

Board Office Use: Legislative File Info.	
File ID Number	<u>18-1378</u>
Introduction Date	<u>June 27, 2018</u>
Enactment Number	18-1055
Enactment Date	6/27/18 os



Memo

To Board of Education

From Tara Gard, Deputy Chief Talent Officer
Rebecca Littlejohn, Risk Management Officer *RL*

Date June 27, 2018

Subject Ratification of Custom Professional Services Contract with Basic Pacific of CA for Third Party Administration of District COBRA and Retiree Billing – Risk Management

Action Requested Ratification of Oakland Unified School District - Basic Pacific of CA Custom Professional Services Contract for the term July 1, 2018 to June 30, 2019 in the amount not to exceed \$50,000.

Summary On June 24, 2015, the OUSD Board of Education approved a three year contract with Basic Pacific of CA (formerly known as "Custom Benefit Administrators" or "CBA") (Enactment No.15-1194), which expires on June 30, 2018. Basic Pacific was chosen through an RFP process and has proven to be a competent and efficient service provider. The current Custom Professional Services Contract memorializes the ongoing business arrangement with Basic Pacific, incorporating by way of Exhibit A thereto the terms of the previous contract (including the scope of work) that do not conflict with the terms of the Contract at issue. Services to be provided to Risk Management.

Recommendation Ratification of Oakland Unified School District - Basic Pacific of CA Custom Professional Services Contract for the term July 1, 2018 to June 30, 2019 in the amount not to exceed \$50,000.

Fiscal Impact Fund 67 Not to exceed \$50,000

Attachments Copy of original contract

Board Office Use: Legislative File Info.	
File ID Number	18-1378
Introduction Date	June 27, 2018
Enactment Number	18-1055
Enactment Date	6/27/18 os



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

CUSTOM PROFESSIONAL SERVICES CONTRACT BETWEEN **OUSD AND BASIC PACIFIC**

This Custom Agreement (or "Contract") is entered into between Basic Pacific of CA (CONTRACTOR) and Oakland Unified School District (OUSD or District). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. **Services:** CONTRACTOR shall provide the ("Services" or "Work") as described in **Exhibit "A,"** attached hereto and incorporated herein by reference.
2. **Term:** CONTRACTOR shall commence work on July 1, 2018, or the day immediately following approval by the Superintendent as the aggregate amount CONTRACTOR has contracted with the District is below \$90,200 in the current fiscal year. The work shall be completed no later than June 30, 2019.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement. The compensation under this Contract **shall not exceed Fifty Thousand Dollars (\$50,000.00)**. This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

The granting of any payment by OUSD, or the receipt thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work which does not conform to the requirements of this Agreement may be rejected by the District and in that case must be replaced by CONTRACTOR without delay.

4. **This Section Intentionally Omitted from this Custom Contract.**

5. **CONTRACTOR Qualifications / Performance of Services:**

CONTRACTOR Qualifications: CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

Standard of Care: CONTRACTOR warrants that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

6. **Invoicing:** Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, but not be limited to: Contractor name, Contractor address, invoice date, invoice number, purchase order number, name of school or department service was provided to, period of service, name of the person performing the service, date service was rendered, brief description of services provided, number of hours of service, hourly rate, total payment requested.
7. **Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

OUSD Representative:

Name: REBECCA LITTLEJOHN
 Site /Dept.: 987-RISK MANAGEMENT
 Address: 1000 Broadway, Suite 440
Oakland, CA 94607
 Phone: (510) 879-1611
 Email: Rebecca.Littlejohn@ousd.org

CONTRACTOR:

Name: Doris Piper
 Title: BASIC PACIFIC - Director of Operations
 Address: 915 Douglas Blvd,
 Roseville, CA 95678
 Phone: 916) 303-7090
 Email: dpiper@basiconline.com

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address.

8. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

9. **Insurance:**

1. Unless specifically waived by OUSD, the following insurance is required:

- i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

CONTRACTOR does not employ anyone in the manner subject to the workers' compensation laws of California.

- ii. CONTRACTOR shall maintain Commercial General Liability insurance, including automobile coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Evidence of insurance must be attached. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policy shall protect CONTRACTOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

- iii. If CONTRACTOR is offering OUSD professional advice under this Contract, CONTRACTOR shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

OR

- iv. CONTRACTOR is not required to maintain any insurance under this agreement. (Completed and approved Waiver of Insurance Form is required from OUSD's Risk Management.) Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

10. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

11. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.

12. **Non-Discrimination:** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

13. **Drug-Free / Smoke Free Policy:** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

14. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement.

15. **Copyright/Trademark/Patent/Ownership:** OUSD understands and agrees that all matters produced under this Agreement shall remain the property of CONTRACTOR. However, upon payment by the OUSD, OUSD shall obtain a non-exclusive limited license for such handout documents only for internal physical distribution to current OUSD staff only.

16. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
17. **Termination:** OUSD may at any time terminate this Agreement upon 30 days prior written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
18. **Conduct of CONTRACTOR:** By signing this Agreement, CONTRACTOR certifies compliance with the following requirements and will provide OUSD with evidence of staff qualifications, which include:
 1. **Tuberculosis Screening:** CONTRACTOR is required to screen employees who will be working at OUSD sites for more than six hours. CONTRACTOR affirms that each employee has current proof of negative TB testing on file and TB results are monitored.
 2. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contact with OUSD pupils in providing services to the District under this Agreement."

In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONTRACTOR related persons, employee, representative or agent from an OUSD school site and, or property, CONTRACTOR shall immediately, upon receiving notice from OUSD of such desire, cause the removal of such person or persons.

19. **No Rights in Third Parties:** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
20. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law. The OUSD's evaluation may include, without limitation:
 1. Requesting that OUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 2. Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
21. **Limitation of OUSD Liability:** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.
22. **Confidentiality:** CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Contractors will be permitted access to student data only where permissible under state and federal law and only after executing OUSD's Confidentiality Agreement Regarding Student Data.
23. **Conflict of Interest:** CONTRACTOR shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.

24. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov>).

Custom Professional Services Contract

- 25. **Litigation:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- 26. **Incorporation of Recitals and Exhibits:** The Recitals and each exhibit (if any) attached hereto are hereby incorporated herein by reference. CONTRACTOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Custom Professional Services Contract, the terms and provisions of this Custom Professional Services Contract shall govern.
- 27. **Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 28. **Counterparts:** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 29. **Signature Authority:** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- 30. **Contract Contingent on Governing Board Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
- 31. **W-9 Form:** If CONTRACTOR is doing business with OUSD for the first time, complete and return with the signed Contract the W-9 form.
- 32. **Contract Publicly Posted:** This contract, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

OAKLAND UNIFIED SCHOOL DISTRICT

Aimee Eng

- President, Board of Education
- Superintendent
- Chief or Deputy Chief

J. J. [Signature]

Secretary, Board of Education

CONTRACTOR

A. Joseph Aitchison

Contractor Signature

A. Joseph Aitchison
BASIC Sr. VP Business Strategy
Print Name, Title

This Custom Professional Service Contract approved by OUSD
General Counsel 5/1/18

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

By: *[Signature]* 5/30/18
Michael L. Smith, Attorney at Law
(ccob 5/30/18)

EXHIBIT "A" SCOPE OF WORK

[IF A CONTRACTOR PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES MAY BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]

1. **Description of Services to be Provided:** Provide a description of the service(s) the contractor will provide. Be specific about what service(s) OUSD is purchasing and what *this* Contractor will do.

Exhibit A



Memo

File ID Number: 15-1403
Introduction Date: 6/24/15
Enactment Number: 15-1194
Enactment Date: 6/24/15
By: [Signature]

To Board of Education

From Vernon Hal, Deputy Superintendent of Business and Operations
Ruth Alahydoian, Chief Financial Officer
Rebecca Cingolani, Risk Management Officer

Board Meeting Date June 24, 2015

Subject Approval by the Oakland Unified School District Board of COBRA and Retiree Billing TPA RFP Custom Benefit Administrators for three fiscal years effective July 1, 2015 through June 30, 2018.

Action Requested Approval of proposal of Custom Benefit Administrators (CBA) proposal to provide COBRA and Retiree Billing administrative services for three years.

Background The District's current third party administrator, Ceridian, has been providing coverage as the third party administrator for the last several years, however the services provided are have had many issues with their customer services and support on issues have been problematic.

Discussion The objective of this request is to retain a competent, efficient and competitive arrangements with expert vendors for the services requested and improve the experience of the District's members and staff contrasting with current experience and has been approved by the Health Benefits Improvement Committee (HBIC)

Recommendation Approval by the Board of Education to replace services by Ceridian with proposed vendor Custom Benefit Administrators to provide COBRA and Retiree Billing Administration services.

Fiscal Impact Fund 67, Resource Code 0000, not to exceed \$50,000 Fiscal Year.

ADMINISTRATIVE SERVICES AGREEMENT (ASA)

This Administrative Services Agreement (Agreement), effective as of the **1st** day of **July, 2015**, is made and entered into by and between **Custom Benefit Administrators, A Division of BASIC**, that acts as a third party administrator (CBA), and **Oakland Unified School District**, (EMPLOYER) the sponsoring employer of one or more employee benefit plans (referred to herein as "employee benefit plans").

