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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Thriving Students

Memo

To Board of Education

From Tony Smith, Ph.D., Superintendent
Vernon Hal, Deputy Superintendent, Business & Operations *VEH*
Jerry Johnson, Rick Management Officer

Board Meeting Date April 4, 2012

Subject Internal Revenue Code Section 125 Employee Flexible Fringe Benefits Plan

Action Requested Approval by the Board of Education to change the District's Internal Revenue Code Section 125 Employee Flexible Fringe Benefits Plan Administrator from American Fidelity Assurance Company (AFA) to American Family Life Assurance Company of Columbus (AFLAC).

Background The District has engaged the services of American Fidelity Assurance Company as its Section 125 Plan Administrator since April 27, 2006. In recent years, American Fidelity has signed up fewer than 130 employees annually for these important tax-favored benefits. Additionally, they do not offer pretax parking or transit benefits.

Discussion AFLAC is a national company with more than 30 years of experience administering Section 125 plans for employers, including more than 13,000 school districts. They have sufficient resources in and around Oakland to significantly improve employee participation in these important benefits. Additionally, AFLAC offers both pretax parking and transit benefits, as well as a free debit card which gives employees direct access to their tax-free medical accounts, without need for reimbursement form submissions.

Recommendation Approval by the Board of Education to change the District's Internal Revenue Code Section 125 Employee Flexible Fringe Benefits Plan Administrator from American Fidelity Assurance Company (AFA) to American Family Life Assurance Company of Columbus (AFLAC).

Fiscal Impact None.

Attachments

REIMBURSEMENT SERVICES AGREEMENT

This Agreement, effective upon execution for the Plan Year as set forth herein, by and between **OAKLAND UNIFIED SCHOOL DISTRICT** (the "Employer") and American Family Life Assurance Company ("Aflac")

WITNESSETH:

WHEREAS, the Employer has adopted a Medical Care Expense Reimbursement ("URM") Plan and/or a Dependent Care Expense Reimbursement ("DDC") Plan (the "URM" and "DDC" may be referred to herein as the "FSAs") for its Employees in conjunction with its Flexible Benefits Plan (collectively referred to as the "Plan" and attached hereto) to be adopted and administered in accordance with Sections 105, 125, and 129 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Employer represents that it is a governmental entity exempt from ERISA and that it will serve as the Plan Administrator; and

WHEREAS, the Employer desires that Aflac, as its agent, furnish reimbursement services within a framework of policies, interpretations, rules, practices and procedures (the "reimbursement practices and procedures") made and established by the Employer in: (i) receiving and processing requests for benefits under the Plan ("Requests") and (ii) disbursing benefit payments from Employer funds (as provided for in Section II.A.) for eligible expenses under the flexible spending account provisions of the Plan; and

WHEREAS, the Employer is to pay all plan benefits owed or established under the Plan to its Participants, and Aflac is to provide the agreed upon services to the Plan without assuming any such liability;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

Section I. Enrollment and Determination of Eligibility

A. The Employer shall:

- (1) be responsible for interpreting the Plan and its provisions, its terms, conditions and operation; and
- (2) notify Plan Participants of their ability to apply for reimbursement benefits and supply them with Request forms (to be provided by Aflac) and Request filing instructions; and
- (3) provide Aflac with the names, addresses, Social Security Numbers, and elected amounts of all Participants in the Plan (for annual enrollment, provide such information at least twenty (20) days prior to the effective date of Plan participation, unless the Plan participation effective date falls within the month of January and then at least thirty (30) days prior to such effective date); and
- (4) upon the occurrence of events that would change a Participant's status under the Plan (e.g. termination, Change in Status, Change in Cost or Coverage for DDC, etc.) immediately provide Aflac with updates (via telefax or other means of written communication acceptable to Aflac) which identify eligible Participants in each of the respective reimbursement Plans and/or the amount of reimbursement benefits for which they are eligible; and
- (5) immediately inform Aflac (via telefax or other means of written communication acceptable to Aflac) as to any new Participants in either of the reimbursement Plans, any Change in Status affecting a Participant's election, or any Qualified Beneficiary electing coverage under COBRA and the amount of such election (if COBRA applies to the Employer), or of any other change which will affect Aflac's responsibilities hereunder.

B. In determining any person's right to benefits under the Plan, Aflac shall rely on the eligibility information furnished by the Employer, and any signed statements by Participants regarding the eligibility of their Requests under the respective Plan. It is mutually understood that the effective performance of this Agreement by Aflac will require that it be advised on a timely basis by the Employer during the continuance of this Agreement of the identity of individuals eligible for benefits under each of the respective reimbursement Plans. Information regarding a Participant's enrollment under either reimbursement Plan shall identify the effective date of enrollment and shall be provided to Aflac (via telefax or other means of written communication acceptable to Aflac) in accordance with the applicable time frames set forth in Sections I.A.(3) through I.A.(5) above. Any delay shall result in a corresponding delay in Aflac's ability to make benefit determinations. Aflac shall not be responsible for delays in paying Requests where the Employer has failed to inform Aflac (in a form and with such information as may reasonably be required by Aflac) of a Participant's enrollment information in a timely manner. Similarly, information modifying a Participant's eligibility or status/election under either reimbursement Plan shall identify the effective date of eligibility and the termination date of eligibility and shall be provided to Aflac (via telefax or other means of written communication acceptable to Aflac) prior to the effective date of such modification in order to be considered by Aflac in making benefit determinations hereunder. Aflac shall not be responsible for Requests paid in error where the Employer has failed to inform Aflac (in a form and with such information as may reasonably be required by Aflac) of a Participant's eligibility or status change prior to the release of the benefit payment.

Section II. Funding and Payment of Requests for the Plan Benefits

A. The Employer selects the Daily Processing Option and agrees:

- (1) to make sufficient funds available from its general assets for amounts allocable to eligible reimbursement benefits under its plan by wiring the entire FSA deduction amounts every pay period to Aflac to be maintained by Aflac in an Aflac owned account (the "Account") to facilitate the timely processing of Requests under the Plan; and



