



- b. The remaining 1.5% (valued at approximately \$25,000 in 2021) includes a performance guarantee and will be returned to BPS if Consultant's services do not save at least this amount in high costs claims. Each year, Consultant will present the value of our clinical oversight services for the purpose of the Board's evaluation of performance and retention of 1.5%.

The standard agreement template has been used with modifications approved by Employee Benefits and Risk Management, and Legal Services on January 5, 2021.

**CONTRACT TERM:**

The initial contract term shall commence January 20, 2021 and continue until January 19, 2024 with one (1) additional two (2) year renewal period.

**RECOMMENDATION:**

It is the recommendation of Beth Thedy, Ed.D., Deputy Superintendent/Chief Human Resources Officer and Mark Langdorf, Director of Employee Benefits and Risk Management to approve the attached agreement with Southeast Series of Lockton Companies, LLC in the annual not to exceed amount of \$187,300.00 plus 2.5% of the Stop-Loss commission as outlined in the discussion section.

**AUTHORITY FOR ACTION:**

Florida Administrative Code 6A-1.012



**AGREEMENT**  
**By and Between**  
**The School Board of Brevard County, Florida**  
**and**  
**Southeast Series of Lockton Companies, LLC**

This Agreement ("Agreement") is made by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as "BPS") and Southeast Series of Lockton Companies, LLC whose business address is 4221 W. Boy Scout Blvd, Suite 550, Tampa, FL 33607, (hereinafter referred to as "Contractor" or "Consultant" or "Lockton"), each individual referred to as a "Party" and, collectively, the "Parties."

**WITNESSETH:**

**WHEREAS**, BPS desires to secure a contractual relationship for the purpose of **Employee Benefits Consultant, Actuarial Services, and Broker of Record Services** for Brevard County Public Schools, as outlined in Exhibit "A," Scope of Services ("Services"), and

**WHEREAS**, these Services have been competitively solicited pursuant to RFP 21-271-P-KR, which has been assigned to the tracking number indicated above by BPS for tracking purposes.

**NOW THEREFORE**, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

1. **RECITALS**. The above Recitals are true and correct and are incorporated herein.
2. **DEFINITIONS**. The following definitions of terms associated with this Agreement are provided to establish a common understanding between both Parties to this Agreement, as to the intended application, interpretation, and usage of terms in connection with this Agreement.
  - 2.1. **"AGREEMENT"** refers to the executed Agreement by and between BPS and Contractor.
  - 2.2. **"AMENDMENT"** means a written document authorized by the parties to this Agreement which, when executed by both parties, sets forth any changes to that certain scope of services ("Services"), attached hereto as Exhibit "A" and incorporated herein by reference, that contemplates a change in the Services, work, and materials to be provided and performed by Contractor pursuant to this Agreement, sets forth the basis of compensation due to Contractor of, and sets forth the time period and/or schedule for performance and completion thereof.
  - 2.3. **"BPS"** shall mean The School Board of Brevard County, Florida and may be used interchangeably with Brevard Public Schools.
  - 2.4. **"CONFIDENTIALITY"** For purposes hereof, "Confidential Information" shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Confidential Information shall not include any information which: (a) a party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (c) a party has developed independently without reference to any Confidential Information of the other party; (d) a party can demonstrate such information came into its possession from a third-party who had a bona fide right to make such information available; or (e) is subject to the Florida Public Records Law, Chapter 119, F.S., or any other information required to be disclosed by a valid court order or agency of government.
  - 2.5. **"CONTRACTOR"** means Southeast Series of Lockton Companies, LLC, a Party hereto, who is authorized to conduct business in the State of Florida, offering Services hereunder, which has executed

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

this Agreement, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the Services, work, and materials, including services and/or work of any approved sub-contractors, required under the covenants, terms, and provisions contained in this Agreement and any and all Amendments thereto.

- 2.6. **"FUNDS"** shall mean payment made by BPS to Contractor hereunder.
- 2.7. **"PARTIES"** shall mean the parties entering into this Agreement, BPS and Contractor, respectively; individually, a "Party."
- 2.8. **"SERVICES"** shall mean the services as set forth and required, pursuant to the Agreement and described in further detail in Exhibit "A," attached hereto and incorporated herein by reference.

3. **AMENDMENTS AND MODIFICATIONS.** No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the Parties.

4. **TERM AND TERMINATION.**

- 4.1. The term of this Agreement will cover the period beginning the date of School Board approval through January 31, 2024 and may be renewed at the end of the term up to one (1) additional two (2) year renewal period. The Agreement term recommendation will be that which is determined to be in the best interest of the School Board. The renewal option shall be exercised at the same or substantial similar terms by mutual written agreement of the Parties.
- 4.2. Contractor shall give BPS written notice of any substantial failure to perform under this Agreement through no fault of Contractor. If BPS fails to correct or diligently pursue cure of such failure within ten (10) business days of receipt of notice, this Agreement may be terminated by Contractor, at its option, upon thirty (30) calendar days' prior written notice to BPS.
- 4.3. This Agreement may be terminated by BPS with or without cause upon thirty (30) days' written notice sent by certified mail. In the event of a material breach by Contractor hereunder through no fault of BPS, BPS may, at its option, terminate this Agreement immediately.
- 4.4. This Agreement may be terminated by Contractor with or without cause upon one hundred twenty (120) days' written notice sent by certified mail.
- 4.5. Upon termination of this Agreement hereunder, Contractor should be due all fees earned through the date of termination on a pro-rata basis.

5. **PAYMENT.**

- 5.1. BPS agrees to provide funds for the Agreement in the amount not to exceed Nine Hundred Thirty-Six Thousand Five Hundred (\$936,500.00) as outlined in Exhibit "B," Fee Schedule, which is attached hereto and incorporated herein. In accordance with the Local Government Prompt Payment Act, payments shall be made within forty-five (45) days after BPS's receipt of invoice. BPS shall pay these fees to Contractor for services rendered as outlined in Exhibit "B" which includes all direct charges, indirect charges, and reimbursable expenses, if any. **BPS shall incur no obligation for payment until issuance of a purchase order to Contractor.**
- 5.2. Expenses shall only be incurred as authorized by BPS and as provided for in Section 112.061, F.S.
- 5.3. If the Services are divided into phases, completion of a phase is defined by an appropriate signoff by BPS's and Contractor's project manager that all activities of that phase have been satisfactorily completed according to the project schedule, as agreed upon by both parties attached Exhibit "A". Contractor and BPS will agree upon planned completion dates for each phase and work in good faith to meet the planned schedule. BPS reserves the right throughout each phase to conduct a quality assurance check to ensure accuracy, quality, and delivery of work.

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 5.4. Subject to Contractor's right to cure under Section 4 herein, should the Services not be completed as scheduled, Contractor and BPS will jointly plan a revised completion date for the Services. Failure on the part of Contractor to complete its work in an accurate and quality manner shall be considered a default of this Agreement.
- 5.5. **Final Notice.** The final invoice for payment shall be submitted to BPS no more than forty-five days (45) after the Agreement term ends or the Agreement is terminated. Any payment due under the terms of this Agreement may be withheld until all reports due from Contractor, and necessary adjustments thereto, have been approved by BPS.
- 5.6. **Disclosure.** In addition to the fee compensation set forth in Section 5.1 and Exhibit "B", BPS acknowledges, consents and agrees that Contractor may receive a maximum of 2.5% in commissions from the School Board's Stop-Loss insurance carrier. The commission will be used by the Contractor to pay for clinical oversight services that are not provided in the Contractor's core consulting services. The Contractor feels the clinical oversight services are a benefit to BPS, but the payment of these services will be subject to the following performance guarantee:

Performance Guarantee. To the extent permitted by law, starting in 2022 Contractor agrees to offer a performance guarantee for BPS on its clinical oversight services, whereby Contractor agrees to put one point five percent (1.5%) of its two point five percent (2.5%) stop loss premium at risk, for use towards benefit related value-added services for BPS, contingent upon BPS's subjective evaluation of Contractor's performance of its clinical oversight services.

In addition, Contractor agrees to offset the stop-loss commission each year by 1% starting in 2022 as outlined in Exhibit "B.", as allowed by law.

- 5.7. **Agreement to Forgo Receipt of Base Commissions.** In consideration of BPS's agreement to pay the funds set forth in Section 5.1 and Exhibit "B", Contractor agrees that it will seek to make all placements referenced in Exhibit E on a net of commission basis. In the event an insurance company cannot eliminate commissions and show that a clear delineation of actual savings in premiums can be achieved net of commissions, Contractor shall advise BPS accordingly. BPS may then seek and obtain approval from the School Board of Brevard County before the Contractor is allowed to receive commissions. If commissions are to be paid to the Contractor these commissions will only be used to offset benefit related Contractor fees scheduled to be paid by BPS, fees paid by BPS for its benefit management system, premium credit for policies procured, or to offset other BPS benefit related expenses as allowed by law.
6. **AVAILABILITY OF FUNDS.** The obligations of BPS under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and BPS.
7. **TRUTH-IN-NEGOTIATION CERTIFICATE.** If applicable to the Services contained herein, signature of this Agreement by Contractor shall be deemed an acknowledgement and certification by Contractor that the wage rates and costs used to determine the funds provided for in this Agreement are accurate, complete, and current as of the date of this Agreement. The said rates and costs shall be adjusted to exclude any significant sums should BPS determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to Contractor. BPS shall exercise its rights under this provision within one (1) year following final payment of the funds.
8. **PERSONNEL.**
- 8.1. All of the Services herein shall be performed by Contractor or under its supervision, and all personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services.
- 8.2. **Jessica Lunsford Act (Background Check).**

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 8.2.1. To the extent applicable to the Services hereunder, Contractor shall comply with the Jessica Lunsford Act, effective September 1, 2005, as same may be amended from time to time and with all requirements of Sections 1012.32 and 1012.465, F.S.
  - 8.2.2. Except as provided in Sections 1012.467 or 1012.468, F.S., and consistent with BPS policy, all of Contractor's personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and BPS. This background screening will be conducted by BPS in advance of the Contractor or its personnel providing any Services under the conditions described in the previous sentence.
  - 8.2.3. Contractor shall bear the cost of acquiring the background screening required by Section 1012.32, F.S., and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Contractor and its personnel.
  - 8.2.4. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling BPS to terminate immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death, or property damage resulting from Contractor's failure to comply with requirements of this section or with Sections 1012.32 and 1012.465, F.S.
- 8.3. **Key Personnel.** Contractor shall notify BPS as soon as possible, but no later than five (5) working days, after any changes in address or key personnel positions of Contractor. Changes in key personnel may include resignations, approved leaves of absence of six (6) weeks or more, or terminations. Such notification shall be in writing and shall include information related to replacement staff assigned. Contractor agrees to work closely with BPS to ensure that the work and cooperation between the Parties is efficient and mutually productive to both Parties.
  - 8.4. **Background Screening.** To the extent applicable to the Services hereunder, Contractor and all Contractor staff under this Agreement shall meet and comply with all federal, state, county, and city laws, ordinances, rules, and regulations that relate to the background screening process of those applying for work with children, seniors, or the disabled, including those contained in Chapter 408 (Health Care Administration) and Chapter 435 (Employment Screening).
  - 8.5. **Conduct while on BPS Property.** Contractor acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any BPS facility and shall, at all times, conduct themselves in a manner consistent with BPS policies and within the discretion of the premises administrator or designee. It is a breach of this Agreement for any agent or employee of Contractor to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that will disrupt the educational program or constitute any level of threat to the safety, health, and well-being of any student or employee of BPS. Contractor agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee.

