

# AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2001, 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

## CNA GROUP BENEFITS

(hereinafter referred to as "CNA",  
whose principal place of business is  
CNA Plaza  
Chicago, Illinois 60685

WHEREAS, SBBC issued a Request for Proposals, identified as RFP 22-033V Group Long Term Disability Coverage for School Board Employees, dated April 9, 2001, and amended by Addendum Number 1, dated May 4, 2001, (hereafter referred to as "RFP") which is incorporated by reference herein, for the purpose of receiving proposals for Group Long Term Disability Coverage for SBBC employees and;

WHEREAS, CNA offered a proposal dated May 14, 2001, (hereafter referred to as "Proposal") which is incorporated by reference herein, in response to RFP, and;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and the sum of Ten Dollars (\$10.00) 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.** This Agreement is effective as of 12:01 A.M., January 1, 2002, and will continue until 12:00 A.M., January 1, 2005, unless extended by a written Amendment to this Agreement and signed by the parties, or, terminated pursuant to Section 3.04 of this Agreement.

2.02 **Rates.** The rates for the period commencing on January 1, 2002, through December 31, 2004, shall be as follows:

#### Monthly Premiums

Core Plan:	73 cents per \$100.00 of insured payroll
Buy-Up Plan:	An additional 33 cents per \$100.00 of insured payroll

2.03 **Minimum Hours.** CNA agrees that the eligibility requirements detailed in the insurance policy issued to provide disability benefits to SBBC employees will require a minimum of 20 hours of active employment per week to be eligible for both the Core and Buy-Up Plans.

2.04 **Waiver.** CNA agrees the insurance policy issued to provide disability benefits will not require a minimum number of participants in the Buy-Up Plan.

2.05 **Applications.** CNA agrees to provide disability application packets in an SBBC approved format.

2.06 **Pre-Existing Conditions.** CNA agrees that no pre-existing conditions, as defined in the policy, will apply during the first 180 days of disability.

2.07 **Weekly/Monthly Benefits.** CNA agrees that the insurance policy issued to provide disability benefits to SBBC employees will provide weekly benefits to disabled employees during the initial 6 months of benefit payments. The policy will provide monthly benefit payments to disabled employees beyond the initial 6 months.

2.08 **Conversion.** CNA agrees to provide a conversion option for employees leaving SBBC up to \$4,000.00 of monthly benefit.

2.09 **Class 1 Occupation.** CNA agrees that the definition of disability in the insurance policy issued to provide disability benefits to SBBC employees will provide an own occupation definition for the maximum period payable to Class 1 employees.

2.10 **Own Occupation.** CNA agrees that the insurance policy will provide an own occupation benefit for the maximum period payable under the Core Plan (two years). The Buy-Up Plan will provide an any occupation benefit to the maximum period payable following 24-month own occupation period. CNA will not consider an occupation as gainful employment during the any occupation period unless the employee can earn at least 80% of pre-disability salary in such occupation.

2.11 **Self-Reported.** CNA agrees to limit the benefits for self-reported symptoms as defined in the policy, to twenty-four months for both the Core and Buy-Up Plans.

2.12 **Self-Billing.** CNA agrees to accept SBBC's self-billing statements.

2.13 **M/WBE.** In the event there is a change in the M/WBE(s) scope of work, dollar amount, or a need to replace the M/WBE(s), CNA agrees to provide the M/WBE office a 30 day written notice for substitution of any M/WBE(s). If CNA does not substitute the M/WBE(s), CNA agrees upon request from the M/WBE office, to provide documentation demonstrating its good faith efforts to substitute the M/WBE(s). In the event CNA fails to reply or demonstrates its good faith efforts, CNA agrees to liquidated damages of \$100 per calendar day for the first 30 days and \$1000 per calendar day thereafter, until CNA provides the M/WBE office notice demonstrating its good faith efforts or its substitution of the M/WBE(s). CNA agrees to submit a monthly M/WBE Utilization Report by the 15<sup>th</sup> day after the end of each month, whether the M/WBE(s) received payments or not.

2.14 **Priority of Documents.** In case of a conflict between the wording in these documents, the order of priority of the documents is as follows:

- This Agreement, exclusive of all documents included by reference therein; then
- The RFP documents; then
- The Proposal

2.15 **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 CNA: 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 liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by CNA, its agents, servants or employees; the equipment of CNA, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of CNA'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 CNA, SBBC or otherwise.

## **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement, including but not limited to the Indemnification section of Article 2, is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

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 manner arising out of any contract.

3.03 **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 race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** This Agreement may be canceled by SBBC during the term thereof upon thirty- (30) days written notice to CNA of SBBC'S desire to terminate this Agreement.

3.05 **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.

3.06 **Entire 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.

3.07 **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.

3.08 **Preparation of Agreement.** The Parties acknowledge that they have sought and obtained whatever competent advise 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.

3.09 **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 a subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

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

3.11 **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.

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

3.13 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

3.14 **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.

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

3.16 **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 effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **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  
1320 S.W. 4<sup>th</sup> Street, Building 7  
Ft. Lauderdale, Florida 33312

To CNA: CNA Group Benefits  
2600 Lucien Way, Suite 120  
Maitland, Florida 32751

With a Copy to: Jacob Story, Senior Account Executive  
2600 Lucien Way, Suite 120  
Maitland, Florida 32751

3.18 **Captions.** The captions, section numbers article 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, no in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

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

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

FOR SBBC

(Corporate Seal)

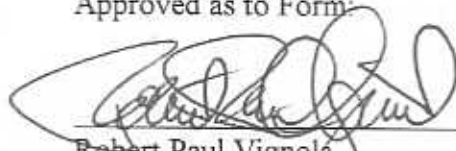
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By: \_\_\_\_\_  
Paul D. Eichner, Esquire, Chairperson

ATTEST:

\_\_\_\_\_  
Franklin L. Till, Jr.,  
Superintendent of Schools

Approved as to Form:

  
\_\_\_\_\_  
Robert Paul Vignola  
Assistant School Board Attorney

FOR CNA

(Corporate Seal)

CNA Group Benefits

ATTEST:

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

By *Kris Kearney*  
Kris Kearney  
Regional Vice President

-or-

*Jermaine Mathis*  
Witness

*Shelley Kuyler*  
Witness

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

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of July, 2001, by Kris Kearney of CNA GROUP BENEFITS on behalf of the corporation/agency. He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath.

My Commission Expires:

*Holly C. Fenlon*  
Signature - Notary Public

Holly C. Fenlon  
Printed Name of Notary

(SEAL)

\_\_\_\_\_  
Notary's Commission Number