- (2) the Employer bears sole responsibility for any fees imposed with respect to any account by the financial institution, including, but not limited to: Account maintenance fees, insufficient fund fees, electronic transfer fees, fees with respect to voided or stopped checks, etc.;
- (3) if, at any time, the amount of the URM reimbursement benefits payable under the applicable Plan provisions exceeds the amount of URM deductions withheld from Employees and deposited by the Employer to the FSA Account, and if such shortage is attributable solely to the Uniform Coverage requirement (as described in Section IV.A.1), Aflac shall advance sufficient funds to reimburse valid URM Requests under the Plan. Aflac shall not advance funds for DDC benefits. The Employer shall transfer an amount of FSA contributions (not to exceed the amount of URM FSA deductions properly withheld by the Employer under the Plan) sufficient to reimburse Aflac for its advance directly to Aflac. Except for limited advances to satisfy the URM Plan's Uniform Coverage obligation (as specifically described herein), Aflac is under no obligation to advance funds on behalf of the Employer or URM Plan. Except as otherwise provided in Section IV.A.2, any funding deficiency remaining upon termination of the Agreement or at the end of the Plan Year shall be the Employer's responsibility and the Employer shall reimburse Aflac for any advances it has made.
- B. Aflac, as agent for the Employer, shall provide those services described in Appendix A (attached hereto).
- Upon written request submitted to Aflac's Benefit Services/Flex One® Department, Aflac may provide limited assistance with certain of the nondiscrimination tests. The terms and conditions (including applicable fees) under which such services are provided are set forth in Appendix B "Nondiscrimination Testing Services". Except as specifically provided herein, in providing services, Aflac shall treat the URM as if COBRA applies to the Employer's Plan.
- C. Aflac shall not be obligated or responsible for any duty with regard to the administration of the Plan (imposed by the Plan or otherwise) except as specifically provided above or in the attached appendices. Without limiting Employer's responsibilities described therein, it shall be the Employer's sole responsibility (as Plan Administrator) and duty to: ensure compliance with COBRA; perform required nondiscrimination testing; amend the Plan as necessary to ensure ongoing compliance with applicable law; file any required tax or governmental returns (including Form 5500 returns to meet any applicable ERISA requirements) relating to the Plan; determine if and when a valid election change has occurred; handle Participant claim appeals; allow Aflac, by and through independent associates, a reasonable opportunity to discuss Aflac, URM, and DDC benefits; execute and retain required Plan and claims documentation; and take all other steps necessary to maintain and operate the Plan in compliance with applicable provisions of the Plan, ERISA, the Code and other applicable federal and state laws.
- D. In the event that Aflac overpays any person entitled to benefits under the Plan, or pays benefits to any person who is not entitled to them, Aflac shall take all reasonable steps to recover the overpayment, except that Aflac shall not be required to initiate court proceedings to recover an overpayment. Aflac shall promptly notify the Employer if it is unsuccessful in recovering any overpayment.
- E. Aflac will optically scan and maintain electronic copies of all URM and/or DDC Plan reimbursement Requests and supporting documentation for a period of seven (7) years after the claim is processed. Copies of URM and DDC claim documents can be reproduced upon written request at Aflac's currently prevailing rate.

Section III. Liability and Indemnity

- A. In performing its obligations under this Agreement, Aflac neither assumes nor underwrites any liability of the Employer under the Plan, but with respect to the Employer, acts only as provider of those services specifically described in Section II.B of this Agreement and with respect to Plan Participants, acts only as the agent of the Employer. The services to be performed by Aflac shall be ministerial in nature and shall be performed within the framework of policies, interpretations, rules, practices, and procedures made or established by the Employer. Except as may specifically be provided herein, Aflac shall have no discretionary authority or discretionary control over any assets of the Employer, the Plan, or Plan Participants.
- B. Aflac shall have no duty or obligation to defend any legal action or proceeding brought to recover a Request for Plan benefits. Aflac shall, however, make available to the Employer and its counsel, such evidence relevant to such action or proceeding as Aflac may have as a result of its processing of the contested benefit determination.
- C. Except as otherwise explicitly provided in this Agreement, the Employer shall retain the liability for all Plan benefit Requests and all expenses incident to the Plan and for any and all violations of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), if applicable, and agrees to indemnify Aflac for and hold it, its directors, officers, and employees, harmless from all amounts and expenses (including reasonable attorneys' fees and court costs) for which Aflac may become liable. This indemnity shall survive the termination of this Agreement.
- D. Aflac shall use ordinary and reasonable care in the performance of its duties, but shall not be liable to the Employer for mistakes of judgment or other actions taken in good faith unless such error results directly from an intentionally wrongful or grossly negligent act of Aflac, its officers or employees.
- E. Aflac shall have no duty or obligation with respect to Requests incurred prior to the Effective Date of this Agreement or pertaining to a plan year prior to the Initial Plan Year (hereafter "Prior Reimbursement Requests") and/or Plan Administrator (or other) services arising prior to the Effective Date of this Agreement or pertaining to a plan year prior to the Initial Plan Year (hereafter "Prior Administration"). The Employer specifically acknowledge(s) and agree(s) that: (i) Aflac has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration; (ii) the Employer will be responsible for processing Prior Reimbursement Requests (including any Run-Off Requests or grace period Requests) submitted after the Effective Date of this Agreement) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements and (iii)

the Employer agrees to indemnify and hold Aflac harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

- F. Except as otherwise provided in the HIPAA Business Associate Agreement (Exhibit A), the Employer agrees that Aflac may communicate confidential, protected, privileged or otherwise sensitive information to Employer through the Named Contact (as designated on the applicable plan document request form or as subsequently updated by Employer and maintained on file by Aflac) and specifically agrees to indemnify Aflac and hold it harmless: (i) for any such communications directed to the Employer through the Named Contact attempted via telefax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and (ii) from any claim for the improper use or disclosure of any health information by Aflac where such information is used or disclosed in a manner consistent with its duties and responsibilities under this Agreement.

Section IV. Hold Harmless Agreement For Unreimbursed Medical Accounts

- A. Aflac agrees to indemnify and hold Employer harmless from any "Loss" resulting from the IRC §125 "Uniform Coverage" requirement imposed by Section 1.125-5(d) of the proposed regulations as calculated per the terms and conditions stated herein.

- (1) "Uniform Coverage" under IRC §125 means that the entire amount elected by each Plan Participant on his/her salary redirection agreement as an annual amount for medical care expense reimbursement (less any reimbursements already disbursed) shall be available at any time during the plan year without regard to the balance in the Participant's account (provided that the Participant's periodic salary reduction contributions have been made).
- (2) "Loss" means the aggregate amount that the Employer, as plan sponsor, is required to pay and does actually pay to Plan Participants under their respective medical reimbursement accounts in a plan year in excess of the total contributions made during the plan year by the Participants or by the Employer with respect to the certain participants; provided, however, that (i) Loss shall not include amounts paid with respect to COBRA continuation coverage, incurred in a plan year after the plan year in which such COBRA coverage begins, (ii) any amounts forfeited by Plan Participants under the "Use-it-or-Lose-it" Rule (1017 of the Flexible Benefits Document) shall be deducted when calculating the aggregate amount of Loss; and (iii) Loss shall not include any administrative expenses incurred by Employer, including but not limited to, Service Fees incurred under this Agreement, claims expenses, salaries, interest, or other expenses, other than actual benefits paid out under the URM Plan.

- B. The foregoing indemnification and hold harmless provision, in order to be binding upon Aflac, is further subject to the following requirements and restrictions:

- (1) Maximum limit of \$2500 per Plan Year per Participant or such lesser amount elected by the Participant).
- (2) Employer shall follow all medical reimbursement account requirements imposed by applicable laws, regulations, and the Plan Document.
- (3) Employer shall undertake reasonable efforts to collect account deficiencies from terminated Employees. Aflac shall not be responsible for any Loss incurred with respect to an owner, shareholder, or dependent of an owner or shareholder of Employer.
- (4) Employer must have a minimum number of 200 employees eligible to participate in the unreimbursed medical portion of Employer's Plan as of the beginning of the Plan Year.
- (5) Only Plan participants employed for a minimum of six months prior to execution of this Agreement will be covered by this indemnity/hold harmless provision.
- (6) As consideration for this provision, Employer agrees to pay Aflac the monthly fee, if any, set forth in Section V below.
- (7) Aflac's aggregate maximum liability under this provision shall be \$1,000,000 or, if lesser, the aggregate benefit selected by Plan Participants (subject to restriction 1 above).
- (8) In the event that Employer: (i) terminates or amends its Plan prior to the end of a Plan Year, (ii) fails to pay any amount(s) due under the Agreement, or (iii) terminates the Agreement prior to the end of a Plan year, the indemnity/hold harmless provision set forth in this Section shall not apply.
- (9) This indemnity/hold harmless shall not apply to any Loss incurred as a result of layoffs or terminations of employees by the Employer.

