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Introduction Date: Jan 9, 2013
Enactment Number: 13-926
Enactment Date: Jan 9, 2013
By: o.k

EMPLOYEE BENEFITS CONSULTING SERVICES AGREEMENT

This **Employee Benefits Consulting Services Agreement** ("Agreement") is made and entered into by and between **Oakland Unified School District** ("Client") and **Keenan & Associates** ("Keenan"), as of **January 1, 2013** ("Effective Date").

RECITALS

WHEREAS, Client desires to secure a variety of insurance products, and related services in conjunction with the health and welfare benefits provided to its eligible employees;

WHEREAS, Keenan is a specialty insurance services provider and, as such, is qualified to provide such services; and

WHEREAS, Client desires Keenan to provide, and Keenan desires to provide, the services described in this Agreement for those Client benefits programs identified below ("Plans"):

Life Insurance - District Paid
AD&D Insurance - District Paid
Long Term Disability Insurance - District Paid
Vision Coverage
Delta Dental Eligibility
Medical Insurance

The parties agree as follows:

AGREEMENT

1. TERM

The term of this Agreement is from the Effective Date through **June 30, 2014** ("Termination Date")

2. KEENAN SERVICES AND RELATIONSHIP OF THE PARTIES

- A. Client elects and Keenan shall provide its services ("Services") with respect to Client's Plans for the Plan years that begin on **July 1, 2012** and **July 1, 2013**. A full description of the Services is provided in Exhibits A-1 through A-3 attached hereto and incorporated herein.
- B. The relationship of Keenan and Client shall be that of an independent contractor and Keenan shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers' compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.

- C. In providing the Services, Keenan shall act exclusively in an advisory and consultative capacity. Client shall at all times have the right to determine whether to act on or implement the information, recommendations, and suggestions provided by Keenan, and the manner by which any such action or implementation shall be undertaken. Except for Keenan's responsibilities with respect to funds obtained from or on behalf of Client, Keenan shall not be a fiduciary of Client.
- D. Keenan shall not provide any legal, tax, or accounting service, advice, or opinion, and the Services shall not be interpreted as representing any such service, advice or opinion. Client shall consult its own attorney on all legal issues and its own tax and accounting experts on all tax, accounting, and financial matters relating to its operations, including without limitation, the establishment, implementation and operation of the Plans.
- E. In providing its Services, Keenan shall comply with all applicable state and federal laws and regulations, and obtain and maintain all necessary licenses, registrations, and/or permits necessary for the performance of its duties under this Agreement.
- F. The Services provided to Client are non-exclusive and Keenan reserves the right to provide the same or similar services to other clients who may be in the same industry, business, or service as Client.

3. CLIENT'S DUTIES AND RESPONSIBILITIES

- A. Client shall retain decision-making authority for its Plans, and shall manage the day-to-day activities of the Plans, except for those duties and/or functions expressly assigned to Keenan under this Agreement.
- B. Client shall provide Keenan with timely access to such information and individuals, including its outside advisors and consultants, as may be necessary for Keenan to perform the Services. Keenan shall not be responsible for any delay in its performance that results from the failure of Client, or any person acting on behalf of Client, to make available any information or individual in a timely manner.
- C. All information provided to Keenan, either in anticipation of or during the term of this Agreement, shall be complete and accurate, and that Keenan may rely upon such information.
- D. If Client desires Keenan to obtain insurance quotes on its behalf, Client shall execute the Broker of Record Designation attached hereto as Exhibit B.

4. COMPENSATION

- A. Keenan's fees for the Services rendered pursuant to this Agreement are as provided in the attached Exhibit C. Any Services provided to Client that are outside of or in addition to those described in Exhibit A-1 and A-2 shall be subject to additional fees.
- B. It is possible that Keenan may also provide services to other entities that participate in or provide services to the Plans (such as management services, underwriting, marketing,

claims administration, loss control services, obtaining other insurance and reinsurance). To the extent that such services are provided, Keenan will be separately compensated by the recipient of those services.

- C. Keenan shall comply with all applicable state and/or federal laws and regulations regarding disclosure of compensation. We embrace industry efforts for transparency and believe it is important that clients have access to information that may be relevant to their choice of insurance products, including the cost of such insurance and services, and, the compensation that may be directly or indirectly paid to Keenan in connection with the products or services that are selected. If you have questions regarding any of these items or desire additional information, you may contact your Keenan account representative to discuss this matter in more detail.
- D. As an accommodation to Client and to help Client defray the costs of its newly created Wellness Coordinator position, Keenan shall pay client \$8333 per month for a period of six months beginning January 1, 2013. The entire amount of this payment shall be used by Client to offset the cost of the Wellness Coordinator's salary and benefits.

5. INSURANCE

Keenan shall procure and maintain during the term of this Agreement the following insurance coverages, and shall provide certificates of insurance to Client upon Client's request.

