

AGREEMENT

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

SCHOLASTIC INSURANCE OF FLORIDA, L.L.C.

D/B/A SCHOOL INSURANCE OF FLORIDA

(hereinafter referred to as “VENDOR”),
whose principal place of business is
855 East Plant Street, Suite 1300
Winter Garden, Florida 34787

WHEREAS, SBBC issued a Request for Proposal identified as RFP 19-073V – Student and Athletic Accident Insurance Coverage (hereinafter referred to as “RFP”), dated September 13, 2018 and amended by Addendum No. 3, dated October 12, 2018, Addendum No. 2, dated October 11, 2018 (Revised) and Addendum No. 1, dated October 3, 2018, all of which are incorporated by reference herein, for the purpose of receiving proposals for student and athletic accident insurance coverage; and

WHEREAS, VENDOR offered a proposal dated October 1, 2018 (hereinafter referred to as “Proposal”) which is incorporated by reference herein, in response to this 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 **July 31, 2022**. The term of the Agreement may, by mutual agreement between SBBC and VENDOR be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. SBBC’s Procurement & Warehousing Services Department, will, if considering renewing, request a letter consenting to renewal from VENDOR, prior to the end of the term. Any renewal period shall be approved by an Amendment to this Agreement executed by both parties.

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

- First: This Agreement, then;
- Second: Addendum No. 3, then;
- Third: Addendum No. 2, then;
- Fourth: Addendum No. 1, then;
- Fifth: RFP 19-073V – Student and Athletic Accident Insurance Coverage, then;
- Sixth: Proposal submitted in response to the RFP by VENDOR.

2.03 **Scope of Services.** The Scope of Services to be provided under this Agreement is specified in **Attachment A** of this Agreement and the RFP.

2.04 **Costs of Services and Payment.** The negotiated costs to be paid for services provided under this Agreement are specified in **Attachment B** of this Agreement. Voluntary Accident Insurance and Voluntary Athletic accident insurance selected by the parent or guardian shall be paid directly by the parent or guardian of the student to VENDOR. VENDOR shall be paid by SBBC for Mandatory accident insurance for Early Head Start and Head Start programs through a written purchase order; terms are Net 30 from date of invoice; such payment by SBBC to VENDOR is contingent upon SBBC receipt of Head Start grant funding.

2.05 **Schedule of Benefits.** The negotiated Schedule of Benefits for Plans A and B of provided coverages for both Athletic and Student accident insurance are specified in **Attachment C** of this Agreement. Other benefits and rates, for Plans A and B as provided in VENDOR’s proposal, remain unchanged.

2.06 **SBBC Disclosure of Education Records.**

- (a) Purpose: (1) To facilitate enrolling students in the insurance plan (application process), and (2), to confirm status in Head Start or Early Head Start program (if applicable), SBBC will disclose the education records listed in this section.
- (b) SBBC will provide VENDOR with the following education records:
 - 1) Student’s first name, last name, and middle initial
 - 2) Home address
 - 3) Name of school
 - 4) Grade
 - 5) Personal email address
 - 6) Benefit plan option (check box)
 - 7) Dollar amount of payment
 - 8) Confirmation of Head Start or Early Head status (if applicable)
- (c) SBBC will obtain consent from each student’s parent/guardian or student age 18 or older prior to disclosing the education records listed in this section.

2.07 **VENDOR Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure shall be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) **VENDOR** shall, 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. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.08 **HIPAA Compliance.** **VENDOR** 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 **Attachment D**. PHI may be used and disclosed only in compliance with HIPAA.

2.09 **Inspection of VENDOR's Records by SBBC.** **VENDOR** 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 **VENDOR'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 **VENDOR** 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 VENDOR'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 VENDOR pursuant to this Agreement.

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

(f) Inspection of Subcontractor's Records. If applicable, VENDOR 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 VENDOR 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 VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR 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 shall 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, Risk Management Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To VENDOR: School Insurance of Florida
P.O. Box 784268
Winter Gaarden, Florida 34778

With a Copy to: Lane Smith
855 East Plant Street, Suite 1300
Winter Garden, Florida 34778

2.10 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467, and 1012.468 Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) shall have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening shall be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR 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 VENDOR and its personnel. The parties agree that the failure of VENDOR 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. VENDOR 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 VENDOR's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467, and 1012.468, Florida Statutes.