- C. The indemnification and hold harmless provision included in this Section IV does not cover any other act, omission or matter. Aflac shall have no liability except as provided for herein.

Section V. Reimbursement Request Processing Service Fee

- A. The Employer shall pay Aflac a fee for services performed under this Agreement (the "Service Fee") and a one time fee to initiate the reimbursement arrangement under the URM and/or DDC (the "Set-Up Fee"). Service fees are based on a number of factors and are set forth on the Fee Schedule, attached hereto as Appendix C, which shall be part of and incorporated into this Agreement. The Set-Up Fee is set forth in Appendix C. The Service Fee amount shall be due by the tenth (10th) of each

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month (or portion thereof) for which this Agreement is in effect. The Service Fee and Set-Up Fee are in addition to and separate from the Employer's obligation to make available sufficient funds to satisfy its FSA funding obligations under the Plan and Account maintenance fees and to make benefit disbursement in accordance with Section II.A. above. The Employer is responsible for paying the Service Fee to Aflac. Except as otherwise agreed to by the parties, Aflac is not authorized to withdraw the Service Fee from the Account. Failure to pay any applicable monthly Service Fee by the next monthly Request processing cycle shall result in a cessation of Request processing services until such fees are received by Aflac. If Request processing services are pending for an entire monthly processing cycle, Aflac may terminate this Agreement in accordance with Section VII.

- B. Aflac may revise the Service Fee for services performed under this Agreement effective on each Anniversary Date (as defined in Section VI) of this Agreement by giving the Employer written notice of the revised rate at least thirty (30) days prior to the applicable Anniversary Date.
- C. Notwithstanding any other agreement between the parties (and/or their agents), Aflac may revise the Service Fee set forth above at any time if revision is deemed necessary by Aflac by reason of: (i) modification or amendment of the Plan by the Employer; or (ii) a significant suspension, limitation, modification, or revocation of the benefits made available to Participants under the reimbursement Plan or the Flexible Benefit Plan. Aflac shall advise the Employer of the revised Service Fee at least thirty (30) days prior to its implementation. If the Employer does not terminate this Agreement (by written notification pursuant to Section VII.A.(3)) within thirty (30) days after the receipt of a notice of such revision, the Employer shall be deemed to have agreed to such revision for the remainder of the Term of the Agreement. Thereafter, the Service Fee on and after the implementation date shall be made on the basis of such revised Service Fee.
- D. Aflac may revise the Service Fee set forth above at any time if any change in law or regulations imposes on Aflac greater duties or obligations than contemplated by the Agreement in force at the time of such change.

Section VI. Term of Agreement

The initial term of this Agreement shall commence on the later of the (i) Effective Date or (ii) the first day of the Initial Plan Year and shall end on the last day of the initial Plan Year (the "Initial Term"); thereafter, this Agreement will automatically renew for successive periods of twelve (12) months (each, a "Term" from the first day of the Initial Plan Year (the "Anniversary Date") unless, at least thirty (30) days prior to the end of the then current Term (the "Renewal Date"), the Employer or Aflac gives written notice to the other of its intention not to renew the Agreement. In the event of a short Plan Year (other than the first Initial Plan Year) this Agreement shall automatically renew for an additional twelve (12) months unless the Employer or Aflac gives written notice to the other of its intention not to renew the Agreement within thirty (30) days after the Employer notifies Aflac of the short Plan Year.

Section VII. Termination of Agreement

- A. This Agreement shall terminate upon the earliest of the following dates:
 - (1) The end of a Term (including the Initial Term) of the Agreement following the delivery of written notice of termination pursuant to Section VI.
 - (2) At the option of Aflac, the date upon which the Employer fails to transfer sufficient funds to Aflac (upon request by Aflac) (i) to pay all valid Requests pending under the Plan (as provided in Section II.A), or (i) to pay the Service Fee (as provided in Section V.A. and Appendix C). Aflac shall promptly communicate its election of this option to the Employer.
 - (3) Upon the implementation date for a proposed Service Fee increase deemed to be unacceptable by the Employer (after delivery of written notice of termination by the Employer) pursuant to Section V.C.
 - (4) At the option of Aflac, upon suspension, limitation, modification or revocation of the benefits made available to Participants under the reimbursement Plan or the Flexible Benefit Plan (as determined by Aflac in its sole discretion), Aflac shall immediately communicate its election of this option to the Employer.
 - (5) Any other date mutually agreeable to the Employer and Aflac.
- B. Upon termination of this Agreement, Aflac shall cease the processing of all Requests then in its possession, return any undistributed funds to the Employer, and make all records relating to Requests in process reasonably available to the Employer. If the termination occurs pursuant to VII.A.(1), (above), Aflac shall process all Run-Off Requests provided any Service Fee(s) is current. Thereafter, the Employer and/or Plan Administrator shall be responsible for all aspects of reimbursement Request processing and Plan administration.

Section VIII. Miscellaneous

- (1) **Notices**. Any notice required to be given hereunder to Aflac shall be sufficient if in writing and delivered personally, or by telefax to a number specified by Aflac upon the Employer's request, or by prepaid first class mail to Aflac Benefit Services/Flex One, Attn: Service Contracts, 1932 Wynnton Road, Columbus, GA 31999-9950, or if to the Employer, at the address of the Employer denoted on the signature page attached hereto, or as subsequently updated by Employer and maintained on file by Aflac.
- (2) **Applicable Law**. This Agreement shall be governed by, and shall be construed in accordance with the laws of the State of Nebraska, to the extent they are not preempted by ERISA, the Code, or any other federal law.

- (3) Legal and Tax Status. The Employer acknowledges that neither Aflac nor its agents is providing legal or tax advice, and that neither Aflac nor its agents serves as the Plan Administrator or a fiduciary under the Plan. The Employer shall be the sole party responsible for determining the legal and tax status of the Plan under applicable law. Aflac shall have no power or authority to waive, alter, breach, or modify any terms or conditions of the Plan.
- (4) Assignment. This Agreement may be assigned by Aflac to any other party, including any successor to the business of Aflac by merger, consolidation, purchase of assets, or otherwise, without the prior consent of the Employer. This Agreement shall be binding upon any corporation into which the Employer may be merged or with which it may be consolidated, or any corporation succeeding to all or substantially all of the business of the Employer.
- (5) Entire Contract. This Agreement constitutes the entire contract between the parties and no modification or amendment hereto shall be valid unless in writing and signed by an officer of the Employer and an Officer or duly authorized representative of Aflac.
- (6) Tax Reporting and Withholdings. The Employer has ultimate control over the payment of Plan benefits and shall be the sole party responsible for income and employment tax reporting and withholding obligations imposed as a result of the includability of such payments in the gross income of recipients. Aflac is a mere agent of the Employer for the processing of benefit Requests
- (7) Confidential Information. The term "Confidential Information" as used in this Agreement means confidential or proprietary information of any party that is not generally known to the public, including, but not limited to compilations, lists of actual or potential customers or suppliers, hardware systems, software, or other documentation of any type, whether in printed or machine readable form, computer databases, forms and form letters, contracts, information regarding specific transactions, and marketing and business plans. For the purposes of this subsection, Confidential Information shall not include the personally identifiable information relating to any of Employer's employees.

