



Broker Services Agreement

Prepared For:

Suwannee County School Board

Presented by:

Foundation Risk Partners, Corp. d/b/a Acentria Public Risk

Effective Date:

February 1, 2023



Terms and Conditions

This Broker Services Agreement (this "Agreement") is entered into on February 1, 2023 ("Effective Date") by and between Suwannee County School Board, a Florida Government entity with offices at 1740 Ohio Avenue South, Live Oak, FL 32064 ("Client"), and **FOUNDATION RISK PARTNERS, CORP.**, a Delaware corporation, with offices at 1540 Cornerstone Blvd, Ste. 230, Daytona Beach, FL 32117 d/b/a Acentria Public Risk ("FRP").

WHEREAS, Client has engaged FRP to perform certain services, including but not limited to broker of record services for Employee Benefits Program; and

WHEREAS, this Agreement represents the mutual understanding of Client and FRP regarding the services that FRP will provide to Client.

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Services. During the term of this Agreement, FRP agrees to provide Client with the "Services" as described on Exhibit A attached hereto. Client shall appoint FRP as its insurance broker of record. FRP shall have the exclusive right to provide the Services to Client for the term of this Agreement. Any and all Services not contained herein fall outside the scope of this Agreement and if additional services are required, this Agreement shall be amended in writing accordingly prior to the provision of such service.

2. Payment. In consideration for the Services, Client agrees FRP will receive commissions from the carriers as advised in Exhibit B.

3. Term.

3.1 *Term.* This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years ("Initial Term"). After the Initial Term, the Agreement shall renew for up to two (2) additional three (3) year terms upon mutual agreement between the Parties ("Additional Term"), unless canceled by either party during the Additional Term, with or without cause, upon thirty (30) days' written notice to the other party ("Termination Notice"). If FRP and Client, in good faith, continue its business relationship after the above expiration date, the terms of this Agreement will control and continue to be in full force and effect until such time as a new agreement is executed by the parties or the relationship between the parties is otherwise terminated, except FRP shall have the sole discretion to revise the Payment terms. Furthermore, in the event FRP and Client agree to renew and continue its business relationship, unless and until a new agreement is entered into by FRP and Client supplanting the terms of this Agreement in their entirety, the terms of this Agreement, as amended, supplemented or otherwise modified from the date hereof until such time, will control the matters set forth herein.

3.2 *Miscellaneous.* Client may, at any time and in accordance with the requirements in section 3.1 above, terminate this agreement in whole or in part by written or telegraphic notice confirmed in writing. Upon termination by Client, Client will assume responsibility for



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specific contractual or scheduled financial commitments made prior to the termination date provided in the Termination Notice. Any and all services, property, publications, or materials provided during or resulting from this Agreement shall become the property of the Client. If, however, termination is occasioned by FRP's breach of any condition hereof, except due to circumstances beyond FRP's control and without FRP's fault or negligence, the remedies afforded to Client in Section 7 of this Agreement shall control.

4. Warranties.

4.1 *Warranties by FRP.* FRP hereby represents and warrants to Client that:

a. The Services will be performed in a professional and workmanlike manner, consistent with all applicable laws, required guidelines and industry standards.

b. It will at all times employ current industry standard security protection, compliant with all applicable laws, to prevent unauthorized access to all records, data, documents, images and other information of Client and its employees ("Employee Data Records") and that it shall employ industry standard measures to maintain the strict confidentiality at all times of all Employee Data Records.

c. The Services do not and shall not violate or infringe the copyright, trademark, patent, trade secret, privacy, publicity or reputational rights of any third party.

4.2 *Warranties by Client.* Client hereby represents and warrants to FRP that:

a. All information provided to FRP by Client in connection with FRP's performance of Services is or will be complete and accurate in all material respects;

b. Use of the information provided by Client to perform the Services will not conflict with or constitute a violation or breach of any contract or other obligation under which Client is bound or any judgment, law, rule, or governmental regulation applicable to Client.

4.3 *WARRANTY DISCLAIMERS.* Neither party makes any representation or warranty, express or implied, with respect to any Confidential Information. Neither party shall be responsible for any expenses, losses, or actions incurred or undertaken by the other party as a result of the receipt and use by such party of Confidential Information of the other party. Disclosing party retains all rights to its Confidential Information. No grant or license is made or given hereunder, express or implied, to any trademark, copyright, patent or similar right other than the use of the Confidential Information for the limited Business Purpose. Confidential Information is disclosed "AS IS" under this agreement. This Agreement is not intended, nor shall it be constructed, to create or convey any right in or upon any person or entity not a party to this Agreement

5. Data and Return of Data.

5.1 *Data.* Client hereby represents, warrants, and covenants that: (i) Client has all rights and authorizations, in compliance with all applicable laws and regulations, to provide the Data (defined below) to FRP and (ii) Client owns all Data and has sole responsibility and liability for the Data under all applicable laws



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and regulations at all times during Initial Term and any renewal of this Agreement. "Data" means Client's records or files and other related information.