2.11 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR 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, VENDOR 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. VENDOR 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 VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon

completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically shall 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.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

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

2.13 **Insurance Requirements.** VENDOR shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** VENDOR 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. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

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

(c) Workers' Compensation. VENDOR 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. VENDOR 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 shall be furnished by VENDOR 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) shall be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR shall 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 shall 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. VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and shall 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.

2.14 **Nondiscrimination.**

(a) As a condition of entering into this Agreement, VENDOR represents and warrants that it shall 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, VENDOR 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 VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR 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. VENDOR 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.

2.15 **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.

2.16 **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.

2.17 **Incorporation by Reference.** **Attachments A, B, C and D** are attached hereto and the RFP, its Addenda and the Proposal which are referenced herein shall be deemed to be incorporated into this Agreement by reference.

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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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) calendar 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) calendar 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 IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworh, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

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FOR VENDOR:

(Corporate Seal)

SCHOLASTIC INSURANCE OF FLORIDA, L.L.C.
D/B/A SCHOOL INSURANCE OF FLORIDA

ATTEST:

By Lane A Smith

Print Name: Lane Smith

Title: President / Agent

_____, Secretary

-or-

Witness

Witness

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

STATE OF FLORIDA

COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 28 day of NOVEMBER, 2018 by LANE SMITH of

SCHOOL INSURANCE OF FLORIDA, on behalf of the corporation/agency.
Name of Corporation or Agency

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

My Commission Expires:

Sheila B. Anthony
Signature - Notary Public

SHEILA B. ANTHONY
Printed Name of Notary

00040271
Notary's Commission No.

(SEAL) SHEILA B. ANTHONY
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG040271
Expires 11/30/2020

SCOPE OF SERVICES

1. VENDOR shall provide a toll-free telephone service serving all of Broward County. In addition, the office shall have the ability to provide full service to English, Spanish and Creole speaking individuals.
2. VENDOR shall, within thirty (30) days of notification of award, maintain a claims and policyholder's service office for the verification of eligibility, the answering of coverage questions, and the processing and handling of claims between 8:00 a.m. and 5:00 p.m. ET. The claims office shall meet the requirements of Florida Statutes including, but not limited to, F.S. 627.661.
3. VENDOR shall provide an online website for enrollment and an online portal for access to online rosters and plan information. The online portal shall allow appropriate staff at school sites to electronically provide roster information to the Awardee and allow the school sites to access enrollment data without jeopardizing student privacy concerns. The online website shall allow parents/families access to coverage and enrollment information. The online portal shall track student premium payments and provide proof of payment and coverage. The online website for enrollment shall accept credit card payment for paying premiums.
4. Roster and enrollment data shall be maintained on secure servers in accordance with Payment Card Industry Security Standards (PCI) for enrollment and claim submission purposes.
5. SBBC shall be given access to audit claim files on an as-needed basis.
6. Rates are requested to be guaranteed a minimum of the first two coverage years. If VENDOR requests alteration of the premium rates after the rate guarantee period, SBBC reserves the option to negotiate a new premium rate or to reject the request and remarket the coverage, whichever SBBC considers to be in its best interest. Such request by VENDOR shall be submitted in writing and delivered to SBBC's designated Risk Management office no later than one hundred twenty (120) days before the anniversary date of the policy.
7. VENDOR shall submit, for written approval to SBBC's Risk Management Department, within twenty (20) days following date of award, a sample copy of "proofs" of material intended for distribution through or to the schools. VENDOR shall also submit an actual copy of any material intended for distribution to students or parents through the schools to SBBC's Risk Management office at least two (2) weeks prior to delivery to the schools.