The term "Trade Secrets" as used in this Agreement shall mean Confidential Information that: (1) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The terms "Confidential Information" and "Trade Secrets" do not include information that: (a) is known to the receiving party prior to its disclosure by the disclosing party, as evidenced by the receiving party's written records; (b) is developed by the receiving party independently of any of the Confidential Information or Trade Secrets received in confidence from disclosing party, evidenced by the receiving party's written records; (c) is rightfully received by the receiving party from a third party without restriction and without breach of any obligation of confidentiality running to the disclosing party.

Each party agrees that it shall not disclose to others or use for any purpose other than performance of the Agreement any of the other party's Confidential Information or Trade Secrets any time during or after the term of this Agreement. Each party further agrees that it will disclose Confidential Information or Trade Secrets to its employees only as necessary for the performance of the Agreement, and only to employees with a need to know. Each party to this Agreement agrees that all Confidential Information and Trade Secrets are the property of the party disclosing it, and each agrees to promptly return to the disclosing party, upon demand, any Confidential Information or Trade Secrets furnished under this Agreement which is either received in or reduced to material form, and all copies thereof. The Employer agrees that Aflac may make lawful references to Employer in its marketing activities.

- (8) Individual Information. Each party acknowledges that performance of the Agreement may involve the use and disclosure of personal information relating to the Employer's employees (including but not limited to names, addresses, benefit elections, claims and health information). Aflac agrees that it will not use any such information disclosed to it by Employer except as authorized by the individual to whom the information relates or as otherwise permitted by applicable state or federal law or regulation. Employer agrees that it will not use any such information disclosed to it by Aflac except for the purpose for which it received the information and will not further disclose such information without the written authorization of the individual to whom the information relates. This provision is not intended to create any third party beneficiary rights (in favor of Employer's employees or any other party).
- (9) Capitalized Terms shall have the same meaning as in the Plan documents unless otherwise defined herein.



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and signed by an Officer of the Employer and an Officer or duly authorized Worldwide Headquarters Employee of Aflac to do so, effective as of the _____ day of _____, _____ ("Effective Date") for the Plan Year beginning the _____ day of _____, _____ (the "Initial Plan Year").

Dated at Aflac this _____ day of _____

By: _____

Jason A. Goodroe
Second Vice President
Aflac Benefit Services/Flex One

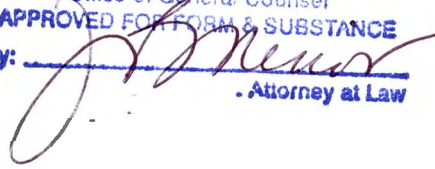
Dated at _____ this _____ day of _____

By: _____

Street Address: _____

Jody London
President, Board of Education

Edgar Ralostraw, Jr., Secretary
Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  . Attorney at Law

Appendix A
Schedule of Services to Be Provided By Aflac

In accordance with attached Reimbursement Services Agreement Aflac shall provide the following services for the Employer:

General Plan Services:

- provide the Employer with a sample cafeteria plan document, including a medical care expense reimbursement ("URM") Plan and a dependent care expense reimbursement ("DDC") Plan to be reviewed by the Employer and its legal counsel; and
- provide the Employer with a sample flexible benefits summary plan description for distribution to each Plan Participant and employees and where may be required by a Change in Status; and
- upon receiving instructions from the Employer on a Change in Status, Aflac will make the change requested by the Employer.

Additional Services if DDC or URM Benefits Are Offered:

- assist the Employer in explaining the URM and/or DDC features of the cafeteria plan to employees; and
- process the Employer-executed Salary Redirection Agreements as they relate to the URM and DDC components of the Employer's flexible spending account; and
- prepare an enrollment confirmation letter and send it to the Employer to verify URM and DDC elections; and
- provide each URM and/or DDC Participant with an Explanation of Benefits and account balance statement with each reimbursement Request, and, unless the annual election is exhausted, at the end of each quarter (based on Plan Year) if no reimbursement Requests are received; and
- provide the Employer with monthly written reports summarizing the previous period's URM and/or DDC and Account activities; and
- receive Requests for URM and/or DDC benefits, and expeditiously review such Requests in a non-discretionary manner under reimbursement guidelines established under the requirements of Section 125 of the Internal Revenue Code ("Code"), to determine what amount, if any, is due and payable with respect thereto; and
- disburse the benefit payments it determines to be due (provided the Employer transfers sufficient funds to Aflac in accordance with provisions under Section II.A.) in accordance with the provisions of the Plan and the following procedures:
 - valid reimbursement for URM and/or DDC benefits shall be paid by Aflac on the date funds are received from the Employer (with respect to such Requests and in accordance with provisions under Section II.A.3) by mailing a check directly to the Participants at their addresses (unless otherwise requested by the Employer as allowed by the terms of the Plan) or by initiating a direct deposit funds transfer directly to the Participants in their respective bank accounts in the appropriate amount(s); and
 - if the amount of the (otherwise) reimbursable DDC Request exceeds the amount the Participant had withheld for DDC benefits, the excess shall be carried forward (within the same Plan Year) and treated as an Eligible Employment-Related Expense for that month; and
 - if the amount of URM Requests exceeds the amount the Participant has had withheld from URM benefits, the entire amount shall be processed to the extent of the Participant's annual election reduced by previous reimbursements made for expenses incurred during the Plan Year; and
 - Requests of less than \$15.00 may be carried forward and aggregated with future Requests until the reimbursable amount is greater than \$15.00, provided however, that the entire amount of the reimbursable Requests shall be paid after the close of the Plan Year (and any applicable grace period) without regard to the \$15.00 threshold; and
 - unless otherwise specified in writing by the Employer, Requests for URM benefits following a Change in Status impacting the URM election shall be processed using a "blended approach" (i.e., the maximum URM benefit for a period of coverage following a Change in Status will be limited to the lesser of: (a) the annual URM maximum set forth in the Plan document less any benefit payments made prior to the Change in Status; and (b) the sum of the Participant's URM account balance immediately before the Change in Status and any additional contributions made during the remaining period of coverage); and
 - notify claimants as to any Requests which are denied because of inadequate Request substantiation or improper Request form submission, and give affected claimants the opportunity to resubmit their Requests; and
 - provide to the claimant within thirty (30) days following receipt of a Request, written notification: (a) as to the disposition of the Request, or (b) of an anticipated delay beyond thirty (30) days, not to exceed 15 days from the end of the 30-day period, with respect to the disposition of the Request together with an explanation of the delay; and



- Claim Appeals. Although Aflac will process Requests in a non-discretionary manner under reimbursement guidelines established under the requirements of Section 125 of the Code, and will further conduct Request review and appeal procedures in a non-discretionary manner, the Employer shall have the ultimate right and responsibility to review contested Request appeals. Any departure specifically requested by the Employer in writing will be implemented by Aflac, but if Aflac objects to the departure as inconsistent with the requirements of the Code and Aflac standard guidelines, implementation will be at the expense and risk of the Employer.