5.2 Return of Data. Upon either (i) completion of the Services or (ii) termination of this Agreement, Client and FRP hereby agree that FRP shall return to the owning party or destroy all copies of the Confidential Information, provided that such destruction is not prohibited by applicable law, rule, court order or other similar process, or a governmental, regulatory or legal authority. A party may return Confidential Information, or any part thereof, to the other party at any time. Notwithstanding the foregoing, the obligation to return or destroy Confidential Information shall not cover (a) Confidential Information that is maintained on routine computer backup tapes, disks, or other backup storage devices or (b) one copy of Confidential Information that the recipient is required to maintain in accordance with applicable legal, regulatory or record-keeping requirements, provided that such retained Confidential Information is not used or disclosed or, in the case of back-up Confidential Information, otherwise recovered from such back-up devices. The obligation contained in this Section not to use, disclose or otherwise access such retained Confidential Information shall continue in full force and effect, notwithstanding any other termination of this Agreement.

6. Client Responsibilities. Client has sole responsibility and liability for: (a) establishment and operation of its plans; (b) construing and interpreting the provisions of its plans; (c) deciding all questions of fact arising under its plans; and (d) all fiduciary decisions relating to its plans.

7. Remedies. Without prejudice to any other remedies to which Client may be entitled at law or in equity, in the event of a breach of FRP's warranty under Section 4.1, Client shall provide FRP written notice of non-conforming services within fifteen (15) days of the non-conforming services being performed. If adequate notice was provided to FRP, FRP shall promptly re-perform the non-conforming Services at no additional cost so as to make the Services comply with its representations, warranties and covenants of Section 4.1. If FRP should fail to promptly re-perform the Services, Client shall not be obligated to pay for any such deficient Services to the extent they are not re-performed, and shall be entitled to: (i) recover any fees already paid to FRP for such deficient Services to the extent they were not re-performed, provided however, no refund shall be given for any Services which were performed or have been re-performed in compliance with FRP's representations, warranties and covenants of Section 4; and (ii) retain any deliverables resulting from such deficient Services if and only to the extent Client pays all fees for any Services in connection with such deliverables regardless of whether the Services were performed in compliance with FRP's representations, warranties and covenants of Section 4.

8. Authority; Compliance with Laws. Each party represents, warrants and covenants to the other party that (i) it has the authority to enter into this Agreement and to perform all of its obligations hereunder; (ii) FRP and each of FRP's employees, contractors, and subcontractors who perform Services hereunder ("FRP Personnel") have not previously entered into any agreement that would restrict any of such persons in the performance of Services; and (iii) each party shall comply with all applicable foreign and United States federal, state and local laws, rules and regulations in its performance of this Agreement, including, but not



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limited to, Florida's E-Verify law found at section 448.095, Florida Statutes.

9. Sufficient Rights; Non-Infringement. FRP represents, warrants and covenants to Client that (i) it has sufficient rights to perform the Services on behalf of Client; and (ii) the Services, when performed and used in accordance with the terms and conditions of this Agreement, do not and shall not infringe upon or otherwise violate or misappropriate any Intellectual Property Rights of any third party. "Intellectual Property Rights" means copyrights, patents, trademarks, trade secrets, and other intellectual property rights.

10. Publicity; Use of Trademarks. Nothing herein shall be interpreted as granting either party a right or a license to use the trade name, word mark or the trademark of the other party for any reason. Any use of such information must be obtained in writing from the other party.

11. Relationship of the Parties. Client and FRP are independent contracting parties. This Agreement shall not create a relationship of principal and agent, partners, joint venturers, or employer and employee.

12. Confidentiality.

12.1 *Definition.* "Confidential Information" includes all trade secrets (as defined by Florida law), business information, technical data, or know-how, including, but not limited to, that which relates to a disclosing party's research, hardware, insurance information (including insurance data, premium and policy information, premium spend, broker and insurer information, insurance coverage amounts and limits, historical losses, asset related information), products and services, clients, customers, tenants and tenant financial information, software products, technology, data, data models, data processing systems and techniques, product roadmap,

product platforms, solutions, technical information, trades secrets, business plans, business models and related documentation, support, and services, financial information and other confidential and proprietary information not made available to the general public by disclosing party furnished after the date of this agreement, analyses, compilations, summaries or other documents prepared by the recipient party containing or based upon any such information, copies of any of the foregoing regardless of its form or medium (oral, written, stored in computers, machine readable, electronic or other) ("Confidential Information"). Each party (the "Recipient") acknowledges that it has or may be exposed to Confidential Information of the other party (the "Disclosing Party"), whether or not the Disclosing Party expressly designates any such information to be Confidential Information. Confidential Information shall not include any information (a) that is or becomes publicly known without any breach hereof by the Recipient, (b) that was known to the Recipient prior to any disclosure to it by the Disclosing Party, as shown by the Recipient's written records, (c) that is rightfully received by the Recipient from a third party who is not bound by a confidentiality obligation to the Disclosing Party, (d) that is independently developed by the Recipient without using any of the Confidential Information of the Disclosing Party, or (e) that is required to be disclosed by law.

