



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 9.1a

Meeting Date: September 6, 2012

Subject: Grants, Entitlements, and Other Income Agreements
Ratification of Other Agreements
Approval of Bid Awards
Approval of Declared Surplus Materials and Equipment
Change Notices
Notices of Completion

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Administrative Services

Recommendation: Recommend approval of items submitted.

Background/Rationale:

Financial Considerations: See attached.

Documents Attached:

1. Grants, Entitlements, and Other Income Agreements
2. Other Agreements
3. Approval of Declared Surplus Materials and Equipment

Estimated Time:	N/A
Submitted by:	Daniel M. Sanchez, Manager II, Purchasing Services Kimberly Teague, Contract Specialist
Approved by:	Patricia A. Hagemeyer, Chief Business Officer

GRANTS, ENTITLEMENTS AND OTHER INCOME AGREEMENTS - REVENUE

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>ACCOUNTABILITY OFFICE</u>		
A12-00096.1 California Department of Education	3/1/12 – 9/30/13: School Improvement Grant, Cohort 2. Oak Ridge Elementary School three-year School Improvement Grant (SIG) decrease of \$29,671. Original grant in the amount of \$1,545,785 was approved by Board of Education on April 19, 2012.	Decrease of \$29,671 New Total = \$1,516,114

ADULT EDUCATION

A13-00024 California Department of Education	7/1/12 – 6/30/13: Grant funding for Workforce Investment Act, Title II: Adult Education and Family Literacy Act, English Literacy, and Civics Education programs. The programs supported by these funds improve employment opportunities; and provide training, literacy, and vocational rehabilitation to community adults. Achievement in Adult Basic Education, English as a Second Language, English as a Second Language – Citizenship, General Education Development, Adult Secondary Education, and other vocational programs is measured through testing. Benchmarks are tracked for future funding opportunities.	\$815,361 No Match
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CHILD DEVELOPMENT

A12-00115.1 California Department of Education	7/1/12 – 6/30/13: General Child Care and Development Program Contract increase of \$115,044. Original contract in the amount of \$895,024 was approved by Board of Education on June 21, 2012.	Increase of \$115,044 New Total = \$1,010,068
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FAMILY AND COMMUNITY ENGAGEMENT

A13-00023 Sierra Health Foundation	8/1/12 – 7/31/12: Grant to improve the educational achievement of high-risk 10 th and 11 th grade students who have a history of suspension/expulsion incidents, through the Men's Leadership Academy, a pilot support program for students of color at American Legion, C.K. McClatchy and John F. Kennedy High Schools. The Men's Leadership Academy will connect participants to academic and career resources and opportunities; empower students to engage positively and constructively with peers and adults; instill a commitment to service through school and community action; and create a seamless web of support services around at-risk young men. Expected outcomes for participants include reduced behaviors leading to suspension and expulsion incidents; improved academic performance, improved school attendance and participation; and increased graduation rates and matriculation to college.	\$25,000 No Match
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INTEGRATED SUPPORT SERVICES

<p>A13-00027 California Department of Education</p>	<p>7/1/12 – 6/30/13: Grant for Education for Homeless Children and Youth Program. Funding for part-time social worker, youth and family advocate, and clerk to provide supplemental services to homeless students and families, including outreach to families living in shelters and temporary residential housing; school and academic support to facilitate school enrollment and attendance; family and student case management when necessary; school and office supplies; and emergency transportation to school.</p>	<p>\$111,421 In-kind Match: Homeless Coordinator, equipment and student supplies</p>
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EXPENDITURE AND OTHER AGREEMENTS

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
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ACADEMIC OFFICE

<p>SA13-00130 Wireless Generation</p>	<p>8/1/12 – 6/30/13: Last year, as a result of the district being in Program Improvement, to implement corrective actions mandated for districts with this designation, the California Department of Education allocated funds to address the student academic performance. These funds were and are to be used to partner with external providers to target the areas of deficiencies. A Request for Proposal (RFP) process was conducted last year. This is a continued implementation of a technology-based assessment and intervention program that addresses all five essential elements of reading (phonological awareness, phonics, fluency, vocabulary, and comprehension). The program is designed to identify, target, and address students' reading deficiencies across the five elements in Grades K-6. The elementary schools will administer the DIBELS and Reading-3D benchmark and progress monitoring assessments and Burst Reading intervention program. The technology will analyze the assessment data at the specific item level and group students with similar needs, provide teachers with 10-day sequences of curriculum and detailed lesson plans that are synchronized to the students' changing needs.</p>	<p>\$ 190,375.81 82% Carryover from Program Improvement year 3-5 5% Title I 13% Title III</p>
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The schools that will be served by the Wireless Generation reading assessment and intervention program during the 2012-2013 school year are:

1. Earl Warren
2. James Marshall
3. Pacific
4. Bowling Green McCoy
5. Bowling Green Chacon
6. Jedediah Smith
7. Mark Hopkins
8. Joseph Bonnheim
9. C.P. Huntington

10. John Still
11. Ethel Phillips
12. Freeport
13. Maple
14. John Sloat

All of the schools listed above participated in the program during the 2011-2012 school-year. Of the 14 schools listed, 10 showed growth in the percentage of students scoring at proficient or above on the ELA California Standards Test (CST) with student performance ranging from 0.2 to 9.2 percentage point gains.

In addition, student performance on the Wireless Generation Benchmark assessments, administered 3 times during the school year (Beginning, Middle, and End of year), showed growth from the beginning of the year assessment to the end of year assessment. The system categorizes students into a three tiers of performance, "intensive" (students who are far below the benchmark), "strategic" (students who are slightly below the benchmark) and "benchmarked" (students who have met or exceeded the benchmark. Seventeen percent (17%) of students who were intensive at the beginning of the year moved to strategic and 10% moved to benchmark at the end of the year. Thirty-five percent (35%) of students who were strategic at the beginning of the year moved to benchmark by the end of the year.

Due to limited funding, 10 of the 14 schools will implement the program in grades K-2 only. The remaining four schools, which are the being developed as Balanced Literacy Lab Schools, will implement the program in grades K-6. Assessment information will inform instruction and modifications to the program.

Strategic Plan: Aligns with Pillar 1, Career and College Ready Students, by implementing a targeted, systematic process that is designed to accelerate the rate of student learning at these low-performing sites. It includes in-time intervention supports that tackle varying levels of student abilities and areas of deficiencies, plus utilizes ongoing assessments coupled with a systematic data inquiry methodology for learning from student results, indicating shortcomings in both teaching and learning, as well as designing and implementing instructional improvements.