Appendix B
Nondiscrimination Testing Services
[Provided Upon Annual Request]

Nondiscrimination Testing:

The Employer, upon submission of an annual Employee Census Data Sheet, authorizes Aflac to compile nondiscrimination testing percentages based upon the employee census data provided. As consideration for this service, the Plan Sponsor/Administrator agrees to release and hold Aflac, its subsidiaries, affiliates, officers, directors, owners, shareholders, attorneys, successors and assigns harmless from any liability arising as a result of the provision of or reliance upon such testing percentages. In addition, the Employer understands and agrees that:

- Aflac is not in the business of providing legal or tax advice, and the Employer, as the plan sponsor/administrator, will not construe the testing percentages provided by Aflac to be legal or tax advice. Accordingly, the Employer will seek the advice of its own tax or legal advisor to interpret and verify the testing percentages provided, and ensure compliance with applicable nondiscrimination requirements.
- The Employer bears sole responsibility for nondiscrimination testing and the continued qualified status of its cafeteria plan under all applicable provisions of the Internal Revenue Code.
- The testing percentages provided by Aflac are merely an indicator of compliance with three of the applicable nondiscrimination tests - the Cafeteria Plan 25% Key Employee Concentration Test, the Dependent Care 5% Shareholder Test, and the Dependent Care 55% Average Benefits Test. The Employer must also ensure compliance with the Eligibility Test and Contributions and Benefits Test applicable to the Cafeteria Plan, the URM, and the DDC Plan, as well as other tests that may apply to the benefits offered through the Cafeteria Plan. To ensure compliance with applicable provisions of the Internal Revenue Code, additional nondiscrimination testing and result verification must be undertaken by the Employer with the assistance of its tax or legal counsel.
- Discrimination testing should be conducted at least 180 days prior to the end of the Plan Year to which the data relates to ensure adequate time to make any required corrections. Testing should also be performed as of the last day of the Plan Year. Aflac will assist with discrimination testing no less frequently than once per year and no more frequently than once every thirty (30) days.



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**Appendix C
Fee Schedule**

In accordance with the attached Reimbursement Services Agreement, the services provided pursuant to this Agreement are subject to the Service Fee and Set-Up Fee described in the Fee Schedule. To the extent this Appendix conflicts with the Agreement, the Agreement shall control.

1. **Service Fees.** For the Initial Term, the Service Fee and Set-Up Fee shall be calculated according to the Negotiated Service Fee and Negotiated Set-Up Fee Calculation set forth in Section 2 of this Appendix C. A term during which the Negotiated Service Fee is in effect shall be referred to as a "Negotiated Service Fee Term". For the term commencing immediately after the expiration of the Negotiated Service Fee Term and for successive Terms thereafter, the Service Fee shall be calculated according to the Standard Fee Calculation set forth in Section 3 of this Appendix C. Notwithstanding the foregoing sentence, the parties may mutually agree to extend the Negotiated Service Fee Term thirty (30) days prior to the expiration of such term.
2. **Negotiated Service Fee and Negotiated Set-Up Fee Calculation.** The Service Fee shall be equal to the greater of (i) **\$0.00** per Participant in the reimbursement benefit (URM or DDC) per month (max per Participant of **\$0.00**) or (ii) a minimum monthly fee of **\$0.00** for the reimbursement Plans (URM or DDC) for which services are rendered. The Set-Up Fee shall be in the amount of **\$0.00**.
3. **Standard Service Fee Calculation.**
 - A. The Service Fee shall be based on:
 - (1) The Employee Count (defined below) and
 - (2) The number of Participants per Plan benefit (DDC or URM) per month for the reimbursement Plans (URM and/or DDC) for which services are rendered (subject to a per Participant maximum).
 - B. **Employee Count.**
 - (1) The number of eligible employees (the "Employee Count") is the factor that determines the Employer's monthly fee rate per Participant in the Plan (the "Fee Rate") under this Agreement. For purposes of this Appendix C, the term "eligible employees" includes all the Employer's employees who may participate in the benefits offered under the Employer's Flexible Benefit Plan (including URM or DDC Plan benefits).
 - (2) The Employee Count on record for the Employer for the Initial Term of this Agreement is **4,500**. By executing this Agreement, the Employer certifies that the Employee Count listed above either (i) reflects the actual number of Employer's eligible employees, or (ii) falls within the same Employee Count range (see the Rate Table in Section 2 for the ranges) in which the actual number of Employer's eligible employees falls. If no Employee Count is on record for the Employer, Aflac will assume the Employer's Employee Count falls within the range of 1-50. Upon each Renewal Date of this Agreement, the Employer agrees to verify and update the Employee Count accordingly. Failure to do so will result in Aflac assuming the Employee Count range of 1-50 applies and will use the applicable Fee Rate to calculate the monthly Service Fee for the renewal Plan year. Aflac will adjust the assessed Fee Rate for changes in the Employee Count only upon each subsequent Plan year for which this Agreement is renewed, unless otherwise mutually agreed upon by both Aflac and the Employer.
 - C. The calculation of the Service Fee will be subject to a per Participant maximum as well as a total monthly minimum.
 - D. The Service Fee is calculated as follows: Using the Rate Table below, multiply the Employer's applicable monthly Fee Rate per Participant by the number of Participants for a given month. The calculation above shall be the Service Fee for the month unless the Minimum Monthly Fee applicable to the Employer's Employee Count is greater, in which case the Minimum Monthly Fee amount shall apply.
 - E. **Rate Table**

Tier 3 - Fast Forward Funding Option Fee Schedule			
Employee Count	Account Establishment/ Set-Up Fee	Monthly Fee Rate Per Participant	Minimum Monthly Fee
1 to 50	\$300	\$7.20/\$7.20 max.	\$125
51 to 200	\$350	\$6.00/\$6.00 max.	\$125
201 to 300	\$400	\$4.80/\$4.80 max.	\$125
301 or more	\$450	\$3.60/\$3.60 max.	\$125



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**Aflac Reimbursement Services Agreement
Card Services Appendix**

OAKLAND UNIFIED SCHOOL DISTRICT (the "Employer") has established a Medical Care Reimbursement Plan (the "URM Plan") to allow participants to be reimbursed for eligible URM medical expenses. Aflac has the capability, in conjunction with its card provider, to provide a prepaid debit card service that is designed to process certain transactions electronically in the Employer's URM Plan by allowing participating employees to use an electronic payment card (the "Card") to purchase certain health care services and products from hospitals, physicians, health care professionals, and other eligible health care providers and merchants, as designated under the Employer's URM Plan.

Employer has asked Aflac to assist it with its administrative obligations related to processing claims via electronic payment card under the URM Plan. Assistance will only be provided with respect to a URM Plan for which Aflac has provided the sample plan documentation or, if Aflac's sample plan documentation is not utilized, then only such URM plan identified by the Employer and agreed to by Aflac pursuant to separate written notice.

This Aflac Reimbursement Services Agreement Card Services Appendix (the "Card Services Appendix") is incorporated into and made a part of the Aflac Reimbursement Services Agreement (the "Agreement"). The effective date of this Card Services Appendix is the effective date of the Agreement or if later, the date indicated in this Card Services Appendix. The responsibilities of the parties set forth in this Card Services Appendix are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Card Services Appendix and the Agreement, the Agreement controls.