12.2 *Restrictions.* Each party forever agrees to hold in confidence and not disclose or utilize for its own or anyone else's benefit any Confidential Information except as necessary in connection with the Services, or as required pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction. Except as expressly authorized herein or in a separate writing signed by the Disclosing Party, the Recipient shall not use, commercialize or



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disclose any Confidential Information to any person or entity, except to its own employees or agents having a “need to know” (and who themselves are bound by similar non-disclosure restrictions for purposes of this Agreement), and to such other recipients as the Disclosing Party may approve in writing in advance, provided that all such other recipients shall have first executed the Non-Disclosure Agreement attached hereto as Exhibit C. Each party shall also ensure that all of its officers, directors, employees and independent contractors abide by the terms of this Agreement. The Non-disclosing Party shall protect all Confidential Information of the Disclosing Party from disclosure and unauthorized use in the same manner that it protects its own proprietary and confidential information of like nature, but in no event shall such standard of care be less than reasonable care. The Non-disclosing Party shall not copy the Disclosing Party’s Confidential Information without the Disclosing Party’s prior written consent except as necessary to perform its obligations under this agreement and to maintain a record of the Confidential Information exchanged pursuant to this agreement, and shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Disclosing Party’s Confidential Information. However, any Confidential Information that is required to be disclosed pursuant to a requirement of a governmental agency or law of the United States of America or a state thereof, or any governmental or political subdivision thereof, may be disclosed, but only to the extent required so long as the party required to disclose the information provides the other party with timely prior notice of such requirement and an opportunity to oppose the disclosure. The parties further agree that each party is and shall remain; the exclusive owner of all of its respective Confidential Information and no license or conveyance of any rights to any Confidential Information is granted or implied under this

Agreement. Upon the termination of this Agreement, the parties shall return all Confidential Information to its respective owner.

12.3 Survival. The provisions of this Section 12 shall survive any termination of this Agreement.

13. Indemnification.

To the extent allowed by law:

13.1 General; Personal Injury; Damage to Personal Property. FRP and Client shall each indemnify (a party providing indemnification pursuant to this Article 13 referred to as an “Indemnifying Party”) and hold the other party (a party seeking indemnification pursuant to this Article 13 referred to as an “Indemnified Party”), its officers, employees and agents harmless against any and all liability, loss, expense, including reasonable attorney’s fees, or claims for injuries or direct damages (not including consequential or punitive damages) arising out of the Indemnifying Party’s performance of this Agreement, but only in proportion to and to the extent such liability, loss or expense, attorney fees, or claims for injury or direct damages are caused directly by or resulting from the negligent or intentional acts or omissions of the Indemnifying Party, its officers, employees or agents. The Indemnified Party will provide the Indemnifying Party written notice within thirty (30) days of receiving notice of a claim potentially giving rise to indemnification hereunder and will provide the Indemnifying Party an opportunity to control the defense of such claim. Notwithstanding the foregoing, the Indemnifying Party shall not make any settlement of any claim on behalf of the Indemnified Party without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.



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13.2 Non-Infringement. FRP and Client shall each indemnify, defend and hold harmless each other from and against any and all claims relating to, or arising out of, any claim alleging that the Services or any deliverable, or the use of any part thereof, when used in accordance with the terms and condition of this Agreement infringes, misappropriates or violates any Intellectual Property Rights of a third party, except to the extent (i) that either party is determined by a court of competent jurisdiction to be responsible for the incident that resulted in such claims, or (ii) such claims result directly from gross negligence or willful misconduct. Both parties shall cooperate as reasonably requested and shall provide any information in its possession with respect to such claims and will provide prompt notice of such claims.

13.3 Breach of Confidentiality or Security Requirements. Each party shall indemnify, defend and hold harmless each other from and against any and all claims relating to, or arising out of, any breach of Section 12 (Confidentiality), except to the extent (i) either party is determined by a court of competent jurisdiction to be responsible for the incident that resulted in such claims, or (ii) such claims result directly from gross negligence or willful misconduct. Both parties shall cooperate as reasonably requested and shall provide any information in its possession with respect to such claims and will provide prompt notice of such claims.

13.4 Nothing in this Agreement shall limit, revoke, or otherwise modify Client's sovereign immunity under Florida law, including those protections provided under section 768.28, Florida Statutes.

14. Limitation of Liability.

14.1 SUBJECT TO SECTION 14.2, EITHER PARTY'S CUMULATIVE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ALL CAUSES OF ACTION, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (INCLUDING THIRD PARTY CLAIMS), SHALL BE LIMITED TO AND NOT EXCEED PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID OR TO BE PAID BY CLIENT PURSUANT TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES, OR ANY AMOUNTS REPRESENTING LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOST OR DAMAGED DATA, INTERRUPTION OF BUSINESS ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Miscellaneous.

15.1 In General. The parties, without further consideration of any kind, shall each execute and deliver, or cause to be executed and delivered, such other instruments, and take, or cause to be taken, such other action, as shall reasonably be requested by the other party hereto to more effectively carry out the terms and provisions of this Agreement.

