



# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

EE-16.

MEETING DATE	2018-09-05 10:05 - School Board Operational Meeting
AGENDA ITEM	ITEMS
CATEGORY	EE. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Procurement & Warehousing Services

<b>Special Order Request</b>	
<input type="radio"/> Yes	<input checked="" type="radio"/> No
Time	
<b>Open Agenda</b>	
<input checked="" type="radio"/> Yes	<input type="radio"/> No

**TITLE:**  
 Recommendation of \$500,000 or Greater - 19-020V - Group Term Life and Accidental Death and Dismemberment (AD&D) Insurance for School Board Employees

**REQUESTED ACTION:**  
 Approve the recommendation to award the contract for the above-referenced Request for Proposal (RFP). Contract Term: January 1, 2019 through December 31, 2021, 3 Years; User Department: Benefits; Award Amount: \$6,000,000; Awarded Vendor(s): Mutual of Omaha; Small/Minority/Women Business Enterprise Vendor(s): McKinley Financial Services, Inc.

**SUMMARY EXPLANATION AND BACKGROUND:**  
 The School Board of Broward County, Florida, received six (6) proposals for RFP 19-020V - Group Term Life and Accidental Death and AD&D Insurance for School Board Employees. The Superintendent's Insurance and Wellness Advisory Committee voted to recommend the awarding of the contract to Mutual of Omaha.  
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

**SCHOOL BOARD GOALS:**  
 Goal 1: High Quality Instruction     Goal 2: Continuous Improvement     Goal 3: Effective Communication

**FINANCIAL IMPACT:**  
 The estimated financial impact to the District for 2019 will be \$2,000,000. The funding for this RFP will come from the Benefits Clearing Account for the term of the contract. The financial impact represents an estimated contract value, however, the amount authorized will not exceed the estimated contract award amount.

**EXHIBITS: (List)**  
 (1) Executive Summary (2) Agreement (3) Recommendation Tabulation

**BOARD ACTION:**  
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:	
Name: Dr. Dildra Martin-Ogburn	Phone: 754-321-3100
Name: Mary C. Coker	Phone: 754-321-0501

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
 Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Signature  
*Maurice Woods*  
 8/27/2018, 2:03:09 PM

Approved In Open Board Meeting On: **SEP 05 2018**  
 By: *Heather P. Buntwood*  
 School Board Chair

## EXECUTIVE SUMMARY

### 19-020V – Group Term Life and Accidental Death and Dismemberment (AD&D) Insurance for School Board Employees

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The current contract with the District's Group Term Life and Accidental Death and Dismemberment (AD&D) vendor, Mutual of Omaha expires on December 31, 2018. On November 15, 2017, Procurement & Warehousing Services Department released RFP 19-020V- Group Term Life and AD&D Insurance for School Board Employees. Proposals were due on or before January 29, 2018.

Proposals were received from the following companies:

1. MetLife Insurance Company
2. Minnesota Life Insurance Company
3. Mutual of Omaha
4. Standard Insurance Company
5. The Hartford Life and Accident Insurance Company
6. United Healthcare Insurance Company

On March 14, 2018, the Superintendent's Insurance & Wellness Advisory Committee (SIWAC) met to evaluate the Proposals received in response to RFP 19-020V – Group Term Life and AD&D Insurance for School Board Employees. The SIWAC Members were informed that the Proposals were reviewed by the District's Benefits Consultants and Benefits Staff and it was recommended to the Committee to reject the following Proposals for the reasons noted below:

- The Hartford Life and Accident Insurance Company – the Proposer, did not meet the Minimum Eligibility Requirements of the RFP. Proposer took exception to the language in Sections 4.2.1 and 7.1 – Indemnification. Proposer did not respond to Section 4.2.5 - Staffing.
- Minnesota Life Insurance Company – the Proposer, did not meet the Minimum Eligibility Requirements of the RFP for Section 4.2.6. Proposer took exception to the language in Section 6.4 – Insurance Requirements.
- Standard Insurance Company – the Proposer, did not meet the Minimum Eligibility Requirements of the RFP for Section 4.2.6. Proposer took exception to the language in Section 6.4.7 – Insurance Requirements.
- United Healthcare Insurance Company – the Proposer, did not meet the Minimum Eligibility Requirements of the RFP, specifically Section 4.2.5 - Staffing. Proposer took exception to this provision.

The SIWAC voted unanimously to reject the above-noted Proposals for the reasons outlined above and moved forward with the evaluation of the remaining Proposals of Mutual of Omaha and MetLife Insurance Company.