**9. FEDERAL AND STATE TAX.**

- 9.1. BPS is exempt from federal and state taxes for tangible personal property. Contractor shall not be exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with BPS, nor shall Contractor be authorized to use BPS's tax exemption number in securing such materials.
- 9.2. In the event Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to BPS an appropriate exemption certificate. BPS will sign an exemption certificate submitted to it by Contractor.

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 9.3. Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

**10. DOCUMENTATION AND REPORTING.**

- 10.1. In the performance of this Agreement, Contractor shall maintain books, records, and accounts of all activities in compliance with standard accounting procedures.
- 10.2. **Documentation.** Documentation in connection with the description of the Services as set forth in Exhibit "A" attached hereto shall be provided upon request.
- 10.3. **Reporting.** Contractor shall provide report containing requested data in the requested format in a timely manner as defined by BPS.

- 11. INSURANCE.** At its sole expense, Contractor will provide, before commencement of the Services, and submit to BPS along with this Agreement, a certificate(s) evidencing such insurance coverage to the extent listed in 11.1.1 to 11.5.5 below. The following applies to the insurance requirements below for products or services from contractors when all products, services, or work performed, when totaled together, will result in BPS paying to Contractor \$25,000.00 or more during the fiscal year. The insurance requirements are as follows:

- 11.1. **Insurance listed in 11.1.1 below is required of all contractors.** "The School Board of Brevard County, Florida" shall be provided a certificate of insurance evidencing BPS as an additional insured to the insurance policy. If the School Board is not named as an additional insured, then the School Board reserves the right to terminate this Agreement.
- 11.2. **Insurance listed in 11.1.2 below.** All contractors whose work for BPS includes products or services, and the value of these products or services are in excess of \$25,000.00, are required to carry this insurance to the limit listed below.
- 11.3. **Insurance listed in 11.1.3 below.** Any contractor transporting district employees, delivering or transporting district owned equipment or property, or providing services or equipment where a reasonable person would believe that BPS is responsible for the work of the Contractor from portal to portal is required to carry this insurance to the limit listed below.
- 11.4. **Insurance as listed in 11.1.4 below.** All contractors that have one (1) or more employees or that subcontract any portion of their work to another individual or company is required to have workers' compensation insurance to the limits listed below. For contracts of \$25,000.00 or more, no State of Florida, Division of Workers' Compensation, Exemption forms will be accepted. All entities and individuals are required to purchase a commercial workers' compensation insurance policy.
- 11.5. **Insurance as listed in 11.1.5 below.** All contractors providing professional services such as architects, engineers, attorneys, auditors, accountants, etc. are required to have this insurance to the limits listed below.

All Contractors will carry and maintain policies as described in numbers 11.1 to 11.5 above and as checked off in the box to the left of each section 11.1.1 to 11.1.5 below as specifically marked by representatives of the BPS Office of Procurement Services. All required insurance required must be from insurance carriers that have a rating of "A-" or better and a financial size category of "VII" or higher according to the A. M. Best Company. Contractor must provide BPS notification promptly following any material change in coverage or cancellation. This is applicable to the procurement and delivery of products, goods, or services furnished to BPS.

- 11.1.1. **Commercial General Liability Insurance:**  
 Negligence including Bodily Injury and Property Damage  
 Per Occurrence - \$1,000,000  
 General Aggregate - \$2,000,000
- 11.1.2. **Product Liability and/or Completed Operations Insurance:**

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

|  |             |
|--|-------------|
| Negligence Including Bodily Injury and Property Damage - | \$1,000,000 |
| Products – Completed Operations Aggregate -              | \$2,000,000 |

 11.1.3. **Automobile Liability:**

|   |             |
|---|-------------|
| Negligence Including Bodily Injury and Property Damage: |             |
| Per Claim -   | \$ 500,000  |
| Combined Single Limit (each accident) -                 | \$1,000,000 |

 11.1.4. **Workers' Compensation/Employer's Liability:**

|                              |                  |
|------------------------------|------------------|
| W.C. Limit Required* -       | Statutory Limits |
| E.L. Each Accident -         | \$ 1,000,000     |
| E.L. Disease – Each Employee | \$ 1,000,000     |
| E.L. Disease – Policy Limit  | \$ 1,000,000     |

 11.1.5. **Professional Liability Insurance (Errors and Omissions):**

|                    |              |
|--------------------|--------------|
| Each Claim -       | \$10,000,000 |
| Annual Aggregate - | \$10,000,000 |

Professional Liability coverage must be maintained for a two-year period following completion of the Services in this Agreement If commercially available.

- 11.6. All Commercial General Liability insurance shall be primary and not contributory to any other insurance carried by The School Board of Brevard County, Florida. This shall also apply to any self-insurance maintained by The School Board of Brevard County, Florida.
- 11.7. Contractor shall provide notice of cancellation to BPS's Risk Management Department within thirty (30) days of any material changes or notice of cancellation Contractor received from its insurer on above required insurance.
- 11.8. Contractor shall provide evidence of all insurance in the form of a Certificate of Insurance (Acord) and specify any self-insured retention applicable to above required insurance.
- 11.9. Contractor agrees that proof of insurance shall be provided prior to execution of this Agreement and that no Services shall begin until proof of insurance is received by BPS. Receipt of proof of insurance shall not be construed as an approval of Contractor's insurance or a release or waiver of Contractor's obligation to provide insurance required in this Agreement.
- 11.10. To the extent permitted by law, Contractor's Commercial General Liability and Worker's Compensation/Employer's Liability insurance shall contain a waiver of subrogation against BPS or its insurance.
- 11.11. Any required insurance that Contractor self-insures or carries self-insured retentions in excess of Ten Thousand Dollars (\$10,000.00) shall be pre-approved by BPS's Risk Management Department and referenced in an addendum to this Agreement.

**12. TIME OF ESSENCE.** Time is of the essence concerning the performance of all terms and conditions of this Agreement, unless the failure was solely due to BPS actions.

**13. STANDARD OF CARE.** In providing Services under this Agreement, Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by BPS, Contractor will correct those Services not meeting such a standard.



**14. INDEMNIFICATION.**

- 14.1. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys' fees at the pre-trial, trial, and appellate levels, arising out of, resulting from, or incidental to CONTRACTOR's performance under this Agreement and to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR's available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any and all of its negligence other than the sole negligence of BPS, until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of "solely negligent" should arise, a court agreeable to both Parties may be engaged to settle this dispute.
- 14.2. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS's sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS's rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.
- 14.3. **Limitation of Liability.** IN NO EVENT SHALL CONTRACTOR BE LIABLE TO BPS FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOST BUSINESS), ARISING OUT OF OR RELATED TO THESE TERMS OF BUSINESS, EVEN IF IT HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHER LEGAL THEORY. IN ANY EVENT, THE LIABILITY OF CONTRACTOR TO BPS FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO TEN MILLION DOLLARS (\$10,000,000.00). THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED HEREIN SHALL NOT APPLY TO: 1) ANY DAMAGES AWARDED IN CONJUNCTION WITH A FINAL JUDICIAL DETERMINATION OF FRAUD OR GROSS NEGLIGENCE OR 2) PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENT, WILLFUL OR INTENTIONAL ACTS OF A PARTY OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. REFERENCES TO CONTRACTOR HEREIN INCLUDE SUCH PARTY'S DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AGENTS AND DOMESTIC AND INTERNATIONAL AFFILIATED ENTITIES.

- 15. SUCCESSORS AND ASSIGNS.** BPS and Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other Party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither BPS nor Contractor shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of BPS, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than BPS and Contractor.

**16. GOVERNING LAW AND REMEDIES.**

- 16.1. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in Brevard County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or 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 further exercise thereof.
- 16.2. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

**17. CONFLICT OF INTEREST.** Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, F.S. Contractor further represents that no person having any interest shall be employed for said performance of services. Contractor shall promptly notify BPS in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances that may influence or appear to influence Contractor's judgment or quality of Services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstances and the nature of work that Contractor may undertake. Contractor shall request an opinion by BPS as to whether the association, interest, or circumstance would, in the opinion of BPS, constitute a conflict of interest if entered into by Contractor. BPS agrees to notify Contractor of its opinion by certified mail within thirty (30) calendar days of receipt of notification by Contractor. If, in the opinion of BPS, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Contractor, BPS shall so state in its response, and Contractor may, at its option, enter into said association, interest, or circumstance and it shall be deemed not a conflict of interest with respect to the Services provided to BPS by Contractor under the terms of this Agreement. If BPS, in its sole discretion, determines that there is a conflict, Contractor shall not enter into or if already entered into, will immediately terminate such arrangement or Agreement with the subject business associate.

**18. INDEPENDENT CONTRACTOR RELATIONSHIP.**

- 18.1. Contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of BPS. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Contractor's relationship and the relationship of its employees to BPS shall be that of an independent contractor and not as employees or agents of BPS. Contractor does not have the power or authority to bind BPS in any promise, agreement, or representation.
- 18.2. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other Party.

**19. ARREARS.** Contractor shall not pledge BPS's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**20. CONFIDENTIAL INFORMATION AND DISCLOSURE OF DOCUMENTS.**

- 20.1. If applicable, Contractor shall deliver to BPS for approval and acceptance, and before eligible for final payment of any amounts due, all documents and materials prepared by Contractor for BPS under this Agreement.
- 20.2. All BPS written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by BPS at its expense will be kept as Confidential Information by Contractor and will not be disclosed to any other party, directly or indirectly, without BPS's prior written consent unless required by a lawful order of court. All drawings, maps, sketches, and other data developed or purchased under this Agreement or at BPS's expense shall be and remains BPS's property and may be reproduced and reused for internal use at the discretion of BPS. As requested, BPS shall comply with the provisions of Chapter 119, F.S.
- 20.3. The Party receiving Confidential Information will not at any time disclose to any person or entity (including, without limitation, any member of the media) or use for its own benefit or the benefit of anyone, Confidential Information of the other Party without the prior written consent of said Party, except that BPS expressly authorizes Contractor to disclose BPS's Information to underwriters, insurers, insurance-related intermediaries and/or other third parties as necessary for the purpose of providing the services contemplated herein. Neither Party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court, authorized agency of government, or in compliance with Chapter 119, F.S.