RECITALS

- A. EMPLOYER has established one or more employee benefit services identified below for the benefit of its employees, former employees, and their dependents.
- B. EMPLOYER is the Plan Administrator of such employee benefit plan, and is the Plan Fiduciary, and has the responsibility for appointing the third-party contract administrator of such employee benefit plan, and shall remain responsible for the maintenance and operation of such employee benefit plan.
- C. CBA is engaged in the business of providing certain third-party contract administration services to sponsoring employers and Plan Administrators of such employee benefit plans.
- D. EMPLOYER desires to enter into an agreement with CBA under which CBA will provide certain day-to-day administration services to EMPLOYER with respect to the employee benefit plans identified in this Agreement and Addendums identified below and attached hereto:
 - a. **COBRA Administration** dated **July 1, 2015** (The original start date with CBA is July 1, 2015.)
 - b. **Billing Administration (Retiree, Leave)** dated **July 1, 2015** (The original start date with CBA is July 1, 2015.)

AGREEMENT

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Engagement of CBA: EMPLOYER hereby engages CBA and CBA hereby accepts such engagement by EMPLOYER to perform the third party plan administration services specified in this Agreement and attached Addendums to this Agreement, with respect to the employee benefit plan(s) and consistent with the relevant provisions of the Internal Revenue Code ("Code"), ERISA (if applicable) and the terms of the employee benefit plans included by Addendum herein. EMPLOYER understands and agrees that should new and/or additional regulations, requirements or costs be imposed on EMPLOYER by the relevant provisions of the Internal Revenue Code ("Code"), ERISA (if applicable) or the terms of the employee benefit plans included by Addendum herein, CBA may modify said services during the term of this Agreement in order to timely comply with such new requirement(s) and/or charge additional fees for such new requirement(s) if required by law or requested by EMPLOYER. CBA will provide EMPLOYER with prior written notice of any/all additional fees charged for additional services.
2. Term: The term of this Agreement is specified on the applicable Addendum(s). For each succeeding contract year, this Agreement and Addendum(s) shall renew upon the earlier of: (1) receipt of confirmation from EMPLOYER for the period specified on the applicable Addendum(s); or, (2) automatically on the first day of the succeeding contract period, unless discontinued by either party for any of the following reasons:
 - A. As of the last day of the term of the Agreement by either party, in its sole and absolute discretion, giving at least sixty (90) days prior written notice to the other party that the Agreement will not be renewed;
 - B. As of any date upon which EMPLOYER and CBA mutually agree;
 - C. As of the date when EMPLOYER fails to provide the agreed upon funds necessary for the efficient performance of CBA's responsibilities under this Agreement (Notice with a fair and reasonable opportunity to remedy (as defined in 26.B.) will be provided to EMPLOYER prior to termination of this agreement by CBA);
 - D. As of the end of a period of thirty (30) days after written notice of termination for cause has been given by either party to the other, provided that such cause has not been cured within such thirty (30) day period;
 - E. Upon termination in accordance with the Force Majeure paragraph, below;
 - F. Upon the voluntary or involuntary dissolution of either party; or,
 - G. As of the first day of any calendar month after ninety (90) days formal notice is provided by either party without cause.

3. Duties Of CBA: CBA shall provide to or on behalf of EMPLOYER the services set forth in the Agreement and Addendum(s) (collectively, the "Services").
4. Standards of Performance: CBA will perform all Services diligently and professionally, and at all times, in accordance with the standards and practices of care, skill, and diligence customarily observed by similar firms under similar circumstances. CBA warrants that 1) it has the full right, power, legal capacity and authority to enter into, deliver and fully perform under this Agreement, 2) that its performance hereunder will comply with all applicable laws, rules and regulations governing such Services; and, 3) that it will comply with all applicable privacy laws (if required for the services provided, a separate Business Associate Agreement shall be executed).
5. Responsibility of EMPLOYER: EMPLOYER understands and agrees to the following:
 - A. EMPLOYER understands and agrees that CBA's performance under this Agreement shall be delivered so as to comply with the requirements of all applicable laws, including HIPAA, and with the documents governing such services to the extent that such documents are not inconsistent with applicable law. EMPLOYER further understands and agrees that CBA's material may be superseded by changes in the regulations or applicable laws governing the services provided by CBA. EMPLOYER further understands & agrees that CBA's responsibilities are limited to those services specified in the attached Addendum(s). EMPLOYER understands that it is solely responsible to ensure their organization is in compliance with regulations not specified in their Addendum(s), such as compliance with the HIPAA Privacy regulations.
 - B. In performing its services under this Agreement, CBA must necessarily rely upon EMPLOYER and others to provide CBA with timely, accurate and complete information as requested by CBA. CBA shall not be responsible for any losses, damages, claims or liability of any kind, by the failure of EMPLOYER or others to provide such timely, accurate and complete information to CBA. EMPLOYER is responsible for supervising the timely delivery of data and information requested by CBA.
 - C. EMPLOYER shall be responsible for the timely execution and delivery or filing of all documents and forms. CBA shall provide all necessary documents and forms in a timely manner so as to allow Employer to review and timely file such documents and forms. When reviewing any documents or forms prepared by CBA, EMPLOYER shall report any inaccuracies or errors to CBA upon discovery, or as soon as possible thereafter. Although CBA may assist EMPLOYER as requested in the preparation of forms, returns and other documents, the decision to prepare and file such documents, as well as all other decisions relating to compliance with the reporting and disclosure requirements applicable to the employee benefit plan(s) shall be the sole responsibility of EMPLOYER.
 - D. EMPLOYER shall notify CBA of any changes in information previously given or supplied to CBA that will impact CBA's provision of Services under this Agreement, particularly with respect to any change or anticipated change in the employee benefit plan(s) or in the employee census data.
 - E. EMPLOYER is required to meet all reporting, disclosure and employee benefit plan requirements not specifically performed by CBA and identified herein. Failure to comply with all such reporting and disclosure requirements is the sole responsibility of EMPLOYER.
 - F. Except as specifically set forth in this Agreement, CBA shall have no responsibility or liability to any person to fund any employee benefit plan benefits.
 - G. CBA may seek instructions from EMPLOYER on any matter related to the interpretation of any matter pertinent to the benefit plan(s) or services provided by CBA and may await the written instructions from EMPLOYER without incurring any liability under this Agreement whatsoever. If at any time EMPLOYER should fail to give directions to CBA in a timely manner, CBA may act or refrain from acting, and shall be protected in acting or refraining from acting without such directions, as CBA reasonably deems in good faith to be appropriate and advisable under the circumstances.
6. Record Keeping: EMPLOYER and CBA understand and agree to the following:
 - A. All original employee benefit plan records and documents shall be maintained by EMPLOYER.
 - B. EMPLOYER understands and agrees that CBA will retain records for a minimum period of seven (7) years. Records more than seven (7) years old may be destroyed in an appropriate manner. Any records containing protected health information (as defined by HIPAA) shall be maintained in accordance with (1) the terms of the HIPAA privacy and security rules, as well as (2) the separate BAA entered into between CBA and Employer.
 - C. Upon the termination of this Agreement, CBA will, upon request by EMPLOYER, complete the processing of this Agreement under the terms and conditions that would be applicable if this Agreement were still otherwise in full force and effect through the date of termination. Upon receipt of a directive from EMPLOYER, CBA

will provide all information requested and maintained by CBA to ensure the smooth and timely transfer of services to the new administrator. The data will be provided in CBA's standard electronic format. An additional fee of \$200 per hour will be charged if EMPLOYER requests that CBA provide data/materials in a non-standard format, or for assistance gathering information not maintained by CBA. Undisputed fees must be paid to date prior to CBA providing any data or material.

- D. CBA will promptly make copies of any employee benefit plan records and documents in its possession available to EMPLOYER upon request. CBA shall also permit authorized representatives of EMPLOYER, at reasonable times, to have access to, examine, and make copies of, such records and documents, at EMPLOYER's expense.
 - E. Should copies of employee benefit plan records or documents be requested by any employee, participant, beneficiary, court or governmental agency, CBA will promptly notify EMPLOYER and will make and provide the requested copies.
7. Confidential Information: All records, files, documents (including certain information that is known by CBA to be confidential and proprietary to EMPLOYER's general organization, operations and structure) and the like relating to EMPLOYER's employee benefit plan(s), including, without limitation, personal information of employees of the EMPLOYER or participants in the employee benefit plans, with which CBA shall come into contact shall remain the sole property of EMPLOYER and shall not be disclosed to third parties except as authorized in this Agreement, as authorized by the separate BAA between the Employer and CBA, as otherwise authorized by EMPLOYER in writing, or pursuant to the direction or order of a governmental agency or a court of competent jurisdiction. To the extent permitted, CBA will give EMPLOYER adequate time to contest such direction or order. However, any additional time spent by CBA pertaining to an EMPLOYER that chooses to contest a governmental direction or order shall be billed to the EMPLOYER at the rate of \$75 per hour, plus legal costs, if applicable. Notwithstanding any of the foregoing, any examination or copying of participant records shall be carried out in a manner designed to protect the confidentiality of such information. All written materials constituting or incorporating any such information described herein shall be returned to EMPLOYER upon request.
8. No Legal or Tax Services: EMPLOYER recognizes that CBA is not authorized to engage in the practices of law or accounting and that CBA will not provide legal or tax services to EMPLOYER or any other person. EMPLOYER agrees that they are responsible to obtain legal and tax guidance from their counsel when appropriate. Whenever a legal or tax issue arises in the course of the work to be performed under this Agreement, EMPLOYER shall be responsible to obtain such legal or tax guidance as may be necessary to resolve the issue. EMPLOYER shall notify CBA of their decision accordingly and CBA shall be entitled to rely upon direction from EMPLOYER in the performance of its services for EMPLOYER.
9. Advice and Recommendations: EMPLOYER understands and agrees that, although CBA may from time to time call to EMPLOYER's attention and make recommendations concerning potential or actual problems that may come to CBA's attention with respect to the operation and administration of EMPLOYER's employee benefit plan(s), such advice and recommendations are a matter of accommodation only and CBA shall have no duty to give such advice, make such recommendations, or otherwise to question any actions or decisions of EMPLOYER, the sponsoring employer, any employee benefit plan fiduciary, or any of their respective agents or employees.
10. Not a Fiduciary: EMPLOYER and CBA understand and agree to the following:
- A. EMPLOYER understands and agrees that CBA is not the "Plan Administrator" of any of the employee benefit plan(s) and that CBA is not a fiduciary with respect to any such employee benefit plan. CBA acts in a ministerial capacity only. EMPLOYER will communicate to all employee benefit plan fiduciaries and participants that CBA does not act as a fiduciary.
 - B. EMPLOYER and each employee benefit plan fiduciary shall retain his, her, its or their full authority, discretion and responsibility for the operation of the employee benefit plan(s) with respect to which CBA is providing its services under this Agreement. CBA shall be entitled to rely on the EMPLOYER's or other plan fiduciary's decision with respect to any claim for benefits under any employee benefit plan, and CBA shall perform its services under this Agreement in accordance with such decisions.
 - C. Unless expressly stated in an amendment to the Agreement, or in a separate agreement, CBA accepts no responsibility for the distribution of summary plan descriptions (SPD's) to employees or dependents.

