales
Texas Life Insurance Company
900 Washington Avenue
Waco, Texas 76701

With a Copy to: Ralph Tumolo, Agent
Teacher Financial Services
6000 N. University, Suite 100
Tamarac, FL 33321

2.14 **BACKGROUND SCREENING.** TEXAS 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 the TEXAS or its personnel providing any services under the conditions described in the previous sentence. TEXAS 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 the TEXAS and its personnel. The parties agree that the failure of TEXAS 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. To the extent permitted by law, TEXAS 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 TEXAS'S failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or TEXAS of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.15 **Insurance Requirements.**

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

(b) **Worker's Compensation.** Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit). Workers' Compensation Affidavit shall be required if less than four (4) employees and submit with Agreement.

(c) **Professional Liability/Technical Errors & Omissions.** Limits not less than \$1,000,000 per occurrence covering services provided under this contract

(d) **Auto Liability.** Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If TEXAS does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit signed by TEXAS must be furnished to SBBC indicating the following: TEXAS does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

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

(f) **Verification of Coverage.** Proof of the required insurance must be furnished by an Awardee to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.**

(g) **Required Conditions.** Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance: The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida. (Certificate Holder: The School board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301)

(h) **Cancellation Of Insurance.** TEXAS is prohibited from providing services under this contract with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this agreement.

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. In the event of such termination, SBBC shall pay all amounts collected from employees and subject to remittance to TEXAS in the ordinary course.

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, other than submission of amounts collected and subject to remittance to TEXAS in the ordinary course.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. TEXAS shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, TEXAS shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. TEXAS shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if TEXAS does not transfer the public records to SBBC. Upon completion of the Agreement, TEXAS shall transfer, at no cost, to SBBC all public records in possession of TEXAS or keep and maintain public records required by SBBC to perform the services required under the Agreement. If TEXAS transfers all public records to SBBC upon completion of the Agreement, TEXAS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TEXAS keeps and maintains public records upon completion of the Agreement, Insert Name shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

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 state and local laws, SBBC policies 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 nor 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 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the

scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

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

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

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

B. By TEXAS: TEXAS 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 TEXAS, its agents, servants or employees; the equipment of TEXAS, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of TEXAS or the negligence of TEXAS'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 TEXAS, SBBC or otherwise.

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

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

FOR SBBC

(Corporate Seal)

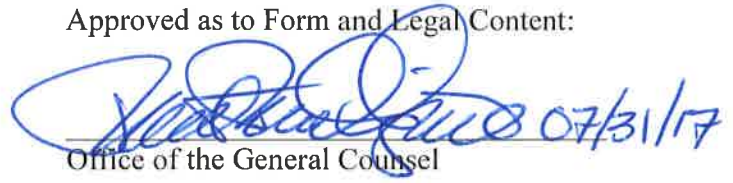
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 07/31/17
Office of the General Counsel

FOR TEXAS

(Corporate Seal)

Texas Life Insurance Company

ATTEST:

By Carroll W. Fadal
Carroll W. Fadal, Vice President, Sales

_____, Secretary

-or-

Melanie Cook
Witness

Stephanie Gorbely
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 Texas

COUNTY OF McLennan

The foregoing instrument was acknowledged before me this 25th day of July, 2017 by Carroll W. Fadal of Texas Life Insurance Company,
Name of Person Name of Corporation or Agency
on behalf of the corporation/agency.

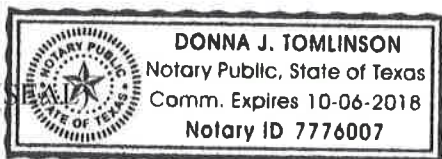
He/She is personally known to me or produced _____ as
identification and did/did not first take an oath. Type of Identification

My Commission Expires: 10-6-18

Donna J. Tomlinson
Signature - Notary Public

Donna J. Tomlinson
Printed Name of Notary

7776007
Notary's Commission No.



AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2017, 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

U.S. LEGAL SERVICES, INC.