The proposals for both Mutual of Omaha and MetLife Insurance Company were evaluated based on Experience and Qualifications, Scope of Services, Small/Minority/Women Business participation and Cost of Services. As a result of the evaluation, the Committee voted to select and recommend to the Superintendent of Schools, the following award:

#### **Mutual of Omaha**

As a result of issuing the Group Life Insurance RFP and negotiations with the selected company, the rate for Basic Life increased from \$0.127 per \$1,000 to \$0.145 per \$1,000. There was no change to the Basic AD&D rate of \$0.15 per \$1,000.

The Enhanced Life, Option 1 rate increased from \$0.215 per \$1,000 to \$0.24 per \$1,000. Options 2 through 5 rates increased from \$0.245 per \$1,000 to 0.275 per \$1,000. There was no change to the Enhanced AD&D rate of \$0.15 per \$1,000.

All rates are fixed for the initial three (3) year Agreement, January 1, 2019 through December 31, 2021.

## AGREEMENT

THIS AGREEMENT is made and entered into as of this 5<sup>th</sup> day of September, 2018, 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

**MUTUAL OF OMAHA INSURANCE COMPANY**  
(hereinafter referred to as "*MUTUAL OF OMAHA*"),  
whose principal place of business is  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175

**WHEREAS**, SBBC issued a Request for Proposal, identified as RFP 19-020V - Group Term Life and Accidental Death and Dismemberment (AD&D) Insurance for School Board Employees dated, November 15, 2017 and amended by Addendum Number One dated, December 22, 2017 (hereinafter referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Group Term Life and Accidental Death and Dismemberment (AD&D) Insurance for School Board Employees; and

**WHEREAS**, Mutual of Omaha offered a proposal dated, January 29, 2018 (hereinafter referred to as "Proposal") which is incorporated by reference herein, in response to RFP; and

**WHEREAS**, Mutual of Omaha desires to provide SBBC, and SBBC desires to receive from Mutual of Omaha, Group Term Life and Accidental Death and Dismemberment (AD&D) Insurance for School Board Employees described in the RFP.

**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, 2019 and conclude on December 31, 2021. The Term of Agreement may be extended for two (2) additional one-year periods and if needed, 180 days beyond the expiration date of the renewal period at the same rates/fees as the previous 12-month period.

2.02 **Premiums.** The premium rates for the period January 1, 2019 through December 31, 2021 shall be:

Core Plan – Life (All Classes): \$0.145 cents per \$1,000.00 of insured payroll  
Core Plan – AD&D (All Classes): \$0.015 cents per \$1,000.00 of insured payroll

Enhanced Plan Options:

Option 1 – 1.25 times salary \$0.24 cents per \$1,000.00 of insured payroll  
Option 2 – 2.50 times salary \$0.275 cents per \$1,000.00 of insured payroll  
Option 3 – 3 times salary \$0.275 cents per \$1,000.00 of insured payroll  
Option 4 – 4 times salary \$0.275 cents per \$1,000.00 of insured payroll  
Option 5 – 5 times salary \$0.275 cents per \$1,000.00 of insured payroll

Enhanced Plan Options – AD&D (All Options): \$0.015 cents per \$1,000.00 of insured payroll.

If SBBC exercises the first additional one-year renewal, the premium rates for the period January 1, 2022 through December 31, 2022 will be capped with a not to exceed rate cap of ten (10) percent.

If SBBC exercises the second additional one-year period, the renewal will be based on the loss ratio of as outlined within the RFP.

2.03 **Life and AD&D Benefits.** Mutual of Omaha agrees that its affiliate, United of Omaha Life Insurance Company will issue a policy, which will provide the following negotiated benefit provisions:

1. No exclusions on the Basic Life Insurance.
2. The only exclusion on the Enhanced Life Insurance, is a one-year suicide exclusion for new hires.
3. Exclusions, as outlined within the RFP document will only apply to the AD&D coverage for both the Basic and Enhanced AD&D products.
4. Additional value added services will be provided, as outlined within the RFP and in addition to those the following additional value added services:
  - a. Beneficiary Claims Assistance – which will include the use of Mutual of Omaha’s internal EAP services.

b. Will Preparation Services.

5. Mutual of Omaha agrees to provide a lump sum option, as the only option for beneficiaries' payout.

6. **Total Disability/Total Disabled.** The following definition of "Disability" will remain in effect through the term of the Agreement:

a. The term "*Disability*" means that because of an Injury or Sickness an employee is continuously unable to perform any work or engage in any occupation.