15.2 Amendment. This Agreement may not be modified or amended except in writing and duly signed by an authorized representative of each party.



15.3 Governing Law. The construction, interpretation and performance of this Agreement, and the transactions under it, shall be governed by and construed in accordance with the laws of the State of Florida, excluding its conflict of laws and choice of law rules, and jurisdiction over any action to enforce this Agreement, or any dispute arising from or relating to this Agreement shall subsist solely in Suwannee County, Florida and the Middle District of Florida, Jacksonville Division.

15.4 Force Majeure. Neither FRP nor Client shall be held responsible for any delay or failure in performance under this Agreement arising out of causes beyond its control, or without its fault or negligence. Such causes may include, but are not limited to, fires, terrorist acts, strikes, embargoes, shortages or supplies of raw materials, or components or finished goods, acts of God, acts of regulatory agencies or national disasters.

15.5 Notices. All notices, requests, demands, claims and other communications hereunder ("Notices") shall be in writing. Any Notice hereunder shall be deemed duly given (i) upon receipt if delivered in person; (ii) upon the third business day after being sent if sent by registered or certified mail, return receipt requested with postage thereon prepaid; or (iii) on the next business day if sent by Federal Express or similar overnight courier service; in each case addressed to HIP or to Client at the addresses listed below:

Address for Notices to FRP:

Tom Leek
Chief Legal Officer
Foundation Risk Partners
d/b/a Acentria Public Risk
1540 Cornerstone Blvd, Ste. 200

Daytona Beach, FL 32117
kpowers@foundationrp.com

Address for Notices to Client:

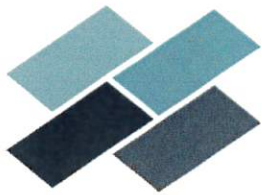
ATTN: Ted L. Roush
Suwannee County School District
1740 Ohio Avenue, South
Live Oak, FL 32064

ATTN: Leonard Dietzen
Rumberger Kirk P.A.
P. O. Box 10507
Tallahassee, FL 32302-2507

15.6 Attorney's Fees. In the event of a dispute concerning the terms of this Agreement, any claims arising from this Agreement, or arising out of the relationship created by this Agreement, the prevailing Party, as determined by the court or arbiter, shall be entitled to recover, in addition to any other remedy obtained, (i) all attorneys' and paralegals' fees incurred in the investigation and preparation of issues related to the dispute, including investigation and preparation for trial and in the trial and appellate proceedings, and (ii) all statutory costs. The prevailing party shall be that party which shall have prevailed on a majority, but not necessarily all, of the material issues which were adjudicated in such proceeding.

15.7 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall not affect the validity or enforceability of the balance of the Agreement or of the offending term or provision in any other situation or jurisdiction.

15.8 Waiver. The failure of either party hereto to enforce any right under this Agreement



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shall not be construed to be a waiver of that right, or of damages caused thereby, or of any other rights under this Agreement

15.9 Counterparts. This Agreement may be executed in any number of counterparts, which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page by facsimile or electronic means shall be effective as delivery of a manually executed counterpart.

16.0 Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and no terms, conditions or provisions other than those expressly contained herein shall be deemed to be part of this Agreement. This Agreement supersedes any and all prior agreements, covenants, arrangements, communications, representations and/or warranties with respect to the subject matter of this Agreement.

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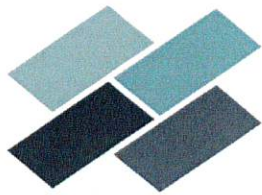
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Exhibit A – Services

See attached RFP #23-202 Acentria Public Risk Response

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Exhibit B - Pricing

Acentria Public Risk's goal is to bring clarity and transparency to Suwannee County School District's benefits spend, while providing best in class services and plan administration. There is no hourly charges or fees based on staff level or travel, and no limit to the number of onsite meetings with your employees and staff. We are proposing the following remuneration:

- Self-Funding Health Insurance Program \$10.00 PEPM
- All other lines of insurance coverages Standard Commission
- **Annual remuneration not to exceed \$150,000**

Our proposed fee includes all **Scope of Services** as detailed in the School Board's RFP and our response including:

- Actuary Services including the annual state filing per FS.112.08
- Online HR library and on demand HR services (AcentriaHR)
- Client Portal – 24/7 online risk management and compliance resource center
- ACA reporting assistance
- CMS Medicare Part D reporting
- Online enrollment system (Explain My Benefits) – additional technical financial support from carriers.

It is important to note that Acentria Public Risk does not participate in any provider relationships that would prevent us from acting independently and providing objective advice and guidance. We practice full disclosure relating to all compensation. Acentria Public Risk is an independent agency, not affiliated with any particular insurance companies, third party administrators or provider networks.



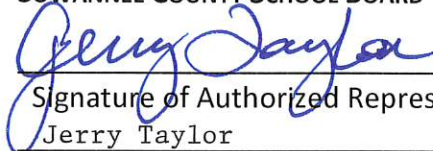
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Client Acknowledgement

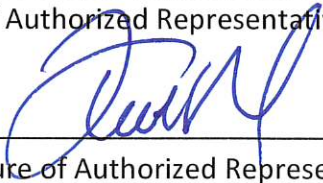
Please confirm your understanding of the letter agreement by executing two (2) original copies of this document and returning it to us at the address indicated in the letter within ten (10) business days.