COMPENSATION AND BENEFITS

SA13-00007 Benefit & Risk Management Services	7/1/12 – 6/30/13: Online administration system for billing, reconciliation, and benefit costs tracking, including retiree benefits administration, over-age dependent tracking, Consolidated Omnibus Budget Reconciliation Act (COBRA), and self-funded plan for CalPERS retiree benefits reimbursement. Strategic Plan: Aligns with Pillar III by providing cost containment activities in the area of health benefits and supports continuous improvement in alignment with organizational transformation.	\$220,000 General Funds
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SPECIAL EDUCATION

SA13-00124 Eaton Interpreting Services	7/1/12 – 6/30/13: Deaf interpreting services for students as requested by the Special Education Department. Strategic Plan: Aligns with Pillar I, Career and College Ready Students, by providing students with a relevant, rigorous and well-rounded education.	\$155,925 Special Education Funds
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APPROVAL OF DECLARED SURPLUS MATERIALS AND EQUIPMENT

ITEM	SITE/DEPARTMENT	TOTAL VALUE	DISPOSAL METHOD
Computer Equipment	Collis P Huntington Elementary	None	Recycle
	Theodore Judah Elementary	None	Recycle
Audio/Visual Equipment	Theodore Judah Elementary	None	Recycle



SERVICES AGREEMENT

Date: September 7, 2012 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Wireless Generation, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

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

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Implement technology-based assessment and intervention program that addresses all five essential elements of reading (phonological awareness, phonics, fluency, vocabulary and comprehension) to identify, target and address students' reading deficiencies in Grades K-6 per Proposal dated July 5, 2011 (second year) and attached price quotes.

ARTICLE 2. TERM.

This Agreement shall commence on July 1, 2012 and continue through June 30, 2012 unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be One Hundred Ninety Thousand, Three Hundred Seventy Five Dollars and eighty one cents (\$190,375.81).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Iris Taylor, Asst. Superintendent, Curriculum and Instruction, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments



to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in



force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870
Attn: Iris Taylor, Asst. Supt, Curriculum

Contractor:
Wireless Generation
55 Washington Street, Suite 900
Brooklyn, NY 10201
Attn: James Mylen, Senior Vice President

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating

to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their 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. In the event of a 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 the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.



ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

WIRELESS GENERATION

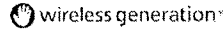
By: _____
Patricia A. Hagemeyer
Chief Business Officer

By: _____
Signature

Date

Print Name/Title

Date



55 Washington Street, Suite 900 | 1 800 886 9126 | 646 403 4700
Brooklyn, NY 11201-1071 | www.wirelessgeneration.com

Wireless Generation Renewal Price Quote

Date: 8/24/2012

Prepared For:
Dr. Iris Taylor
Sacramento City Unified School District
Sacramento, CA 95824

Prepared By:
Chad Prezlowski
Account Representative, Renewals
(212) 796-2200
cprezlowski@wgen.net

Products & Services	Quantity	Unit Price	Total Price
mCLASS® Platform Annual Student Subscription Renewal	168	\$8.90	\$1,495.20
mCLASS® DIBELS Next® Software Annual Student Subscription Renewal	168	\$6.00	\$1,008.00
Burst® Reading Early Literacy Edition Annual Student Subscription Renewal	84	\$60.00	\$5,040.00
mCLASS® Now What? Tools Annual Student Subscription Renewal	168	\$5.50	\$924.00
Subscription Period: 9/1/2012 - 8/31/2013			
SUBTOTAL			\$8,467.20
CA STATE SALES TAX (7.750%)			\$656.21
GRAND TOTAL			\$9,123.41

Scope of engagement:

- Grades: K; 1; 2
- Participating Schools: James Marshall ES

Duration of engagement:

- Term of product license: 9/1/2012 - 8/31/2013
- Term of Training and Professional Development: Services listed herein to be used within one year of purchase.

Other information:

- Quote ID: PO# 120724-43862
- This Proposal is valid for sixty (60) days.
- Prices do not include sales tax, if applicable.
- Wireless Generation's Federal Tax ID # is 13-4125483.
- Payment terms, net 30 days.
- Pricing for all software products is based on total enrollment per grade level assessed.
- Assessment kits include the cost of shipment and are non-returnable. Expedited shipping is available at extra charge.
- Please visit the following website below for information about technical specifications, hardware requirements.
<http://wirelessgeneration.com/solutions/requirements.html>

This Price Quote is subject to Wireless Generation's Standard Terms & Conditions. Issuance of a purchase order or payment pursuant to this Price Quote shall be deemed acceptance of such Terms & Conditions.

Wireless Generation Renewal Price Quote

Date: 8/24/2012

Prepared For:

Dr. Iris Taylor
 Sacramento City Unified School District
 Sacramento, CA 95824

Prepared By:

Chad Prezlomski
 Account Representative, Renewals
 (212) 796-2200
 cprezlomski@wgen.net

Products & Services	Quantity	Unit Price	Total Price
mCLASS® Platform Annual Student Subscription Renewal	2,000	\$8.90	\$17,800.00
mCLASS®:DIBELS Next® Software Annual Student Subscription Renewal	2,000	\$6.00	\$12,000.00
Burst®:Reading Early Literacy Edition Annual Student Subscription Renewal	1,114	\$60.00	\$66,840.00
mCLASS®:Reading 3D™ Software Annual Student Subscription Renewal for Existing mCLASS®:DIBELS® Next Customers	1,130	\$6.00	\$6,780.00
mCLASS®: Now What? Tools Annual Student Subscription Renewal	2,000	\$5.50	\$11,000.00
mCLASS®:DIBELS Next® Kit (Grade K)	18	\$35.00	\$630.00
mCLASS®:DIBELS Next® Kit (Grade 1)	18	\$50.00	\$900.00
mCLASS®:DIBELS Next® Kit (Grade 2)	18	\$50.00	\$900.00
mCLASS®:DIBELS Next® Kit (Grade 3)	5	\$50.00	\$250.00
mCLASS®:DIBELS Next® Kit (Grade 4)	5	\$75.00	\$375.00
mCLASS®:DIBELS Next® Kit (Grade 5)	5	\$75.00	\$375.00
mCLASS®:DIBELS Next® Kit (Grade 6)	5	\$75.00	\$375.00
DISCOUNT - mCLASS® Platform and Annual Student Subscription Renewal	250	\$14.90	-\$3,725.00
Subscription Period: 9/1/2012 - 8/31/2013			
SUBTOTAL			\$114,500.00
CA STATE SALES TAX (7.750%)			\$8,873.00
GRAND TOTAL			\$123,373.25

Scope of engagement:

- Grades: K; 1; 2; 3; 4; 5; 6
- Participating Schools: Bowling Green ES (K-2)
- Bowling Green-Chacon ES (K-2)
- Collis P Huntington ES (K-6)
- Ethel Phillips ES (K-6)
- Jedediah Smith ES (K-2)
- John S Sloat ES (K-5)
- Joseph Bonnheim ES (K-5)
- Mark Hopkins ES (K-5)
- Pacific ES (K-5)

Duration of engagement:

- Term of product license: 9/1/2012 - 8/31/2013
- Term of Training and Professional Development: Services listed herein to be used within one year of purchase.