11. Independent Contractor Status: Neither CBA, nor any party contracting with CBA shall be deemed to be an employee of EMPLOYER. CBA is and shall be an independent contractor with respect to EMPLOYER. The legal relationship of any person performing services for CBA shall be one solely between CBA and such person. Neither party has the right or ability to bind the other party to any agreement with a third party or to incur any obligation or liability on behalf of the other party without the other party's written consent.
12. Indemnity by EMPLOYER: EMPLOYER agrees to indemnify, defend and hold CBA, its partners, directors, officers, employees, affiliates and successors harmless from any claim, damage, loss, demand, benefit, payment, tax, costs, charges, penalties and reasonable legal expenses (collectively, "Losses") resulting directly or indirectly from EMPLOYER's breach of its obligations under this Administrative Services Agreement and Addendum(s) or as a result of EMPLOYER's negligence or willful misconduct in performing its duties and responsibilities under the Agreement and Addendum(s) except to the extent such Losses result directly or indirectly from CBA's breach of its obligations under this Administrative Services Agreement and Addendum(s) or from CBA's negligence or willful misconduct in performing its duties and responsibilities under this Administrative Services Agreement and Addendum(s).
13. Indemnity by CBA: CBA agrees to indemnify, defend and hold EMPLOYER, its owners, partners, directors, officers, employees, affiliates and successors harmless from any claim, damage, loss, demand, benefit, payment, tax, costs, charges, penalties and reasonable legal expenses resulting directly or indirectly from CBA's breach of its obligations under this Administrative Services Agreement and Addendum(s) or as a result of CBA's negligence or willful misconduct in performing its duties and responsibilities under the Agreement and Addendum(s).
14. Insurance: CBA shall at all times maintain business & liability insurance coverage as well as all coverage required by law for its services, obligations, employment and physical assets. All coverage shall meet or exceed minimum required coverage levels.
15. Amendment: Except as otherwise provided in this Agreement, no waiver or modification of any part of this Agreement shall be valid unless in writing and duly executed by both parties. This Agreement may be amended at any time, in whole or in part, in writing signed by EMPLOYER and CBA that recites specifically that it is an amendment to the terms of this Agreement.
16. Governing Law, Jurisdiction and Venue: The laws of the State of California, without regard to California's conflict of laws provisions, shall govern the construction and interpretation of this Agreement. Both Parties consent to jurisdiction and venue in the state and federal courts in California. In any action or suit to enforce any right or remedy in this Agreement or to interpret any provision of this Agreement, the prevailing Party in a final determination shall be entitled to recover its costs, including reasonable attorneys' fees.
17. Audit Rights. The parties agree to cooperate in all reasonable audits. Audit fees shall be payable by the party initiating the audit. Audits shall be conducted using procedures mutually agreed upon by the parties. Results of the audit may be shared with the party being audited at the sole discretion of the party initiating the audit.
18. Non Assumption of Liabilities. Unless specifically provided in this Agreement and Addendum(s), the parties do not assume the existing or future obligations, liabilities or debts of the other party.
19. Partial Invalidity: The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.
20. Waiver: Failure to insist upon strict compliance with any provision of this Agreement shall not be deemed to be a waiver of such provision or any other provision. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other provision or of any subsequent breach of such provision.
21. Assignment: This Agreement shall not be assigned by EMPLOYER or CBA without the prior consent of the other party.

22. Notice: Any notice required or permitted to be given under this Agreement shall be provided in writing and delivered by the most expeditious means available including, but not limited to email, facsimile, overnight courier or certified or registered mail as set forth below.

Notice to EMPLOYER shall be sent to:

Employer Name: Oakland Unified School District

Attention: Pam Goo

Notice to CBA shall be sent to:

Custom Benefit Administrators

Attention: Robert P. Hayes, President


23. Enforcement: In the event a dispute should arise regarding the interpretation or enforcement of any of the terms of this Agreement, the parties shall attempt in good faith to resolve informally and promptly any such dispute. The Parties agree that this Agreement shall be governed by and construed and interpreted in accordance with the laws of California without giving effect to any principles of conflicts of law.
24. Force Majeure: In the event that either party is unable to perform any of its obligations under this Agreement because of an occurrence beyond the control and without the fault or negligence of the party affected and which by exercise or reasonable diligence such party is unable to prevent or provide against. (e.g., natural disaster, actions or decrees of governmental bodies, etc.) (Force Majeure Event), the affected party shall immediately give notice to the other party and shall resume performance within a reasonable time after the cause of such failure has been removed. Upon receipt of such notice, all of the other party's obligations under this Agreement, the performance of which is dependent upon the performance of the obligation that has been delayed by the Force Majeure Event, shall be suspended. If the period of nonperformance by the affected party exceeds thirty (30) days from the receipt of notice of the Force Majeure Event by the other party, the other party may terminate this Agreement immediately upon written notice to the affected party.
25. Limitations on Actions: Notwithstanding any applicable law that may provide for a longer period of time, no action, regardless of its form, arising out of this Agreement may be brought by either party more than four (4) years after the cause of action has arisen, including if the action involves nonpayment.
26. Fees and Charges: Fees and charges specific to an employee benefit plan or service provided by CBA are stated on the Addendum(s) made part of this Agreement. General fees and charges are as follows:
- A. All undisputed fees are due and payable within thirty (30) days of the date of the invoice. A late payment penalty may be charged for all undisputed fees not received within sixty (60) days of the invoice date. The penalty will be one and one half percent (1.5%) of the undisputed delinquent balance per month or, where a lower rate is prescribed by law, the highest rate thereby permitted. In addition, CBA retains the right to suspend or terminate services if the delinquent payment is not received by CBA within ninety (90) days of the invoice date, provided EMPLOYER is given at least thirty (30) days' notice of delinquency. An additional reinstatement fee will apply to reinstate services after suspension or termination due to EMPLOYER's failure to pay undisputed fees by the deadline stated herein.
 - B. Upon request by EMPLOYER, CBA will assist EMPLOYER with issues that existed prior to the commencement of services with CBA. The additional charge for this service is \$75 per hour.
 - C. Work that must be duplicated or corrected resulting from late or inaccurate information from EMPLOYER (e.g. resend COBRA notices, correct posted FSA contributions, etc.) may be charged at the rate of \$75 per hour.
 - D. EMPLOYER may request that any document or material be mailed via special delivery. EMPLOYER understands and agrees to pay shipping and handling charges incurred by CBA for all requests for special delivery. Upon request, CBA will ask EMPLOYER for their shipping number. Alternatively, CBA will add the charge to a subsequent EMPLOYER invoice.
 - E. CBA will add an additional fee of \$20 to EMPLOYER's monthly fee invoice for each wire transfer received from EMPLOYER (fees or claim funding). EMPLOYER may avoid this charge by remitting funds by check or ACH.
 - F. If requested by EMPLOYER, CBA will name EMPLOYER as a "Primary" and/or "Additional" insured on CBA's General/Business liability policy at no charge. However, should EMPLOYER require CBA to name EMPLOYER as "Primary and Non-Contributory" insured, EMPLOYER understands and agrees that CBA

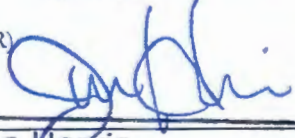
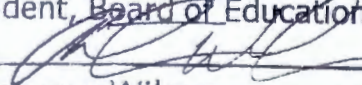
will pass through to EMPLOYER (i.e. EMPLOYER will pay) additional charges (if any) charged by CBA's insurer to name EMPLOYER as "Primary and Non-Contributory".