SCOPE OF SERVICES

8. VENDOR shall provide mailed validation cards to verify receipt of payment and a premium envelope which, after being sealed, shall have space for the name of the student, address, parent's or guardian's signature, name of school, amount of premium, and applicable data. The insurance brochure that is part of or accompanies the envelope shall show the coverage provided, the name of the insurer, and where (including the toll-free telephone number) and how to file a claim. A complete description of the benefits shall accompany or be part of the insurance brochure. Either separate English and Spanish insurance brochures shall be provided, or the English insurance brochures shall have Spanish translations on the insurance brochure for all pertinent information. Envelopes, insurance brochures or flyers shall be made available to all students at the beginning of the school year, and the documents shall be available for downloading and printing at all school sites or for parents (via the internet) at home throughout the school year. The current estimate is that the student accident program shall require at least 300,000 flyers and 40,000 envelopes/brochures for the beginning of each school year, with additional envelopes/brochures required throughout the year. The tackle football program shall require approximately 3,000 tackle football insurance brochures. The cost of printing insurance flyers and envelopes/brochures and distribution to all school sites for the beginning of the school year shall be included in the administrative costs.
9. VENDOR shall furnish collection envelopes for each homeroom teacher for the collection of the individual student envelopes. These collection envelopes shall be of the variety that can be sealed. Neither SBBC nor its employees shall handle or account for the actual money sent in as premium, nor assume responsibility for any mishandling of the envelopes. VENDOR shall provide each school with, at minimum, two large postage-paid envelopes to remit the applications to VENDOR.
10. VENDOR shall provide regularly updated electronic lists/rosters of insured students to the Risk Management Department. Two lists shall be electronically delivered to the designee of the Risk Management office. Each electronic list shall include for each insured student, the name of the student, the premium paid for the student and the effective date of the coverage for the student. One list shall be an alphabetical master list. The second list shall be broken down by school and shall be in alphabetical order within the school. The third list shall be a duplicate of the second list, but shall be distributed directly to the schools by VENDOR, not the School Board.
11. If payment for coverage is made by check(s) which is/are returned to VENDOR due to insufficient funds, VENDOR shall provide to the appropriate school and the parents/family with written notice of the insufficient funds and to replace the check with sufficient funds.
12. Due to the fact that student enrollment for Before/After School Care programs are ongoing throughout the year, it is imperative that an electronic listing of insured students be available at the request of the individual school site on a monthly basis. The electronic list shall be unique to the school requesting the list and the insured students listed shall be in alphabetical order.

SCOPE OF SERVICES

13. In the distribution of insurance brochure/flyer/envelope VENDOR shall not indicate that the insurance package is contingent on the sale of allied lines. If VENDOR wishes to advertise any allied lines in the material distributed, complete details of such offering shall be submitted, including copies of the advertising material, to the designee at the Risk Management office for consideration prior to the offering date. VENDOR agrees that, unless the School Board specifically approves such additional allied lines offering, the material prepared for distribution to the schools shall cover only the program or programs awarded to VENDOR on the basis of this RFP, and that any mailing list which might be developed from the sale of this policy shall not be used, or cause to be used, for any other commercial purpose.

ADDITIONAL SERVICES

VENDOR is able to provide the following services in relation to the scope of the RFP:

- a) VENDOR prints, sorts and distributes a brochure for all students in the District.
- b) VENDOR is a Florida licensed Third Party Administrator (TPA) and complies 100% with Florida Statute, 627.661 by having an in-state claims paying office rather than claims being processed out of state by an outsourced office.
- c) VENDOR's website allows students to enroll online and print personalized ID cards in real-time.
- d) The website provides Broward School Administrators, under password protection, access to view a listing of enrolled students in real-time.
- e) Parents have the opportunity to select from two benefit levels of coverage based on their family's needs.
- f) VENDOR has developed a PPO that parents can utilize and save out-of-pocket expenses when filing claims.
- g) VENDOR is staffed in order to take parent phone calls rather than automated responses or voicemails.
- h) VENDOR representative is available for school meetings locally and within the State of Florida, when required.