Wireless Generation Price Quote

Date: 8/24/2012

Prepared For:

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 Sacramento, CA 95824

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<u>Products & Services</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Product Training Session (1/2-Day On-Site for up to 25 participants)	18	\$1,860.00	\$33,480.00
GRAND TOTAL			\$33,480.00
CA STATE SALES TAX (7.750%)			\$2,594.70
GRAND TOTAL			\$36,074.00

Scope of engagement:

- Grades: K; 1; 2; 3; 4; 5; 6
- Participating Schools: Bowling Green ES (K-2)
- Bowling Green-Chacon ES (K-2)
- Collis P Huntington ES (K-6)
- Ethel Phillips ES (K-6)
- Jedediah Smith ES (K-2)
- John S Sloat ES (K-5)
- Joseph Bonnheim ES (K-5)
- Mark Hopkins ES (K-5)
- Pacific ES (K-5)

Duration of engagement:

- Term of product license: One year beginning on the date set forth on invoice.
- Term of Training and Professional Development: Services listed herein to be used within one year of purchase.

Other information:

- Quote ID: PQ# 120824-44726
- This Proposal is valid for sixty (60) days.
- Prices do not include sales tax, if applicable.
- Wireless Generation's Federal Tax ID # is 13-4125483.
- Payment terms, net 30 days.
- Pricing for all software products is based on total enrollment per grade level assessed.
- Assessment kits include the cost of shipment and are non-returnable. Expedited shipping is available at extra charge.
- Please visit the following website below for information about technical specifications, hardware requirements:
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Prepared For:

Dr. Iris Taylor
 Sacramento City Unified School District
 Sacramento, CA 95824

Prepared By:

Chad Prezlomski
 Account Representative, Renewals
 (212) 796-2200
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<u>Products & Services</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
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GRAND TOTAL			\$33,480.00
CA STATE SALES TAX (7.750%)			\$2,594.70
GRAND TOTAL			\$36,074.00

Scope of engagement:

- Grades: K; 1; 2; 3; 4; 5; 6
- Participating Schools: Bowling Green ES (K-2)
- Bowling Green-Chacon ES (K-2)
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- Payment terms, net 30 days.
- Pricing for all software products is based on total enrollment per grade level assessed.
- Assessment kits include the cost of shipment and are non-returnable. Expedited shipping is available at extra charge.
- Please visit the following website below for information about technical specifications, hardware requirements:
<http://wirelessgeneration.com/solutions/requirements.html>

This Price Quote is subject to Wireless Generation's Standard Terms & Conditions. Issuance of a purchase order or payment pursuant to this Price Quote shall be deemed acceptance of such Terms & Conditions.

Master Services Agreement

This Cover Page, including the Summary of Basic Terms below, together with the attached General Terms and Conditions and the Schedules thereto (the "Terms"), set forth the entire agreement of the parties with respect to services to be provided by Benefit and Risk Management Services, Inc. ("BRMS") to below-named Employer (this "Agreement").

Summary of Basic Terms

Any capitalized terms not defined in this Cover Page shall have the meaning ascribed to them in the Terms in the attached General Terms and Conditions, unless the context clearly establishes a different meaning.

Employer: Sacramento City Unified School District
Effective Date: 7/1/2011
Covered Plans: Medical/Dental/Vision/Life/Retiree Reimbursement

Description of Third Party Administration Services:

- Plan Administration Services (checked)
Claims Administration Services
Medical (checked)
Dental (checked)
Vision (checked)
Medical Management
Vbas Software License (checked)
COBRA Administration Services (checked)
FSA Administration Services
Retiree Administration Services (checked)

Compensation: As set forth in the applicable Schedule.

Employer Primary Contact: Marianne Clemmens

NOW, THEREFORE, intending to be bound, the parties have executed this Agreement by and through their authorized representatives as set forth below:

Sacramento City Unified School District

BENEFIT & RISK MANAGEMENT SERVICES, INC.

By: _____

By: [Signature]
Printed Name: Matthew Schafer

Printed Name: _____

Title: Chief Executive Officer

Title: _____

Address: 5735 47th Avenue
Sacramento, CA 95824

Address 80 Iron Point Road, Suite 200
Folsom California 95630

GENERAL TERMS AND CONDITIONS

Employer hereby engages Benefit & Risk Management Services, Inc. ("BRMS") and BRMS hereby accepts such engagement by Employer to perform the Services to be provided under this Agreement. BRMS is hereby authorized to do all things necessary to carry out the terms, purposes and conditions of this Agreement and to perform the Services. In connection with the execution of this Agreement or subsequent thereto, the parties may mutually execute Schedules describing additional or complimentary Services to those described in these Terms. Such Schedules are hereby incorporated into this Agreement and made part of this Agreement as though fully set forth herein.

These Terms and Conditions (these "Terms") are made as of the Effective Date by and between BRMS and the Employer indicated on the attached Summary of Basic Terms in the Cover Page (the "Summary"). Any capitalized terms not defined in these Terms shall have the meaning ascribed to them in the Summary.

1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the capitalized terms in this Section will have the meanings ascribed to them below.

1.1 "**Administrator**" means the person, corporation or organization, including Employer, appointed from time to time by Employer, who is responsible for the day-to-day functions and management of the Plan. The Administrator is Employer, or third party appointed by Employer unless BRMS has expressly undertaken the role of Administrator as part of the Services.

1.2 "**Claim**" means a request by a Covered Person to receive benefits under the Plan.

1.3 "**Claimant**" means an individual who makes a Claim.

1.4 "**COBRA**" means the Consolidated Omnibus Budget Reduction Act of 1985 and any amendments thereto.

1.5 "**Continuation Coverage**" means the continued group health care coverage required by COBRA as to employers employing greater than a designated number of persons.

1.6 "**Covered Person**" means any employee or dependent entitled to benefits under the terms of the Plan.

1.7 "**Effective Date**" means the effective date of this Agreement as set forth in the Summary.

1.8 "**Employees**" means all employees of Employer as defined under the terms of the Plan.

1.9 "**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

1.10 "**Funds**" means any and all assets and earnings of the Plan.

1.11 "**HIPAA**" means the federal Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.

1.12 "**Plan(s)**" means any of the insurance benefits programs arranged by Employer and listed on the Summary, as they may be amended or modified in writing from time to time.

1.13 "**Premium Trust Account**" means the account into which premiums are deposited for the Plan.

1.14 "**Qualified Beneficiaries**" means any individual who, one (1) day before the occurrence of a Qualifying Event (as defined below) is covered under the Plan in one of the following capacities: (i) Spouse of the covered Employee; (ii) dependent child of the covered Employee; (iii) retired Employee; or (iv) self-employed individual, independent contractor or corporate director.

1.15 "**Qualifying Event**" means a loss or reduction of group health plan coverage due to: (i) death of an Employee; (ii) voluntary or involuntary termination of employment of an Employee (other than for gross misconduct); (iii) divorce of an Employee; (iv) reduction in the hours of an Employee; (v) entitlement of an Employee to Medicare coverage; (vi) dependent child ceasing to be dependent child under the terms and conditions of the Plan; or (vii) Employer's filing of a Chapter 11 bankruptcy petition (or such other events listed in Section 4980B of the Code).

1.16 "Schedule" means an addendum, exhibit or other attachment to this Agreement which references this Agreement and describes particular Services to be provided by BRMS to Employer.

1.17 "Services" means the services to be provided by BRMS to or on behalf of Employer as described in this Agreement, including the Schedules hereto.