SUWANNEE COUNTY SCHOOL BOARD


Signature of Authorized Representative
Jerry Taylor

Print Name of Authorized Representative
Board Chairman

Title of Authorized Representative


Signature of Authorized Representative

Ted L. Roush

Print Name of Authorized Representative
Superintendent of Schools

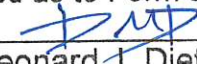
Title of Authorized Representative

FEB 01 2023

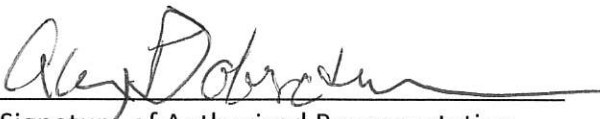
Date

FEB 01 2023

Date

"Approved as to Form and Sufficiency
BY 
Leonard J. Dietzen, III
Rumberger, Kirk & Caldwell, P.A.
Suwannee School Board Attorney"

FOUNDATION RISK PARTNERS, CORP. d/b/a ACENTRIA PUBLIC RISK


Signature of Authorized Representative

Alex Doberstein
Print Name of Authorized Representative

Vice President
Title of Authorized Representative

2/7/2023
Date

W065705
License No.

HIPAA Business Associate Agreement

between

**Acentria Public Risk,
A Foundation Risk Partners, Corp. Company**

and

Suwannee County School Board

BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (the "Agreement") is entered into this February 1, 2023, by and between Suwannee County School Board (hereinafter the "Covered Entity"), and Acentria Public Risk, A **FOUNDATION RISK PARTNERS, CORP. COMPANY**, a Delaware corporation (hereinafter the "Business Associate").

WHEREAS, This Agreement is intended to comply with the applicable provisions of 45 CFR Parts 160 and 164, subparts A and E (the "Privacy Rules") and 45 CFR Parts 160 and 164, subpart C (the "Security Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), as supplemented and amended by the privacy provisions of Subtitle D of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, at 42 U.S.C. §17921 et seq ("ARRA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HHS"), which statute and regulations collectively may be referred to as "HITECH";

WHEREAS, Covered Entity is a group health plan as defined in 45 CFR 160.103;

WHEREAS, Business Associate is an insurance broker that provides consulting services to plan sponsors and group health plans on matters related to employee benefits;

WHEREAS, Business Associate has been retained by the Covered Entity to perform a function or activity on behalf of the Covered Entity and Business Associate recognizes that in the course of performing services for the Covered Entity, it will have access to, create, and/or receive from the Covered Entity Protected Health Information ("PHI") relating to health plans of the Covered Entity, which PHI shall be the property of the Covered Entity. For purposes herein, PHI shall be limited to the information created or received from the Covered Entity or on its behalf by Business Associate. Whenever used in this Agreement, other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Agreement, but not defined herein, shall have the same meaning as those terms are defined in the Privacy Rules and Security Rules or in HITECH;

WHEREAS, Covered Entity desires to receive satisfactory assurances from the Business Associate that it will comply with the obligations required of business associates by the HIPAA Privacy and Security Rules; and

WHEREAS, the parties wish to set forth their understandings with regard to the use and disclosure of PHI by the Business Associate in performance of its obligations.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereby agree as follows:

1. **Definitions:** For purposes of this Agreement:
 - a. "Applicable Law" will include HIPAA, the Privacy and Security Rules, and HITECH, as amended and in effect from time to time. Applicable Law may include any state privacy laws specifically made applicable to this Agreement pursuant to any addendum added to this Agreement and expressly incorporating this Agreement, as agreed to by the parties from time to time.

- b. "Business Associate" will include the Business Associate and all successors and assigns, affiliates, subsidiaries (as applicable), and related companies of the Business Associate, including any contract service providers retained by the Business Associate to assist in its performance of services for the Covered Entity.
- c. "Designated Record Set" will have the same meaning given to the term "designated record set" in 45 C.F.R. § 164.501.
- d. "Discovery" means that a Breach becomes known, or should reasonably have become known, to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Business Associate), and the Discovery is deemed to have occurred on the first day such Breach was so known or should reasonably have been so known, in accordance with Section 13402(c) of the ARRA and 45 C.F.R. § 164.410(a)(2).
- e. "Individual" will have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- f. "Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- g. "Protected Health Information" ("PHI") will have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by the Business Associate from, on behalf of or otherwise in connection with its services for the Covered Entity.
- h. "Representative" will include the Business Associate's officers, directors, designated authorized employees, managing members (as applicable), trustees, general partners (as applicable), Subcontractors and financial and legal advisors.
- i. "Required by Law" will have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- j. "Secretary" will mean the Secretary of the U.S. Department of Health and Human Services or such official's designee.
- k. "Breach" means, as provided under Section 13400(1) of ARRA and 45 C.F.R. § 164.402, the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Breach does not include:
 - a. Any unintentional acquisition, access or use of PHI by an employee or individual acting under the authority of a Covered Entity or Business Associate if:
 - i. Such acquisition, access or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the Covered Entity or Business Associate; and