(hereinafter referred to as “U.S. LEGAL”),
whose principal place of business is
8133 Baymeadows Way
Jacksonville, Florida 32256

WHEREAS, SBBC issued a Request for Proposal, identified as RFP 18-010V – Voluntary Supplemental Insurance for School Board Employees, dated December 15, 2016 and amended by Addendum Number One dated December 23, 2016 (hereinafter referred to as “RFP”) which is incorporated by reference herein, for the purpose of receiving proposals for Voluntary Supplemental Insurance for School Board Employees; and

WHEREAS, U.S. LEGAL is willing to provide such products and services to the SBBC; offered a proposal dated February 8, 2017 (hereinafter referred to as “Proposal”) which is incorporated by reference herein, in response to RFP; and

WHEREAS, the SBBC and U.S. LEGAL desire to memorialize the terms and conditions of their Agreement;

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 3.06 of this Agreement, the term of this Agreement shall commence on **January 1, 2018** and conclude on **December 31, 2020**. The term of the Agreement may by mutual agreement between SBBC and the Awardee, upon the Superintendent's Insurance & Wellness Advisory Committee's recommendation and Board approval, be extended for two (2) additional one-year periods. If needed, upon SBBC's sole option after the initial or any one-year renewal option, an extension of 180 days beyond the expiration date of the renewal period at the same rates/fees as the previous twelve (12) months.

2.02 **Direct Billing.** U.S. Legal agrees to provide direct billing for all employees that leave SBBC at a cost of \$2.00 per month, to paid by the participant (ex-employee).

2.03 **Performance Standards.** U.S. Legal agrees to all of the performance standards as outlined in Attachment L to the Proposal submitted in response to the RFP by U.S. Legal, with no deviations.

U.S. Legal 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 any of the reported metrics.

2.04 **M/WBE.** Awardee will provide for M/WBE participation as subsequently negotiated as follows:

- U.S. Legal agrees to allocate a total of \$5,000 annually. U.S. LEGAL further agrees to provide 30 days written notice of any substitution of an M/WBE vendor.

2.05 **Student Scholarship.** U.S. Legal agrees to provide equal to 5% of the collected premium on an annual basis towards Minority Student Scholarships, as defined by SBBC.

2.06 **Rates.** U.S. Legal agrees to a flat rate guarantee of \$16.90 per month for the initial contract period of January 1, 2018 through December 31, 2020.

If SBBC and U.S. Legal mutually agree to exercise the first and second one-year renewal options, U.S. Legal agrees to maintain the initial rates as outlined in section 2.06 above.

Furthermore, U.S. Legal agrees not to pay Commissions.

2.07 **Marketing.** U.S. Legal agrees to only market to SBBC employees the following product:

- Family Defender Voluntary Legal Plan, as more fully described in their proposal.

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

First: The Agreement; then
Second: Addendum Number Three (dated, December 23, 2016); then
Third: RFP 18-010V – “Voluntary Supplemental Insurance for School Board Employees”; then
Fourth: The Proposal submitted in response to the RFP by U.S. Legal
Fifth:

2.08.1 **Disputes:** In the event of any dispute or difference of opinion concerning the interpretation of the Agreement and any documents incorporated therein, the decision of SBBC shall be final and binding upon all parties.

2.09 **Inspection of U.S. LEGAL Records by SBBC:** U.S. LEGAL 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 U.S. LEGAL 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 U.S. LEGAL or any of U.S. LEGAL’S payees pursuant to this Agreement. U.S. LEGAL 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. U.S. LEGAL 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) **U.S. LEGAL Records Defined.** For the purposes of this Agreement, the term “U.S. LEGAL Records” shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC’s agent or authorized representative shall have access to U.S. LEGAL 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 *U.S. LEGAL* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *U.S. LEGAL* 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 *the U.S. LEGAL'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 *U.S. LEGAL* 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 *U.S. LEGAL* 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 *U.S. LEGAL* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *the U.S. LEGAL*. If the audit discloses billings or charges to which *the U.S. LEGAL* is not contractually entitled, the *U.S. LEGAL* 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. *U.S. LEGAL* 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 *U.S. LEGAL* 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 *U.S. LEGAL* pursuant to this Agreement and such excluded costs shall become the liability of *the U.S. LEGAL*.

(h) Inspector General Audits. *U.S. LEGAL* 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.