2.04 **Certificate of Coverage.** Mutual of Omaha agrees to provide SBBC with an electronic version and a substantial supply of hard copies at no additional cost.

2.05 **M/WBE Participation.** As consideration for being awarded this contract, Mutual of Omaha agrees to utilize an M/WBE vendor, with a commitment of two percent (2%) of annual premium, to be provided on an annual basis to the M/WBE vendor through the term of the Agreement.

Mutual of Omaha also agrees to provide \$5,000 annually to the Broward Education Foundation, to be allocated for Minority Student Scholarships.

2.06 **SBBC Personnel:** Mutual of Omaha agrees to fund one (1) full-time SBBC employee, including benefits, office equipment, supplies, travel and professional dues, when applicable at an annual cost of \$62,000.

2.07 **HIPAA COMPLIANCE.** *Mutual of Omaha* acknowledges that the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") (HIPAA and HITECH Act are collectively referred to herein as "HIPAA") protect the privacy of protected health information ("PHI") and may be applicable to student records in certain circumstances; and shall enter into SBBC's HIPAA Business Associate Agreement ("BAA") attached as **Exhibit A**. PHI may be used and disclosed only in compliance with HIPAA.

2.08 **Inspection of Mutual of Omaha's Records by SBBC.** *Mutual of Omaha* 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 *Mutual of Omaha's* applicable 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 the applicable business records of *Mutual of Omaha* directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) 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 *Mutual of Omaha'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 *Mutual of Omaha* pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide *Mutual of Omaha* reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to *Mutual of Omaha'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.

(d) Failure to Permit Inspection. Failure by *Mutual of Omaha* 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 SBBC's denial of some or all of any *Mutual of Omaha's* claims for payment.

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

(f) Inspection of Subcontractor's Records. If applicable, *Mutual of Omaha* 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 *Mutual of Omaha* 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 Payees' costs from amounts payable by SBBC to *Mutual of Omaha* pursuant to this Agreement and such excluded costs shall become the liability of *Mutual of Omaha*.

(g) Inspector General Audits. *Mutual of Omaha* 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.

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

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director, Benefits & Employment Services  
The School Board of Broward County, Florida  
7770 W. Oakland Park Blvd.  
Sunrise, Florida 33351

To Mutual of Omaha: Dan Rood, National Sales Director - Special Products  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175

With a Copy to: McKinley Financial Services, Inc.  
1451 w. Cypress Creek Road, Suite 300  
Fort Lauderdale, Florida 33309

2.10 **Background Screening.** *Mutual of Omaha* shall 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 *Mutual of Omaha* or its personnel providing any services under the conditions described in the previous sentence. *Mutual of Omaha* 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 *Mutual of Omaha* and its personnel. The parties agree that the failure of *Mutual of Omaha* 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. *Mutual of Omaha* 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 *Mutual of Omaha's* failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

2.12 **Insurance Requirements.** *Mutual of Omaha* shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** *Mutual of Omaha* shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** *Mutual of Omaha* shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** *Mutual of Omaha* shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability.** *Mutual of Omaha* shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of 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 *Mutual of Omaha* to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit *Mutual of Omaha* to remedy any



deficiencies. *Mutual of Omaha* must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. *Mutual of Omaha* is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

#### 2.13 Nondiscrimination.

(a) As a condition of entering into this Agreement, *Mutual of Omaha* represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, *Mutual of Omaha* shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall *Mutual of Omaha* retaliate against any person for reporting instances of such discrimination. *Mutual of Omaha* shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. *Mutual of Omaha* understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.14 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.

2.15 **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.

### **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 Agreement.

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 **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.

**3.05 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. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. 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 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.

**3.07 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.

**3.08 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 exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

**3.09 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.

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

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **Agreement 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.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

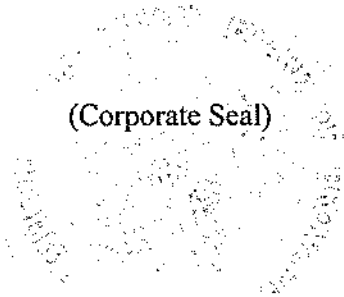
3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this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

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

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

FOR SBBC

(Corporate Seal)



THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By *Nora Rupert*  
Nora Rupert, Chair

ATTEST:

*Robert W. Runcie*  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

*[Signature]* 08/15/2018  
Office of the General Counsel

**FOR MUTUAL OF OMAHA**

(Corporate Seal)