In consideration for the mutual promises set forth below, the Employer and Aflac agree as follows:

I. Standard Services

Aflac will provide services as outlined below in Sections 1, 2, 3 and 4.

Standard Fee

The Employer shall pay Aflac the Service Fee set forth in the Fee Schedule (attached hereto as Appendix C).

Card Services Effective Date

As stated above, the effective date of this Card Services Appendix is the effective date of the Agreement or if later, the date indicated directly below

Card Services Effective Date: ___ / ___ / 20___

In consideration for the services provided by Aflac in accordance with this Card Services Appendix, Employer agrees to pay to Aflac the applicable fees set forth above. The Employer will make sufficient funds available to pay the fees in accordance with the method set forth in the Agreement.

Section 1. Definitions

- A. Card Transaction means when the Card is presented for payment of Eligible Medical Expenses.
- B. Eligible Medical Expenses shall be defined in the URM Plan.
- C. Benefit Plan Participants or Participants means employees and their dependents that are participating in the URM Plan.
- D. Health Flexible Spending Account (or "Health FSA") means a health flexible spending account, as provided through the URM Plan.
- E. Employee means those employees eligible to participate in the URM Plan.
- F. Account is the Employer-owned bank account from which reimbursements are made.
- G. Card or Cards means the electronic payment card provided by Aflac or by the card processor.

Section 2. Aflac Responsibilities

- A. Unless otherwise specified above, Aflac does not currently charge additional service fees to Participant Health FSAs for its card-related services. Notwithstanding any provision in the Agreement or this Card Services Appendix, Aflac reserves the right to begin charging fees to Participant Health FSAs upon ninety (90) days notice.
- B. Aflac shall provide administrative services to Employer on behalf of Participants, including updating Participants' records, maintaining accurate Participant Health FSA balances, and Health FSA contribution information, activating and deactivating Participant Cards, responding to Participant inquiries and providing appropriate notices regarding Participant Health FSAs and actions taken in relation thereto.
- C. Aflac shall provide administrative services to Employer, including maintaining accurate Health FSA balance information, providing reports of URM Plan related Account activities and initiating draws (either directly or through its authorized agent)



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against the Account designated by the Employer to fund reimbursement transactions and maintain Account balances at the agreed-upon levels.

- D. Aflac will provide call center support, subject to its standard hours of operation, for Participants to report lost or stolen Cards, and resolve all servicing issues related to the Card, except transaction or merchant disputes.
- E. Aflac will make available to the Employer, for distribution to the Participants, information concerning proper use of the Card.
- F. Aflac will use its best efforts to operate the Electronic Payment Card Program (the "Card Program") in accordance with IRS guidance applicable to debit card processing of Eligible Medical Expenses as set forth in Revenue Ruling 2003-43, IRS Notice 2006-69, and IRS Notice 2007-02, and any applicable IRS regulations or additional guidance published by the IRS (collectively "IRS Card Guidance"). Aflac will follow Employer direction with regard to administration of the Card Program, but Aflac shall not be responsible for any adverse consequences attributable to the direction of the Employer or that may arise as a result of the card processor's standard procedures. If either Employer or Aflac has concerns that the card processor is not operating in accordance with IRS Card Guidance, either party may terminate this Card Services Appendix without penalty upon thirty (30) days written notice.

Section 3. Employer Responsibilities

- A. Employer acknowledges that Card services are not generally available to certain persons, including, but not limited to, those ineligible to participate in Employer's URM Plan, non-employees, terminated employees, persons participating through COBRA, and certain employees on leave from employment and on disability (collectively, "Ineligible Persons"). Employer agrees to notify Aflac (as specified in the Agreement) if a Participant becomes an Ineligible Person.
- B. Employer agrees to sufficiently fund the Account, in advance, in an amount to be specified by Aflac from time to time) in a checking account in the Employer's name at a financial institution mutually agreeable to Employer and Aflac (the "Maintenance Deposit") to ensure adequate funding for the payment of Card Transactions as they occur. The Maintenance Deposit may be increased depending on the timing and level of Card Transactions.
- C. The Employer shall deposit additional funds in the Account (at the request of Aflac) in order to reestablish the Maintenance Deposit at the end of each claim processing cycle.
- D. Each day that Card Transactions are paid from the Account, Employer authorizes Aflac to initiate a draw (either directly or through its authorized agent) from a designated Employer account to restore the Account to the Maintenance Deposit level.
- E. Employer will provide a mechanism to deduct any ineligible Card Transactions through payroll deduction that have not been offset against other valid Eligible Medical Expenses or repaid to the Account by the Participant through check or money order, or if this is prohibited by law, to alternative agree to accept the loss as part of the risk of the URM Plan.
- F. Employer agrees to notify Aflac of Employee termination in a timely manner.
- G. Employer agrees that the cost of all Card Transaction and claims arising under the URM Plan shall be paid by the Employer's contributions to the Account. The liability for payment of claims falls on the Employer or the Plan Participant, and not on Aflac. Any additional costs, including administrative costs and banking costs, shall be paid by the Employer or Plan Participant. In no event shall Aflac be responsible for any such costs or charges. If, at any time, the amount of reimbursement benefits payable under the applicable Benefit Plan provisions exceeds the amount deposited by the Employer in the Account, the Employer shall transfer an amount necessary to the Account to fulfill its reimbursement obligations under the applicable Plan before any further reimbursement benefit payment is made. Aflac is under no obligation to advance funds on behalf of the Employer.
- H. Employer agrees to notify Aflac immediately upon suspicion of inappropriate or fraudulent Card use. Plan Participants must comply with the terms outlined within their Cardholder Agreement relating to inappropriate or fraudulent Card use.
- I. Employer acknowledges that Card usage for the URM Plan is subject to the IRS Card Guidance, which may include, without limitation, restrictions on the amount a Participant may charge, which merchants may accept the Card, and the type of expense that may be charged and other legal requirements. Employer acknowledges that, despite such usage restrictions imposed by the IRS, the Card may cause payments to be issued for expenses that do not represent eligible URM Plan expenses. Employer agrees Aflac may not be held responsible for Employer losses or any tax consequences due to payments for ineligible expenses. Employer acknowledges that state or other laws may govern whether and to what extent it may recoup ineligible payments by withholding such amounts from Employee pay.
- J. Employer acknowledges that Card Transactions will only be applied to the URM Plan's current plan year, unless otherwise formally communicated to the Employer, in writing by an officer of Aflac. In the absence of such an election, Employer agrees to communicate to Participants that Card Transactions will only apply to the URM Plan's current plan year and the Card should not be utilized by Participants to exhaust any remaining Health FSA benefits for the previous plan year during any applicable grace period. Employer will instruct Participants that grace period expenses must be submitted for consideration under the Plan utilizing the Request for Reimbursement form.
- K. Employer agrees that it may be liable for disputed Card payments if such disputes are subsequently resolved by VISA or MasterCard in favor of the merchant that provided the goods or services.