- ii. Such information is not further acquired, accessed, used or disclosed by any person;
 - b. Any inadvertent disclosure from an individual who is otherwise authorized to access PHI at a facility operated by a Covered Entity or Business Associate to another similarly situated individual at the same facility; and
 - c. Any such information where the Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- l. "Security Rules" will mean the Rules on Security Standards at 45 C.F.R. Part 160 and Part 164, Subpart C as they apply to electronic PHI.
 - m. "Subcontractor" will have the same meaning as the term "subcontractor" in 45 CFR § 164.103.
 - n. "Transaction" will have the same meaning as the term "transaction" in 45 CFR § 164.103.
 - o. "Unsecured PHI" means, in accordance with Section 13402(h) of ARRA and 45 C.F.R. § 164.402, PHI that is not secured through the use of technology or methodology specified by guidance in HITECH from time to time, but absent such guidance, then Unsecured PHI shall mean PHI that is not secured by a technical standard that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, which standard renders the PHI unusable, unreadable or indecipherable to unauthorized individuals.

2. **Confidentiality.** At all times, both during and after the termination of its relationship with the Covered Entity for any reason, the Business Associate and its Representatives will not use, disclose, or give others any of the PHI in any manner whatsoever, except as provided in Sections 3 and 4 of this Agreement and as consistent with Applicable Law, and will hold and maintain the PHI in confidence or destroy PHI if feasible.

3. **Permitted Uses and Disclosures by Business Associate.**

a. Except as otherwise limited in this Agreement or by Applicable Law, the Business Associate may use or disclose PHI on behalf of, or to provide services to, the Covered Entity for the purposes set forth in its service agreement with the Covered Entity or as otherwise set forth on Appendix A. To the extent practicable, Business Associate shall limit its use or disclosure of PHI or requests for PHI to a limited data set, or if necessary, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request. Notwithstanding the foregoing, Covered Entity will not request that Business Associate use or disclose PHI in any manner that would not be permissible under Applicable Law if such disclosure or use were done by the Covered Entity itself.

b. The Business Associate further agrees to document any disclosures of PHI and the information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and to provide such documentation to the Covered Entity upon request and in the time and manner directed by Covered Entity.

c. In the event that Business Associate maintains PHI in a Designated Record Set in paper or electronic form, Business Associate agrees to provide access to such PHI that it maintains in a

Designated Record Set to the Individual to whom the PHI relates at the request of Covered Entity in accordance with 45 CFR § 164.524, in the time and manner directed by Covered Entity. Furthermore, at the request of Covered Entity, Business Associate agrees to make amendments to PHI that it maintains in a Designated Record Set as directed by Covered Entity and to incorporate any amendments to PHI in accordance with 45 CFR § 164.526, in the time and manner directed by Covered Entity.

d. The Business Associate will require Subcontractors who create, receive, maintain or transmit PHI on behalf of the Business Associate, to have a written agreement with the Business Associate, to comply with the provisions of the Security Rule and apply the same restrictions, requirements, and conditions that apply to the Business Associate with respect to PHI.

e. The Business Associate may disclose PHI to its agents, and other Representatives with a bona fide need to know such PHI, but only if, prior to such disclosure, such Representatives provide reasonable assurances in writing that they will agree to the same restrictions and conditions that apply to the Business Associate with respect to such PHI, and only to the extent directly related to and necessary for the performance of services for the Covered Entity.

f. The Business Associate and its Representatives shall (i) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI (including electronic PHI) that it creates, receives, maintains, or transmits on behalf of the Covered Entity; (ii) to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement or as required by law, as required by 45 C.F.R. § 164.504(e)(2)(ii)(B); (iii) report to the Covered Entity any security incident, complaint, governmental investigation or legal process of which it becomes aware concerning PHI (including electronic PHI); and (iv) access, use and disclose PHI only to the minimum extent necessary to provide services to the Covered Entity and meet its legal obligations.

g. The Business Associate shall not use or disclose Genetic Information for underwriting purposes as prohibited by the HIPAA rules.

h. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to provide data aggregation services to Covered Entity.

i. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI for such purposes provided that (i) such disclosures are required by law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

j. To the extent Business Associate is to carry out one or more Covered Entity obligations under 45 C.F.R. Part 164 Subpart E, Business Associate shall comply with the requirements of that Subpart that apply to the Covered Entity in the performance of such obligation.

4. **Required Disclosures and Use.** The Business Associate may disclose the PHI revealed to it by the Covered Entity if and to the extent that such disclosure is required pursuant to Applicable Law. Further, the Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Secretary, as requested by the Covered Entity or designated by the Secretary, for purposes of the

Secretary determining the Covered Entity's compliance with Applicable Law. No attorney-client or other legal privilege or the work product rule shall be deemed to have been waived by virtue of this obligation.