2.10 **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, 10th Floor
Fort Lauderdale, Florida 33301

With a Copy to: Dr. Dildra Martin-Ogburn, Director
Benefits & Employment Services
7770 W. Oakland Park Blvd., 1st Floor
Sunrise, Florida 33351

To U.S. LEGAL: Marie M. Forbes, President
U.S. Legal Services, Inc.
8133 Baymeadows Way
Jacksonville, Florida 32256

With a Copy to: Renee Bateh, CFO
U.S. Legal Services, Inc.
8133 Baymeadows Way
Jacksonville, Florida 32256

2.11 **BACKGROUND SCREENING.** U.S. LEGAL 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 the U.S. LEGAL or its personnel providing any services under the conditions described in the previous sentence. U.S. LEGAL 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 the U.S. LEGAL and its personnel. The parties agree that the failure of U.S. LEGAL 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. To the extent permitted by law, U.S. LEGAL 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 U.S. LEGAL'S failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or U.S. LEGAL of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.12 **Insurance Requirements.**

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

(b) Worker's Compensation. Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease- each employee/disease-policy limit). Workers' Compensation Affidavit shall be required if less than four (4) employees and submit with Agreement.

(c) Professional Liability/Technical Errors & Omissions. Limits not less than \$1,000,000 per occurrence covering services provided under this contract

(d) Auto Liability. Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If U.S. LEGAL does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 will be accepted. In addition, an affidavit signed by U.S. LEGAL must be furnished to SBBC indicating the following: U.S. LEGAL does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

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

(f) Verification of Coverage. Proof of the required insurance must be furnished by an Awardee to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.**

(g) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance: The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida. (Certificate Holder: The School board of Broward County, Florida, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301)

(h) Cancellation Of Insurance. U.S. LEGAL is prohibited from providing services under this contract with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this Agreement.

2.13 Payment Method. The District's preferred method of payment is via ACH electronic payments. An electronic payment can reduce processing time and administrative overhead costs for both parties, resulting in expedited payment upon invoice approval, and reduces

exposure to check fraud. SBBC will not pay convenience fees, surcharges, or any additional costs for payments made by electronic payment.

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 **M/WBE Commitment.** Throughout the term of the Agreement, U.S. LEGAL shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE U.S. LEGALS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE U.S. LEGALS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. U.S. LEGAL agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE U.S. LEGALS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE U.S. LEGAL participation suggested by SBBC. If at any time during the term the parties

agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 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.

3.07 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 3.06.

3.08 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.

3.09 Excess Funds. Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.10 Public Records: The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. U.S. LEGAL shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, U.S. LEGAL shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes,

or as otherwise provided by law. U.S. LEGAL shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if U.S. LEGAL does not transfer the public records to SBBC. Upon completion of the Agreement, U.S. LEGAL shall transfer, at no cost, to SBBC all public records in possession of U.S. LEGAL or keep and maintain public records required by SBBC to perform the services required under the Agreement. If U.S. LEGAL transfer all public records to SBBC upon completion of the Agreement, U.S. LEGAL shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If U.S. LEGAL keeps and maintains public records upon completion of the Agreement, U.S. LEGAL shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

3.11 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of 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.

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

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

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

3.15 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or

understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

3.17 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

3.19 **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 **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 U.S. LEGAL: U.S. LEGAL 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 U.S. LEGAL, its agents, servants or employees; the equipment of U.S. LEGAL, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of U.S. LEGAL or the negligence of U.S. LEGAL'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 U.S. LEGAL, SBBC or otherwise.

3.27 **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:

Robert W. Runcie, Superintendent of Schools

By _____
Abby M. Freedman, Chair

Approved as to Form and Legal Content:

 07/31/17
Office of the General Counsel

FOR U.S. LEGAL

(Corporate Seal)

U.S. LEGAL SERVICES, INC.

ATTEST:

Marie M. Forbes
_____, Secretary

By Marie M. Forbes

Marie M. Forbes, President

-or-

Nana Jubran

Witness

Dallas Burt

Witness

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

STATE OF Florida

COUNTY OF Duval

The foregoing instrument was acknowledged before me this 25th day of July, 2017 by Marie M. Forbes of U.S. LEGAL SERVICES, INC.,
Name of Person Name of Corporation or Agency
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

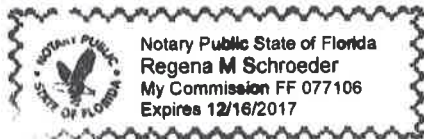
My Commission Expires: 12/16/2017

Regena M. Schroeder
Signature – Notary Public

(SEAL)

Regena M. Schroeder
Printed Name of Notary

FF077106
Notary's Commission No.



AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2017, 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

WASHINGTON NATIONAL INSURANCE COMPANY

(hereinafter referred to as "WASHINGTON NATIONAL"),
whose principal place of business is
11825 N. Pennsylvania Street
Camel, IN 46032

WHEREAS, SBBC issued a Request for Proposal identified as RFP 18-010V Voluntary Supplemental Insurance for School Board Employees dated December 15, 2016 and amended by Addendum Number One dated December 23, 2016. (herein referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Voluntary Supplemental Insurance for School Board Employees; and

WHEREAS, the SBBC is in need of certain products and services and has selected WASHINGTON NATIONAL to provide such products and services; and

WHEREAS, WASHINGTON NATIONAL is willing to provide such products and services to SBBC; offered a proposal dated February 1, 2017 (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to RFP; and

WHEREAS, SBBC and WASHINGTON NATIONAL desire to memorialize the terms and conditions of their Agreement;

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 on January 1, 2018 and conclude on December 31, 2020. 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, with the exception of the Life Insurance Benefit, at a rate change not to exceed the CPI of the previous year.

2.02 **Direct Billing.** WASHINGTON NATIONAL agrees to provide direct billing for all employees that leave SBBC, at no cost to SBBC.

2.03 **Participation.** WASHINGTON NATIONAL agrees to waive any minimum participation requirements for all products.

2.04 **Section 125.** WASHINGTON NATIONAL agrees to offer all products on a post-tax basis.

2.05 **Employee Application.** WASHINGTON NATIONAL agrees to provide access to its electronic enrollment system for benefit administration purposes. In addition, WASHINGTON NATIONAL agrees to provide SBBC with information needed for payroll deductions.

2.06 **Domestic Partners.** WASHINGTON NATIONAL agrees to offer Cancer, Critical Illness, Accident and Life Insurance coverage to dependents and domestic partners, at the same rates offered to SBBC employees.

2.07 **Self-Billing.** WASHINGTON NATIONAL agrees to accept SBBC's self-billing/remittance process without any deviations, provided however, that each payroll cycle, WASHINGTON NATIONAL will receive a form of deduction/reduction report, deduction register, or receipt file showing deductions made for employees enrolled in the consumer financial product plan. The file format of such report will be subject to the prior approval of SBBC. It will be the responsibility of WASHINGTON NATIONAL to provide SBBC with any discrepancies within 10 business days.

2.08 **Performance Standards.** WASHINGTON NATIONAL agrees to all of the performance standards as outlined in Attachment L.

WASHINGTON NATIONAL 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 any of the reported metrics.

2.09 **Marketing.** WASHINGTON NATIONAL agrees to only market to SBBC employees the following products: Cancer, Critical Illness, Accident and Life Insurance plans, as more fully described in their Proposal.

2.10 **Accident Benefits.** WASHINGTON NATIONAL agrees to offer an Accident Plan, as more fully described in their proposal.

- WASHINGTON NATIONAL agrees to offer a Level One and Level Two options, including riders, as more fully described in their proposal, at the discretion of the employee and/or their dependent(s)

2.11 **Cancer Benefits.** WASHINGTON NATIONAL agrees to provide cancer benefits, as more fully outlined in their Proposal.

2.12 **Critical Illness Benefits.** WASHINGTON NATIONAL agrees to provide the following:

- An Active Care plan and a Critical Solutions plan, as more fully described in their proposal.
- The Active Care Plan Commissions are 60% for the first year with 10% for year two (2) and beyond
- The Critical Solutions Plan Commissions are 65% for the first year with 10% for each year the policy remains in force

2.13 **Life Insurance Benefits.** WASHINGTON NATIONAL agrees to offer a Life Insurance Plan, as more fully described in their proposal.

- WASHINGTON NATIONAL agrees to offer coverage to all Benefit eligible employees who work 20 or more hours per week.