**21. PUBLIC RECORDS.**

- 21.1. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, [recordsrequest@brevardschools.org](mailto:recordsrequest@brevardschools.org), BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**
- 21.2. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.
- 21.3. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 21.4. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.
- 21.5. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this Article. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.
- 22. CONTINGENT FEES.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 23. ACCESS AND AUDITS.** Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least five (5) years after completion of this Agreement. BPS or its duly authorized representatives (who is not a direct competitor of Contractor) shall have access to such books, records, and documents as required in this section for the purpose of inspection, audit, excerpts, and transcription during normal business hours, at BPS's cost, upon reasonable advance written notice and subject to Contractor's security and confidentiality obligations.
- 24. NON-DISCRIMINATION.** Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.
- 25. SURVIVAL.** All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.
- 26. AUTHORITY.** Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.
- 27. COMPLIANCE WITH LAWS.** Contractor agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations as well as applicable BPS policies and regulations, rules, and guidelines in connection with the Services to be provided hereunder, including, without limitation, BPS Policy 6460 Vendor Relations. BPS agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services to be provided hereunder.
- 28. SEVERABILITY.** If any terms or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 29. NAMES; TRADEMARKS.** Contractor shall acquire no rights under the Agreement to, and shall not use, the name of The School Board of Brevard County, Florida or the name of "Brevard County Schools" or "BPS" either

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, "BPS Marks") in any of Contractor's advertising, publicity, or promotion; to express or imply any endorsement by BPS or Brevard County Schools of its Services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by BPS, except as expressly permitted herein. No advertisement, publication, or other use of BPS Marks (except in furtherance of the Services hereunder) shall be published or otherwise promulgated by Contractor without BPS's prior inspection and written approval. This clause shall survive the expiration or sooner termination of this Agreement.

**30. COPYRIGHTS.** Contractor is hereby notified that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and, any rights of copyright to which a grantee, subgrantee, or a Contractor purchases ownership with grant support. Furthermore, the Parties agree that BPS has the right to make copies through in-house printer or other non-commercial means, of any materials, whether in tangible or electronic means or media, that are delivered under the provisions of this Agreement for use within BPS for purposes related to BPS business, operations, the delivery of the educational program, or to comply with the requirements of law, rule, policy, or regulation.

**31. PROTECTION AND HANDLING OF DATA.**

31.1. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to BPS or an individual identified with the data or information in Contractor's custody.

31.2. **Compliance with Laws and BPS Policies and Procedures.** Contractor will not knowingly permit any Contractor's personnel to have access to any BPS facility or any records or data of BPS if the person has been convicted of a crime in connection with (1) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. §1829(a); or (2) a felony. Contractor must, to the extent permitted by applicable law, conduct a check of public records in all of the employee's states of residence and employment for at least the last five (5) years in order to verify the above. Contractor shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations.

31.3. **FERPA.** To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in Sections 1002.22 and 1002.221, F.S. (the Protection of Pupil Privacy Acts), 20 U.S.C. §1232g - the Family Educational Rights and Privacy Act (FERPA), the federal regulations issued pursuant thereto (34 CFR Part 99), and/or any other applicable state or federal law or regulation regarding the confidentiality of student information and records. Further, Contractor, and its officers, employees, agents, and representatives, shall fully indemnify and hold BPS harmless for any violation of this provision including, but not limited to, defending BPS and its officers, employees, agents, and representatives against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon BPS, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon BPS arising out of the breach of this provision by Contractor, its officers, employees, agents, or representatives, to the extent that the Contractor, or its officers, employees, agents, or representatives, shall either intentionally or negligently violate this provision, Sections 1002.22 and 1002.221, F.S., or other applicable state, local, or federal laws, rules, or regulations. This provision shall survive the termination of or completion of all performance obligations under this Agreement, and shall remain fully binding upon Contractor. A separate Non-Disclosure Agreement may be required.

31.4. **HIPAA, CIPA, and GLBA.** Contractor and BPS also agree to comply with all applicable state and federal laws, regulations, and BPS policies including Privacy Rights of Students, Computer Users' Responsibilities, Security of Computing Resources, Security of Data, Privacy of Computing Resources, Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 31.5. **Data Security.** Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority or a patch management policy (e.g. Microsoft notifications, etc.). Likewise, BPS agrees to conform to the following measures to protect and secure data:
- 31.5.1. **Data Transmission.** Contractor agrees that any and all transmission or exchange of system application data with BPS and/or any other parties shall take place via secure means, e.g. HTTPS, FTPS, SFTP, or equivalent.
  - 31.5.2. **Data Storage and Backup.** Contractor agrees that any and all BPS data will be stored, processed, and maintained securely. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by BPS with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by BPS for any general or specific case.
  - 31.5.3. Contractor agrees to store all BPS backup data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key.
  - 31.5.4. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement and data otherwise shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no BPS data of any kind shall be revealed, transmitted, exchanged, or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed hereunder or in writing by an BPS officer with designated data, security, or signature authority.
- 31.6. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall return all data to BPS in a useable electronic form, and erase, destroy, and render unreadable all BPS data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing upon request that these actions have been completed within seven (7) days of the written request of an agent of BPS; provided that the Contractor shall be permitted to retain an archival copy of the information pursuant to its record retention and regulatory and legal compliance requirements. If return of the information is not feasible, the Contractor shall maintain the information pursuant to the terms and conditions of this Agreement.
- 31.7. **Data Breach.** Contractor agrees to comply with the State of Florida Database Breach Notification process and all applicable laws, including, but not limited to, Section 501.171, F.S., that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event involving Contractor requiring notification under applicable law ("Notification Event"), Contractor agrees to notify BPS immediately and assume responsibility for informing all such individuals in accordance with the applicable law and to indemnify, hold harmless, and defend BPS, its board members, employees, and representatives from and against any claims, damages, or other harm related to such Notification Event. BPS agrees to reasonably cooperate with Contractor to allow it to meet its obligations for such a Notification Event.
- 31.8. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities laws) to disclose any Protected Information, Contractor will provide BPS with prompt written notice, to the extent permitted by law, so that BPS may seek an appropriate protective order or other remedy. If a remedy acceptable to BPS is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 31.9. **Remedies for Disclosure of Confidential Information.** Contractor and BPS acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage BPS in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give BPS the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants BPS the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
- 31.10. **Safekeeping and Security.** As part of the Services, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, passwords, and similar security codes and identifiers issued to Contractor's employees, agents, or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information.
- 31.11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Contractor and BPS.
- 31.12. **Request for Additional Protection.** From time to time, BPS may reasonably request that Contractor protect the confidentiality of certain Protected Information in particular ways to ensure that confidentiality is maintained. Contractor has the right to reasonably decline BPS's request.
32. **NON-EXCLUSIVE AGREEMENT.** The Parties understand and agree this Agreement is a non-exclusive agreement and the Parties hereto may participate in other comparable services to and from any other person or entity.
33. **ENTIRETY OF AGREEMENT.** BPS and Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto. In the event a conflict arises, the Parties shall discuss any such conflict and the priority of controlling documents shall be as follows: this Agreement, the solicitation, any addenda, and Contractor's response to the solicitation. Note that BPS reserves the exclusive right to rectify any conflicts in its sole discretion.
34. **CONFLICTS.** If there is a conflict between this Agreement and any Exhibits and/or Attachments attached, this Agreement governs.
35. **CONSTRUCTION OF AGREEMENT.** Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.
36. **OTHER CONDITIONS.**
- 36.1. **Legal Authority.** It is understood that those signing this Agreement have the legal authority to enter into binding Agreements.
- 36.2. **Terms and Conditions.** This Agreement contains all the terms and conditions agreed upon by the Parties. Items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the Parties hereto.

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 36.3. **License and Permits.** Contractor shall obtain and possess throughout the term of this Agreement all licenses and permits required for its operations under Federal, Florida, and local laws and shall comply with all fire, health, and other applicable regulatory codes.
- 36.4. **Location.** All Services shall be performed and located in appropriate settings that are convenient, safe, clean, and well-maintained.
- 36.5. **Access.** BPS agrees to provide full accessibility to property owned or leased by BPS for Contractor's employees to perform Services as agreed upon herein. For software support, BPS agrees to allow for secure, remote access to the system via internet-based tools such as WebEx or PCAnywhere or as outlined and agreed upon herein.
- 36.6. **Covenant Not-to-Hire.** Each Party agrees not to hire or attempt to hire employees of the other Party during the term and for a period of one (1) year after the term (including any renewal term) of this Agreement, without the express written consent of the other Party.
- 36.7. **Public Entity Crime.** Pursuant to Section 287.133, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with BPS: when a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, it may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted contractor list.
- 37. DEBARMENT.** By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- 37.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- 37.2. Have not, within the preceding five (5) year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- 37.3. Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph.
- 37.4. Have not within the preceding five (5) year period had one (1) or more public transactions (federal, state, or local) terminated for cause or default.
- 37.5. Contractor agrees to notify BPS within thirty (30) days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described above, with respect to Contractor or its principals.
- 38. NON-WAIVER.** The failure of either Party to exercise or delay in exercising any right, power, or privilege provided for hereunder shall not be deemed a waiver thereof; nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege under this Agreement. No Party shall be deemed to have waived a right, power, or privilege provided for herein, unless such waiver is in writing and signed by the waiving Party. 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.



## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- 39. FORCE MAJEURE.** Except as otherwise provided herein, none of the Parties shall be obligated to perform, and no Party shall be deemed to be in default of its performance, if prevented by: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation.
- 40. NOTICE.** All formal notices, proposed changes, and determinations between the Parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by United States mail, postage prepaid, to the parties at the contact information listed below:

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

Attention: Procurement and Distribution Services  
2700 Judge Fran Jamieson Way  
Viera, Florida 32940

**SOUTHEAST SERIES OF LOCKTON COMPANIES, LLC**

Attention: Manoj Sharma  
3280 Peachtree Road NE  
Suite 250  
Atlanta, GA 30305  
*with copy to: General Counsel*

- 41. COUNTERPARTS.** This Agreement may be executed in counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one (1) original document.
- 42. E-Verify.** Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).
- 43. Insurance Service Terms.**
- 43.1. **Use of Intermediaries.** When in Contractor's professional judgment it is necessary or appropriate, Contractor may utilize the services of appropriate outside vendors to assist in the servicing and marketing of BPS's employee benefit programs. However, this may only be done after consultation with and prior approval by BPS. Such outside vendors may or may not be affiliates of Contractor. Contractor will advise BPS whether any such intermediary is an affiliate of Contractor. Under all circumstances, any and all compensation earned by an outside vendor shall be in addition to the compensation paid to Contractor as described herein.
- 43.2. **Modeling and Analytics Services.** Contractor provides various modeling and/or data analytics services to its clients ("Modeling and Analytics Services") and may provide such services to BPS. BPS authorizes Contractor 1) to disclose information it receives from BPS, its insurers and/or third-party administrators to Contractor's affiliates, parents, employees, and/or to third parties as necessary to perform such Modeling and Analytics Services, and 2) to contribute such information to benchmarking databases created by or for Contractor to facilitate the creation of analytic reports for its clients, provided that such reports shall not include any information that personally identifies BPS or its employees. Modeling and Analytics Services will be based upon a number of assumptions, conditions and factors, as well as information provided by third parties. If any such information provided to or utilized by Contractor is inaccurate, incomplete or should change, the Modeling and Analytics Services provided by Contractor could be materially affected. As Modeling and Analytics Services are subject to inherent uncertainty and involve variables beyond Contractor's control, actual results may differ materially from Contractor's projections. The parties agree that Contractor shall have no liability to BPS if 1) Contractor is provided

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- inaccurate or incomplete information, or 2) actual results differ from Contractor's projections. Modeling and Analytics Services do not constitute, and are not intended to be a substitute for, independent actuarial, accounting or tax advice.
- 43.3. **Cooperation.** BPS shall provide Contractor with reasonable cooperation and assistance necessary for Contractor to fulfill its responsibilities to BPS pursuant to the terms of this Agreement, including, without limitations, copies of all documents reasonably requested by Contractor and the cooperation of and access to certain of BPS's personnel.
- 43.4. **Accuracy and Completeness of Information.** BPS shall be solely responsible for the accuracy and completeness of all information furnished to Contractor and/or to underwriters, insurers, insurance-related intermediaries and/or other third parties as necessary for the services contemplated herein. Contractor shall not be responsible for independently verifying the accuracy or completeness of any information that BPS provides, and Contractor shall be entitled to rely on such information. Contractor shall have no liability for any errors or omissions in any services provided to BPS, including the placement of insurance on BPS's behalf, that are the result of, arise from, or are based on inaccurate or incomplete information provided to Contractor. BPS understands that the failure to provide accurate and complete information to an insurer, whether intentional or by error, could result in the denial of claims or rescission of coverage altogether. BPS will review all policy documents provided to BPS by Contractor and shall inform Contractor of any inaccuracies, deficiencies or discrepancies contained therein.
- 43.5. **Use of a Particular Insurer.** Contractor is not obligated to utilize any particular insurer. In addition, Contractor is not authorized to make binding commitments on behalf of any insurer, except under certain circumstances which Contractor shall endeavor to make known to BPS. Contractor shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or other financial obligations. Contractor does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to BPS. Contractor will not take any action to replace BPS's insurers unless BPS instructs Contractor to do so.
- 43.6. **No Reliance.** Any reports or advice provided by Contractor should not be relied upon as accounting, legal or tax advice. In all instances, Contractor recommends that BPS seek independent advice on such matters from professional accounting, legal and tax advisors.
- 43.7. **Responsibility for Insurance Programs.** Contractor will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented or placed by another broker, including, without limitation, any acts or omissions occurring prior or subsequent to Contractor's engagement.
- 43.8. **Relationship between the Parties.** BPS acknowledges and agrees that in no event shall Contractor owe any enhanced or special duties to BPS, express or implied, in fact or by law, whether referred to as a special relationship or fiduciary relationship or otherwise, except to the extent required by applicable law.

**Exhibits:****Exhibit "A" SCOPE OF SERVICES****Exhibit "B" FEES FOR SERVICES****Exhibit "C" SCHEDULE OF SERVICES****Exhibit "D" LOCKTON BUSINESS ASSOCIATE AGREEMENT****Exhibit "E" COMPENSATION DISCLOSURE STATEMENT****SIGNATURE PAGE TO FOLLOW**

Employee Benefits Consultant, Actuarial Services, and Broker of Record

IN WITNESS WHEREOF, BPS has made and executed this Agreement and Contractor has made and executed this Agreement on the day and year written below.

**SOUTHEAST SERIES OF LOCKTON COMPANIES, LLC**

By: M. Sharma Date: January 13, 2021  
Authorized Representative Signature

Print Name: Manoj Sharma

Title: EVP & Chief Operating Officer

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Misty Belford, Board Chairperson

| YEAR | FND | CNTR | PROJECT | FUNC | OBJT | PRG | S | AMOUNT |
|------|-----|------|---------|------|------|-----|---|--------|
|      |     |      |         |      |      |     |   |        |

Send required insurance certificates to the Procurement and Distribution Services Department.  
New Contractors: Send all completed Forms to the Procurement and Distribution Services Department.

Contractor Contact Name: Mike Meredith  
Email Address: [mmeredith@lockton.com](mailto:mmeredith@lockton.com)  
Phone Number: 561-504-1449

**Exhibit "A"****SCOPE OF SERVICES**

As Southeast Series of Lockton Companies, LLC was selected as the winning proposer for services outlined in this Agreement, then by way of reference we incorporate the attached Lockton document, "*Exhibit C Schedule of Services*". Should Exhibit C not include any of the services presented below, then Lockton shall also perform the following Employee Benefits Consultant, Actuarial Services, and Broker of Record services:

**A. GENERAL SERVICES**

1. Provide dedicated personnel to be the main contact for managing account relationship. The contact must be readily accessible to the District's employee benefit personnel and participate in semi-annual consultant performance reviews.
2. Provide general and technical guidance on employee benefit issues to include market analysis, trends, contract and statute interpretation, affordable care act requirements including any changes that may occur within this law and provide cost containment strategies and methods.
3. Develop or assist in the development and review of communication materials written by the District's employee benefit administrators, consultants, and other participating organizations for content, appearance, compliance, and accuracy.
4. Assist the District on a regular basis and in a timely manner to provide information, analysis, and guidance on any and all aspects of the District's employee benefit program policy and administration.
5. Review, make recommendations to correct, and timely update all plan documents for accuracy and ensure compliance with appropriate laws and regulations, appropriateness of items to be included, but not limited to the District's IRS Section 125 Plan, and review and make recommendations to update and the timely filing of all annual required filings.
6. Prepare information for, and attend, all Superintendent Insurance Advisory Committee (SIAC) meetings:
  - a. Provide financial assessment of health plan including a forecast no later than two weeks before the meeting date.
  - b. Present the financial assessment and forecast to the SIAC members at each meeting, answer questions, and explain assumptions. If requested, consider other viewpoints and report back on what the results of how that viewpoint would affect their forecast.
  - c. Evaluate all requests for information/data requests from SIAC members at each meeting and provide that information to the benefit team within two weeks of the request.
  - d. Answer questions and resolve disputes, if any, when called upon by the SIAC facilitator.
  - e. When requested, prepare and present health plan enhancement opportunities, information that may help the plan in any way, or act as a resource in presentations to satisfy any issue or clarify concerns.
  - f. Prepare and provide the SIAC committee agenda, presentation slides, etc. as needed and discussed by the Benefits Department Director two weeks prior to the SIAC meeting.
7. Provide In House Actuarial services for the health plan.
  - a. Provide detail and submit the 112.08 state filing annually.
  - b. Create an IBNR for calendar year and fiscal year.
  - c. Extrapolate information and support accountants' and actuarial needs for OPEB calculation from claims information.
8. Provide standard broker services for the procurement of benefits as requested by the Benefits Department Director.
  - a. Provide full results of all solicitations, how many carriers responded, rates, terms etc.
  - b. Negotiate the District's benefit plan renewals for best rates, plan designs, etc.
9. Provide support for procurement of benefits using the District's standard ITB, RFP, ITN etc. process.
  - a. Help draft specifications

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- b. Compile and summarize results of solicitation respondents (all carrier responses, rates, terms etc.) for use by selection committee, when necessary and appropriate.
  - c. Evaluate submittals from carriers that respond to a solicitation.
  - d. If asked, attend RFP selection committee meetings/finalist presentations to provide technical assistance, clarify questions and concerns, or summarize submittals if tasked to do so.
10. Provide support and consultation for the District's Benefit's Department
- a. Offer input on strategic/competitive plan design and best practices
  - b. Answer departmental inquires and help resolve employee benefit issues
  - c. Help resolve vendor issues
  - d. Keep the department up to date on/offers guidance in compliance with all applicable benefits regulations, laws and statutes, as applicable
  - e. Share best practices and comparative data from book of business, as needed
  - f. Assist in preparation for annual Open Enrollment including but not limited to:
    - i. Work with vendors to attend meetings, assist in obtaining donations towards meeting expenses, and/or review their portion of enrollment materials
    - ii. Design/update benefit guides – hard copy and/or electronic versions, as needed
    - iii. Review employee facing communications, as needed
  - g. Identify ideas, programs, etc. to assist the District in improving health benefits and/or the financial position of the Health Insurance trust fund.
  - h. Review and analysis of medical, pharmacy, and clinical data to determine root cause and methods to improve performance of the Health Insurance trust fund.
11. Provide medical, dental, prescription, and vision claims assistance.
12. Provide education and communication tools to increase awareness and help contain costs.
13. Consultant is are required to be HIPAA compliant.