MUTUAL OF OMAHA INSURANCE COMPANY

ATTEST:

By Scott Ault, Executive Vice President

PRINT NAME

*Scott Ault*

SIGNATURE

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

-or-

*Karen Fielder*

Witness

*Mari Ann Rutt*

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 NEBRASKA

COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me this 13th day of August, 2018 by Scott Ault of \_\_\_\_\_ Name of Person

Mutual of Omaha Insurance Company, on behalf of the corporation/agency. Name of Corporation or Agency

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

My Commission Expires: 12/18/2021

(SEAL) 

State of Nebraska -- General Notary PATRICIA M. NEU My Commission Expires December 18, 2021
--

*Patricia M. Neu*  
Signature - Notary Public

Patricia M. Neu  
Printed Name of Notary

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

**HIPPA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("*Agreement*") is made and entered into as of this 5<sup>th</sup> day of September, 2018 (the "*Effective Date*"), by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "*SBBC*" or "*Covered Entity*"),  
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

**MUTUAL OF OMAHA INSURANCE COMPANY**  
(hereinafter referred to as "*Business Associate*"),  
whose principal place of business is  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175

**WHEREAS**, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate", as the term is defined at 45 C.F.R. §160.103; and

**WHEREAS**, SBBC and Business Associate may share Protected Health Information ("*PHI*") (as defined below) in the course of their relationship; and

**WHEREAS**, SBBC and Business Associate understand that, with respect to coverage subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("*HIPPA*"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPPA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("*HITECH*"), the Omnibus Rule of 2013, and the applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "*Business Associate Requirements*").

**WHEREAS**, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("*PHI*") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

**WHEREAS**, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement, which shall govern the use/or disclosure of PHI and the security of ePHI.

**NOW, THEREFORE**, to the extent HIPAA applies to the insurance policies issued by United of Omaha Life Insurance Company to SBBC, the parties hereto agree as follows:

**ARTICLE 1 – RECITALS**

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:



- (a) “**Breach**” has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.
- (b) “**Business Associate**” shall mean Business Associate named above and shall include all successors and assigns, affiliates, subsidiaries, and related companies.
- (c) “**Designed Record Set**” has the same meaning as the term “designated record set” in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) “**EDI Rule**” shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162 Subpart A and I through R.
- (e) “**HIPPA**” means Health Insurance Portability and Accountability Act of 1996.
- (f) “**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (g) “**Individual**” shall have the same meaning as the term “Individual” in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (h) “**Minimum Necessary**” means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (i) “**Omnibus Rule**” means the HIPPA Omnibus Rule of 2013.
- (j) “**Privacy Rule**” shall mean the Standards of Privacy of Individuals Identifiable Health Information as set forth at 45 C.F.R. Parts 160 and 164, subparts A and E.
- (k) “**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 C.F.R. §130.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (l) “**Required by Law**” shall have the same meaning as the term “required by law” in 45 C.F.R. §164.103.
- (m) “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (n) “**Security Rule**” shall mean the Standards for Security of ePHI as set forth 45 C.F.R. Parts 160 and 164 Subpart C.
- (o) “**Unsecured PHI**” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

## ARTICLE 2 – SPECIAL CONDITIONS

### 2. **Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPPA or HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPPA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be substantially the same form as Exhibit A, hereto.
- (e) Business Associate shall promptly inform SBBC of a Breach of Unsecured PHI following the first day on which Business Associate knows of such Breach or following the first day on which Business Associate should have known of such Breach.
- (f) For the Breach of Unsecured PHI in its possession:
  - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
    - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - b. The unauthorized person who used the PHI or to whom the disclosure was made;
    - c. Whether the PHI was actually acquired or viewed; and
    - d. The extent to which the risk to the PHI has been mitigated.
  - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
  - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to by Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPPA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.

- (h) Business Associate agrees to provide access, at the requires of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set that is not also in SBBC's possession, to SBBC in order for SBBC to meet the requirements under 45 C.F.R. §164.524.
- (i) Business Associate agrees to make PHI available for amendment and incorporate all amendments to PHI in a Designated Record Set that SBBC directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of SBBC or an Individual in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at a request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for the purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. §164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. §164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

### **3. Permitted Uses and Disclosures of PHI by "Business Associate"**

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC as previously agreed to by the parties (the "Service Agreement") provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

- (c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used for further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.
- (d) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).