2. Plan Administration Services. With respect to the administration of the Plan, BRMS shall have the following responsibilities:

2.1 Documents and Forms. BRMS shall design, prepare and cause to be printed and supplied to Employer the documents and forms which are necessary for the administration of the Plan. Any expense incurred in the printing of such documents and forms (including plan booklets and summary plan descriptions) shall be an expense of the Plan.

2.2 File Maintenance. Utilizing information provided by Employer, BRMS shall establish and maintain (i) eligibility files based upon the information provided by Employer and (ii) records of all participating Employees and their dependents (including retirees, COBRA participants and the student status of dependents if such services are elected by Employer) in accordance with the Plan.

2.3 Eligibility Processing. With respect to eligibility for participation in the Plan, BRMS shall have the following responsibilities:

(a) BRMS shall communicate eligibility for the Plan to Employees who have elected to receive benefits from such Plan. Such communication may include electronic transfer of data, faxing or mailing of enrollment forms or copies of enrollment forms, electronic-mail of pertinent eligibility information and / or telephone communications. It is noted that the communication of eligibility may at times require research and resolution of discrepancies, including reconciliation of monthly reports and bills with carrier information and other auditing tools as required.

(b) BRMS shall maintain Employee eligibility under groups, divisions or branches using a separate location status identifier, provided each such group, division, or branch is provided to BRMS by Employer.

(c) BRMS shall follow any guidelines or limitations of the Plan, provided such guidelines or limitations have been provided to BRMS by Employer. Examples of such guidelines and limitations are: eligibility of retirees, domestic partners, coverage dependent limits, waiting periods, coverage effective dates, age banded rates, tier structure and rate change guidelines.

(d) BRMS shall furnish the eligibility and payment information to Employer for auditing purposes upon the request of Employer.

2.4 Government Reports. Upon request, BRMS will provide to Employer data regarding disbursements for administrative charges and other expenses of the Plan necessary for Employer's preparation of reports, tax returns, statements or other documents required to be filed by Employer with any local political subdivision, state government or federal government, including, all reports required to be filed pursuant to ERISA. However, Employer shall be solely responsible for the preparation and filing of any annual reports required by ERISA (including on IRS Form 5500) and BRMS shall not be responsible for the preparation and filing of such annual reports, unless BRMS specifically assumes such responsibility in a written agreement.

2.5 Premium Trust Account. Upon request, BRMS will provide assistance to Employer in Employer's efforts to develop an accounting policy for the Premium Trust Account designed to make contributions to the Premium Trust Account to insure that sufficient funds are available to meet the obligations of the Plan. It shall be the responsibility of Employer to determine if changes in the accounting policies for the Premium Trust Account are needed and/or appropriate.

2.6 Not Administrator. It is understood that BRMS is not and will not be treated as the Administrator or sponsor of any Plan for ERISA and all other purposes. BRMS is not a provider of health care services or benefits. Except as specifically set forth in this Agreement, BRMS shall have no responsibility or liability to any person for premiums of any Plan, or for payment of premiums or costs for any Plan provided by a third party.

2.7 Medical Expense Audits. BRMS, with notice to Employer, shall be authorized to incur expenses to validate the charges of medical providers, including hospitals. BRMS may hire a third party medical expense

auditor in connection with such validation. The cost of auditing the charges of medical suppliers under this Section shall be deemed an expense of the Plan. These costs will be applied toward any stop-loss provision of the Plan.

2.8 Access to Eligibility Data. BRMS agrees to allow and provide Employer complete and total access to Covered Person's eligibility data for the purpose of providing consulting assistance and customer service functions. Any and all available reports requested by Employer's designated agent shall be provided in a timely manner and in accordance with applicable state and federal privacy regulations.

2.9 Audit. Should the Plan be the subject of a Department of Labor audit or any audit or investigation by any federal or state government or any agency thereof, BRMS is specifically authorized by Employer to cooperate with any such audit or investigation.

2.10 Record Keeping.

(a) Plan Record Availability. BRMS will make copies of any Plan records and documents in its possession available to Employer upon request. Alternatively, BRMS shall 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.

(b) Third Party Requests. Should copies of Plan records or documents be requested by any Employee, Covered Persons, court or governmental agency, BRMS will notify Employer of the request.

(c) Duplicating Charges. BRMS reserves the right, in its sole and absolute discretion, to condition the making of any copies on its advance receipt of its customary copying charges. Notwithstanding any of the foregoing, any examination or copying of any Covered Persons' records shall be carried out in accordance with applicable law.

(d) Record Retention. Upon the termination of this Agreement, BRMS shall have the option of retaining its copies of such records and documents for a period of three (3) years, or delivering them to Employer. In no event will BRMS intentionally destroy its copies of any Plan records or documents without first notifying Employer by regular mail, sent to Employer's last known address, and providing Employer at least thirty (30) days within which to request that such copies be delivered to Employer at Employer's cost.

3. Claims Administration Services. With respect to the administration, processing and payment of Claims, BRMS shall have the following responsibilities:

~~3.1 Claim Receipt. BRMS shall accept any Claim from Employer which shall be made in the manner prescribed by the Plan and upon the form or forms provided or approved by BRMS.~~

3.2 Eligibility Determination. BRMS shall determine eligibility of a Claim for the payment of benefits including, as necessary and in the sole discretion of BRMS, investigation and verification of any statements contained in the Claim.

3.3 Claim Payment. BRMS shall make payment from the Funds for Claims payable according to the Plan. Where authorized by the Plan, BRMS may make such payments to: (i) the Employee on behalf of a dependent, or (ii) to any physician, hospital, nurse or other medical supplier providing services to or on behalf of any Covered Person if there is an assignment of benefits executed by such Covered Person.

3.4 Claim Processing. BRMS shall complete Claim processing, determination and payment within a reasonable time of receipt of the Claim, taking into consideration of the timing and volume of Claims submitted and the factors reasonably affecting the ability of BRMS to process Claims.

3.5 Inadequate Funds. In the event that Funds adequate to allow payment of one or more Claims shall not be made available by the Plan at the time payment is due, BRMS shall have no responsibility to make any payment with regard to such Claims unless and until sufficient funds are made available.

3.6 Monthly Reporting. Within thirty (30) days after the last day of each calendar month, BRMS shall send Employer a written report setting forth all disbursements of Funds made by BRMS in payment of Claims during the preceding calendar month. The report shall include a separate statement indicating payments made to or on behalf of dependents (as defined by the Plan) of Employees during the same month.

3.7 Claim Denial. BRMS may deny any Claim if BRMS determines that such Claim or Claimant is not eligible for benefits under the Plan and/or any guidelines provided by Employer. In the event of a denial of any Claim, BRMS shall provide written notice to the Claimant setting forth the specific reason or reasons for such denial, including such other information as is required by the Plan to be provided, with a copy of such notice to the representative of Employer designated to receive such notices. A Claimant whose Claim has been denied shall be afforded any rights of appeal or other review process provided under the terms and conditions of the Plan or applicable law.

3.8 Claim Compromise. Upon direction of Employer, BRMS shall compromise and adjust any disputed Claim or application for benefits previously denied. However, any Claim so compromised or adjusted upon the direction of Employer may be considered as paid outside the coverage of the applicable excess risk policy of insurance and shall be the sole responsibility of Employer.