**B. TECHNICAL SERVICES**

1. Health Plan Comparison/Utilization Analysis – The consultant is expected to work with the District in securing and analyzing financial and claims data from each of the benefits related insurance carriers and third-party administrator(s) for the District's group self-insured plans on a scheduled basis in order to properly monitor the District's employee benefit plans. Once analyzed, the consultant is expected to provide a summary explanation of the data emphasizing any important trends, emerging problems, etc. It is preferred that the consultant have in-house capabilities to conduct detailed health plan comparison and utilization analysis of all district medical relationships, including managed-care alternatives, employee medical care clinics, etc.
2. Cost Containment recommendations – The consultant will evaluate and recommend cost containment strategies for implementation in the group self-insurance program and insured programs. Cost containment initiatives should be addressed in all areas of group health plan operations to include, but not being limited to, plan design options, the employee Health clinic operations, health & wellness initiatives, etc. The consultant will assist in review of return on investment and other pertinent information regarding BPS Well Care Centers.
3. Premium Structure – The consultant will review, analyze, and recommend premium rate structures for the group self-insured health plan options offered by the district and make recommendations to protect and minimize loss exposure to the plan.
4. Compliance – The consultant will advise the District on any state or federally mandated compliance testing requirements relevant to the district's plans and providing guidance, voluntarily and when requested, in developing testing strategies. The consultant will advise the District on any and all additions, changes, and/or deletions to federal laws, including, but not limited to, mandates from the Patient Protection and Affordable Care Act (PPACA), Health Insurance Portability and Accountability Act (HIPAA), and the Consolidated Omnibus Budget and Reconciliation Act (COBRA), as well as Florida State statutes that impact the administration of any of the district's health and welfare benefit plans and programs.
5. Self-Funded Programs – The consultant will provide guidance on the annual budgets, allocations of payroll deductions, stop loss purchases, and attachment points for the District's self-funded programs. In addition, assist in the gathering of claims information for the IBNR workbook and CAFR,

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- an IBNR analysis for journal entries, assist, gather, and provide OPEB information, provide the annual actuarial filing as required by FS 112.08 to the Office of Insurance Regulation, provide models to assist in determination future budget for the district trust fund, etc.
6. Actuary Report – in addition to the annual filing required by FS 112.08, the consultant will assist in the preparation of materials required for an annual actuary's review of the district's Self-funded Health Care program for OPEB calculations. An independent actuary firm will prepare the actuary report itself.
  7. GASB 45 Requirements – Provide required data elements and coordinate activities with an independent actuary for periodic valuations.
  8. Retiree Drug Subsidy (RDS) administration – Removed from Scope via Addendum #1.
  9. Early Retiree Reimbursement Program (ERRP) administration – Collect all medical and prescription drug information to identify early retiree claims that qualify for reimbursement. Secure all required information and make submissions to Health and Human Services (HHS) to qualify for ERRP reimbursements. The Benefit's consultant will be the ERRP designee authorized by HHS to make submissions using the guidelines established by HHS.
  10. Section 125 Plan – The consultant will participate in the review of all plan documents for accuracy and compliance with appropriate laws and regulations, and appropriateness of items to be included in the plan. If consultant feels corrections are needed, they shall provide this information to the district on a timely basis so that at the start of each plan year the District complies with IRS section 125. This includes assisting the District in the re-write or correction of the District SPD so that the district is and remains current and fully in compliant.
  11. Wellness/Disease Management Programs – The consultant will assist the District in evaluating, implementing, and measuring the effectiveness of health & wellness and disease management programs.
  12. Litigation – On rare occasions, the district may be involved in litigation arising from requests for proposals, contracting, or employee grievances. If such a situation should occur, the consultant will be expected to assist the district and the administration in proving necessary materials and to testify if required.
  13. Benefits Staff Competency Assistance – The consultant will assist the employee benefit department administrators in annually assessing district benefit staff to make sure they are fully aware of all product offerings (self-insured and insured offerings) offered to employees. The consultant is expected to assist the department in providing staff training to make sure all benefit specialists have the skills to respond properly to employees that may contact them with questions, concerns, or problems with the District's offerings in a responsive, professional, courteous, and helpful manner.
  14. Annual Training regarding Insurance Products – The consultant will set up and oversee annual meetings with each of the District's benefit vendors to provide a detailed product review for the Benefit Department staff to ensure they have information necessary to correctly respond to employee/staff inquiries.

**C. REQUEST FOR PROPOSAL SERVICES**

1. The following RFPs shall commence upon approval of the agreement for Employee Benefits Consultant, Actuarial Services, and Broker of Record:
  - a. ASO/PBM
  - b. Dental
  - c. Voluntary Benefits
  - d. Vision (competed by Broker)
  - e. Life Insurance (competed by Broker)
  - f. AD&D (competed by Broker)
  - g. FSA (competed by Broker)
  - h. EAP (competed by Broker)
2. Develop RFPs for various district benefits programs
  - a. Prepare Requests for Proposals in compliance with the District's procurement requirements, exploring all feasible plan designs, for employee benefit programs as needed.
  - b. Develop evaluation criteria.
  - c. Address any questions from vendors in the RFP process.
  - d. Be present and prepared to participate at oral interviews.

## Employee Benefits Consultant, Actuarial Services, and Broker of Record

- e. Prepare a report analyzing the proposals using the evaluation criteria.
- f. If requested, prepare recommendations and defense of said recommendations.
3. Protests – Prepare response to any administrative RFP protests.
  - a. Assist the District’s legal counsel in preparation of defense if any litigation should result from the RFP process.
  - b. Testify in court at the request of the District’s legal counsel if litigation should result from the RFP process.
4. Contract:
  - a. Assist in the development of contracts with vendors.
  - b. Work with the District’s legal counsel to ensure contract legality.
  - c. Conduct any required negotiations of benefits, plan design, premium rates, and performance guarantees.
5. Implementation:
  - a. Serve as an intermediary (ombudsman) between the vendors and the District during the implementation of new programs.
  - b. Prepare rate-deduction spreadsheets.
  - c. Review new program announcement material for content, appearance, compliance, and accuracy.
6. Ongoing Contract Services – It is expected that the consultant will:
  - a. Participate in negotiations with vendors on proposed rates and benefits changes to existing contracts.
  - b. Audit existing contracts on an annual basis for satisfactory performance and contract compliance.
  - c. Provide quarterly written analysis of the medical plans’ claims experience.
  - d. Include a two-year financial projection on a quarterly basis for the trust fund.
  - e. Periodically provide market analysis of current renewal actions for similarly sized employers in Central Florida and analysis of quality of services and value provided by various managed care vendors.
7. Document Review and Update:
  - a. Summary Plan Description (SPD) for compliance and conformance yearly.
  - b. Flex (Cafeteria Plan) for compliance and conformance yearly.
  - d. Summary of Benefits and Coverage (SBC).
  - e. Wrap documents.
  - f. Benefit Internal documents
    - i. Schedule of Benefits for calendar year
    - ii. Benefits cost per pay
    - iii. Employee Benefits Breakdown
    - iv. Benefits change form
    - v. Retiree Monthly rates
    - vi. Frequently Asked Questions
    - vii. BPS in-house produced guidebooks
    - viii. BPS Deductibles Medical/Pharmacy
    - ix. Spouse Affidavit
    - x. Overage Dependent Affidavit
    - xi. New hire packet
    - xii. Any other document created or not listed.

**Exhibit "B"**

**FEEES FOR SERVICES**

|   |                                   |
|---|-----------------------------------|
| <b><u>Total for Initial Three-Year Term</u></b>                                     | <b>\$561,900.00</b>               |
|   | <b>Monthly</b>                    |
|   | <b>Installments</b>               |
| <b>Year One</b>   | <b>Annual Fee</b><br>\$187,300.00 |
|   | \$15,608.33                       |
| <b>Year Two</b>   | \$187,300.00                      |
|   | \$15,608.33                       |
| Year 2 Reduction in annual fee based on fee offset of 1% of 2022 stop-loss premium. |                                   |
| <b>Year Three</b>   | \$187,300.00                      |
|   | \$15,608.33                       |
| Year 3 Reduction in annual fee based on fee offset of 1% of 2022 stop-loss premium. |                                   |
| <b><u>Total for Two-Year Renewal Period</u></b>                                     | <b>\$374,600.00</b>               |
|   | <b>Monthly</b>                    |
|   | <b>Installments</b>               |
| <b>Year Four</b>  | <b>Annual Fee</b><br>\$187,300.00 |
|   | \$15,608.33                       |
| Year 4 Reduction in annual fee based on fee offset of 1% of 2022 stop-loss premium. |                                   |
| <b>Year Five</b>  | \$187,300.00                      |
|   | \$15,608.33                       |
| Year 5 Reduction in annual fee based on fee offset of 1% of 2022 stop-loss premium. |                                   |
| <b><u>Total for Five Years</u></b>  | <b>\$936,500.00</b>               |



## Exhibit “C” SCHEDULE OF SERVICES

| Standard Services  | Typical Frequency | Cost   |
|--|-------------------|--|
| <b>Health and Welfare Program Assessment and Strategic Planning</b>  |                   |  |
| ❖ Conduct Health and Welfare Program Assessment to establish short- and long-term benefit plan objectives, including benefits offered, plan design, employee/employer cost sharing, role of voluntary benefits, etc. | Annually          | Included in fee  |
| ❖ Review possible future program modifications and financial impact to complement the Client's objectives  | Annually          | Included in fee  |
| ❖ Develop and monitor strategic plan, with emphasis on benefits offered, plan design, total cost, and employee contributions   | Annually          | Included in fee  |
| ❖ Analyze relevant normative data to ensure the Client is within its desired range   | Annually          | Included in fee  |
| <b>Renewal and Marketing</b>   |                   |  |
| ❖ Coordinate renewal activities with all carriers/administrators   | Annually          | Included in fee  |
| ❖ Quantify financial impact of renewal; negotiate variance between renewal and Lockton projections   | Annually          | Included in fee  |
| ❖ Prepare and present detailed renewal report, including Lockton recommendations   | Annually          | Included in fee  |
| ❖ Prepare and distribute Request for Proposal if marketing is necessary  | As needed         | Included in fee  |
| ❖ Direct and coordinate marketing process and carrier data requests  | As needed         | Included in fee  |
| ❖ Prepare and present Marketing Report, detailing current and proposed costs, provider networks, service capabilities, plan designs, vendor evaluations, etc.  | As needed         | Included in fee  |
| ❖ Prepare and submit Executive Summary of final recommendations, including marginal cost analysis associated with program changes and/or price changes   | As needed         | Included in fee  |
| <b>Claims Experience/Financial Analysis</b>  |                   |  |
| ❖ Prepare paid claims analysis, detailing paid claims, projected claims, plan enrollment, and large claimants; including monthly and quarterly claims reporting with weekly high and emerging claims reporting       | Quarterly         | Included in fee  |
| ❖ Prepare preliminary renewal projection based on claims analysis  | Quarterly         | Included in fee  |
| ❖ Prepare claims management report, detailing claims paid by type of service, diagnostic category, in- vs. out-of-network, brand drug vs. generic drug utilization, etc. (based on carrier reporting capabilities)   | Annually          | Included in fee  |
| ❖ Analyze claims history to determine most appropriate method of medical and/or dental financing (e.g. fully insured, self-insured, minimum premium, etc.)   | Annually          | Included in fee  |
| ❖ Prescription Drug Audit  | Quarterly         | Included in fee  |
| <b>Health Risk Management Services</b>   |                   |  |
| ❖ Develop wellness/intervention and disease management program to help mitigate future claims with assistance from Lockton's Medical Director and Director of Health Risk Management                                 | As needed         | Lockton services included in fee; outside services, if needed, provided at Lockton preferred vendor cost |
| ❖ Identify claims trends with Lockton's physician guidance   | Annually          | Included in fee  |