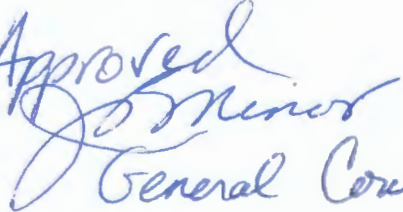
- 27. Consideration: EMPLOYER understands and agrees that authorizing services to be performed by CBA or paying fees to CBA (whether paid directly or by a third-party), constitutes acceptance by EMPLOYER of the terms and conditions of this Agreement (including all Addendums listed herein) even if EMPLOYER has not yet executed and returned this Agreement to CBA by the first day of the contract period specified herein.
- 28. Entire Agreement: This Agreement (including the Addendums which are a part of this Agreement and the Business Associate Agreement, if applicable) constitutes the entire agreement between CBA and EMPLOYER as it relates to the provision of administrative services. This Agreement supersedes all prior and contemporaneous agreements, understandings and representations between the parties, whether written or oral.
- 29. Signatures. This Agreement may be executed in separate counterparts, and by facsimile or electronically, each of which when so executed and delivered shall be a legally-binding original and all such counterparts shall together constitute one and the same instrument, binding on all parties, notwithstanding that each of the parties may have signed different counterparts. The parties agree that delivery of an executed counterpart signature hereof by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the duly-authorized officers of the Parties hereto have executed this Agreement below.

Custom Benefit Administrators, A Division of
BASIC
(CBA)

By: 
Robert P. Hayes
Title: Principal
Date: June 9, 2015

OAKLAND UNIFIED SCHOOL DISTRICT
(EMPLOYER)
By:  6/25/15
James Harris
President, Board of Education
Title:  6/25/15
Antwan Wilson
Secretary, Board of Education
Date: Secretary, Board of Education

Approved

General Council

Addendum to the ADMINISTRATIVE SERVICES AGREEMENT

COBRA ADMINISTRATION SERVICES

This Addendum to the Administrative Services Agreement is made and entered into by and between **Custom Benefit Administrators, A Division of BASIC (CBA)**, which acts as a contract administrator for Federal COBRA administration services (and will assist with required State COBRA notifications), and **Oakland Unified School District**, the sponsoring employer (EMPLOYER).

TERM

The term for services provided herein shall commence on **July 1, 2015** and end on **June 30, 2018**. Thereafter, this Agreement may be extended or revised for successive Agreement Periods by mutual consent of both parties.

INCLUDED SERVICES:

In consideration for the fees listed, CBA will provide the following services:

- Assist EMPLOYER in fulfilling those duties and responsibilities required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, the regulations promulgated thereunder by the Department of Labor (DOL regulations) and the Department of the Treasury, the American Recovery and Reinvestment Act of 2009, and all other administrative law, guidance and applicable decisional law under and/or impacting COBRA (collectively, "Applicable Law") with regard to the employee benefit plans communicated to CBA by EMPLOYER on the Employer Application or subsequent benefit reporting/change form.
- EMPLOYER may transmit COBRA eligibility data to CBA via an electronic file format acceptable to CBA, EMPLOYER may use paper forms provided by CBA, or EMPLOYER may utilize the CBA COBRA web portal.
- CBA will furnish all notices required by the DOL regulations. It will utilize notices that comply with the requirements of Applicable Law and, in particular, it will utilize a General Notice of COBRA Continuation Coverage Rights ("General Notice") and a COBRA Continuation Coverage Election Notice ("Qualifying Event Notice") that are consistent with the DOL model notices. It will furnish such notices in the time and manner prescribed by Applicable Law.
- CBA will make every reasonable effort to mail the DOL Initial (General) Notice and Qualifying Event Notice within 3 business days following proper notification from EMPLOYER. CBA guarantees to mail the DOL Initial (General) Notice and Qualifying Event Notice within 14 days of receipt of all required information from EMPLOYER. (However, the Qualifying Event Notice may not be mailed more than 30 days in advance of the date of the qualifying event, as defined in Applicable Law).
- The DOL General Notification includes the content required for the HIPAA Initial Notification. CBA will also mail a separate HIPAA Initial Notification to employees that waive coverage with EMPLOYER at no additional charge to EMPLOYER. However, to

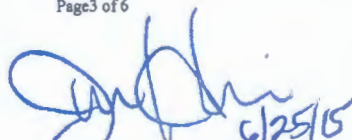
receive this value-added service, EMPLOYER must notify CBA of all employees that waive coverage in manner required by CBA.

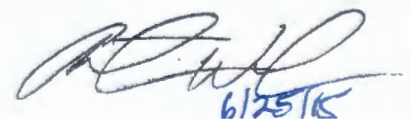
- CBA will send by permitted method (e.g. USPS First Class mail) all notices required by the DOL regulations or by this Agreement (with related materials) to the address provided by EMPLOYER. CBA will retain an electronic copy of all notices and a "hard" copy of the postage-prepaid envelope for a period of not less than six (6) months. Thereafter, CBA will maintain an electronic copy of the envelope in .pdf format for a minimum of seven (7) years.
- CBA will provide all notices concerning continuation and conversion health coverage required to be provided under California law by EMPLOYER (i.e. not required to be provided by the insurance carrier or HMO). Such notices will be furnished with the General Notice, the Qualifying Event Notice and the notice that COBRA coverage is expiring or is terminating early, and as otherwise required by applicable California law.
- CBA will notify the carrier (or EMPLOYER if CBA reports eligibility to EMPLOYER instead of the carrier) within 3 business days of receiving properly completed COBRA election forms and full payment of the initial premium.
- CBA will mail (USPS First Class) all required forms and notices.
- CBA will mail (USPS First Class) a termination of COBRA rights notice to qualified beneficiaries, as defined under Applicable Law, (QBs) whenever a QB fails to elect COBRA within the election period or initial payment period.
- CBA will mail (USPS First Class) a Notice of Termination of COBRA coverage to qualified beneficiaries, as defined under Applicable Law, (QBs) upon any of the following events:
 - COBRA premiums are not paid in full by the end of the applicable Grace Period;
 - The Employer ceases to provide any group health plan to any employee;
 - The qualified beneficiary becomes entitled to Medicare after electing COBRA coverage;
 - A disabled qualified beneficiary whose disability caused an extension of the COBRA maximum coverage period is determined not to be disabled; or
 - The qualified beneficiary's COBRA coverage is terminated for cause.
- CBA will mail (USPS First Class) an expiration of COBRA coverage notification to QBs within sixty (60) days prior to the expiration of the applicable COBRA coverage period (18, 29 or 36 months) and advise QBs of their right to convert their coverage to an individual contract (if available), their right to extend COBRA under State law (if applicable), and, their right to elect coverage via the marketplace.
- CBA will provide each QB who elects COBRA coverage with payment coupons. New coupons will be provided whenever there is a change of COBRA coverage or premiums. Employer understands and agrees that payment coupons are a value-added service that is not required and QBs will remain fully responsible to pay their COBRA premiums on a timely basis even if CBA fails to deliver coupons.
- CBA will maintain all records, correspondence, reports, letters and notifications in PDF format for a minimum of seven (7) years.

 6/25/15

 6/25/15

- CBA will back-up all electronic data files on a daily basis. Back-up data is stored in a manner intended to comply with all current HIPAA privacy and security regulations (refer to separate BAA for details).
- CBA will receive payments directly from COBRA participants, except when EMPLOYER elects to have the carrier bill & collect COBRA premiums. EMPLOYER understands and agrees that CBA will no longer be responsible for COBRA compliance & administration for premiums billed & collected by an insurance carrier once CBA has notified the carrier of the participant's COBRA election.
- If a QB underpays their COBRA premium by an "insignificant amount", CBA will issue a notice to the QB giving them 30 days to make up the underpayment. EMPLOYER understands & agrees to CBA's definition of "insignificant amount", which is the lesser of \$50 or 10% of the premium due.
- CBA will maintain all banking requirements necessary to receive payments from participants, unless CBA is not responsible to bill & collect the premium or EMPLOYER elects CBA's "pass through" service option.
- After the end of each calendar month, CBA will close out the prior month between the 5th and 15th business day of the following month. Upon closing out the month, CBA will post updated records to the web portal.
- Between the 5th and 15th business day of each month, CBA will remit premiums for the previous month to EMPLOYER (unless CBA pays the carriers directly). EMPLOYER is responsible to audit the CBA payment against carrier invoices monthly to ensure EMPLOYER does not pay carrier(s) for participants who have not paid their COBRA premiums. EMPLOYER fully understands that carriers will generally not back-date terminations more than 30 to 60 days. EMPLOYER further understands and agrees that EMPLOYER is fully responsible to notify CBA and the carrier of a discrepancy within 30 days of receipt of the reports. Should EMPLOYER fail to notify the carrier(s) of a discrepancy within this time frame, EMPLOYER agrees to assume full responsibility for non-refundable premiums paid to carrier(s). Regardless of the circumstances, CBA's liability to compensate EMPLOYER for non-refundable premiums paid to carriers shall not exceed an amount equal to one (1) monthly premium for the applicable Qualified Beneficiary. This one month limitation of financial liability only applies if EMPLOYER pays COBRA premiums directly to the carrier. If CBA pays the carriers directly, CBA accepts full financial responsibility for premiums due if CBA fails to maintain eligibility records with all carriers.
- CBA will provide unlimited toll-free customer service for employers and participants.
- If elected by EMPLOYER, CBA will provide HIPAA Certificates of Creditable Coverage to each individual being offered COBRA coverage continuation. The CBA HIPAA Certificate service is limited to the following events: (1) CBA will mail (USPS First Class) HIPAA Certificates with the Qualifying Event Notice; (2) CBA will mail (USPS First Class) HIPAA Certificates upon the failure of a QB to elect and timely pay for COBRA coverage; and, (3) CBA will mail (USPS First Class) HIPAA Certificates to covered individuals upon termination of COBRA coverage for any reason, including the failure to pay premiums within the grace period and the end of the COBRA coverage period.