#### **4. Obligations of SBBC Regarding PHI**

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. §164.522.
- (d) SBBC and its representatives shall be entitled with ten (10) business days prior written notice to Business Associate to audit Business Associate from time-to-time to verify Business Associate compliance with the terms of this Agreement. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate normal operations.

#### **5. Security of Electronic Protected Health Information.**

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of “electronic protected health information” (as defined in 45 C.F.R. §160.103) (“ePHI) on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting and confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including “Business Associate”.

## **6. Compliance with EDI Rule.**

Business Associate agrees that, on behalf of SBBC, it will perform all transactions for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its functions on behalf of SBBC.

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPPA.

## **7. Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPPA in general, shall be deemed to amend this Agreement to incorporate said changes without further action.

## **8. Amendment.**

The parties agree to take any and all actions necessary to amend this Agreement from time to time so that SBBC is in compliance with the Privacy Rule, the Security Rule, the HITECH Act, and HIPPA in general. The parties may agree to amend this Agreement from time to time in other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

## **9. Term and Termination.**

- (a) ***Term.*** This Agreement shall be effective as of the Effective Date and shall remain in effect until such time as SBBC exercises its right to termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) ***Termination for Convenience.*** This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) ***Termination for Cause by SBBC.*** Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice of such breach to Business Associate, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, for example, if SBBC makes illegal demands on Business Associate, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business

Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Covered Entity.

- (d) **Effect of Termination.** Except as set forth in this Section 9(d), upon termination of this Agreement for any reason, at the request of SBBC, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is infeasible, such as in the use of data aggregation, Business Associate shall provide to SBBC written notification of the conditions that make return or destruction infeasible. If the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

#### 10. **Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.
- (b) **By Business Associate:** Business Associate 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 cost, court costs and all other sums which SBBC, its agents, servants and employees must 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 Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

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

#### 11. **No Waiver of Sovereign Immunity.**

Nothing contained 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 as waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

#### 12. **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. 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.

**13. Non-Discrimination.**

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

**14. Records.**

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

**15. 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.

**16. Waiver.**

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

**17. 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.

**18. Binding Effect.**

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

**19. 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.

**20. 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.

**21. 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.

**22. Notices.**

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 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33301

With a Copy to: Director, Benefits & Employment Services  
The School Board of Broward County, Florida  
7770 W. Oakland Park Blvd.  
Sunrise, Florida 33351

Privacy Officer  
Risk Management Department  
The School Board of Broward County,  
Florida 600 S.E. 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301

To Business Associate: Dan Rood, National Sales Director – Special Products  
Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175

**23. Severability.**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

**24. Captions.**

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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.



## **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. The person signing on behalf of "Business Associate" has authority to bind "Business Associate" with respect to all provisions contained in this Agreement.

## **26. No Waiver of Rights, Powers and Remedies.**

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

## **27. Regulatory References.**

A reference in this Agreement to a section in the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA in general means the referenced section or its successor, and for which compliance is required.

## **28. Governing Law.**

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.

## **29. Entire Agreement.**

This Agreement 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 Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

## **30. Interpretation.**

Any ambiguity in this Agreement shall be interpreted in a manner that permits SBBC to comply with the Privacy Rule, Security Rule, the HITECH Act, HIPAA in general and any subsequent legislation or regulations otherwise affecting Business Associates.

**IN WITNESS WHEREOF**, the parties have executed this Business Associate Agreement as of the Effective Date.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By Heather P. Brunkow  
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

M. D. [Signature] 09/15/18  
Office of the General Counsel

FOR BUSINESS ASSOCIATE

*Scott Ault*  
Signature

Scott Ault, Executive Vice President  
Print Name and Title

Karen Feible  
Witness

Mari Ann Kott  
Witness

STATE OF NEBRASKA

COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me by Scott Ault who is personally known to me or who produced \_\_\_\_\_ as identification and who did / did not first take an oath this 13th day of August, 20 18.

My Commission Expires: 12/18/2021

*Patricia M. Neu*  
Signature – Notary Public

Patricia M. Neu  
Notary's Printed Name

State of Nebraska – General Notary  
PATRICIA M. NEU  
My Commission Expires  
December 18, 2021

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

**NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC") and \_\_\_\_\_ (Business Associate). Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_  
\_\_\_\_\_

Date or date range of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of individuals affected by the breach: \_\_\_\_\_

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: \_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