## Exhibit “C” SCHEDULE OF SERVICES

| Standard Services   | Typical Frequency    | Cost  |
|---|----------------------|---|
| ❖ Interact with carrier or outsourced disease management firm using InfoLock claims analytics tool when available to aggressively pursue identified high-risk claimants | As needed            | Lockton services included in fee; outside services, if needed, provided at Lockton preferred vendor cost                                  |
| ❖ Monitor Health Risk Management program results to ensure objectives are met; modify as appropriate  | As needed            | Included in fee   |
| ❖ Provide complex claims assessment and facilitate resolution of targeted interventions   | Annually             | Included in fee; Enhanced services with greater frequency and intervention with stop loss component provided at 2.5% of stop loss premium |
| Compliance Services   |                      |   |
| ❖ Access to Lockton’s in-house Compliance Department for assistance with:   |                      |   |
| ➢ ERISA and state insurance law; COBRA and HIPAA; Title VII, FMLA, and USERRA; Tax Code welfare; Tax Code retirement  | Daily                | Included in fee   |
| ➢ Legislation affecting benefit program   | Daily                | Included in fee   |
| ➢ ERISA requirements via “ERISA Calendar”   | Annually and updates | Included in fee   |
| ➢ Document review (Creation of SPD’s, Plan Docs, and Section 125 Plan Docs may be subject to additional cost due to complexity)   | As needed            | Included in fee   |
| ➢ Compliance audits and reporting   | As needed            | Included in fee   |
| ❖ Other services include online seminars and workshops, compliance newsletters, and newflashes/alerts delivered via e-mail  | Timely               | Included in fee   |
| ❖ Coordinate gathering of Schedule A reports to facilitate preparation of Form 5500, if applicable  | Annually             | Included in fee   |
| ❖ Prepare signature-ready Form 5500, if applicable  | Annually             | Included in fee   |
| Actuarial Services  |                      |   |
| ❖ Provide comprehensive actuarial services, including:  |                      |   |
| ➢ IBNR reserve certification for Medical, RX, and Dental  | As needed            | Included in fee   |
| ➢ Actuarial valuation of benefit plan design changes  | As needed            | Included in fee   |
| ❖ Comparison of provider network reimbursement levels by network  | As needed            | Included in fee   |
| ➢ Medicare Part D actuarial attestation   | As needed            | Included in fee   |
| ➢ Medicare Part D claims submission   | As needed            | Included in fee   |
| ➢ COBRA rate certification  | As needed            | Included in fee   |
| ➢ Analysis of funding options (fully insured vs. self-insured)  | As needed            | Included in fee   |

## Exhibit “C” SCHEDULE OF SERVICES

| Standard Services   | Typical Frequency | Cost                                |
|---|-------------------|-------------------------------------|
| ➤ Detailed analysis of claims data to identify problem areas, estimate impact of plan changes, project enrollment for multi-option plans, etc.              | As needed         | Included in fee                     |
| ❖ F.S. 112.08 filing with the FL Office of Insurance Regulation (OIR)   | As needed         | Included in fee                     |
| ❖ GASB 45 / FAS 106 Analysis  | As needed         | Included in fee                     |
| ❖ Stop loss analysis; including,  | As needed         | Included in fee                     |
| ➤ Analysis of the difference in risk between various stop loss levels   | As needed         | Included in fee                     |
| ➤ Estimate of expected number and dollar of claims above the specific stop loss deductible  | As needed         | Included in fee                     |
| ➤ Probability that aggregate claims will exceed various levels  | As needed         | Included in fee                     |
| ❖ Multi-option plan modeling, including cost projections, employee contribution strategies, and enrollment migration estimates                              | As needed         | Included in fee                     |
| <b>Human Resources Consulting Services</b>  |                   |                                     |
| ❖ Access to Lockton’s HR Consultant for assistance with the following:  |                   |                                     |
| ➤ ThankHR – People Risk Management Solution   | As needed         | Included in fee                     |
| ➤ Compliance and employment law   | As needed         | Included in fee                     |
| ➤ HR management consulting resources  | As needed         | Included in fee                     |
| ➤ HR technology / Outsourcing Services (actual cost of technology or carriers fees subject to additional cost if not offset)                                | As needed         | Preliminary 5 Hours Included in fee |
| ➤ Mergers and acquisition integration   | As needed         | Included in fee                     |
| ➤ Organization change management and development  | As needed         | Included in fee                     |
| ➤ Outsourcing   | As needed         | Included in fee                     |
| ➤ Performance management  | As needed         | Included in fee                     |
| ➤ Policies, standard operating procedures, and handbook development   | As needed         | Included in fee                     |
| ➤ Recruitment and retention consulting support  | As needed         | Included in fee                     |
| ➤ Training and development consulting support   | As needed         | Included in fee                     |
| <b>Employee Communication and Implementation Activities</b>   |                   |                                     |
| ❖ Develop basic written and visual employee communication materials (i.e., overview, overheads, bulletins, etc.) (Print fees charged at pass-through price) | Annually          | Included in fee                     |
| ❖ Coordinate and participate in annual enrollment process   | Annually          | Included in fee                     |
| ❖ Manage carrier participation in annual enrollment process   | Annually          | Included in fee                     |
| ❖ Develop periodic benefit-related newsletter articles  | As needed         | Included in fee                     |
| ❖ Coordinate preparation of annual benefit statements   | As needed         | Additional cost—TBD                 |
| ❖ Develop and administer online employee survey   | As needed         | Additional cost—TBD                 |
| <b>Routine Service</b>  |                   |                                     |

## Exhibit “C” SCHEDULE OF SERVICES

| Standard Services  | Typical Frequency | Cost                |
|--|-------------------|---------------------|
| ❖ Provide assistance in resolving carrier service issues (i.e., claims, billing, etc.)                               | As needed         | Included in fee     |
| ❖ Unlimited availability to assist with various human resource issues, including benefit- and legal-related concerns | Daily             | Included in fee     |
| ❖ Coordinate and attend service meetings with the Client, Lockton, and select carrier representatives                | Quarterly         | Included in fee     |
| ❖ Coordinate research on benefit-related legal issues with Compliance team   | As needed         | Included in fee     |
| ❖ Review plan documents, summary plan descriptions, contracts, and other benefit-related documents                   | As needed         | Included in fee     |
| Optional Services  |                   |                     |
| ❖ Develop customized employee communication materials  | As needed         | Additional cost—TBD |
| ❖ Implement Web-based benefit communication system/enrollment system   | Annually          | Additional cost—TBD |
| ❖ Prepare annual benefit statements  | Annually          | Additional cost—TBD |

**Exhibit “D”**  
**BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is made and effective the date of School Board approval (the “Effective Date”), by and between the Southeast Series of Lockton Companies, LLC (“Lockton”), The School Board of Brevard County, Florida (“Client”) and the group health plan(s) maintained by Client (“Plan”). Client and Lockton are referred to individually as a “Party” and collectively as the “Parties” herein.

WHEREAS, Plan is an employee welfare benefit plan as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”) that provides medical care to its employees and their dependents;

WHEREAS, Plan has engaged Lockton to provide certain health and welfare insurance brokerage and/or consulting services that may include, as applicable, Pharmacy Analytic Services, InfoLock® Services and/or other consulting services as mutually agreed to by the Parties (collectively, “Services”), which may or will necessitate Disclosure of Protected Health Information (“PHI”) to Lockton. Such Services are provided in accordance with separate agreements with Plan and/or Client (collectively, the “Service Agreement”); and

WHEREAS, the Parties to this Agreement are committed to compliance with the Privacy, Security, Breach Notification, Standard Transactions and Enforcement Rules of the Health Insurance Portability and Accountability Act of 1996 (as amended “HIPAA”) and its implementing regulations at 45 C.F.R. Parts 160 to 164 (collectively the “HIPAA Rules”) and any current and future regulations promulgated under HIPAA or the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”);

WHEREAS, Client is authorized to enter into this agreement on behalf of Plan;

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to maintain the privacy and security of PHI as set forth herein:

**ARTICLE 1. DEFINITIONS**

“**Breach**” has the meaning set forth in 45 C.F.R. 164.402 and generally means the acquisition, access, use or disclosure of Protected Health Information which compromises the privacy or security of such information as determined by the HIPAA Rules.

“**Data Aggregation**” has the meaning set forth in 45 C.F.R. 164.501 and generally means the combining of Protected Health Information created or received by Lockton in its capacity as a business associate of the Plan with the Protected Health Information received by Lockton in its capacity as a business associate of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.

**“Designated Record Set”** has the meaning set forth in 45 C.F.R. 164.501 and generally means a group of records maintained for the Plan that is (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the Plan to make decisions about individuals. For the purposes of this definition, “record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, Used, or disseminated by or for the Plan.

**“Disclose”** or **“Disclosure”** has the meaning set forth in 45 C.F.R. 160.103 and generally means the release, transfer, provision of access to, or divulging in another manner, of information outside the entity holding the information.

**“Electronic Media”** has the meaning set forth in 45 C.F.R. 160.103 and generally means (i) electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card, or (ii) transmission media Used to exchange information already in electronic storage media. For the purposes of this definition, “transmission media” include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dialup lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

**“Electronic PHI”** has the meaning set forth in 45 C.F.R. 160.103 and generally means individually identifiable health information that is transmitted by or maintained in Electronic Media.

**“Individual”** has the meaning set forth in 45 C.F.R. 160.103 and generally means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

**“InfoLock® Services”** means the performance of data analytic consulting services for the Client, including but not limited to: medical and pharmacy claims, health risk assessment and biometric screening information to identify possible trends in chronic disease, high-cost claims, and utilization patterns.

**“Pharmacy Analytics Services”** means the performance of consulting services for the Client, including but not limited to: data modeling, benchmarking, auditing, marketing of the program or Requests for Proposals (RFP), diagnostic analysis, reporting and related pharmacy financial and clinical information consulting services.