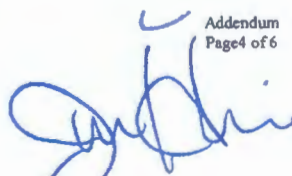

6/25/15


6/25/15

- If requested by EMPLOYER (and approved by CBA for each employee benefit plan requested), CBA will pay COBRA premiums directly to the appropriate carrier or TPA. This optional service requires that the carrier must: (1) provide a separate bill & account number for COBRA participants; (2) not require EMPLOYER to pay the COBRA bill "as billed"; (3) accept payment and eligibility data up to 60 days in arrears; and (4) accept CBA reporting forms.
- If requested by EMPLOYER (each year), CBA will mail, assist COBRA participants, collect and process "open-enrollment" elections for QBs. EMPLOYER must provide CBA with a "mail-ready" enrollment packet (hard copy or electronic) at the same time and in the same manner as EMPLOYER provided to active employees. The basic service includes a maximum packet size of 11 pages (22 sides). Packets printed by CBA are limited to grayscale. Packets will be mailed USPS First Class. The charge for this service is listed on the fee schedule.
- If elected by EMPLOYER, CBA will "pass through" COBRA premiums received from QBs directly to EMPLOYER within 2-business days of receipt. If "pass through" is elected, CBA will not deposit COBRA premiums received from QBs. At the end of each month, CBA will provide EMPLOYER with a full accounting of premiums received for the previous month and invoice EMPLOYER for the 2% fee paid by participants. EMPLOYER agrees to reimburse CBA for the 2% fee in a timely basis. If EMPLOYER fails to reimburse CBA timely, CBA may suspend COBRA services until such time as EMPLOYER pays the fee owed. CBA will notify EMPLOYER if services are at risk of being suspended and . CBA will remove the suspension immediately upon receipt of the 2% fees due.
- CBA will assist EMPLOYER at EMPLOYER'S request providing records for audits, whether initiated by a governmental agency or internally by EMPLOYER. CBA will not charge EMPLOYER any additional fee for standard management reports that can be generated directly from CBA's administrative systems. If EMPLOYER is an active client of CBA, CBA will not charge EMPLOYER for the first hour of CBA staff time required to provide EMPLOYER with all additional information requested/required by EMPLOYER, including but not necessarily limited to: researching CBA records maintained outside the administrative system, locating/providing copies of checks, attending meetings on behalf of EMPLOYER and organizing/generating custom reports. Time in excess of one hour (for active clients) will be billed at the rate of \$75 per hour.
- CBA Service Guarantee: CBA agrees to fully indemnify, defend and hold EMPLOYER, its partners, directors, officers, employees, affiliates and successors harmless from any claim, damage, loss, demand, benefit, payment, tax, costs, charges, penalties and legal expenses resulting from CBA's breach of its obligations under this Addendum to the Administrative Services Agreement or as a result of CBA's negligence or willful misconduct in performing services under the Addendum and master Service Agreement; provided that EMPLOYER understands and agrees that the timelines for CBA to mail required notices do not commence until CBA receives complete, accurate & legible information from EMPLOYER.

Duties of EMPLOYER


- EMPLOYER understands and agrees to provide CBA with all carrier information necessary for CBA to perform it's duties under this Agreement, including but not limited to the plan name, plan number, renewal date, and eligibility contact information (including fax number).

 6/25/15

 6/25/15

EMPLOYER understands and agrees to notify CBA of plan and/or eligibility changes in a timely manner. EMPLOYER understands and agrees that CBA is in no way responsible to maintain accurate information without proper notification from EMPLOYER.

- EMPLOYER understands and agrees to remain financially responsible to maintain accurate eligibility records with carriers & CBA. If EMPLOYER pays COBRA premiums to the carrier(s), EMPLOYER agrees to review carrier bills on a monthly basis to ensure: (1) COBRA participant eligibility is accurately reflected; and, (2) the premiums charged by the carriers match the premiums reported by CBA. In addition, EMPLOYER is obligated to generate and review management reports periodically in order to: (1) ensure that DOL General Notices were provided to all designated individuals; (2) ensure that all Qualifying Event Notices were mailed to all QB's reported to CBA; and, (3) ensure that CBA eligibility reports match the carrier bills & EMPLOYER records. EMPLOYER understands and agrees that, even if CBA fails to notify carriers properly, any liability, premiums, penalties, and other charges resulting from EMPLOYER'S failure to provide & maintain accurate information with CBA is and shall remain the sole responsibility of EMPLOYER.
- EMPLOYER understands and agrees to remain solely responsible for all HIPAA notification requirements except those specifically agreed to by CBA in this or another Addendum to the service Agreement.
- EMPLOYER agrees to notify CBA timely upon an active employee or spouse first becoming covered under one or more COBRA qualified health plans. EMPLOYER understands and agrees that whenever possible, CBA must be notified prior to coverage taking effect and never more than 14 days after coverage takes effect.
- EMPLOYER agrees to notify CBA upon the occurrence of a COBRA "qualifying event" (as defined under Applicable Law) that results in a loss of coverage for an employee, spouse (same or opposite sex), dependent or Domestic Partner (if EMPLOYER provides COBRA coverage to domestic partners). EMPLOYER understands and agrees that it is legally responsible to notify CBA of all COBRA Qualifying Events no later than 30 days after the event date.
- EMPLOYER understands that it is EMPLOYER'S responsibility to notify CBA in advance of adding, dropping or changing any health plan subject to COBRA. EMPLOYER agrees to notify CBA at least 30 days in advance of adding, dropping or changing any health plan subject to COBRA, or, if less, immediately upon EMPLOYER receiving the information from the carrier(s). A "change" includes, but is not limited to, change of premium. EMPLOYER further understands that COBRA requires that EMPLOYER provide COBRA participants with reasonable advance notice of a premium increase. Should EMPLOYER not notify CBA of a rate or plan change (including adding or terminating plans) in a timely manner, EMPLOYER understands that EMPLOYER may be required to absorb the additional cost of the premium increase for any period during which the COBRA participant did not receive reasonable advance notification.
- EMPLOYER understands and agrees that all material generated by CBA will be provided exclusively in English.


6/25/15


6/25/15

- EMPLOYER understands and agrees to pay the charge for all requests for special delivery of any item. Upon request, CBA will ask EMPLOYER for their shipping number. If no shipping number is available, CBA will add the charge to a subsequent EMPLOYER invoice.
- EMPLOYER understands and agrees to continuously maintain one or more EMPLOYER email addresses with CBA at all times. EMPLOYER further agrees to notify CBA of a new/changed email address in a timely manner.

ADMINISTRATION FEES:

One-time Transfer Fee (charged for each Qualified Beneficiary or COBRA participant that exists prior to the inception of CBA services or upon a future acquisition/merger): **INCLUDED**

Annual Fee (charged at the beginning of each contract year): **WAIVED**

Base Monthly Fee (based on 4,000 to 4,999 eligible employees): **\$1,275 ***

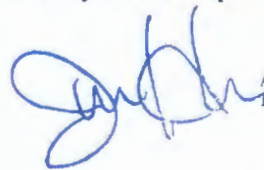
* The Base Monthly Fee for 4,000 to 4,999 benefitted employees is guaranteed for 3 years. If enrollment falls to between 3,000 to 3,999 benefitted employees prior to the second or third contract renewal year, the monthly fee will drop to \$1,075 for that year. Conversely, if enrollment grows to 5,000 to 5,999 benefitted employees prior to the start of the second or third contract year, the Base Monthly Fee will increase to \$1,475 for that year.

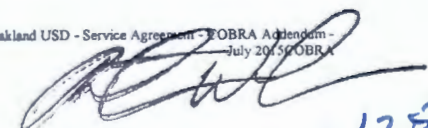
The 2% COBRA fee will be retained by CBA.

COBRA service include ALL COBRA health plans offered by the District.

Additional and/or Optional Services:

- Additional work required by new /amended laws impacting COBRA: **Charged as needed, based on \$75/hour**
- Does EMPLOYER Elect the Direct Pay service with CBA? **YES**
 - If yes, the additional fee will be: **Included in Base Monthly Fee**
 - If yes, extra hourly charges may apply for assistance Required to reconcile carrier invoices that are out of balance at the time CBA becomes responsible to maintain eligibility with the carriers. The charge for this extra time shall be billed at the rate of: **\$75 Per Hour**
- Does EMPLOYER elect CBA's "Pass Through" service: **NO**
- Does EMPLOYER elect HIPAA Certifications? **NO**
- Blanket-mail DOL General Notice to all covered employees and covered spouses (requires electronic file from employer): **\$2.65 (max. 1 ounce) per Notice**
- Open enrollment – Mail, assist Participants and process open enrollment for COBRA participants and QB's (includes USPS First Class postage – Max 11 pages). Employer Must provide CBA with "Mail Ready" packets: **Included**
- Additional service time beyond the scope of this agreement: **\$75 per hour**


 Addendum
 Page 6 of 6
 6/25/15

2_Oakland USD - Service Agreement - COBRA Addendum -
 July 2015 COBRA

 6/25/15

ADDENDUM TO THE ADMINISTRATIVE SERVICES AGREEMENT
RETIREE & LEAVE BILLING ADMINISTRATION SERVICES

This Addendum to the Administrative Services Agreement is made and entered into by and between **Custom Benefit Administrators, A Division of BASIC (CBA)**, which acts as a third party administrator for billing services, and **Oakland Unified School District**, the sponsoring employer (EMPLOYER).

TERM:

The term for services provided herein shall commence on **July 1, 2015** and end on **June 30, 2018**. Thereafter, this Agreement may be extended or revised for successive Agreement Periods by mutual consent of both parties.