In the event that Business Associate receives a subpoena or similar notice or request from any judicial, administrative or other party arising out of or in connection with this Agreement, including, but not limited to, any unauthorized use or disclosure of PHI, Business Associate shall promptly forward a copy of such subpoena, notice or request to Covered Entity and afford Covered Entity the opportunity to exercise any rights it may have under law.

5. **Required Notice to the Covered Entity.** The Business Associate will report to the Covered Entity any use or disclosure of PHI otherwise than as provided by this Agreement as promptly as practicable and not more than fourteen (14) days after becoming aware of such use or disclosure of such PHI. Business Associate shall make reasonable efforts, and cooperate with the Covered Entity, to mitigate any harmful effects arising from any improper use and/or disclosure of PHI.

6. **HITECH Obligations.** Business Associate acknowledges and agrees that, as of the applicable effective dates for such provisions, Business Associate shall comply with each provision of the American Recovery and Reinvestment Act of 2009 ("ARRA") that extends a HIPAA Privacy Rule or Security Rule requirement to business associates of HIPAA covered entities.

In particular, but without limitation, Business Associate:

a. Shall report to Covered Entity any Breach of Unsecured PHI without unreasonable delay and, in no case, more than fourteen (14) days after Discovery to the Covered Entity's Privacy Officer. Business Associate will treat a Breach of Unsecured PHI as being discovered in accordance with 45 CFR § 164.410. If a delay is requested by law enforcement in accordance with 45 CFR § 164.412, a delay in notifying the Covered Entity is permissible for the applicable time period requested by law enforcement. The Business Associate's report regarding a Breach of Unsecured PHI will include the following:

1. Identifying the nature of the breach (including the date of the breach discovery of the breach and a description of how the breach occurred).
2. Identify the type of PHI that was involved in the breach.
3. Identify the corrective action or investigation action the Business Associate took of will take to prevent future breaches, and/or mitigate harmful effects, and to protect against breaches.
4. Provide other required information, including a written report and risk assessment under 45 CFR § 164.402.

The parties agree that the Business Associate may provide notice to individuals and/or any governmental agencies (including but not limited to the US Department of Health and Human Services Office of Civil Rights) in the event of a HIPAA breach, at Covered Entity's sole discretion.

b. Shall not directly or indirectly receive remuneration in exchange for any PHI of an individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the individual a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by Business Associate. The foregoing shall not apply to Covered

Entity's payments to Business Associate for services delivered by Business Associate to Covered Entity.

7. Obligations of Covered Entity.

a. Covered Entity shall notify Business Associate of any limitation(s) in its privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

c. Covered Entity shall notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to with any Individual in accordance with 45 CFR § 164.522, and any changes thereto, to the extent that such restriction or change may affect Business Associate's use or disclosure of PHI.

d. Covered Entity shall comply with Applicable Law regarding its access to, handling and disclosure of PHI, and shall not ask the Business Associate to make any uses or disclosures of PHI that are not permitted by Applicable Law.

8. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity, except that Business Associate shall be permitted to use PHI as set forth in this Agreement.

9. Disclosure to Employees of the Parties. The Covered Entity and the Business Associate have listed their respective HIPAA Privacy Officers below. Except with respect to required disclosures under Section 4, above, the parties acknowledge and agree that all PHI transferred between them shall only be transmitted between such employees or other designated persons (for proper purposes and by such means) as are duly authorized to handle such PHI under the HIPAA privacy policies and practices of each respective party. Any questions regarding who is authorized to handle PHI on behalf of a party shall be directed to the Privacy Officer of that party.

The Privacy Officer of the Covered Entity is **Teresa Jones**

The Privacy Officer of the Business Associate is **Alex Doberstein**

Any change in such Privacy Officer shall be promptly communicated in writing to the other party by either the outgoing or incoming Privacy Officer or by an officer of that party. If the Covered Entity or Business Associate so desires, or upon request of the other party, it may provide a written list identifying which personnel are authorized under its privacy policies and practices to transmit PHI to the other party, receive PHI from the other party, or direct the other party with respect to PHI. Any such list shall be duly updated in writing to the other party promptly as it changes.

10. Term/Termination.

a. Term. This Agreement shall be effective as of the later of (i) the effective date of this Agreement, (ii) such later effective date of the Privacy Rule, or (iii) the date set forth above, and shall

terminate as provided in Section 10 or upon thirty (30) days written notice by the Covered Entity or the Business Associate.

b. Termination for Cause by Covered Entity. This Agreement may be terminated by the Covered Entity upon 15 business days written notice to the Business Associate in the event that the Business Associate breaches any provision contained in Sections 2-6 of this Agreement and such breach is not cured within such 15 day period; provided, however, that in the event that termination of this Agreement is not feasible in the Covered Entity's sole discretion, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

c. Termination for Cause by Business Associate. Effective February 17, 2010, this Agreement may be terminated by the Business Associate upon 15 business days written notice to the Covered Entity in the event that the Covered Entity breaches any provision contained in Sections 7 or 8 of this Agreement and such breach is not cured within such 15 day period; provided, however, that in the event that termination of this Agreement is not feasible in the Business Associate's sole discretion, Covered Entity hereby acknowledges that the Business Associate shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

d. Effect of Termination.

1. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI (in all forms) received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Subcontractors, agents or other Representatives of Business Associate. Business Associate shall retain no copies of the PHI.
2. In the event that Business Associate determines that returning or destroying certain PHI is infeasible, Business Associate shall retain that PHI and provide to Covered Entity written notification of the conditions that make such return or destruction infeasible. Business Associate will continue to extend the protections of this Agreement to such retained PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI.

11. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies or obligations whatsoever.

12. **Successors and Assigns.** This Agreement and each party's obligations hereunder will be binding on the representatives, assigns, and successors of such party and will inure to the benefit of the assigns and successors of such party; provided, however, that the rights and obligations of the Business Associate hereunder are not assignable

13. **Remedies.** The parties acknowledge that breach of Sections 3 through 8 of this Agreement may cause irreparable harm for which there is no adequate remedy at law. In the event of a breach, or if either party has actual notice of an intended breach, such party shall be entitled to a remedy of specific performance and/or injunction enjoining the other party from violating or further violating this Agreement. The parties agree the election of the party to seek injunctive relief and or

specific performance of this Agreement does not foreclose or have any effect on any right such party may have to recover damages.

14. **Notices.** All notices, requests, consents and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient, (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), (c) when the recipient of an electronic mail acknowledges receipt of the electronic mail, or (d) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to the Covered Entity: Suwannee County School Board
1740 Ohio Avenue, South
Live Oak, FL 32064

If to the Business Associate: Acentria Public Risk,
A Foundation Risk Partners, Corp. Company
1540 Cornerstone Blvd., Suite 200
Daytona Beach, Florida 32117

15. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

16. **Modifications and Amendments.** Business Associate and Covered Entity agree to take such action as is necessary to amend this Agreement from time to time to enable Covered Entity to comply with the requirements of the Privacy Rules, the Security Rules and HITECH. The terms and provisions of this Agreement may be modified or amended only by written agreement executed by the parties hereto and any such amendment will comply with the requirements of Applicable Law.

17. **Severability.** The parties intend this Agreement to be enforced as written. However, (i) if any portion or provision of this Agreement will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agree that the court making such determination will have the power to reduce the duration of such provision, and/or to delete specific words and phrases, and in its reduced form such provision will then be enforceable and will be enforced.

18. **Interpretation.** The parties hereto acknowledge and agree that both (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party and (ii) the terms and provisions of this Agreement, will be construed fairly as to all parties hereto and not in favor of

or against a party, regardless of which party was generally responsible for the preparation of this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that furthers compliance with Applicable Law. The parties agree to amend this Agreement from time to time as necessary for the parties to comply with the requirements of Applicable Law.

19. **Regulatory References.** A reference in this Agreement to a section in the Applicable Law means the section as in effect and any amendments thereto.

20. **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4 (Required Disclosures) and 10(d) (Effect of Termination) shall survive termination of the Agreement indefinitely.

21. **Headings and Captions.** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

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

23. **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of laws to the extent that the provisions of HIPAA, the Privacy Rules, Security Rules, and HITECH and its implementing regulations do not preempt the laws of the State of Florida.

In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the Privacy Rules, Security Rules, as may be expressly amended from time to time by HHS or as a result of interpretations by HHS, a court, or another regulatory agency with authority over the parties, the interpretation of HHS, such court, or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence. Where provisions of this Agreement are different from those mandated by the Privacy Rules, Security Rules, or HITECH but are nonetheless permitted by the Privacy Rules, Security Rules, or HITECH, the provisions of the Agreement shall control.

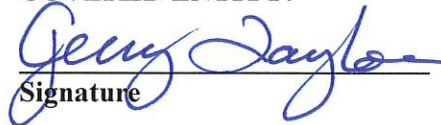
24. **Counterparts.** This Agreement may be signed in counterparts, which together will constitute one agreement.

25. **Relationship of the Parties.** Covered Entity and Business Associate agree that Business Associate's services hereunder are being carried out as an independent contractor and not as an employee or agent of the Covered Entity.

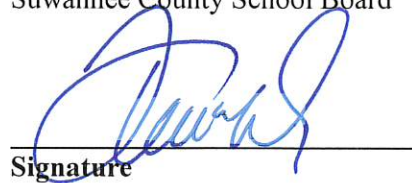
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IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives or officers, effective as of the date first listed above in the preamble to this Agreement.

COVERED ENTITY:

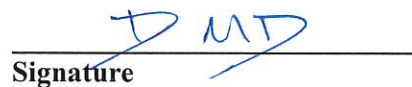

Signature

Jerry Taylor
School Board Chairman
Suwannee County School Board


Signature

Ted Roush
Superintendent
Suwannee County School Board

Approved as to legal form and sufficiency by:


Signature

Leonard Dietzen
Attorney
Suwannee County School Board

BUSINESS ASSOCIATE:


Signature

Alex Doberstein
Vice President / Benefits Resource Leader
Acentria Public Risk
A Foundation Risk Partners, Corp. Company