- L. Employer agrees to administer the URM Plan in accordance with the rules and regulations of the URM Plan and IRS Card Guidance.
- M. Employer agrees to provide to Aflac in a timely fashion all information for any reports or other documents required by law, including but not limited to the rules and regulations promulgated by the U.S. Department of Labor and the Internal Revenue Service. It is Employer's responsibility to ensure that it complies with all applicable tax and other laws.

Section 4. Administration

Aflac will administer the Card as follows:

- A. Aflac or the Card service provider chosen by Aflac will provide a Card to each Participant in the URM Plan.
- B. Aflac will provide each participant with reimbursement forms and instructions for filing requests for benefits under the URM Plan ("URM Requests"); and
- C. Aflac will provide each Participant with written monthly reports summarizing the previous period's URM Plan Card activities; and receive electronic and/or paper URM Requests, and expeditiously review such URM Requests to determine what amount, if any, is due and payable with respect thereto; and
- D. Aflac will disburse the benefit payments it determines to be due (provided the Employer has sufficient funds in the Account) in accordance with the provisions of the URM and the following procedure(s):
 - (1) Valid reimbursement for Health FSA benefits shall be paid by authorizing a valid Card Transaction at point of sale, or by mailing a check to the Participants at their address (unless requested by the Employer as allowed by the terms of the Plan) or by initiating a direct deposit transfer directly to the Participants in their respective bank accounts in the appropriate amount(s); and
 - (2) Card Transactions that have been authorized, but subsequently found to be ineligible shall be offset with valid paper URM Requests; or
 - (3) Card Transactions deemed ineligible shall be reimbursed by the Employee or deducted by the Employer via payroll system, or included in the Employee's tax income by the Employer; and
 - (4) Card Transactions will only be applied to the URM Plan's current plan year, unless elected by Aflac and formally communicated to the Employer, in writing by an officer of Aflac. Aflac reserves the right to apply Card Transactions to the grace period of a previous plan year of the URM Plan.
- E. Aflac agrees to reasonably ensure compliance with proper use of the Card and take whatever action is necessary to investigate and resolve errors in Card Transactions.
- F. The Card will be deactivated upon notice from the Employer that the Participant is no longer employed by the Employer or has ceased to satisfy the eligibility requirements of the URM Plan. Where Employer instructs Aflac to terminate eligibility, Aflac agrees to deactivate, as soon as practicable, but in no event more than three (3) business days of its actual receipt of a complete notice thereof, the Card of any Ineligible Person. If Aflac has deactivated the Card pursuant to the preceding sentence, Employer agrees that Aflac or the Card Service Provider may not be held responsible for all such ineligible expenses. Employer will use its best efforts to retrieve the Card from any Ineligible Person. Aflac may deactivate at its option and without prior notice to Employer or Participant, any Card for fraudulent activity or as outlined in the Cardholder Agreement. Aflac reserves the right to deactivate the Card any other time that it deems appropriate.
- G. Participants must agree to use the Card in accordance with the terms of the Cardholder Agreement that accompanies the Card. Aflac or the Card services provider will deactivate the portion of the Card that corresponds with the applicable URM Plan if the Participant fails to use the Card in accordance with the Cardholder Agreement.
- H. The Card may be used by Participants to pay for Eligible Medical Expenses with merchants who have a category code associated with medical services (to the extent applicable) or at merchants who have implemented an inventory information approval system (IIAS) as described in IRS Card Guidance. Aflac reserves the right to allow the Card to be used at merchants who do not have an appropriate category code provided such transactions are permissible under the IRS Card Guidance. Aflac will use its best efforts to ensure that the Card complies with IRS requirements; however, Aflac shall not be responsible for Card systems procedures established by the Card processor or directed by the Employer.
- I. Aflac will require substantiation of expenses paid with the Card in accordance with IRS Card Guidance. Aflac will notify claimants in writing as to any electronic or paper URM Requests that are denied or deemed ineligible for reimbursement because of inadequate claim substantiation, improper claim form submission, or medical expense not meeting URM Plan requirements. The Card will be deactivated if the Participant fails to provide the requested substantiation. Aflac will make reasonable attempts to collect repayment of benefits paid through the Card for ineligible expenses or offset the ineligible payment against any URM Requests for future eligible expenses (made during the plan year where required). No more than two (2) requests for repayment will be made. If repayment or offset is not made, Employer will be informed and will be responsible for taking any necessary action required by law. Employer agrees to recover the funds from the Participant (as required by IRS Card Guidance and permissible under state or other laws) and send notice of the recovered funds to Aflac for credit to the Participant's Account.



- J. Aflac or the Card service provider will incur no liability for ineligible Card payments. It is the Employer's responsibility to ensure that it complies with all applicable tax and other laws.
- K. All Cards will be deactivated on the date this Agreement is terminated. Aflac has the right to deactivate all Cards in the event the Employer fails to fund the Account as provided in Section 3 above. Aflac may also elect to terminate the Agreement as of such date.
- L. If a Card has been deactivated (other than for failure to properly fund), neither Aflac nor the Card service provider will reactivate the Card, until Aflac has reasonably determined that the reason for the deactivation has been resolved or promoted by written instructions from the Employer.

Section 5. Transfer of Data

Aflac will establish a standard procedure for exchanging information. Employer will furnish the information determined to be necessary to satisfy its responsibilities under this Card Service Appendix in a format, method, and time mutually agreed upon by the parties. Aflac may exchange eligibility and adjudication data with the pharmacy benefits manager. Also, Aflac may interface with the Card processor on all Card activity and post data to system file.

Section 6. Optional Services

<i>II. Optional Services</i> These are provided only upon written request of the Employer.	<i>Optional Fees</i>
[Reserved]	[Reserved]

Exhibit A**HIPAA
BUSINESS ASSOCIATE AGREEMENT**

THIS APPENDIX, effective upon the execution of the Reimbursement Services Agreement attached hereto, by and between American Family Life Assurance Company of Columbus (Aflac) and the OAKLAND UNIFIED SCHOOL DISTRICT MEDICAL CARE REIMBURSEMENT PLAN (the "URM Plan") is adopted by the OAKLAND UNIFIED SCHOOL DISTRICT (the "Employer") on behalf of the URM Plan and is incorporated into and made a part of the Reimbursement Services Agreement ("Agreement") between Aflac and the Employer. This Exhibit A is intended to comply with the business associate agreement provisions set forth in 45 CFR §§ 164.314 and 164.504(e), and any other applicable provisions of 45 CFR parts 160 and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 as amended, including by the Health Information Technology for Economic & Clinical Health Act of the American Recovery and Reinvestment Act of 2009 ("ARRA"), (collectively "HIPAA").

Aflac recognizes that in the performance of services for the URM Plan under the Agreement it will have access to, create, and/or receive from the URM Plan or on its behalf Protected Health Information ("PHI"). For purposes herein, PHI shall have the meaning given to such term in 45 CFR § 1640.103, limited to the information created or received from the URM Plan or on its behalf by Aflac. Whenever used in this Exhibit A other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Exhibit A but not defined herein, shall have the same meaning as those terms are defined under HIPAA.