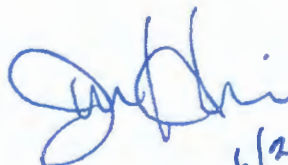
INCLUDED SERVICES:

In consideration for the fees listed, CBA will provide the following services:

- Bill and collect health insurance premiums for retirees and employees on approved Leave
- Bill and collect premiums as follows:
 - (1) EMPLOYER (or EMPLOYER's designated representative) shall be responsible to provide CBA with the correct premium to be charged to participants.
 - (2) CBA will send payment coupons to each participant.
 - (3) Participants will pay premiums directly to CBA. Participants may choose to pay their premiums by check, ACH Draft, credit card or virtual check. A \$20 convenience Fee will be charged to the participant for credit card and virtual check payments.
 - (4) After the end of each month, CBA will remit all premiums received for the prior month directly to EMPLOYER. The remittance will include a report listing the amount paid by each participant.
- Provide unlimited toll-free customer service support for HR/Payroll staff and retirees/Leave participants.
- Provide all banking and accounting functions required for the administration of the service, including: (1) absorbing the cost to maintain the banking account; (2) recording deposits (via check, ACH draft, credit card or virtual check); (3) issuing disbursements from the account; and, (4) reconciling the account.
- Provide a full service web portal for EMPLOYER, participants and Insurance consultant.

EMPLOYER AGREES TO:

- Provide CBA with an EMPLOYER email address to receive both confidential and day-to-day Billing information and reports. EMPLOYER further agrees to notify CBA in a timely manner whenever an email or contact person changes.
- To maintain Internet access to fully utilize CBA features and services.


6/25/15


6/25/15

- To notify CBA of eligibility, premium, and health plan changes timely and accurately. CBA is not responsible for any charges, premiums or claims that arise directly or indirectly as a result of inaccurate or late information provided by EMPLOYER.

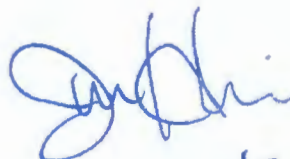
ADDITIONAL CHARGES

- Additional fees may be charged to EMPLOYER if CBA is required to duplicate work resulting from inaccurate, incomplete or late information that is the responsibility of EMPLOYER to provide. If required, additional charges will be based on a rate of \$75 per hour for duplicate work. CBA will notify EMPLOYER prior to assessing such additional charges to give EMPLOYER an opportunity to correct the problem without incurring extra charges (if possible).

ADMINISTRATION FEES:

One-time Transfer Fee (charged for each Retiree/Leave Record transitioned to CBA at the start of services):	INCLUDED
Annual Fee (charged at the beginning of each contract year):	INCLUDED
Base Monthly Fee (per Retiree/Leave Participant):	\$4.20 *

* The fee is guaranteed for 3 years.


8/25/15


6/25/15



330 North Brand Boulevard Suite 1100 Glendale, CA 91203-2308
T 818.956.6744 www.segalco.com

Robert D. Mitchell
Consultant
mitchell@segalco.com

June 9, 2015

Mr. Robert Hayes
Principal
Custom Benefit Administrators
P.O. Box 2170
Rocklin, CA 95677

**Re: Oakland Unified School District – 2015 COBRA and Retiree Billing TPA RFP
Custom Benefit Administrators Proposal Acceptance Letter - REVISED**

Dear Robert:


Oakland Unified School District has accepted, subject to Board ratification, Custom Benefit Administrators' (CBA) proposal to provide COBRA and Retiree Billing administrative services for three years effective July 1, 2015 through June 30, 2018.

Effective July 1, 2015, CBA will administer COBRA services for all of the District health plans, including Kaiser medical, Health Net medical, Delta Dental and VSP vision services. A complete list of services is included in the attached table.

Please commence the implementation process immediately and sign and return this form confirming the attached rates by June 12th, 2015. In addition, please provide the contract as soon as possible.

If you have any questions or comments, please do not hesitate to contact me at (818) 956-6744.

Sincerely,



Robert Mitchell
California License #0F42167

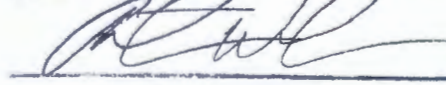
Attachment (5367806)

cc: Thomas Morrison, Jr.

Signed by:

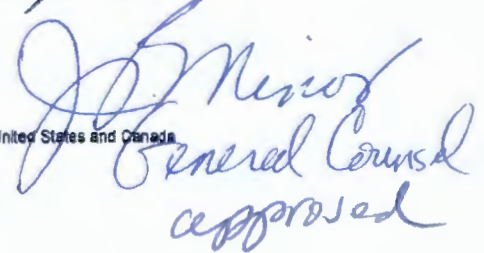



James Harris
President, Board of Education
6/25/15


Antwan Wilson
Secretary, Board of Education
6/25/15

Date: 6/12/2015

5376807v1/14150.003


General Counsel
approved

**OAKLAND UNIFIED SCHOOL DISTRICT
COBRA and Retiree Billing TPA**

Rates effective July 1, 2015

	Proposed Rates		
	7/1/2015 - 6/30/2016	7/1/2016 - 6/30/2017	7/1/2017 - 6/30/2018
COBRA Administration - total fee per month*	\$1,275	\$1,275	\$1,275
Unpaid / Self-Paid Leave Billing - rate per participant per month	\$4.20	\$4.20	\$4.20
Retiree Billing - rate per participant per month	\$4.20	\$4.20	\$4.20

* Fees based on the District having 4,000 to 4,999 benefitted employees and are guaranteed for 3 years. If enrollment falls to 3,000 – 3,999 benefitted employees prior to the start of the second or third contract year, the fee will drop by \$200 per month for that year. Conversely, if enrollment grows to 5,000 – 5,999 benefitted employees prior to the start of the second or third year, the fee will increase by \$200 per month for that year.

The 2% COBRA surcharge will be retained by CBA.

Services

1. CBA will administer COBRA for *ALL COBRA* health plans (Kaiser medical, Health Net medical, Delta Dental, & VSP vision);
2. CBA will bill and collect *ALL COBRA* health plan premiums from participants;
3. CBA will provide comprehensive COBRA administration for all District health plans through the entirety of each participant's Federal COBRA eligibility (generally 18 or 36 months). This will include managing the open-enrollment requirement for COBRA participants and providing all required COBRA communications throughout each participants' COBRA eligibility period;
4. CBA will report all eligibility (COBRA enrollments, COBRA terminations and COBRA election changes) directly to ALL COBRA health plan carriers;
5. CBA will pay COBRA premiums directly to ALL COBRA health plan carriers (this includes paying the Delta Dental administration fee and claim funding separately, if needed);
6. CBA will be responsible to reconcile carriers invoices and maintain COBRA eligibility with ALL carriers. Included in this service, CBA will assume full financial responsibility for the premiums charged by the carriers. Should CBA fail to reconcile invoices and maintain eligibility timely, CBA shall be fully responsible for any premium shortfall.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, is entered into as of this **1st** day of **July, 2015**, by and between **Oakland Unified School District** (the "Plan Sponsor") on behalf of its **COBRA, Retiree and Leave HealthPlan** (the "Plan" or "Covered Entity"); and **Custom Benefit Administrators, A Division of BASIC** (the "Business Associate").

By signing this Business Associate Agreement on behalf of the Plan, the Plan Sponsor does not subject itself to the terms of this Business Associate Agreement, except to the extent required to ensure the Plan's compliance with the Health Insurance Portability and Accountability Act of 1996.

This Business Associate Agreement is part of the Agreement and will be administered in accordance thereto as amended from time to time, except as hereinafter expressly provided.

WITNESSETH:

WHEREAS, the Covered Entity has entered into an agreement (the "Agreement") with the Business Associate, whereby the Business Associate has agreed to provide certain services to the Plan;

WHEREAS, Covered Entity and Business Associate acknowledge that certain of their activities under the Agreement may be subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the regulations issued thereunder by the United States Department of Health and Human Services governing (i) the privacy of health information (the "Privacy Rule") and (ii) the security of health information (the "Security Standards") at 45 CFR parts 160, 162 and 164, as amended from time to time, and other applicable laws;

WHEREAS, Covered Entity and Business Associate acknowledge that the Privacy Rule and Security Standards of HIPAA were amended by the "Health Information Technology for Economic and Clinical Health Act" ("HITECH Act") as set forth in Title XIII of the American Recovery and Reinvestment Act of 2009, Public law 111-5, which in part governs the activities of "covered entities" and their "business associates," and further acknowledge that the United States Department of Health and Human Services has and will issue regulations implementing such HITECH Act amendments to the Privacy Rule and Security Standards;

WHEREAS, to comply with the requirements of the Privacy Rule and Security Standards, the Covered Entity must enter into this Business Associate Agreement with the Business Associate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

I. Definitions

If terms are used, but not otherwise defined under this Business Associate Agreement, such terms shall then have the same meaning as those terms in the Privacy Rule and Security Standards.

(a) Covered Electronic Transactions. "Covered Electronic Transactions" shall have the meaning given the term "transaction" in 45 CFR §160.103.

(b) Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103, limited to the information that Business Associate receives, creates, transmits or maintains from or on behalf of Covered Entity.

(c) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(d) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E, as amended.

(e) Protected Health Information (PHI). "Protected Health Information (PHI)" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information that Business Associate receives, creates, transmits or maintains from or on behalf of Covered Entity.

(f) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

(g) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(h) Standards for Electronic Transactions Rule. "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.

(i) Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.

(j) Security Rule. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C, as amended.

(k) Subcontractor. "Subcontractor" shall have the same meaning as the term "Subcontractor" in 45 CFR §160.103.