2.14 **Premiums.** WASHINGTON NATIONAL agrees to guarantee premium rates for the term of the Agreement. During the term of the Agreement, if the rates are changed for the entire block of business within the State of Florida, WASHINGTON NATIONAL agrees to provide at a minimum, 270 days' notice prior to the effective date of January 1st.

2.15 **M/WBE.** WASHINGTON NATIONAL will provide for M/WBE participation, as subsequently negotiated:

- WASHINGTON NATIONAL agrees to allocate a total of \$2,500 per line of coverage (Cancer, Critical Illness, Accident and Life) for a total of \$10,000 annually for a verified M/WBE vendor.

2.16 **Student Scholarships.** WASHINGTON NATIONAL agrees to provide a total of \$2,500 per line of coverage (Cancer, Critical Illness, Accident and Life) for a total of \$10,000 annually to the Broward Education Foundation for Minority Scholarships.

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

- | | |
|---------|--|
| First: | This Agreement |
| Second: | Addendum Number One [dated December 23, 2016] to the RFP; |
| Third: | RFP 18-010V - "Voluntary Supplement Insurance for School Board Employees"; |
| Fourth: | The Proposal submitted in response to the RFP by WASHINGTON NATIONAL |

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

2.18 **Inspection of WASHINGTON NATIONAL Records by SBBC.** WASHINGTON NATIONAL 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 WASHINGTON NATIONAL 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 WASHINGTON NATIONAL

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

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to *WASHINGTON NATIONAL*'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 *WASHINGTON NATIONAL* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *WASHINGTON NATIONAL* 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 *WASHINGTON NATIONAL*'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 *WASHINGTON NATIONAL* 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 *WASHINGTON NATIONAL* 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 employees by *WASHINGTON NATIONAL* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *WASHINGTON NATIONAL*. If the audit discloses billings or charges to which *WASHINGTON NATIONAL* is not contractually entitled, *WASHINGTON NATIONAL* shall pay said sum to affected SBBC employees within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. *WASHINGTON NATIONAL* 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 *WASHINGTON NATIONAL* 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 *WASHINGTON NATIONAL* pursuant to this Agreement and such excluded costs shall become the liability of *WASHINGTON NATIONAL*.

(h) Inspector General Audits. *WASHINGTON NATIONAL* 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.

2.19 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
Broward County Public Schools
600 Southeast Third Avenue, 10th Floor
Fort Lauderdale, Florida 33301

With a Copy to: Director, Benefits & Employment Services
Broward County Public Schools
7770 W. Oakland Park Boulevard – 1st Floor
Sunrise, Florida 33351

To Washington National: Michael Heard, President
Washington National Insurance Company
11825 N. Pennsylvania Street
Carmel, IN 46032

With a Copy to: Linda Teets, Vice President
Performance Matters Associates
11825 N. Pennsylvania Street
Carmel, IN 46032

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

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

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its 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 *WASHINGTON NATIONAL*: *WASHINGTON NATIONAL* 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 *WASHINGTON NATIONAL*, its agents, servants or employees; the equipment of *WASHINGTON NATIONAL*, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of *WASHINGTON NATIONAL* or the negligence of *WASHINGTON NATIONAL*'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 *WASHINGTON NATIONAL*, SBBC or otherwise.

ARTICLE 3 – GENERAL CONDITIONS

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

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

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

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

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

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

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of

student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

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

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

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

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

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

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

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

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

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

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

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

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

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

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

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

SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 07/31/17
Office of the General Counsel

FOR WASHINGTON NATIONAL

(Corporate Seal)

WASHINGTON NATIONAL
INSURANCE COMPANY

ATTEST:

By *Michael Heard*
Michael Heard, President

_____, Secretary

-or-

Tammy Craig
Witness
Sumner M. De
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 IN
COUNTY OF Hamilton

The foregoing instrument was acknowledged before me this 17 day of July, 2017 by Michael Heard of Washington National Insurance Company
Name of Person Name of Corporation or Agency
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: 11-29-18

Tammy R. Craig
Signature - Notary Public
Tammy R. Craig
Printed Name of Notary
622641
Notary's Commission No.

(SEAL)