4. COBRA Claims Administration. With respect to the administration and processing of COBRA claims (including assisting Employer in the determination of the eligibility of applicants for COBRA coverage), if BRMS is engaged to perform such services, BRMS shall have the following responsibilities:

4.1 Initial COBRA Notification. BRMS shall provide the appropriate initial COBRA notification to covered Employees and dependent spouses in accordance with the requirements of COBRA.

4.2 Qualifying Event Notification. BRMS shall, upon notification from Employer of the occurrence of a Qualifying Event, promptly notify Qualified Beneficiaries of their right to continuation coverage under COBRA in accordance with the requirements of COBRA.

4.3 Monthly Reporting. BRMS shall, upon receipt of a response from an Employee selecting continuation coverage under COBRA, provide the following to Employer: (i) a monthly bill or coupon booklet directed to the recipient of continuation coverage to be used to remit payments of premium; (ii) receipt and accounting for premium payments; (iii) remittance of COBRA premiums received to Employer or the appropriate carriers and/or third party vendor; (iv) notice of termination of continuation coverage for nonpayment of premium, termination of coverage due to end of coverage period under COBRA, or termination of coverage for any reason permitted under COBRA.

4.4 Termination Notice. BRMS shall provide notice of termination of continuation coverage to the applicable Employee or other covered individual for nonpayment of premium, due to end of coverage period under COBRA, or for any reason permitted under COBRA.

4.5 Benefits Payment. The source of payment of COBRA benefits payable under the terms of the Plan shall be contributions made by Employees. Expenses of administration of the Plan shall be paid from contributions made by Employer on behalf of eligible participating Employees and contributions made by eligible participating Employees, if any.

4.6 Premium Payment. Employer understands and agrees that COBRA regulations do not require Employer to provide participants with a monthly bill statement or payment coupon after initial enrollment by the COBRA participant and that it is the responsibility of the participant to pay their COBRA premiums when due regardless whether or not they receive a bill statement or payment coupon.

4.7 File Maintenance. BRMS shall maintain Employer's COBRA eligibility files and related records of all Employees and their dependents participating in COBRA in accordance with the Plan.

4.8 Premium Fee. BRMS is hereby authorized to assess, collect and retain an administrative fee to be invoiced with the COBRA premium payments received by BRMS from COBRA participants. This administration fee charged to the COBRA participant by BRMS will not exceed the legal maximum. The administration fee charged to the COBRA participant will be retained by BRMS to offset administrative charges that would otherwise be born by Employer.

4.9 Application Acceptance. To accept any application for benefits under COBRA from Employer made in the manner and on forms acceptable to BRMS.

4.10 Eligibility Determination. To assist Employer in the determination of eligibility for COBRA benefits payable under the terms of the Plan and to investigate and verify any statements contained in the application

for benefits that, in BRMS' sole opinion, require additional information for verification. With respect to the requirements of continued eligibility of dependent children, BRMS shall have the following responsibilities:

(a) BRMS shall request verification of student status two (2) times per year by notifying appropriate Covered Persons of their obligation to provide proof of student status for identified dependents upon request from BRMS.

(b) BRMS shall provide Employer with a written monthly report of those dependents who have exceeded the maximum age limit within the terms of the Plan and terminate identified dependents unless or until BRMS has or receives documentation identifying that said dependent is disabled.

4.11 Eligibility Notice. To communicate COBRA eligibility under the Plan to those Employees who have elected to receive COBRA benefits from such Plan.

4.12 Claims Payment. To pay Claims from Funds contributed by the Employees through the payment of COBRA premiums provided, however, that, in the event COBRA premium payments submitted by the Employees are inadequate to allow payment of any Claims, BRMS shall have no responsibility to make any payment with regard to such Claims.

4.13 Status Maintenance. To maintain COBRA eligibility under groups, divisions, or branches using a separate location status identifier provided such group, division, or branch is supplied to BRMS from Employer.

4.14 Regulation Compliance. To follow any rules or limitations under COBRA for the Plan, in which Employees may enroll, provided such rules or limitations were provided to BRMS by Employer. Examples of such rules are eligibility of retirees, domestic partners, overage dependent limits, waiting periods, coverage effective dates, age banded rates, tier structure and rate change rules.

4.15 Effect of Termination. All obligations of BRMS for processing of eligibility and disbursements of premiums payable under COBRA, will be terminated and extinguished upon the date of termination of this Agreement. Any COBRA premiums payable incurred prior to the date of termination will be processed and paid only for the time period up to and ending with the date of termination. COBRA payments remaining unprocessed or unpaid as of the termination of this Agreement shall be returned to Employer by BRMS and shall no longer be the responsibility of BRMS.

5. Vbas Service.

~~5.1 Vbas Defined. Vbas shall mean the machine readable version of the computer software located at (the "Site") provided by BRMS in connection with and as a material part of the Services.~~

5.2 Vbas License. Subject to the terms and conditions of this Agreement, BRMS hereby grants to Employer a non-exclusive, non-transferable and non-assignable license to access Vbas solely (i) through the Site; (ii) by and through Employer's Authorized Users; (iii) for Employer's internal business purposes and for no other purpose. BRMS hereby grants Employer a non-exclusive, non-transferable and non-assignable license to use the documentation, instructional materials and user guides for Vbas which BRMS may make generally available to BRMS' customers and in the form (paper or electronic) selected by BRMS (collectively, the "Documentation").

5.3 No Other Rights. Other than the license granted under Section 5.2, all right, title and interest in and to Vbas, the Documentation, and all portions of the foregoing, including all intellectual property rights (e.g. patent, trade secret, copyright, trademark and similar rights), shall remain the property of BRMS or its licensors, as applicable. Employer's use of third-party programs in conjunction with Vbas is not covered by this Agreement and will be governed solely by the terms and conditions of the applicable third party license agreements. Any rights not expressly licensed hereunder are reserved by BRMS.

5.4 Restrictions. To the maximum extent allowed by applicable law, neither Employer nor its Authorized Users (defined below) shall reverse engineer, reverse assemble, decompile or otherwise attempt to derive source code of any software located on the Site or utilized in connection with the Service, including Vbas. Neither Employer nor its Authorized Users shall (i) disassemble, unbundle or cause the disassembly or unbundling of Vbas for any purpose; (ii) use Vbas on a service bureau or time share basis or to provide services to third parties; (iii) distribute, copy, rent, lease, sublicense or otherwise transfer Vbas to any third party; (iv) grant any third party,

other than an Authorized User, access to Vbas; or (iv) modify Vbas for any purpose. Any modifications or configurations made to Vbas shall be made by BRMS and shall be the sole and exclusive property of BRMS.

5.5 Principle User. Employer will designate a single individual to act as the "Principle User" for Employer's use of Vbas. BRMS will provide the Principle User with a password to access and use Vbas. Principle User will have the ability to add, change or delete Employer Information on Vbas. Principle User will have the sole authority to grant or delete Vbas access privileges to Authorized Users (defined below). Employer is responsible for the designation of the Principle User and shall notify BRMS immediately by written notice should Employer wish to designate a replacement for the Principle User. Employer is solely responsible for the activation and deactivation of access for its Authorized Users.