(l) Transaction. "Transaction" shall have the meaning given the term "transaction" in 45 CFR §160.103.

(m) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the meaning given the term "unsecured protected health information" in 45 CFR §164.402.

II. Safeguarding Privacy and Security of Protected Health Information

(a) Permitted Uses and Disclosures. The Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on the Covered Entity's behalf or receives from the Covered Entity (or another business associate of the Covered Entity) and to request Protected Health Information on the Covered Entity's behalf (collectively, "Covered Entity's Protected Health Information") only:

(i) Functions and Activities on the Covered Entity's Behalf. To perform those services referred in the attached services agreement.

(ii) Business Associate's Operations. For the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, provided that, with respect to disclosure of the Covered Entity's Protected Health Information, either:

(A) The disclosure is Required by Law; or

(B) The Business Associate obtains reasonable assurance from any person or entity to which the Business Associate will disclose the Covered Entity's Protected Health Information that the person or entity will:

(1) Hold the Covered Entity's Protected Health Information in confidence and use or further disclose the Covered Entity's Protected Health Information only for the purpose for which the Business Associate disclosed the Covered Entity's Protected Health Information to the person or entity or as Required by Law; and

(2) Promptly notify the Business Associate (who will in turn notify the Covered Entity in accordance with the breach notification provisions) of any instance of which the person or entity becomes aware in which the confidentiality of the Covered Entity's Protected Health Information was breached.

(iii) Disclosures to Other Business Associates. Business Associate may disclose Protected Health Information to other business associates of Covered Entity, or to business associates of another covered entity that is part of an organized health care arrangement that includes Covered Entity, to the fullest extent allowed under applicable law.

(iv) Minimum Necessary. In its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of the Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that the Business Associate will not be obligated to comply with this minimum-necessary limitation if neither the Business Associate nor the Covered Entity is required to limit its use, disclosure or request to the minimum necessary. The Business Associate and the Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act.

(b) Prohibition on Unauthorized Use or Disclosure. The Business Associate will neither use nor disclose the Covered Entity's Protected Health Information, except as permitted or required by this Business Associate Agreement or in writing by the Covered Entity or as Required by Law. This Business Associate Agreement does not authorize the Business Associate to use or disclose the Covered Entity's Protected Health Information in a manner that will violate the Privacy Rule if done by the Covered Entity.

(c) Information Safeguards.

(i) Privacy of the Covered Entity's Protected Health Information. The Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of the Covered Entity's Protected Health Information. The safeguards must reasonably protect the Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made to a use or disclosure otherwise permitted by this Business Associate Agreement. Business Associate agrees to limit access to Covered Entity's Protected Health Information to only those employees or classes of employees who are needed to carry out Business Associate's activities under the Agreement and this Business Associate Agreement, to train those employees regarding the

use and disclosure of the Covered Entity's Protected Health Information as provided by this Business Associate Agreement, and to discipline applicable employees, as appropriate, in the event such employee uses or discloses the Covered Entity's Protected Health Information in violation of the provisions of this Business Associate Agreement.

(a) Business Associate agrees to mitigate, to the extent practicable, any known harmful effect of a use or disclosure of Covered Entity's Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.

(ii) Security of the Covered Entity's Electronic Protected Health Information. The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that the Business Associate creates, receives, maintains, or transmits on the Covered Entity's behalf as required by the Security Rule. Business Associate agrees to limit access to Electronic Protected Health Information to only those employees or classes of employees who are needed to carry out Business Associate's activities under the Agreement and/or this Business Associate Agreement, to train those employees regarding the use and disclosure of Electronic Protected Health Information as provided by this Business Associate Agreement, and to discipline applicable employees, as appropriate, in the event such employee uses or discloses Electronic Protected Health Information in violation of the provisions of this Business Associate Agreement.

(iii) Policies and Procedures. The Business Associate shall maintain written policies and procedures, conduct a risk analysis, and train and discipline of its workforce to the extent a business associate is required to do so under the Privacy Rule and/or Security Rule, as amended by the HITECH Act.

(d) Subcontractors and Agents. The Business Associate will enter into a written agreement with any of its Subcontractors and agents to which the Business Associate is permitted by this Agreement or in writing by the Covered Entity to disclose the Covered Entity's Protected Health Information and/or Electronic Protected Health Information or who will create, receive, maintain, or transmit Protected Health Information and/or Electronic Protected Health Information on behalf of Business Associate. Such written agreement will require such Subcontractor or agent to comply with the same privacy and security safeguard obligations with respect to the Covered Entity's Protected Health Information and/or Electronic Protected Health Information that are applicable to the Business Associate under this Agreement.

(e) Prohibition on Sale of Records. As of the effective date specified by HHS in final regulations issued on this topic, the Business Associate shall not directly or indirectly receive remuneration (whether financial or nonfinancial) in exchange for any Protected Health Information of an individual unless the Covered Entity or Business Associate obtained from the individual, in accordance with 45 CFR §164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that individual, except as otherwise allowed under the HITECH Act.

(f) Marketing. As of the effective date specified by HHS in final regulations issued on this topic,, except as otherwise allowed by the Privacy Rule, Business Associate may not use or disclose Protected Health Information regarding a Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service unless Covered Entity receives no direct or indirect payment in exchange

for making such communication and the communication is made to the Individual: (i) to describe a health-related product or service (or payment for such product or service) that is provided by, or included in, the Plan, including communications about the entities participating in a health care provider network or health plan network, replacement of, or enhancements to, the Plan, and health-related products or services available only to Individuals that add value to, but are not part of, the Plan; (ii) for treatment of the Individual; or (iii) for case management or care coordination for the Individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the Individual. Notwithstanding the foregoing, Business Associate may use or disclose Protected Health Information regarding a Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service if the communication relates to a prescription drug that is currently being prescribed for a Individual and any financial remuneration received by Covered Entity in exchange for making the communication is reasonably related to Covered Entity's cost of making the communication.

(f) Penalties For Noncompliance. The Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with certain provisions of the Privacy Rule and Security Rule, as amended by, and to the extent provided in, the HITECH Act.

III. Compliance with Electronic Transactions Rule

If the Business Associate conducts in whole or part electronic Transactions on behalf of the Covered Entity for which HHS has established standards, the Business Associate will comply, and will require any Subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule. The Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

IV. Obligations of the Covered Entity

The Covered Entity shall notify the Business Associate of:

(a) Any limitation(s) in its notice of privacy practices (prepared in accordance with 45 CFR §164.520), to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information;

(b) Any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information; and

(c) Any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by the Covered Entity

The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity. Such requests include, but are not limited to, requests or directions for disclosure of Protected Health Information to the Plan Sponsor in a capacity other than one in which it is acting on behalf of the Covered Entity. To the extent a dispute or difference of opinion exists between the Business Associate and Covered Entity regarding whether a use or disclosure requested by the Covered Entity is permissible, Business Associate may disclose the Protected Health Information under objection pursuant to the specific, written direction of

Covered Entity. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of this Business Associate Agreement.

VI. Individual Rights

(a) Access. The Business Associate will, within ten (10) calendar days following the Covered Entity's request, make available to the Covered Entity or, at the Covered Entity's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of the Covered Entity's Protected Health Information about the individual that is in the Business Associate's custody or control, so that the Covered Entity may meet its access obligations under 45 CFR §164.524. Effective as of the date specified by HHS, if the Protected Health Information is maintained electronically in a Designated Record Set, Business Associate shall make available, within the time period specified above, a copy of such information in the electronic form and format specified by Covered Entity, provided such information is readily producible in such form and format. If the information is not readily producible in such form and format, Business Associate shall make the information available in a readable electronic form and format as agreed to by the parties. The Business Associate shall provide such a copy to the Covered Entity or, alternatively, to the individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the individual or the Covered Entity. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing access to the requested Protected Health Information or making the determination to deny access to requested Protected Health Information.

(b) Amendment. The Business Associate will, upon receipt of written notice from the Covered Entity, promptly amend or permit the Covered Entity access to amend any portion of the Covered Entity's Protected Health Information, so that the Covered Entity may meet its amendment obligations under 45 CFR §164.526. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for determining whether the requested amendment shall be made and, if the request is denied, in whole or in part, complying with 45 C.F.R. Section 164.526.

(c) Disclosure Accounting. To allow the Covered Entity to meet its disclosure accounting obligations under 45 CFR §164.528.

(i) Disclosures Subject to Accounting. The Business Associate will record the information specified below ("Disclosure Information") for each disclosure of the Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that the Business Associate makes to the Covered Entity or to a third party.

(ii) Disclosures Not Subject to Accounting. The Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of the Covered Entity's Protected Health Information if the Covered Entity need not account for such disclosures.

(iii) Disclosure Information. With respect to any disclosure by the Business Associate of the Covered Entity's Protected Health Information that is not excepted from disclosure accounting, the Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

(A) Disclosure Information Generally. Except for repetitive disclosures of the Covered Entity's Protected Health Information as specified below, the Disclosure Information that the Business Associate must record for each accountable disclosure is (1) the disclosure date, (2) the name and (if known) address of the entity to which the Business Associate made the disclosure, (3) a brief description of the Covered Entity's Protected Health

Information disclosed, and (4) a brief statement of the purpose of the disclosure.

(B) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of the Covered Entity's Protected Health Information that the Business Associate makes for a single purpose to the same person or entity (including the Covered Entity), the Disclosure Information that the Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (1) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (2) the frequency, periodicity, or number of the repetitive accountable disclosures; and (3) the date of the last of the repetitive accountable disclosures.