- i. Workers' Compensation: Coverage in conformance with the laws of the State of California and applicable federal laws;
- ii. General Liability: Coverage (including motor vehicle operation) with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability; and
- iii. Errors and Omissions: Coverage with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

6. INDEMNIFICATION

If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by one of Client's employees, Plan beneficiaries, or Plan vendors ("Third-Party Demand") relating to the Services and such Third-Party Demand is not a direct result of Keenan's negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand.

7. **LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for any punitive damages, fines, penalties, taxes, or any indirect, incidental, or consequential damages incurred by the other party, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort claims or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage. Keenan's liability under this Agreement shall further be limited to, and shall not exceed, the amount of its available insurance coverage, but not exceeding the limits of coverage outlined in Section 5.

8. **DISPUTE RESOLUTION**

A. Disputes arising out of or relating to this Agreement, other agreements between the parties, or any other relationship involving Client and Keenan (whether occurring prior to, as part of, or after the signing of this Agreement) shall first be resolved by good faith negotiations between representatives of the parties with decision-making authority. If either party determines that the dispute cannot be resolved through informal negotiation then the dispute shall be submitted to non-binding mediation. The site of the mediation and the selection of a mediator shall be determined by mutual agreement of the parties. If the dispute is not resolved through mediation within sixty (60) days following the first notification of a request to mediate, then either party shall have the right to require the matter to be resolved by final and binding arbitration by JAMS dispute resolution service pursuant to its Streamlined Arbitration Rules and Procedures, or such other arbitration procedures as may be agreed to in writing by the parties. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between Client and Keenan and their respective members, agents, employees and officers.

B. Arbitration shall be before a single arbitrator in the County of Alameda, California. The Arbitrator shall apply the Federal Arbitration Act and California substantive law, and shall accompany the award with a reasoned opinion. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. The prevailing party shall be entitled to an award of reasonable attorneys' fees. A judgment of any court having jurisdiction may be entered upon the award.

C. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

9. **TERMINATION**

A. This Agreement may be terminated upon the occurrence of any of the following events:

- i. By either party upon the dissolution or insolvency of a party to this Agreement;
 - ii. By either party following the filing of a bankruptcy petition by or against either party (if the petition is not dismissed within sixty (60) days in the case of an involuntary bankruptcy petition);
 - iii. If the application of any law, rule, regulation, or court, or administrative decision prohibits the continuation of this Agreement, or would cause a penalty to either party if the Agreement is continued, and if the Agreement cannot be amended to conform to such law, rule, regulation, or court, or administrative decision in a manner that would preserve the original intent of the parties with respect to their rights and duties under this Agreement; or
 - iv. By the non-breaching party if a breach of this Agreement is not cured within thirty (30) days following receipt of written notice of the breach from the non-breaching party;
 - v. By either party without cause or penalty upon thirty (30) days written notice.
- B. In the event of termination pursuant to Section 9A above, Keenan shall be paid for the full value of its services performed through the date of termination.

10. GENERAL

- A. This Agreement, its recitals and all exhibits attached to the Agreement contain the entire understanding of the parties related to the subject matter covered by this Agreement and supersede all prior and collateral statements, presentations, communications, reports, agreements or understandings, if any, related to such matter(s).
- B. The obligations set forth in this Agreement, other than Keenan's obligation to perform the Services and Client's responsibility to pay for such services, shall survive the expiration or termination of this Agreement. Nothing in this Section 10B shall, however, be interpreted as relieving Client of its obligation to pay for any Services rendered by Keenan during the term of this Agreement.
- C. This Agreement is made for the benefit of the parties and is not intended to confer any third party benefit or right. The enforcement of any remedy for a breach of this Agreement or claim related to the Services may only be pursued by the parties to this Agreement.
- D. No modification or amendment to this Agreement shall be binding unless it is in writing and signed by authorized representatives from both parties. Any waiver or delay by a party in enforcing this Agreement shall not deprive that party of the right to take appropriate action at a later time or due to another breach. This Agreement shall be interpreted as if written jointly by the parties.
- E. Any provision determined by a court of competent jurisdiction to be partially or wholly invalid or unenforceable shall be severed from this Agreement and replaced by a valid and enforceable provision that most closely expresses the intention of the invalid or

unenforceable provision. The severance of any such provision shall not affect the validity of the remaining provisions of this Agreement.

- F. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make good faith efforts to perform under this Agreement in the event of any such circumstances, and shall resume full performance once the cause of the delay has abated.
- G. All notices hereunder shall be in writing and sent to the parties at the addresses as set forth below, or to such other individual or address as a party may later designate. Notices shall be sent via personal delivery, courier service, United States mail (postage pre-paid, return receipt requested), express mail service, electronic mail, or fax. Notice shall be effective when delivered, or if refused, when delivery is attempted. Notices delivered during non-working hours shall be deemed to be effective as of the next business day.