5.6 Access to Vbas by Authorized Users. An individual shall be an "Authorized User" only so long as he/she is (i) an employee, contractor or agent of Employer who has received a valid password from the Principle User. BRMS recommends that the Employer have each Authorized User execute an Electronic Signature Authorization form (an "Authorization") available from BRMS. Employer is responsible for obtaining, maintaining and storing signed Authorizations and will be solely responsible for any liability or action that results directly from providing access to Vbas to any Authorized Users from whom Employer did not obtain a signed Authorization.

5.7 Passwords. Each Authorized User shall be issued a unique user name and password by the Principle User. Employer agrees and shall cause each Authorized User to agree, that no user name or password will be utilized at any time by any person other than the Authorized User to whom such user name or password was originally assigned. Upon written notice to BRMS, Employer may terminate an Authorized User's access and substitute a new Authorized User. Employer shall be solely responsible for all activities of its Authorized Users and any party who accesses Vbas through a password issued to Employer or an Authorized User. Employer agrees to immediately notify BRMS if Employer becomes aware of: (i) any loss or theft of any password, or (ii) any unauthorized use of any password, or (iii) any indication that anyone has or may have entered inaccurate, conflicting or inappropriate information into Vbas.

5.8 Electronic Signature. Employer agrees on its own behalf and on behalf of its employees, to adopt as its/their signature an employer identification code and a password, which is to be affixed to or contained in each transmission sent by such party ("Signature"). Employer hereby agrees and authorizes, on its own behalf and on behalf of its Employees, that its/their Signature shall act as its/their formal signature for all internet based transactions among Employer, its employees, BRMS, vendors and any and all third parties. The initial Signature will be provided by BRMS to the Principle User in confidence. While using Vbas, the Principle User and Employer's employees will have the ability to change their Signature at any time. Employer agrees and authorizes, on its own behalf and on behalf of its employees that any Signature of Employer affixed to or contained in any electronic document shall be sufficient to verify that Employer executed such document and authorized the actions contemplated thereby. Such Signature shall be treated in all respects as having the same effect as an original handwritten signature. In each case in this Section, where Employer purports to bind either its Authorized Users or its employees or both, Employer represents and warrants to BRMS that Employer has the express authority to bind such Authorized Users and/or employees and understands that BRMS is expressly relying on such representation as a material inducement to BRMS' willingness to enter into this Agreement.

5.9 Employer Information. Employer shall populate Vbas with the accurate and timely information necessary for use of Vbas by Employer and its Authorized Users including, employment, personal and payroll information on employees; contact information on each contracted vendor; benefit packages; and rates, payment, eligibility, contact, broker of record, benefits, coverage, enrollment information on each contracted Plan and employee handbook information (collectively the "Employer Information"). Employer is solely responsible for the accuracy of the Employer Information on Vbas.

5.10 Maintenance of Records. During the term of this Agreement, BRMS will maintain electronic records on Vbas pertaining to the use thereof by Employer and its Authorized Users. BRMS will also maintain electronic records of transactions among BRMS, third party vendors, the Employer and Authorized Users using Vbas. It is the responsibility of Employer to download (electronically or on paper) the Employer Information from Vbas prior to the termination of this Agreement. Except as specifically provided in this Section, BRMS will not be responsible for storing copies of the Employer Information for archiving or back-up purposes.

5.11 Accessibility of Records. Employer shall have access to all Employer Information available through Vbas during the term of this Agreement. Following termination of an Employee's benefits or of a Plan, BRMS will maintain the relevant electronic records in a manner accessible to Employer on Vbas for twenty-four (24) months following the termination of the subject employee or Plan (provided this Agreement remains in effect for such period).

5.12 Security. BRMS will utilize security mechanisms reasonable in its sole discretion to protect the confidentiality and integrity of the Employer Information provided to Vbas.

5.13 Right to Change Vbas. BRMS shall have the right in its sole discretion to change Vbas at any time, provided that BRMS shall provide Employer with thirty (30) days notice of any material change to the functionality of Vbas. BRMS is under no obligation to make any changes to Vbas that Employer may request.

5.14 Connection to Vbas. Employer, at its own expense, shall provide and maintain the equipment, software, communication lines, services and testing necessary to effectively and reliably transmit and receive documents and information over the Internet to and from Vbas.

5.15 Agreements and Contracts with Vendors. Employer acknowledges that it and its employees may, through the use of Vbas and otherwise, enter into separate agreements with vendors. The terms of such agreements shall be at the sole discretion of, and enforceable solely against, the parties thereto. BRMS makes no warranties or representations regarding, and shall have no liability with respect to, any coverage, right to coverage, eligibility, claims, enrollment, benefits, premiums, conditions, exclusions or any other terms which may be available or agreed to under any such agreements and/or policies issued by or entered into with such third party vendors.

6. Fidelity Bond. BRMS shall obtain a fidelity bond, reasonably satisfactory to Employer, providing protection for the Plan and related Funds against loss by reason of and act of fraud or dishonesty on the part of BRMS, whether directly or through connivance with others, such bond having as a surety thereon a corporate surety company reasonably acceptable to Employer and meeting the requirements of ERISA.

7. HIPAA Requirements. With respect to the requirements of HIPAA relative to health benefits, BRMS shall (i) accept a Certificate of Group Health Plan Coverage from Covered Persons and apply the certificate's information to the Covered Person's record; or (ii) upon notification of termination of coverage of a Covered Person by Employer, promptly provide a Certificate of Group Health Plan coverage to the subject person and subsequent certificates, as requested in accordance with the requirements of HIPAA.

~~8. Information from Employer. Employer shall provide the following documents and information to BRMS in order to allow BRMS to perform the Services:~~

8.1 Information in General. Throughout the term of this Agreement, Employer shall provide to BRMS, on a timely basis, all information that is requested by BRMS to perform the Services. In performing the Services, BRMS must necessarily rely upon Employer and others to provide BRMS with timely, accurate and complete information as requested by BRMS. BRMS shall not be responsible for any damages, claims or liability of any kind, caused directly or indirectly by the failure of Employer or others to provide such timely, accurate and complete information to BRMS, or by any other circumstance not within BRMS' direct control. Employer is responsible for supervising the production and timely delivery of all requested data and information to BRMS.

8.2 Plan Documents. Within a reasonable period of time after the Effective Date of this Agreement, Employer shall provide BRMS with copies of all Plan documents. Employer shall provide BRMS with a true copy of any Plan amendment within a reasonable period of time after the effective date of such amendment. All original Plan records and documents shall be maintained by Employer.

8.3 Covered Person Information. Throughout the term of this Agreement, Employer shall promptly provide to BRMS all information about the Employees and their family members who are Covered Persons under one or more Plans that BRMS may request or need in order for BRMS to perform the Services, including, census data (e.g., name, address, date of birth, date of hire, date of termination of employment, and hours of service), the coverage provided to the Employees and their family under the Plan, the effective date(s) of such coverage as to each such person, and all changes in such information.