**“Privacy Rule”** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**“Protected Health Information”** or **“PHI”** has the meaning set forth in 45 C.F.R. 160.103 (which includes Electronic PHI) and generally means information that is created or received by Lockton from or on behalf of the Plan and is information about an individual, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be Used to identify the individual. PHI does not include individually identifiable health information in: (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and (ii) records described at 20 U.S.C. 1232g(a)(4)(B)(iv). PHI also does not include individually identifiable health information maintained by an entity in its role as an employer. PHI also does not include individually identifiable health information regarding a person who has been deceased for more than 50 years.

**“Required By Law”** means a mandate contained in applicable law and regulation that compels a covered entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required By Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

**“Secretary”** means the Secretary of Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority involved has been delegated.

**“Security Incident”** has the meaning set forth in 45 C.F.R. 164.304 and generally means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an information system. Inconsequential incidents that occur on a daily basis, such as scans or pings on Lockton’s networks or servers containing Electronic PHI, are unsuccessful Security Incidents and shall not be considered a Security Incident subject to reporting, unless so required by the Privacy Rule.

**“Security Rule”** means the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**“Standards for Electronic Transactions Rule”** means the final regulations issued by Health and Human Services concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Parts 160 and 162.

**“Unsecured PHI”** has the meaning set forth in 45 C.F.R. 164.402 and generally means PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

“**Use**” has the meaning set forth in 45 C.F.R. 160.103 and generally means the sharing, employment, application, utilization, examination, or analysis of information.

All terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules.

## **ARTICLE 2. OBLIGATIONS AND ACTIVITIES OF LOCKTON**

**2.1** Lockton agrees to not Use or further Disclose PHI other than as permitted or required by this Agreement or as Required By Law.

**2.2** Lockton agrees to implement and use appropriate safeguards to prevent the Use or Disclosure of the PHI other than as provided for by this Agreement.

**2.3** Lockton agrees to implement and use appropriate administrative, physical, and technical safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI.

**2.4** Lockton agrees to notify the Plan of any Security Incident or Use or Disclosure of PHI not permitted by this Agreement of which Lockton is aware, including any Breach of Unsecured PHI as required by 45 C.F.R. 164.410. Such notice shall be provided within three (3) business days and shall include, to the extent possible, information that is required to be included in notification to the individual under 45 C.F.R. 164.404. In addition to such notice, Lockton will document as required by 45 C.F.R. Part 164, Subpart C and report to Plan (i) any successful unauthorized access, use, disclosure, modification, or destruction of Plan’s Electronic Protected Health Information of which Lockton becomes aware, or (ii) any successful unauthorized interference with system operations in Lockton’s Information System containing Plan’s Electronic Protected Health Information of which Lockton becomes aware. Such reports will be provided within ten (10) business days of when Lockton becomes aware of the incident.

**2.4.1** Lockton and Plan agree that unsuccessful attempts at unauthorized access or system interference occur frequently and that there is no significant benefit for data security from requiring the documentation and reporting of such unsuccessful intrusion attempts. In addition, the Parties agree that the cost of documenting and reporting such unsuccessful attempts as they occur would outweigh any potential benefit gained from reporting them. Consequently, both Lockton and Plan agree that this Agreement shall constitute the documentation, notice and written report of such unsuccessful attempts at unauthorized access or system interference as required above and by 45 C.F.R. Part 164, Subpart C and that no further notice or report of such attempts will be required. By way of example (and not limitation in any way), the Parties consider the following to be illustrative (but not exhaustive) of unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of Electronic PHI or interference with an information system:

1. Pings on a Party’s firewall,
2. Port scans,



3. Attempts to log on to a system or enter a database with an invalid password or username,
4. Denial-of-service attacks that do not result in a server being taken off-line, and
5. Malware (e.g., worms, viruses).

Lockton will cooperate with Plan in investigating the Breach and in meeting the Plan's obligations under applicable breach notification laws. In addition to providing notice to Plan of a Breach, Lockton will provide any required notice to individuals, the media, and applicable regulators (e.g., the Secretary) on behalf of Plan in accordance with and within the timeframes prescribed by applicable law (e.g., 45 C.F.R. §§ 164.402, 164.406, and 164.408).

**2.5** Lockton, the Client or the Client's representative may disclose PHI to subcontractors, vendors, agents and/or other third parties, including affiliates of Lockton, to the extent necessary to perform the Services in accordance with the Service Agreement. To the extent any subcontractor, vendor, agent and/or other third party creates, receives, maintains or transmits PHI of the Plan on behalf of Lockton, Lockton agrees to ensure that any such subcontractor, vendor, agent and/or other third party agrees in writing to the same restrictions and conditions that apply to Lockton with respect to such PHI.

**2.6** To the extent any affiliate of Lockton creates, receives, maintains or transmits PHI of Plan to provide Services to Client pursuant to this Agreement and/or the Service Agreement, Lockton agrees to ensure that such affiliate agrees in writing to the same restrictions and conditions that apply to Lockton with respect to such PHI.

**2.7** Upon request by an Individual, Plan shall determine whether an Individual is entitled to access his or her PHI pursuant to 45 C.F.R. § 164.524. If Plan determines that an Individual is entitled to such access, and that such PHI is under the control of Lockton, Plan will communicate the decision to Lockton. At the request of the Plan, Lockton agrees to provide access to PHI in a Designated Record Set, as directed to an Individual in order to meet the Plan's obligations under 45 C.F.R. 164.524. Lockton shall provide access to the PHI in the same manner as would be required for Plan. If Lockton receives an Individual's request to access his or her PHI, Lockton shall forward such request to Plan within five (5) business days.

**2.8** Upon request by an Individual, Plan shall determine whether any Individual is entitled to amend his or her PHI pursuant to 45 C.F.R. § 164.526. If Plan determines that an Individual is entitled to such an amendment, and that such PHI is both in a designated record set and under the control of Lockton, Plan will communicate the decision to Lockton. Lockton agrees to make any amendment(s) to PHI in a Designated Record Set as directed by or agreed to by Plan and to take any other measures necessary to satisfy the Plan's obligations pursuant to 45 C.F.R. 164.526. Lockton shall provide an opportunity to amend the PHI in the same manner as would be required for Plan. If Lockton receives an Individual's request to amend his or her PHI, Lockton shall forward such request to Plan within 5 business days.

**2.9** Lockton agrees to make internal practices, books, and records, relating to the security, Use, and Disclosure of PHI received from, or created or received by Lockton on behalf

of, the Plan available to the Secretary, in a time and manner mutually agreed upon by Lockton and the Plan or as designated by the Secretary, for purposes of the Secretary determining the Plan's compliance with HIPAA.

**2.10** Upon request by an Individual, Plan shall determine whether any Individual is entitled to an accounting pursuant to 45 C.F.R. § 164.528. If Plan determines that an Individual is entitled to an accounting, Plan will communicate the decision to Lockton. Lockton agrees to document such Disclosures of PHI and, provide such information to Plan as would be required for the Plan to respond to a request by an individual for an Accounting of Disclosures of PHI in accordance with 45 C.F.R. 164.528. Lockton will provide information to Plan that will enable Plan to meet its accounting obligations. If Lockton receives an Individual's request for an accounting, Lockton shall forward such request to Plan within five (5) business days.

**2.11** To the extent Lockton is to carry out one or more of Plan's obligations with respect to HIPAA, Lockton will comply with the requirements of HIPAA in the performance of such obligations.

**2.12** Sale of PHI. Lockton shall not sell or receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by 45 C.F.R. § 164.502(a)(5) and § 164.508(a)(4) and provided that this prohibition shall not be construed to limit or otherwise affect payment by Covered Entity to Lockton for its Services provided under the Service Agreement.

**2.13** To the extent Lockton, as business associate creates, receives or maintains information related to substance use treatment services subject to 42 C.F.R. Part 2 ("Part 2 Information") for or from covered entity hereunder, Lockton will:

1. Comply with all obligations of 42 C.F.R. Part 2 as to the Part 2 Information;
2. Include notification required of 42 C.F.R. 2.32 with any disclosure of the Part 2 Information;
3. Implement appropriate safeguards to prevent unauthorized uses and disclosures of the Part 2 Information;
4. Report any unauthorized uses, disclosures, or breaches of the Part 2 Information to covered entity;
5. Only use or disclose the Part 2 Information as necessary to perform services on behalf of covered entity; and
6. Not disclose the Part 2 Information to any third party unless that third party (a) has agreed in writing to comply with these restrictions; (b) assists business associate in the provision of services to covered entity; and (c) will only further disclose the Part 2 Information back to Lockton or the applicable covered entity.

### **ARTICLE 3. PERMITTED USES AND DISCLOSURES BY LOCKTON**

Lockton will Use or Disclose PHI including, without limitation, claim, eligibility, financial and other data received from, or created or received on behalf of Plan consistent with the minimum necessary requirements applicable to Plan set forth in 45 C.F.R. 164.514(d) and only:

**3.1** Use or Disclose PHI as permitted or required by this Agreement or applicable law, or to perform Services under the Service Agreement on behalf of Client and Plan as described in this Agreement, but not in such a manner that would violate HIPAA or the Privacy Rule.

**3.2** For the proper management and administration of Lockton or to carry out the responsibilities of Lockton, provided that Lockton will only Disclose PHI pursuant to this Paragraph 3.2 where such Disclosure is Required By Law or Lockton obtains reasonable assurances from the person to whom the PHI is Disclosed that it will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person notifies Lockton of any instances of which it is aware in which the confidentiality of the information is breached;

**3.3** To create de-identified information in compliance with 45 C.F.R. 164.514(a)-(c). Once PHI has been de-identified, it shall no longer be considered PHI and shall not be subject to the confidentiality obligations or restrictions on Disclosure set forth in this Agreement;

**3.4** To provide Data Aggregation Services 45 C.F.R. 164 on behalf of the Plan, including, without limitation, Disclosure of PHI to subcontractors, vendors and/or other third parties, as may be necessary to allow Lockton to perform the Services and for the health care operations of the Plan; to Use and store PHI in a benchmark database; and to Disclose de-identified and disassociated data for population benchmarking and normative reporting purposes.

**3.5** To Use PHI to report violations of law to appropriate federal and state authorities consistent with the Privacy Rule; and

**3.6** As Required by Law.

#### **ARTICLE 4. OBLIGATIONS OF CLIENT**

**4.1** Client shall make all necessary amendments to Plan documents to permit Use and Disclosure of PHI by Lockton as described in this Agreement.

**4.2** Client shall provide Lockton with a list of person(s) (“Designee”) who perform functions for the Plan or for the Client as Plan Sponsor to whom it is permissible for Lockton to Disclose PHI. To the extent Client has limited the amount of PHI that may be Disclosed to a Designee, Client shall notify Lockton of such limitation. Client shall immediately notify Lockton of any changes in a Designee or the extent of PHI that may be disclosed to a Designee.