(iv) Availability of Disclosure Information. The Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). The Business Associate will make the Disclosure Information available to the Covered Entity within ten (10) calendar days following the Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, the Business Associate shall provide the accounting directly to an individual making such a disclosure request, if a direct response is requested by the individual.

(d) Restriction Agreements and Confidential Communications. The Business Associate will comply with any agreement that the Covered Entity makes that either (i) restricts use or disclosure of the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(a), or (ii) requires confidential communication about the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(b), provided that the Covered Entity notifies the Business Associate in writing of the restriction or confidential communication obligations that the Business Associate must follow. The Covered Entity will promptly notify the Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct the Business Associate whether any of the Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. Effective February 17, 2010 (or such other date specified as the effective date by HHS), the Business Associate will comply with any restriction request if: (i) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

VII. Breaches and Security Incidents

(a) Reporting.

(i) Privacy or Security Breach. The Business Associate will report to the Covered Entity any use or disclosure of the Covered Entity's Protected Health Information not permitted by this Business Associate Agreement along with any Breach of the Covered Entity's Unsecured Protected Health Information. The Business Associate will treat the Breach as being discovered in accordance with 45 CFR §164.410. The Business Associate will make the report to the Covered Entity's Compliance Official not more than ten (10) calendar days after the Business Associate learns of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, the Business

Associate may delay notifying the Covered Entity for the applicable time period. The Business Associate's report will at least:

(A) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of the Breach;

(B) Identify the Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;

(C) Identify who made the non-permitted use or disclosure and who received the non-permitted use or disclosure;

(D) Identify what corrective or investigational action the Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;

(E) Identify what steps the individuals who were subject to a Breach should take to protect themselves;

(F) Identify each Individual whose Protected Health Information has been, or is reasonably believed by Business Associate to have been, acquired, accessed, used, or disclosed during such Breach;

(G) contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free number, e-mail address, Web site, or postal address;

(H) any other available information that Covered Entity is required to include in the notification it must send to the affected individuals pursuant to 45 CFR section 164.404(c); and

(I) Provide such other information, including a written report, as the Covered Entity may reasonably request.

To the extent that such information is not available at the time Business Associate is required by this Section VII(a)(i) to notify Covered Entity, Business Associate shall provide such information to Covered Entity promptly as it becomes available.

(ii) Security Incidents. The Business Associate will **immediately** report to the Covered Entity any Security Incident involving the Covered Entity's Electronic Protected Health Information or Business Associate's information systems, of which the Business Associate becomes aware. Business Associate agrees to mitigate, to the extent practicable, any harm caused by any security incident related to Business Associate's transmission or maintenance of Covered Entity's Protected Health Information.

(b) Reimbursement. Business Associate agrees to pay or reimburse any reasonable expenses, damages, penalties or other losses that Covered Entity incurs in connection with any Breach notification that Covered Entity must provide as with respect to any Breach of Unsecured Protected Health Information by Business Associate or by any of Business Associate's agents.

(c) Policies and Procedures. Business Associate agrees to develop and implement policies and procedures that are designed to promptly detect and notify Covered Entity of any Breach of Unsecured Protected Health Information by Business Associate or any agent of Business Associate and, as required to ensure Covered Entity's ability to satisfy the notification requirements of 45 CFR section 164.400.

(d) Risk Assessment. Business Associate acknowledges and agrees that it is required to conduct a risk assessment to determine whether (and the extent to which) an impermissible use or disclosure of Protected Health Information by Business Associate or its agents constitutes a "Breach" for purposes of this Section VII, and whether such "Breach" requires Business Associate to provide the notification described in this Section VII or meets the criteria of any of the exceptions to the definition of "Breach" found in Section 13400(1) of the HITECH Act and 45 CFR section 164.202. Business Associate agrees to document such risk assessments and determinations in writing contemporaneously with any investigation of any impermissible use or disclosure of Protected Health Information. Business Associate agrees to prepare such documentation with respect to each and every impermissible use or disclosure of Protected Health Information by Business Associate so that Covered Entity can demonstrate that the notification was either: (1) not required; or (2) made, in accordance with the HITECH Act and 45 CFR section 164.400 et seq. Business Associate shall retain the documentation required under this Section VII for the term of the Agreement. Upon termination of the Agreement, Business Associate agrees to retain the documentation for a period of six (6) years after the termination of the Agreement in accordance with the terms of this Business Associate Agreement.

VIII. Term and Termination

(a) Term. The term of this Business Associate Agreement shall be effective as of the date specified above, and shall terminate when all Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

(b) Right to Terminate for Cause. The Covered Entity may terminate this Business Associate Agreement if it determines, in its sole discretion, that the Business Associate has breached any provision of this Business Associate Agreement, and upon written notice to the Business Associate of the breach, the Business Associate fails to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in the Covered Entity's notice of termination.

In addition to any termination provisions provided by the Agreement, Business Associate agrees to authorize termination of the Agreement by Covered Entity if Covered Entity determines that Business Associate has violated a material term of this Business Associate Agreement.

(c) Effect of Termination.

(i) Return or Destruction of Covered Entity's Protected Health Information as Feasible.

(A) Except as provided in paragraph (c)(ii) of this section, upon termination of this Agreement, for any reason, Business Associate shall return at Covered Entity's expense or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of the Covered Entity at the end of 8 years. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business

Associate. Business Associate shall retain no copies of the PHI. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintain such PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintain such PHI.

(C) Right of Termination of Existing Service Contracts. Should Business Associate make a disclosure of PHI in violation of this Agreement, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties.

(ii) Procedure When Return or Destruction Is Not Feasible. The Business Associate will identify any of the Covered Entity's Protected Health Information, including any that the Business Associate has disclosed to Subcontractors or agents as permitted under this Agreement, that cannot feasibly be returned to the Covered Entity or destroyed and explain why return or destruction is infeasible. The Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. The Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

(iii) Continuing Privacy and Security Obligation. The Business Associate's obligation to protect the privacy and safeguard the security of the Covered Entity's Protected Health Information as specified in this Business Associate Agreement will be continuous and survive termination or other conclusion of this Business Associate Agreement.

IX. Miscellaneous Provisions

(a) Definitions. All terms that are used but not otherwise defined in this Business Associate Agreement shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance.

(b) Inspection of Internal Practices, Books, and Records. The Business Associate will make its internal practices, books, and records relating to its use and disclosure of the Covered Entity's Protected Health Information available to the Covered Entity and to HHS to determine compliance with the Privacy Rule.

(c) Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects the Business Associate or the Covered Entity's obligations under this Business Associate Agreement, this Business Associate Agreement will automatically amend such that the obligations imposed on the Business Associate or the Covered Entity remain in compliance with the final regulation or amendment to final regulation.

(d) No Third-Party Beneficiaries. Nothing in this Business Associate Agreement shall be construed as creating any rights or benefits to any third parties.

(e) Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule or Security Standards means the section as in effect or as amended.

(f) Survival. The respective rights and obligations of the Business Associate under Section VIII(c)(iii) and IX(j) of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.

(g) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved to permit the Covered Entity to comply with the Privacy Rule and/or the Security Standards, as amended by HITECH.

(h) Notices. All notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested or by overnight delivery. Notices shall be directed to the parties at their respective addresses set forth in the first paragraph of this Business Associate Agreement or below their signature, as appropriate, or at such other addresses as the parties may from time to time designate in writing.

(i) Entire Agreement; Modification. This Business Associate Agreement represents the entire agreement between the Business Associate and the Covered Entity relating to the subject matter hereof. No provision of this Business Associate Agreement may be modified, except in writing, signed by the parties.

(j) Indemnification. Each Party agrees to indemnify, defend and hold harmless each other Party, its affiliates and each of their respective directors, officers, employees, agents or assigns from and against any and all actions, causes of actions, claims, suits and demands whatever, and from all damages, liabilities, costs, charges, debts and expenses whatever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted or for which they may now or hereafter become subject arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the Party to the Business Associate Agreement and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of any way connected with the Party's performance. In addition to the foregoing, Business Associate agrees to indemnify the Plan for any expenses, damages, penalties or other costs including, without limitation, reasonable attorneys' fees and expert witness fees that the Plan may incur in connection with any notification provided by Business Associate pursuant to Section VII or Business Associate's failure to provide such notification to the Plan in a timely manner.

(k) Assistance in Litigation or Administrative Proceedings related to this Business Associate Agreement. The Business Associate shall make itself, and any Subcontractors, employees or agents assisting the Business Associate in the performance of its obligations under this Business Associate Agreement, available to the Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA regulations, or other laws relating to security and privacy, except where the Business Associate or its Subcontractors, employees, or agents are named as an adverse party.

(l) Binding Effect. This Business Associate Agreement shall be binding upon the parties hereto and their successors and assigns.

(m) Data ownership. Covered Entity will maintain ownership over all Protected Health Information created or received by Business Associate in connection with this Business Associate Agreement and the Agreement.

(n) Assignment. This Business Associate Agreement may only be assigned pursuant to the terms of the Agreement.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the date above.

Each of the undersigned individuals represents and warrants that he or she is expressly and duly authorized by his or her respective entity or agency to execute this Agreement and to legally bind each such entity or agency as set forth in this Agreement.

Custom Benefit Administrators:

Robert P. Hayes _____

By: _____
[Signature]

Title: Principal _____

Date: June 15, 2015 _____

**Oakland Unified School District for the
Oakland USD Health Plan:**

_____ *[Signature]*

James Harris
President, Board of Education

By: _____
[Signature]

Antwan Wilson
Secretary, Board of Education

Date: 6/25/15 _____

Approved
[Signature]
General Counsel