

# PARTICIPATION AGREEMENT

for the

## FLORIDA SCHOOL RETIREE BENEFITS CONSORTIUM

This Participation Agreement (hereinafter referred to as the “Participation Agreement”) is made and entered into by and between the Florida School Retiree Benefits Consortium (“Consortium”), also known as the Florida School Retiree Benefits Consortium, an administrative entity acting on its own behalf and on behalf of all participating public agency in the State of Florida, and the undersigned participating governmental entity (“Member”).

### I. RECITALS:

WHEREAS, the Member is authorized by, *inter alia*, Chapter 163, Florida Statutes, also known as the “Florida Inter-Local Cooperation Act of 1969,” (“the Act”), to exercise jointly with other local public agencies of this state the authority to provide certain functions, which include the provision of health insurance policies and other non-medical benefits to its retirees; and

WHEREAS, the purpose of this Participation Agreement is to enable Members to pool their insurance needs and to identify providers of health insurance who may be able to provide retiree health insurance and other non-medical benefits at more competitive prices than can be procured individually and to realize the various potential economies, including cost savings, for Members;

NOW, THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the undersigned Member and the Consortium agree as follows.

### II. TERMS AND CONDITIONS:

1. **Adopt Inter-Local Agreement.** The Member, by the execution and acceptance of this Participation Agreement, hereby adopts and approves the Florida School Retiree Benefits Consortium Inter-Local Agreement, which established the Consortium as an administrative agency of its collective participants, pursuant to section 163.01(7)(a), Florida Statutes, effective May 8th, 2012, which agreement is incorporated herein by reference.
2. **Term.** The term of this Participation Agreement shall commence and be effective on the date fully executed, and shall remain in effect unless revised or terminated in accordance with the provisions of this Participation Agreement.
3. **Termination.**
  - a. **By the Member.** A Member may terminate this Participation Agreement at any time by giving a minimum one-hundred and eighty (180) days’ prior written notice to the Consortium Board. If the Member terminates its participation under this Participation Agreement or breaches this Participation Agreement, the Member shall bear the full

financial responsibility for any unpaid obligations such member has. The Consortium may seek the whole amount due, if any, from the terminated Member.

- b. **By the Consortium.** The Consortium may terminate this Participation Agreement by: (1) giving ninety (90) days' notice by certified mail to the Consortium Member if the Member breaches this Participation Agreement; or (2) giving one-hundred eighty (180) days' notice by certified mail to the Member with or without cause. Any materials and equipment purchased with Consortium funds shall remain the property of the Consortium.
  - c. **Re-Acceptance of Retirees by Public Agency.** In the event of termination of this Participation Agreement or of the discontinuance of any program procured through the Consortium, the Member (the public agency) shall readmit and accept retirees back into the retiree health plans offered by the public agency.
4. **Health Insurance and Non-Medical Benefits for Retirees.** The Member will have a non-exclusive license to purchase health insurance policies available through the Consortium to provide health insurance to and non-medical benefits for former employees of the Member who have retired, who meet the requirements for such insurance or benefits and who elect to participate.
- A Member will have the option to elect from the non-medical benefits that may be offered, the one(s) in which it will participate.
5. **Payment for Costs of Operation.** The parties agree that the costs associated with the establishment and operation of the Consortium will be paid by the Consortium Board. As permitted by applicable law, the Consortium may receive fees from vendors who have been selected to provide health insurance or non-medical benefits pursuant to the Consortium's operational plans.

### III. GENERAL PROVISIONS

- 1. **Amendment by Notice.** The Consortium's Board may amend this Participation Agreement, provided that written notice is sent to the Member at least sixty (60) days prior to the effective date of any change described in such amendment and provided that the Member does not terminate its participation in the Consortium before the expiration of said sixty (60) day period.
- 2. **Authorization to Participate and Compliance with Local Policies.** The Member represents and warrants that its governing body has duly authorized its participation in the Consortium and that the Member will comply with all state and local laws and policies pertaining to purchasing health insurance benefits for its retirees through its membership in the Consortium.
- 3. **Bylaws.** The Member agrees to abide by the Bylaws of the Consortium, which are incorporated herein by reference, as they may be amended, and any and all reasonable written policies and procedures established by the Consortium; provided, however, no modification of the Bylaws

which is inconsistent with the provisions of the Inter-Local Agreement, shall take effect unless and until the Inter-Local Agreement is modified by the Consortium Board.