COST OF SERVICES

Description	Premium Rate
Parent Cost of Services	
Voluntary Accident	
24 HR Plan – Basic Benefits	\$ 44.00
24 HR Plan – Enhanced Benefits	\$ 139.00
At School Plan A – Basic Benefits	\$ 8.00
At School Plan B – Enhanced Benefits	\$ 21.00
Voluntary Athletics	
High School Football Season – Plan A Basic Benefit	\$ 73.00
High School Football Season – Plan B Enhanced Benefit	\$ 163.00
High School Football Pre-Season – Plan A	\$ 14.00
High School Football Pre-Season – Plan B	\$ 30.00
High School Football Regular Season Only – Plan A	\$ 58.00
High School Football Regular Season Only – Plan B	\$ 110.00
High School Football Practice Only – Plan A	\$ 15.00
High School Football Practice Only – Plan B	\$ 35.00
SBBC Cost of Services contingent upon Head Start and Early Head Start grant funding	
Mandatory Accident	
Head Start and Early Head Start – Plan A Basic Benefits	\$ 4.00
Head Start and Early Head Start – Plan B Enhanced Benefits	\$ 11.00

SCHEDULE OF BENEFITS**Plan A – Basic Benefits****Maximum Medical Benefit**

Schooltime Accident Plan: \$25,000

24 Hour Accident Plan: \$25,000

Interscholastic Sports: \$25,000

Vehicle Accidents

(Other than 2 or 3 wheeled): \$1,500

In-Hospital Sickness Plan: \$5,000 aggregate maximum per covered sickness @ \$500 per day of hospital confinement.

Maximum Dismemberment Benefit: \$7,500**Loss of One Eye, One Hand, One Leg, etc:** \$1,000**Accidental Death Benefit:** \$1,500**Deductible Amount:** **Waived****Maximum Dental Accident Benefit:**

Basic Dental Accident Plan: \$350 per tooth

Medical Expense

Medical and Surgical treatment - \$3,500 Maximum.

Usual and Customary. Insured must receive benefit within 30 days of Covered Accident and services rendered within one year of Covered Accident.

First office visit: \$50

Subsequent nonsurgical visit: \$40

Reduction of fractures or dislocation and surgical procedures: 100% of usual and customary as stated in 2008 Florida Workers Compensation fee schedule.

Surgeon and Anesthesia: 100% of usual and customary as stated in 2008 Florida Workers Compensation fee schedule.

Diathermy, Mechanical fusion, Heat Treatment, Strength measurement, Massage, Physiotherapy, Acupuncture, Manipulation or Adjustment or Office Visit connected therewith:

Initial Treatment: \$200 Maximum.

Initial Treatment: \$40

Follow Up: \$40

Repair or Replacement of Damaged Teeth - \$25,000 Maximum

\$350 per Injured Tooth

X-Ray, CAT Scan or Similar Procedure when not confined to Hospital: Usual and Customary, maximum \$150

SCHEDULE OF BENEFITS

Plan A – Basic Benefits (Continued)

MRI: \$500 Aggregate

Ground Ambulance: \$250 Any One Covered Accident

Broken frames, lenses resulting from Covered Accident payable only in conjunction with an injury requiring medical or surgical treatment other than routine eye exam: \$150

Crutches, braces, splints, casts orthopedic appliances, not to exceed \$150 any one Covered Accident when prescribed.

Private duty nursing when prescribed while hospital confined: Usual or Customary, \$25,000 Maximum

Plastic, reconstructive or re-implantation, transplantation and experimental surgical and/or treatment for cosmetic purposes: \$500 Maximum.

Hospital Coverage

Inpatient – 18 Hours within 365 days of Covered Accident

Daily Room and Board \$350 per Day

Miscellaneous Expenses: \$300 per Day

Outpatient - Per One Covered Accident

If Major Surgery is Performed: \$3,500

If No Major Surgery is Performed: \$300

Outpatient - Licensed Surgical Facility

If Major Surgery is Performed: \$3,500

If No Major Surgery is Performed: \$300

SCHEDULE OF BENEFITS**Plan B – Enhanced Benefits****Maximum Medical Benefit**

Schooltime Accident Plan: \$25,000

Accident Plan: \$25,000

24 Hour Accident Plan: \$25,000

Vehicle Accidents
(Other than 2 or 3wheeled): \$1,500

In-Hospital Sickness Plan: \$5,000 aggregate maximum per covered sickness @ \$500 per day of hospital confinement.

Maximum Dismemberment Benefit: \$7,500**Loss of One Eye, One Hand, One Leg, etc:** \$1,000**Accidental Death Benefit:** \$3,000**Deductible Amount:** **Waived****Maximum Dental Accident Benefit**

Basic Dental Accident Plan: \$750 per tooth

Hospital Confinement for Sickness Only

Per Day of Hospital Confinement: \$500

Period of Confinement Maximum: \$5,000

Medical Expense - Enhanced

Medical and Surgical Treatment - \$7,500 Maximum.