**4.3** Client shall provide Lockton with the Plan’s notice of privacy practices, as well as any changes to such notice. Client shall ensure that such notice of privacy practices permits the Use and Disclosure of PHI by Lockton as described in this Agreement.

**4.4** Client will provide necessary authorization or instruction to the administrator of the Plan to facilitate the release of PHI to Lockton and applicable third parties to the extent necessary for Lockton to provide the Services, including any consents and notices required under 42 C.F.R. Part 2.

**4.5** Client shall provide Lockton with any changes in, or revocation of, permission by an individual to Use or Disclose PHI, if such changes affect Lockton's Use or Disclosure of PHI under this Agreement.

**4.6** Client shall notify Lockton of any restriction to the Use or Disclosure of PHI that the Client has agreed to on behalf of the Plan in accordance with 45 C.F.R. 164.522.

**4.7** Client shall not request Lockton Use or Disclose or receive PHI in any manner that would not be permissible under HIPAA if done by the Plan.

**4.8** Client will not Use or Disclose any information received from Lockton for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of Client.

## **ARTICLE 5. TERM AND TERMINATION OF THE AGREEMENT**

**5.1 Term.** This Agreement shall be effective as of the Effective Date. Subject to Paragraph 5.3, this Agreement shall end upon the termination of the Service Agreement or upon termination for cause as set forth in Paragraph 5.2.

**5.2 Termination for Cause.** If Lockton violates any material term of this Agreement, the Client shall provide an opportunity for Lockton to cure the breach or end the violation. If Lockton does not cure the breach or end the violation within a reasonable time period or if cure is not possible, Client may immediately terminate this Agreement and the Service Agreement. If the breach is not curable, Plan and/or Client may immediately terminate this Agreement and the Service Agreement. Upon Lockton's knowledge of a material breach of this Agreement by Plan, Lockton shall have all of the rights available to Plan in this Paragraph 5.2.

### **5.3 Effect of Termination.**

(A) Upon termination of this Agreement, Lockton shall, if feasible, return or destroy all PHI received from the Plan, or created or received by Lockton on behalf of the Plan. This provision shall also apply to PHI that is in the possession of subcontractors, vendors and/or other third parties engaged by Lockton to assist in the provision of Services. Lockton shall retain PHI only as described in Subparagraph (B) below.

(B) Lockton shall retain only that PHI for which return or destruction is infeasible or retention is necessary for Lockton to continue its proper management and administration or to carry out its legal responsibilities. Lockton shall continue to use appropriate safeguards, comply with HIPAA, and adhere to the terms of this Agreement with respect to PHI for as long as Lockton retains the PHI.

## **ARTICLE 6. MISCELLANEOUS PROVISIONS**

**6.1 Regulatory Reference.** A reference in this Agreement to a section in HIPAA or to a section of the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.

**6.2 Amendment.** The Client and Lockton agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Plan to comply with the requirements of HIPAA, including the provisions of HITECH. This Agreement may be amended by the Client and Lockton by the express mutual written agreement of the Parties. This Agreement contains the entire Business Associate Agreement between the Parties and supersedes all other understandings and agreements, oral or written, between the Parties regarding privacy of PHI.

**6.3 Survival.** The respective rights and obligations of Lockton under Paragraph 5.3 of this Agreement shall survive the termination of this Agreement.

**6.4 Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Plan and Lockton to comply with HIPAA. When a section of the Agreement calls for Lockton to respond to a request from the Plan in conjunction with a regulation specifically cited in the section, Lockton may rely on the Plan's request as verification by the Plan that the request is made in compliance with the regulation. Lockton is not responsible for confirming that the Plan's request is made in compliance with the specific regulation.

**6.5 Governing Law.** This Agreement shall be governed by HIPAA and, where not covered by HIPAA or other federal law, the laws of the State of Florida.

**6.6 Terms.** Where the context of the Agreement requires, the singular shall include the plural and the masculine gender shall include the feminine. Headings or titles of sections are for general information only and this Agreement shall not be construed by reference to such titles.

**6.7 Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**6.8 Severability.** If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provision had not been included.

**6.9 Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Lockton, or the Client and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**6.10 Effect on Service Agreement.** Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the underlying Service Agreement shall remain in force and effect.

**6.11 Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which taken together shall constitute one and the same instrument.

This Agreement is executed and effective on the date of School Board approval.

**Southeast Series of Lockton Companies,**

LLC

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

**The School Board of Brevard County,  
Florida, on behalf of Plan and Client**

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

# Exhibit “E”

## Compensation Disclosure Statement

Thank you for giving Lockton Companies, LLC, the opportunity to provide insurance brokerage and/or other insurance services to you on behalf of your employee benefit plans. The purpose of this Compensation Disclosure Statement is to explain the circumstances under which Lockton may receive compensation from insurance companies and other entities for the services we provide on your behalf, and the method by which the amount of that compensation is determined.

As your broker (or, if an insurance broker is so designated under applicable law, as your consultant licensed to render services as an insurance broker), Lockton may assist you with (i) the placement of one or more insurance contracts offered by employee benefits insurers and/or (ii) services related to one or more self-funded plans administered in whole or in part by an insurance company or other entity, such as a third-party administrator (“TPA”). Any reference herein to a “consultant” shall mean a person designated as a “consultant” under applicable law governing persons who render services as an insurance broker.

Upon placement of a policy with an insurance company, Lockton typically receives compensation from that insurer. This compensation may differ in form and amount depending on the product and the insurer. In cases where Lockton facilitates the placement of an administrative services contract with an insurance company or TPA, Lockton might receive commission-like payments from that carrier or TPA.

There are generally three types of commission or commission-like payments made by insurance carriers and TPAs to employee benefit brokers and consultants:

1. **Base Commissions**—Typically, base commission is equal to a percentage of the policy premiums paid by the contract holder. The rate and amount of commission may vary based on the specific circumstances of an individual policy placement.
2. **Additional Compensation**—Contingency payments, bonuses, overrides, prizes/awards and/or supplemental commissions or other commission-like payments from insurance companies, intermediaries (which may be affiliated with Lockton) or other third parties as a result of being Client’s insurance broker (collectively, “Additional Compensation”) are typically based upon factors such as the overall premium volume placed with a particular insurer, premium growth year-over-year, retention/persistency and the profitability of all the business placed with that insurer on a national basis. Historically, Additional Compensation received by Lockton has ranged from 0.5-5% of overall premium volume placed with an insurer. Additional Compensation is not considered part of the base commissions, and typically is not based upon or contingent on the sale of any particular policy to a particular insured, and does not affect the premium you pay. Some carriers may take into account administrative-services-only contracts placed with the carrier by the broker or consultant on a client’s behalf when calculating Additional Compensation.

3. **Administrative Service Fees**—Insurance companies and TPAs may pay a commission-like fee for services rendered to arrange for the insurance company or TPA to administer a client’s self-insured benefit program.

Attached you will find a summary description of the compensation we believe Lockton is or may be entitled to receive from the insurance companies and/or other entities listed in the attachment that is attributable to the insurance or administrative service contracts placed with those insurers or other entities on your behalf. Lockton will update this Compensation Disclosure Statement as the information in the attachment changes (i.e., as contracts are placed or renewed, or there are material changes to the terms and conditions of Lockton’s compensation from insurance carriers and other entities providing insurance and/or administrative services to you).

Please note that insurance companies are required to disclose to most clients the base and supplemental commissions and other incentive compensation they pay to the clients’ brokers and consultants. They are also required to disclose the value of certain gratuities and gifts (business lunches, tickets to sporting events, etc.) supplied to Lockton Producers and Associates if those items are supplied directly or indirectly in relation to your insurance contract. These amounts are to be reflected as part of the carriers’ Form 5500 Schedule A disclosures supplied to you. Because carriers might employ different methods for tracking, tabulating, and allocating these various items, the amounts reflected on your Schedule A information might vary somewhat from the amounts reflected in our attached summary of anticipated compensation.

Please feel free to contact us if you have any questions regarding this Compensation Disclosure Statement.

**Compensation Disclosure—Attachment Sheet 1 of 3 Sheet(s)**

Subject to the terms of the Services Agreement, Lockton believes it is or may be entitled to receive the compensation listed below, from the insurance companies and/or other entities listed below, attributable to the insurance and/or administrative service contracts placed with those insurers and/or other entities on your behalf [attach additional sheets as necessary]:

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Cigna  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: \_\_\_\_\_

**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: Ends 12/31/2023

**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Cigna  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: Stop Loss

**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_

**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per year (check here →  if this is an estimate)

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Delta Dental  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: \_\_\_\_\_

**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_

**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)



**Compensation Disclosure—Attachment Sheet 2 of 3 Sheet(s)**

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Humana  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: \_\_\_\_\_

**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_

**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Securian / Minnesota Life Insurance Company  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: \_\_\_\_\_

**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_

**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Cigna / New York Life  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: \_\_\_\_\_

**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_

**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

**Compensation Disclosure—Attachment Sheet 3 of 3 Sheet(s)**

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** TASC  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: Flexible Spending Account Administration  
**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_  
**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Health Advocate  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: Employee Assistance Program  
**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_  
**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

If all or some of the information requested here is supplied in a separate attachment (e.g., a commission payment summary generated through BenefitPoint), **check the box** and staple the attachment to this sheet.

**Insurer or TPA:** Aflac  
**Policy or Benefit Type:**  AD&D  BTA  Dental  Grp Trm Life  Grp Univ Life  LTC  LTD  Medical  
 STD  Vision  Other: Group Accident, Group Hospital Indemnity, Group Critical Illness, Individual Cancer  
**Policy/Contract Year:** 1/1/2021; If multiyear check here →  and add effective date and term: \_\_\_\_\_  
**Base Commissions:** 0% of premiums paid (check here →  if this is an estimate) **or** commission scale: \_\_\_\_\_

**Additional Compensation:** This insurer/TPA  does  does not have an Additional Compensation program in place that might apply to the placement of your policy(ies) or administrative-services-only contract(s). Upon request, Lockton can provide you with a more detailed description of the manner in which the Additional Compensation that Lockton may receive under such program would be calculated.

**Administrative Fees:** \$ \_\_\_\_\_ per \_\_\_\_\_ (check here →  if this is an estimate)

## **Our Mission**

To be the worldwide value and service leader in insurance brokerage, risk management, employee benefits, and retirement services

## **Our Goal**

To be the best place to do business and to work

RISK MANAGEMENT | EMPLOYEE BENEFITS | RETIREMENT SERVICES

[www.lockton.com](http://www.lockton.com)