RFP #:	<u>19-020V</u>	Tentative Board Meeting Date*:	<u>SEPTEMBER 5, 2018</u>	
RFP Title:	<u>GROUP TERM LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT (AD&amp;D) INSURANCE FOR SCHOOL BOARD EMPLOYEES</u>	# Notified:	<u>1,135</u>	# Downloaded: <u>28</u>
		# of Responses Rec'd:	<u>6</u>	# of "No Bids": <u>0</u>
For:	<u>BENEFITS AND EMPLOYMENT SERVICES</u> (School/Department)	RFP Opening Date :	<u>JANUARY 29, 2018</u>	
Fund:	<u>FRINGE BENEFITS CLEARING ACCOUNT</u>	Advertised Date:	<u>NOVEMBER 15, 2017</u>	

**POSTING OF RFP RECOMMENDATION/TABULATION:** Select One Recommendations and Tabulations will be posted in the Procurement & Warehousing Services and [www.Demandstar.com](http://www.Demandstar.com) on **MARCH 19, 2018 @ 3:00 pm** and will remain posted for 72 hours. Any person who is adversely affected by the decision or intended decision shall file a notice of protest, in writing, within 72 hours after the posting of the notice of decision or intended decision. The formal written protest shall be filed within ten (10) days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. Section 120.57(3)(b), Florida Statutes, states that "The formal written protest shall state with particularity the facts and law upon which the protest is based." Saturdays, Sundays, state holidays and days during which the District is closed shall be excluded in the computation of the 72-hour time period provided. Filings shall be at the office of the Director of Procurement & Warehousing Services, 7720 West Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351. Any person who files an action protesting an intended decision shall post with the School Board, at the time of filing the formal written protest, a bond, payable to The School Board of Broward County, Florida, (SBBC), in an amount equal to one percent (1%) of the estimated value of the contract. Failure to post the bond required by SBBC Policy 3320, Part VIII, Purchasing Policies, Section N, within the time allowed for filing a bond shall constitute a waiver of the right to protest.

(\* The Cone of Silence, as stated in the ITB / RFP / RFQ / HARD BID, is in effect until it is approved by SBBC. The Board meeting date stated above is tentative. Confirm with the Purchasing Agent of record for the actual date the Cone of Silence has concluded.

**RECOMMENDATION TABULATION**

BASED UPON THE RECOMMENDATION OF THE SUPERINTENDENT'S INSURANCE & WELLNESS ADVISORY COMMITTEE (SIWAC), IT IS RECOMMENDED THAT THE FOLLOWING LISTED PROPOSER BE RECOMMENDED FOR GROUP TERM LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT (AD&D) INSURANCE FOR SCHOOL BOARD EMPLOYEES.

S/M/WBE ADVISOR: ANNEMARIE RICHARDS, S/M/WBE SPECIALIST III

**MUTUAL OF OMAHA**

IT IS RECOMMENDED THAT FOR REASON(S) STATED ON THE ATTACHED RFP REJECTION SHEET, THE PROPOSAL, IN ITS ENTIRETY, BE REJECTED FOR NOT COMPLYING WITH RFP REQUIREMENTS.

CONTRACT PERIOD: JANUARY 1, 2019 AND CONTINUING THROUGH DECEMBER 31, 2021

By: Charles O. High (Digitally Signed) Date: 3/19/18  
(Purchasing Agent)

The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination complaint, may call the Executive Director, Benefits & EEO Compliance at 754-321-2150 or Teletype Machine (TTY) at 754-321-2158.

Individuals with disabilities requesting accommodations under the Americans with Disabilities Act (ADA) may call the Equal Educational Opportunities (EEO) at 754-321-2150 or Teletype Machine (TTY) at 754-321-2158.

**RFP 19-020V**

**Group Term Life and Accidental Death and Dismemberment (AD&D)  
Insurance for School Board Employees**

**RFP Rejection Sheet**

Reject proposal from Hartford Life and Accident Insurance Company -- Proposer did not meet the Minimum Eligibility Requirements of the RFP. Proposer took exception to the language in Sections 4.2.1 and 7.1 -- Indemnification. Proposer did not respond to Section 4.2.5.

Reject proposal from Minnesota Life Insurance Company -- Proposer did not meet the Minimum Eligibility Requirements of the RFP for Section 4.2.6. Proposer took exception to the language in Section 6.4 -- Insurance Requirements.

Reject proposal from Standard Insurance Company -- Proposer did not meet the Minimum Eligibility Requirements of the RFP for Section 4.2.6. Proposer took exception to the language in Section 6.4.7 -- Insurance Requirements.

Reject proposal from UnitedHealthcare Insurance Company -- Proposer did not meet the Minimum Eligibility Requirements of the RFP for Section 4.2.5. Proposer took exception to this provision.