8.4 New Covered Person Information. Within a reasonable period of time after a Covered Person first becomes covered by one or more Plans during the term of this Agreement, Employer shall provide BRMS with written notice of such coverage.

8.5 Changes in Information. Employer shall promptly notify BRMS of any changes in information previously given or supplied to BRMS, particularly with respect to any change or anticipated change in the Plan or in the Employee census data.

8.6 Plan Modifications. Employer agrees that it will immediately notify Employees and BRMS of the cancellation or change in coverage of any Plan covering Employees and/or their dependents. Employer agrees to provide BRMS with timely notice of and: (i) change to Plan, (ii) addition of new coverage to Plan, (iii) deletion of coverage from Plan; (iv) additions of new Plan and (v) cancellation or termination of any Plan (each a "Plan Change"). Employer shall indemnify, defend and hold BRMS harmless; from and against any and all Costs resulting (directly or indirectly) from the untimely notice to BRMS of any Plan Change.

8.7 Additional Information. Throughout the term of this Agreement, Employer shall provide to BRMS such additional information as may be required in the Schedules.

9. Duties of Employer. Employer understands and agrees to perform the following obligations:

9.1 Document Execution and Delivery. Employer shall be responsible for the timely execution and delivery or filing with the applicable public agency of all documents and forms required from the Employer under the Plan or by applicable law. Although BRMS may assist Employer as requested in the preparation of such documents and forms, the decision to prepare and file such documents and forms shall be the sole responsibility of Employer.

9.2 Collection of Plan Contributions. Employer shall collect the contributions (excepting co-pays made at the time medical service is provided), if any, to be made by Employees for coverage according to the terms of the Plan, in such manner as Employer may deem appropriate and shall thereafter transfer required premiums to the Premium Trust Account.

9.3 Premium Trust Account Deposits. Promptly upon receipt of notice from BRMS, Employer shall pay into the Premium Trust Account such amounts as BRMS may request in order to pay insurance premiums payable under the terms of the Plan.

9.4 Enrollment Form Collection. Employer shall be solely responsible for collection of completed enrollment forms of Employees wishing to obtain benefits under the Plan and shall promptly transmit all completed enrollment forms to BRMS.

9.5 Enrollment Supplies. Employer shall prepare or obtain supplies of enrollment forms, enrollment cards, Plan booklets and summary plan descriptions and shall distribute or make available such forms and documents to Employees.

9.6 Eligibility Verification. Employer shall verify the eligibility of any individual enrolling for benefits pursuant to terms of the Plan which verification shall be made on the benefit enrollment form submitted by Employer to BRMS.

9.7 Enrollment Rule Instruction. Employer shall inform BRMS in writing of all enrollment rules and limitations regarding the Plan. Examples of which are eligibility of retirees, domestic partners, coverage dependent limits, waiting periods, coverage effective dates, age banded rates, tier structure and rate change rules.

9.8 Rate Information. Employer shall include on the enrollment forms submitted to BRMS all carriers and the rates of all coverage's and tier structures that may apply to the enrolling Employee and their dependents. Employer shall notify BRMS within five (5) business days, after receipt of any notification from a carrier of rate changes that affect a Covered Person's premium payments.

9.9 COBRA Obligations. With respect to the requirements of COBRA relative to mandatory continuation of coverage of health benefits, Employer shall have the following responsibilities:

(a) Employer shall maintain records tracking the loss or reduction of coverage of any Employee covered under the Plan due to any Qualifying Event.

(b) Employer shall, upon loss or reduction of coverage due to a Qualifying Event, immediately notify BRMS of such loss or reduction of coverage specifying the date thereof, the name of the Employee suffering such loss or reduction in coverage, the reason for such loss or reduction, and shall specify the last known mailing address of the Qualified Beneficiaries suffering a loss or reduction of coverage due to the occurrence of a Qualifying Event. It shall be the responsibility of Employer to notify BRMS of the occurrence of a Qualifying Event within fourteen (14) days after notice to Employer of the occurrence of such Qualifying Event.

(c) Employer agrees that BRMS shall not be responsible for any losses incurred by Employer due to the violation of the provisions of COBRA if such violations were occasioned by Employer's failure to abide by the terms and conditions of this Agreement.

(d) Employer shall be solely responsible for completion of the enrollment forms of Employees wishing to obtain benefits under COBRA by participation therein and shall transmit any enrollments from Employees with respect to details and shall advise BRMS promptly as to any enrollments for COBRA benefits made directly to Employer.

(e) Employer shall verify the eligibility of any Employee enrolling for COBRA benefits pursuant to terms of the Plan which verification shall be made on the benefit enrollment form supplied and submitted by Employer.

(f) Employer shall instruct BRMS in writing of all enrollment rules and limitations regarding all plans in which Employees may elect to enroll for COBRA benefits. Examples of which are eligibility of retirees, domestic partners, coverage dependent limits, waiting periods, coverage effective dates, age banded rates, tier structure and rate change rules.

9.10 BRMS Not Plan Sponsor. BRMS is not and will not be treated as the sponsor or plan administrator of any of the Plans. BRMS is not a provider of health care services or benefits. BRMS shall have no responsibility or liability to any person for (i) any funding of any Plan benefits, (ii) the payment of any premiums or costs for Plan benefits provided by a third party (e.g., an insurance company or an HMO), (iii) providing any Plan benefits to any person, or (iv) the nature or quality of the benefits or services provided by third parties to Employer or any Covered Person.

9.11 Instruction Request. BRMS may, by written request, seek instructions from Employer on any matter related to the interpretation of a Plan or the benefits thereunder, 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 BRMS in a timely manner, BRMS may act or refrain from acting, and shall be protected in acting or refraining from acting without such directions, as BRMS deems in good faith to be appropriate and advisable under the circumstances.~~

9.12 Business Associate Agreement. Concurrently with the execution hereof, Employer agrees to execute the Business Associate Agreement attached hereto as Exhibit B.

9.13 Dispute Resolution. If any dispute arises between Employer and any other person, including, without limitation, any Qualified Beneficiary, with respect to the interpretation of the Plan or the benefits thereunder, then BRMS shall not be obligated to take any other action in connection with the matter involved in the controversy until such time as the controversy is resolved. In addition, BRMS may deposit any cash or other property related to the controversy in an interpleader action with the court of jurisdiction under applicable law.

10. Banking Arrangements.

10.1 General Requirements. In the event any of the Services involve the handling by BRMS of Funds, BRMS shall segregate such Funds from BRMS' own funds. If BRMS is unable to make any payment to any third party from such Funds due to the failure of Employer to provide adequate Funds to BRMS in a timely manner, then (i) BRMS shall not be responsible to any person for the failure to make such payment in a timely manner and (ii) such payment shall be required of BRMS no earlier than three (3) business days after the receipt of adequate and available Funds from Employer. Employer covenants not to deliver to BRMS any Plan assets that must be held in trust, it being specifically understood that BRMS has no responsibility whatsoever for the establishment, maintenance or administration of any trust and that BRMS is not a trustee or fiduciary with respect to any Plan assets.