If the notice relates to a legal matter or dispute, a copy shall be sent to:

Keenan & Associates
 2355 Crenshaw Blvd., Ste. 200
 Torrance, CA 90501
 Attn: Legal Department
 Fax: (310) 533-0573

- H. This Agreement may be executed in counterparts and by fax signatures and each shall be deemed to be an original.

Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

<u>Oakland Unified School District</u>		<u>Keenan & Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>	Jerry Johnson	<u>By:</u>	John Scatterday
<u>Title:</u>	Risk Manager	<u>Title:</u>	Senior Vice President
<u>Address:</u>	102 2 nd Ave. Room 115A	<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
	Oakland, CA		Torrance, CA 90501
<u>Telephone:</u>		<u>Telephone:</u>	310 212-0363
<u>Fax:</u>		<u>Fax:</u>	
<u>Attention:</u>		<u>Attention:</u>	

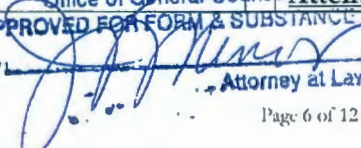
OAKLAND UNIFIED SCHOOL DISTRICT
 Office of General Counsel
 APPROVED FOR FORM & SUBSTANCE

 Attorney at Law

EXHIBIT A-1
Brokerage Services

Keenan shall provide the following Brokerage Services:

1. Plan Review – Keenan shall review Client's current Plans and provide information and recommendations regarding insured and/or self-insured options, as requested by Client.
2. Insurance Needs Assessment – Keenan shall work with Client to determine Client's insurance needs.
3. Insurance Marketing Plan – Review, evaluate and negotiate insurance renewals on Client's behalf. Keenan shall prepare and present to Client its plan for marketing Client to various carriers and/or Coverage providers. In furtherance of its plan, Keenan shall contact those markets that it has determined most likely to meet Client's needs, as made known to Keenan, but shall not necessarily contact every available market for the particular Coverage being sought. In so far as practical, Keenan shall honor Client's timely and reasonable requests to contact specific markets, but Keenan shall not be obligated to present Client to any carrier or Coverage provider which Keenan has determined would not be willing to quote Client's business or would not give a competitive quote.
4. Insurance Marketing Results – Keenan shall present to the client, in summary format, information concerning all markets and carriers approached. The summary shall include, as applicable: name of carrier and Coverage providers approached, limits, premium, and deductible. The summary shall also include the names of any carriers or Coverage providers who declined to provide a quote.
5. Review of Insurance Options – Keenan shall present, along with the Marketing Results, a comparison summary highlighting the significant terms and/or differences among the various Coverages quoted. This summary is provided for Client's convenience only. It is Client's responsibility to ask questions and to request any additional information that it deems necessary for it to make an informed decision regarding its insurance or self-insurance program.
6. Obtain Coverage – Once the Client has made its decision, Keenan shall take all steps necessary to communicate Client's decision to the carrier selected and to have the carrier or other Coverage provider bind Coverage on behalf of the Client.
7. Implementation – Keenan shall assist Client in the preparation and distribution of materials relating to the implementation of its coverage, for which client shall give final approval.
8. Ongoing Service – Keenan will provide the following ongoing Client support services:
 - Direction and support with claims resolution and other related issues;
 - Support with billing/eligibility concerns;
 - Acting as a liaison between Client and carriers and vendors and serving as a proactive Client advocate; and
 - Responding to day-to-day benefit questions from Client and its employees.

EXHIBIT A-2
Consulting Services

Keenan shall perform the following Associated Consulting Services:

1. Benefit Analysis/Financial Analysis

- A. Conducting ongoing review and analysis of the design and performance of Client's current benefit plans ("Plans") and advising Client regarding available options and alternatives, as appropriate.
- B. If Client has one or more self-funded plan(s), preparing annual self-funded plan analysis to project costs based on emerging experience, utilization and trend for plan pricing and budgeting purposes. The report will include claims analysis, reserve calculations, trend projections, a review of utilization patterns for evidence of abuse or deviation from anticipated norms, projected funding levels, COBRA rates, and an analysis of cost management techniques and programs for continued appropriateness and efficacy.
- C. Reviewing claims experience and informing Client of potential impact of developing trends and projected costs (funding levels, COBRA rates).
- D. Assisting Client with governmental reporting and filings (e.g., 5500's and Summary Annual Reports), as applicable.
- E. Periodically providing information concerning current developments and trends in employee benefits, and new legislation that may affect Client's Plans.