4. **Cooperation and Access.** The Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Consortium. The Consortium reserves the right to audit the relevant records of any Member, subject to the Florida public records laws. Any breach of this provision shall be considered material and shall make the Participation Agreement subject to termination as above-described.
5. **Defense and Prosecution of Claims.** The Member authorizes the Consortium to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding, or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Consortium in any litigation, claim or dispute which arises from the services provided by the Consortium on behalf of its Members, collectively or individually. Neither this provision nor any other provision in this Participation Agreement will create a legal duty for the Consortium to provide a defense or prosecute a claim; rather, the Consortium may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Member shall reasonably cooperate and supply any information necessary or helpful in such prosecution or defense. Subject to specific revocation, the Member hereby designates the Consortium to act as a class representative on its behalf in matters arising out of this Participation Agreement.
6. **Governance.** The Consortium's Board will govern the Consortium in accordance with its Bylaws and other written policies.
7. **Jurisdiction/Venue.** This Participation Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for all disputes arising under this Agreement shall lie in Leon County, Florida. Provided, however, any bid protest shall be conducted in the venue of the lead agency issuing a request for bids.
8. **Legal Authority.** The Member represents and warrants to the Consortium the following:
  - a. It possesses the legal authority to enter into the Participation Agreement and may allow this Participation Agreement, as may be amended from time to time, to automatically renew without subsequent action of its governing body.
  - b. Purchases made under this Participation Agreement will satisfy all procedural procurement requirements that the Member must meet under all applicable local policy, regulation, or state law.
  - c. All requirements—local or state—for a third party to approve, record, or authorize the Participation Agreement have been met.
9. **Disclaimer.** THE CONSORTIUM AND ITS ENDORSERS DO NOT WARRANT THAT THE OPERATION OR USE OF CONSORTIUM SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

THE CONSORTIUM, ITS ENDORSERS, AND SUBCONTRACTORS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS PARTICIPATION AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Limitation of Liability.** Without waiver of the disclaimer or other limitation of liability in this Participation Agreement, the parties agree that:

- a. Neither party waives any immunity from liability afforded under law;
- b. In regard to any lawsuit or formal adjudication arising out of or relating to this Participation Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages;
- c. The maximum amount of damages recoverable will be limited to the amount of fees, if any, which the Consortium received as a direct result of the Member's activity, within 24 months of when the lawsuit or action was filed; and
- d. In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney's fees.

Without waiver of the disclaimer or other limitation of liability in this Participation Agreement, the parties further agree to limit the liability of the Consortium's servicing contractor, endorsers and sponsors up to the maximum amount each received from or through the Consortium, as a direct result of the undersigned Member's activity, within 24 months of the filing of any lawsuit or action.

11. **Limitation of Rights.** Except as otherwise expressly provided in this Participation Agreement, nothing in this Agreement is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Participation Agreement.

12. **Merger/Entirety.** This Participation Agreement, together with the Consortium's Bylaws and the Inter-Local Agreement, represent the complete understanding of the Consortium and Member. To the extent there exists any conflict between the terms of this Participation Agreement and that of any prior agreement, the terms of this Agreement, the Inter-Local Agreement, and/or the Bylaws shall control and take precedence to resolve such conflict.

13. **Notice.** Any written notice to the Consortium shall be made by first class mail, postage prepaid, and delivered to the Consortium Coordinator in care of the Duval County Public Schools 1701 Prudential Dr, Jacksonville, FL 32207. Notices to the Member shall be made by first class mail, postage prepaid, and delivered to the Member's board chairperson or chief executive officer (e.g., superintendent). Notices shall be effective only upon actual receipt.

14. **Severability.** If any portion of this Participation Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.

15. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this

Participation Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Participation Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

16. **Warranty.** By the execution and delivery of this Participation Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite action required to enter into and perform the terms of this Participation Agreement.

**\*\*\*END OF PAGE\*\*\***

**IN WITNESS WHEREOF**, the parties, acting through their duly authorized representatives, sign this Participation Agreement as of the date indicated.

**TO BE COMPLETED BY THE CONSORTIUM:**

THE FLORIDA SCHOOL RETIREE BENEFITS CONSORTIUM, on behalf of itself and participating Members

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Consortium Board Chairperson

**TO BE COMPLETED BY THE MEMBER:**

\_\_\_\_\_  
(Name of Local Government)

\_\_\_\_\_  
(Name of Designated Coordinator)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

\_\_\_\_\_  
(Email Address) (Telephone) (Fax)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of authorized representative of Member

\_\_\_\_\_  
Printed name and title of authorized representative