Usual and Customary. Insured must receive benefit within 30 days of Covered Accident and services rendered within one year of Covered Accident.

First office visit: \$75

Subsequent nonsurgical visit: \$45

Reduction of fractures or dislocation and surgical procedures: 100% of usual and customary as stated in 2008 Florida Workers Compensation fee schedule.

Surgeon and Anesthesia: 100% of usual and customary as stated in 2008 Florida Workers Compensation fee schedule.

Diathermy, Mechanical fusion, Heat Treatment, Strength measurement, Massage, Physiotherapy, Acupuncture, Manipulation or Adjustment or Office Visit connected therewith:

Initial Treatment: \$400 Maximum.

Initial Treatment: \$45

Follow Up: \$45

SCHEDULE OF BENEFITS**Plan B – Enhanced Benefits**

Repair or Replacement of Damaged Teeth - \$25,000 Maximum,
\$750 per Injured Tooth

X-Ray, CAT Scan or Similar Procedure when not confined to Hospital: Usual and Customary, maximum \$350

MRI: \$750 Aggregate

Ground Ambulance: \$750 Any One Covered Accident

Broken frames, lenses resulting from Covered Accident payable only in conjunction with an injury requiring medical or surgical treatment other than routine eye exam: \$300

Crutches, braces, splints, casts orthopedic appliances, not to exceed \$300 any one Covered Accident when prescribed.

Private duty nursing when prescribed while hospital confined: Usual or Customary, \$25,000 Maximum

Plastic, reconstructive or re-implantation, transplantation and experimental surgical and/or treatment for cosmetic purposes: \$500 Maximum.

Hospital Coverage

Inpatient – 18 Hours within 365 days of Covered Accident

Daily Room and Board \$500 per Day

Miscellaneous Expenses: \$750 per Day

Outpatient - Per One Covered Accident

If Major Surgery is Performed: \$7,500

If No Major Surgery is Performed: \$750

Outpatient - Licensed Surgical Facility

If Major Surgery is Performed: \$7,500

If No Major Surgery is Performed: \$750

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“*Agreement*”) is made and entered into as of this _____ day of _____, 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

SCHOLASTIC INSURANCE OF FLORIDA, L.L.C.
D/B/A SCHOOL INSURANCE OF FLORIDA
(hereinafter referred to as “*Business Associate*”),
whose principal place of business is
855 East Plant Street, Suite 1300
Winter Garden, Florida 34787

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 (“HIPAA”), 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 HIPAA, 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, the parties hereto agree as follows:

ARTICLE 1 – RECITALS

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

- (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) “**HIPAA**” 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 HIPAA 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 HIPAA or HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA 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 HIPAA 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.

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 HIPAA.

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 HIPAA 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 so that SBBC is in compliance with the Privacy Rule, the Security Rule, the HITECH Act, and HIPAA 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
3rd Avenue
Fort Lauderdale, FL 33301

With a Copy to: Executive Director, ESE/SS Division
The School Board of Broward County, Florida
1701 NW 23rd Avenue
Fort Lauderdale, Florida 33301

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

To Business Associate: School Insurance of Florida
P.O. Box 784268
Winter Gaarden, Florida 34778

With a Copy to: Lane Smith
855 East Plant Street, Suite 1300
Winter Garden, Florida 34778

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 there from 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.

[THIS SPACE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]

FOR BUSINESS ASSOCIATE

Lane Smith
Signature

Lane Smith President
Print Name and Title

[Signature]
Witness
[Signature]
Witness

STATE OF FLORIDA

COUNTY OF MANATEE

The foregoing instrument was acknowledged before me by LANE SMITH who is personally known to me or who produced KB as identification and who did did not first take an oath this 28 day of NOVEMBER, 2018.

My Commission Expires:

Sheila B. Anthony
Signature – Notary Public



SHEILA B. ANTHONY
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG040271
Expires 11/30/2020

SHEILA B. ANTHONY
Notary's Printed Name

GG040271
Notary's Commission No.

EXHIBIT A
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: _____