2. Plan Implementation Services

- A. Assisting in marketing, review, and implementation of new benefit Plans, as needed.
- B. Facilitating Client's review and approval of employee benefits booklets, certificates, insurance policies, and contracts prepared by insurance carriers and vendors providing services to or for the Plans.
- C. Reviewing and distributing vendor administrative manuals for Clients.
- D. Assisting in the drafting, review and/or amendment of Plan and related documents. Any Plan documents drafted or reviewed by Keenan and approved by Client under this Agreement shall apply solely to the Plan year during which such Service was provided. They are not intended for use beyond the Plan year for which they were created, reviewed or revised. Keenan shall not be held liable for any direct, punitive, special, consequential or incidental damages, loss of profit or revenue, loss of business, loss or inaccuracy of data or scope of insurance resulting from the continued use of such plan documents or SPD beyond the dates for which they were intended.
- E. Attending open enrollment, orientation, health fairs, and/or question and answer meetings with Client's employees. A Keenan representative will provide this assistance

for up to two (2) days of employee meetings, to be conducted during regular business hours by mutual agreement of the parties.

**EXHIBIT A-3
CUSTOMIZED SERVICES**

1. Attendance at Insurance Committee Meetings - Twelve (12) meetings.
2. No formal Agenda and Minutes.
3. Benefit Booklet:
 - a. Preparing.
 - b. Assisting with preparations.
 - c. Printing.
 - d. Mailing/Distributing.
4. Wellness Support and Committee Meetings – Twelve (12) meetings.

BOR on file

EXHIBIT B
Broker of Record Designation

This letter confirms that as of **January 1, 2013**, the organization listed below ("Client") has appointed Keenan & Associates ("Keenan") as the Broker of Record in connection with the following coverages:

Life Insurance - District Paid
AD&D Insurance - District Paid
Long Term Disability Insurance - District Paid
Vision Coverage
Delta Dental Eligibility
Medical Insurance

and such additional coverages or insurance (the "Coverage") as Client may from time-to-time request from Keenan.

With respect to the Coverage identified in this Exhibit B (and as later amended) Keenan shall have the exclusive authority and right to negotiate with insurance carriers and other coverage providers on Client's behalf. Client shall not seek or acquire quotes directly from any insurance carrier or other coverage provider during the term of this Agreement.

Keenan is authorized to provide a copy of this letter to any insurer to demonstrate Keenan's authority to obtain the Coverage. This appointment rescinds any and all previous appointments Client may have made with respect to the Coverage, and shall remain in full force and effect until cancelled in writing at any time by either party. Keenan shall at all times remain an independent contractor and shall not act as or be deemed to be an officer, employee, agent or fiduciary of Client.

Client authorizes Keenan to provide representatives of prospective insurers and other coverage providers with all information regarding Client, its operations, employees, and financial status as may be necessary for such insurer or coverage provider to evaluate Client's suitability for coverage and to prepare a quote.

Acknowledged and agreed to by:

Oakland Unified School District		Keenan & Associates	
Signature:		Signature:	
By:	Jerry Johnson	By:	
Title:	Risk Manager	Title:	

EXHIBIT C
COMPENSATION

I. COMMISSIONS

For the period from January 1, 2013 through June 30, 2013, Keenan shall receive as compensation for the Services, commissions from insurance carriers and/or other vendors for the placement of insurance coverage. Client shall have no responsibility for the payment of any such commission to Keenan. Client acknowledges that commissions paid by insurers to Keenan that are directly related to the insurance coverage purchased by Client as part of the Plans may impact the pricing that Keenan is able to obtain for Client for such coverage.

Keenan agrees that the following shall apply to commissions for the placement of Client's medical coverage through Kaiser and HealthNet:

- HealthNet commission shall be 1.5% of gross written premiums;
- Kaiser commissions shall be 0.5% of gross written premiums;
- The maximum commissions due to Keenan for this period for the Kaiser and HealthNet plans shall be \$75,000 per carrier; and
- At the end of the six-month period Keenan shall perform a true-up calculation with respect to the amount of commissions received from Kaiser and HealthNet. If Keenan has received more than \$75,000 in commission from either carrier, Keenan shall refund the amount of the excess to the applicable carrier(s).

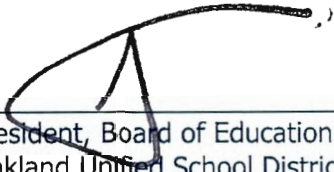
Commissions received from other carriers for the placement of Client's insurance coverages shall not be subject to the limits described above.

II. FEES

For the period July 1, 2013 through June 30, 2014, Keenan shall be compensated on a fee-only basis and shall receive no commissions from carriers for the placement of the coverages described in this Agreement. Keenan's fee during this period shall be \$19,167 per month which shall be due and payable upon receipt of Keenan's invoice.

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President, Board of Education
Oakland Unified School District



Secretary, Board of Education
Oakland Unified School District

Approved as to Form



Jacqueline Minor, General Counsel