SECTION 1. AFLAC RESPONSIBILITIES

- 1.1 Aflac may use or disclose PHI, provided that such use or disclosure of PHI would not violate HIPAA, as follows: (a) as permitted or required in this Exhibit A and in the Agreement; (b) as Required by Law in accordance with 45 CFR § 164.512; (c) for the proper management and administration of Aflac, (d) to fulfill any present or future legal responsibilities; (e) for Data Aggregation services to the URM Plan (as defined in 45 CFR § 164.501); or (f) any use and disclosure of PHI that has been de-identified within the meaning of 45 CFR § 164.514.
- 1.2 Aflac agrees to implement commercially reasonable and appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Exhibit A.
- 1.3 Aflac agrees to implement commercially reasonable administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the URM Plan.
- 1.4 Aflac agrees to report to the URM Plan any successful Security Incident that is material or any use or disclosure of PHI of which it becomes aware that is not provided for by this Exhibit A or in the Agreement.
- 1.5 Aflac agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to similar restrictions and conditions that apply through this Exhibit A to Aflac with respect to such information.
- 1.6 At the request of the URM Plan, and in a mutually agreeable time and manner, Aflac agrees to provide access to PHI it holds in a Designated Record Set (as defined in 45 CFR § 164.501), to the URM Plan, or as directed by the URM Plan, to an Individual in order to meet the requirements under 45 CFR § 164.524. Aflac shall have the right to charge the Individual a reasonable cost-based fee, as permitted by 45 CFR § 164.524. Aflac assumes no obligation to coordinate the provision of PHI maintained by other business associates of the URM Plan.
- 1.7 At the request of the URM Plan, and in a mutually agreeable time and manner, Aflac agrees to make any amendment(s) to PHI it holds in a Designated Record Set that the URM Plan directs or agrees to pursuant to 45 CFR § 164.526 at the request of the URM Plan or an Individual.
- 1.8 At the request of the URM Plan, and in a mutually agreeable time and manner, Aflac agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Aflac on behalf of the URM Plan available to the Secretary (as defined in 45 CFR § 160.103), for purposes of the Secretary determining the URM Plan's compliance with the Privacy and Security Rules.
- 1.9 Aflac agrees to document such disclosures of PHI and information related to such disclosures as would be required for the URM Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 1.10 Aflac agrees to provide to URM Plan or an Individual, in the time and manner designated by URM Plan, information collected in accordance with 1.09 to permit the URM Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 1.11 Except as provided for herein, or as required by law, upon termination of the Agreement, Aflac agrees to return to the URM Plan or destroy PHI and retain no copies in any form, if feasible. In the event that Aflac determines that returning



or destroying the PHI is infeasible, Aflac agrees to extend the protections, limitations and restrictions of this Exhibit A to such PHI and to limit any further uses and/or disclosures of such PHI retained to the purposes that make the return or destruction of the PHI infeasible, for as long as Aflac maintains such PHI. Both parties agree that this Section 1.11 shall survive the expiration or termination of the Agreement and remain in full force and effect thereafter for so long as Aflac or any of Aflac's employees, subcontractors, or agents remain in possession of any PHI, and shall expire thereafter.

SECTION 2. PLAN AND EMPLOYER RESPONSIBILITIES

- 2.1 Employer acting as the Plan Sponsor agrees to comply with the administrative requirements set forth in 45 CFR §§ 164.530 and 164.504(f), including but not limited to amending the URM Plan to restrict uses and disclosures of PHI.
- 2.2 The Employer acknowledges and agrees that Aflac shall only disclose PHI in its possession to the Named Contact as designated (and through the modes specified) in Section III.F of the Agreement. The employees who are identified on the applicable plan document request form (and in the Plan documents) shall be the Designated Persons in accordance with 45 CFR § 164.504(f), and disclosures to such persons by Aflac are solely for purposes of carrying out plan administration functions that the Employer performs for the URM Plan.
- 2.3 Employer shall timely notify Aflac in writing of any changes to the names or positions of employees listed in subsection 2.2 as Designated Persons. Aflac shall have no duty to inquire whether the list of Designated Persons is accurate.
- 2.4 Employer acknowledges and agrees that under the HIPAA Privacy Rules Designated Persons may only request the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Aflac shall have no duty to ensure that the amount of PHI requested by the Designated Persons is the minimum amount necessary.
- 2.5 Aflac shall have no liability for uses or disclosures contemplated in the Agreement. Employer shall indemnify and hold harmless Aflac (and its employees) for any and all liability Aflac may incur as a result of any improper use or disclosure of PHI by the URM Plan, Employer or a Designated Person(s).
- 2.6 URM Plan shall not request Aflac to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rules if done by the URM Plan, except that Aflac may use or disclose PHI as provided in Section 1.1.
- 2.7 URM Plan shall provide URM Plan participants and beneficiaries with adequate notice of the uses and disclosures of PHI that may be made by the URM Plan, and of the individual's rights and the URM Plan's responsibilities with respect to PHI as required in 45 CFR § 164.520. The URM Plan further agrees to forward a copy of such notice to Aflac, as well as any changes to such notices.
- 2.8 URM Plan shall provide Aflac with any changes to, or revocation of, permission by a Participant or Beneficiary to use or disclose PHI, if such changes affect Aflac's permitted or required uses or disclosures.
- 2.9 URM Plan shall not agree to any special privacy restrictions requested by an Individual without Aflac's written approval, including those provided for 45 CFR § 164.522.
- 2.10 Notwithstanding any other provision of this Agreement, Aflac recognizes that the URM Plan may have other business associates and its sharing of PHI with such other business associates of the URM Plan will be reasonable and necessary to facilitate URM Plan administration. Aflac agrees to disclose PHI in its possession to such other entities as directed by the URM Plan, provided that such other business associates agree to comply with the Privacy and Security Rules with respect to the use and disclosure of such PHI. URM Plan shall be solely responsible for ensuring that it has entered into appropriate business associate agreements with its other business associates in accordance with 45 C.F.R. § 164.504(e).

SECTION 3. MISCELLANEOUS

- 3.1 Both parties agree that nothing express or implied in this Exhibit A is intended to confer, nor shall anything herein confer, upon any person other than Aflac, the URM Plan, the Employer, and their respective successors, or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 3.2 This Exhibit A shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy and Security Rules, and any ambiguity in this Exhibit A shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy and Security Rules. Both parties agree that the provisions of this Exhibit A shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions of this Exhibit A.
- 3.3 Both parties acknowledge that future changes to the requirements of HIPAA, the Privacy and Security Rules, and other applicable laws relating to the security or confidentiality of PHI may require amendment of this Exhibit A. Upon the written request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an

amendment to this Exhibit A. If either party disagrees with any such amendment, it shall so notify the other party in writing within 30 days of notice. If the parties are unable to agree on an amendment within 30 days thereafter, then any of the parties may terminate the Agreement in accordance with the termination section of the Agreement.

- 3.4 Notwithstanding Section 3.3 above and without limiting the rights of the parties under the Agreement, upon written notice of the existence of an alleged material breach of the terms of this Exhibit A, the URM Plan shall afford Aflac an opportunity to cure said breach upon mutually agreeable terms. Failure to cure within 30 days shall be immediate grounds for termination of the Agreement.
- 3.5 Section 1.11 shall survive the termination or expiration of the Agreement for the reasons stated therein. The other provisions of this Exhibit A shall survive the termination of the Agreement and remain in full force and effect thereafter for so long as Aflac or any of its employees, agents or subcontractors remains in possession of PHI in accordance with Section 1.11 of this Exhibit A and shall expire thereafter.



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