10.2 Application of Insufficient Funds. If at any time contributions to the Plan made pursuant to any Premium Trust Account policy shall not be sufficient to meet the obligations of the Plan with regard to premiums payable and expenses payable according to the terms of the Plan, and if Employer has not notified BRMS in writing that the Plan is to terminate on or before such date, BRMS shall apply the Premium Trust Accounts in its charge as follows:

- (a) First, to the payment of fees and expenses incurred by BRMS in provision of the Services; and
- (b) Second, to the payment of premiums payable and administrative fees prior to the due date of any unpaid contributions.

10.3 Plan Termination. In the event of termination of the Plan due to unpaid contributions, BRMS will provide notification to the Covered Persons of the occurrence of such termination and the priority as to disbursement of remaining available Premium Trust Accounts.

11. Debit Card ACH Agreement. Debit Card ACH Agreement means the required funds transfer agreement (shown in Exhibit C) which must be signed by the Employer utilizing the Evolution Benefits Program (debit card services provider). Automated Clearing House (ACH) is a secure nationwide electronic funds transfer network which enables participating financial institutions to distribute electronic credit and debit entries to bank accounts and to settle such entries.

12. Confidential Information. All confidential records, files, documents and the like relating to the Plan provided to BRMS by Employer shall be and remain the sole property of Employer and shall not be disclosed to third parties except as authorized in this Agreement, as otherwise authorized by Employer, or pursuant to the direction or order of a governmental agency or a court.

13. No Legal Services. Employer acknowledges that BRMS is not authorized to engage in the practice of law and that BRMS will not provide legal services to Employer or any other person. Employer shall not rely upon BRMS in any way for any legal opinions or legal documents that Employer or any Plan fiduciary may require. Whenever a legal issue arises in the course of the work to be performed under this Agreement, Employer shall obtain such legal counsel as may be necessary to resolve the issue. Employer shall notify BRMS of the resolution and BRMS shall be entitled to rely upon that decision in performing its services for Employer.

14. Advice and Recommendations. Although BRMS may from time to time call to Employer's attention and/or make recommendations regarding potential or actual problems with respect to the operation and administration of the Plan, Employer understands and agrees that such advice and recommendations are a matter of accommodation only and that BRMS has no duty to give such advice, make such recommendations, or otherwise to question any actions or decisions of Employer, the sponsoring employer, any Plan fiduciary, or any of their respective agents or employees.

15. Not a Fiduciary. Employer understands and agrees that BRMS is not the plan sponsor, plan administrator or plan fiduciary under ERISA for the Plan and that BRMS does not act in any fiduciary capacity with respect to the Plan. BRMS acts in an administrative support capacity only. BRMS shall not have any discretionary responsibilities in the administration of the Plan. BRMS shall not be responsible for reporting and disclosure compliance under ERISA. Employer will make certain that the sponsoring employer, all Plan fiduciaries, and the participants understand BRMS' nonfiduciary status as well. Employer and each Plan fiduciary shall retain his, her, its or their full authority, discretion and responsibility for the operation of the Plan with respect to which BRMS is providing the Services. Employer's decision as to any Claim under the Plan shall be final and binding. Employer represents and warrants that it is the employer, plan sponsor, plan administrator and plan fiduciary under ERISA for the Plan. Employer is solely responsible for state and federal disclosure and reporting requests in connection with its activities under this Agreement. Employer agrees to maintain Plan in full compliance with all applicable laws and regulations.

16. Payment of Fees.

16.1 Amount. In consideration for the Services performed by BRMS under this Agreement, Employer shall pay to BRMS the fees and expenses set forth in Exhibit A to this Agreement and/or the applicable Schedule. Within thirty (30) days after the conclusion of each calendar month during the term of this Agreement, BRMS shall

provide Employer with a monthly invoice of the amount due to BRMS for the Services and any direct expenses incurred in performance of the Services.

16.2 Additional Service Fees. Employer will pay BRMS its then applicable hourly rates for any Services performed for Employer by BRMS that are not included in this Agreement or any Schedule. As of the Effective Date, the hourly rate for additional Services is seventy-five dollars (\$75) and the hourly rate for programming or custom reports is one hundred fifty dollars (\$150). BRMS reserves the right to change the hourly rate at any time without advance notice to Employer. Employer shall pay BRMS its fees for any reprocessing of work, or if the unusual amount of time is spent by BRMS in performing the Services, as a result of circumstances beyond BRMS' reasonable control.

16.3 Due Date. All fees and charges shall be due when invoiced and will be considered in default if not paid within thirty (30) days after the invoice date. Unpaid fees and charges will bear a service charge equal to the greater of five percent (5%) of the amount billed or twenty-five dollars (\$25). BRMS' obligation to provide the Services is expressly conditioned upon timely payment of its fees by Employer.

17. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with Section 18.

18. Termination.

18.1 Manner of Termination. This Agreement or any Schedule may be terminated in the following manner:

- (a) By Employer, by delivering at least ninety (90) days prior written notice of termination to BRMS and paying BRMS all fees owed through the effective date of termination;
- (b) By BRMS, by delivering at least ninety (90) days prior written notice of termination to Employer;
- (c) By BRMS, by delivering written notice to Employer, in the event Employer fails to provide Funds necessary for the performance of BRMS' Claims administration responsibilities under this Agreement;
- (d) By either party, by delivering, at least thirty (30) days written notice of the other's breach of a material obligation under this Agreement, provided that such breach is not cured within such thirty (30) day notice period; or
- (e) Automatically, upon the voluntary or involuntary bankruptcy or dissolution of either party.

18.2 Abbreviated Termination. In the event that Employer terminates this Agreement or any Schedule without cause upon less than the ninety (90) days notice period described in Section 18.118.1(a), then on the effective date of termination (and subject to adjustment as described in Section 18.4), Employer shall pay BRMS for two (2) months of compensation for the terminated Services where such compensation shall be equal to two (2) times the compensation due for the last month immediately preceding Employer's notice of termination.

18.3 Allocation of Assets. Within sixty (60) days after termination, BRMS shall deliver to its successor or such other person or entity as may be designated by Employer such Funds of the Plan which remain in the possession of BRMS, if any, at which time BRMS shall be relieved of any obligation to make further payments under the Plan for Claims or otherwise.

18.4 Final Accounting. Within the sixty (60) days after the effective date of termination, BRMS shall deliver a final accounting to Employer which shall include an accounting of receipts, disbursements and other transactions of BRMS regarding the Plan.

18.5 File Delivery on Termination. Upon termination of this Agreement, BRMS shall deliver all eligibility files to Employer. Employer shall: (i) pay the costs of shipment of such eligibility files to Employer; and (iii) store such files in accordance with applicable laws and regulations. Employer further agrees to return to BRMS, upon request, any eligibility file that may relate to any lawsuit or proceeding involving BRMS relating to BRMS' activities as third-party administrator provided pursuant to the authority set forth in this Agreement.

18.6 Conclusion of Obligations. All obligations of BRMS under this Agreement (excepting those specifically referenced in this Section 17), including the responsibility for communicating eligibility and disbursements of premiums, will be terminated and extinguished upon the date of termination of this Agreement.

18.7 Notification of Termination. In the event of termination of this Agreement by either party Employer shall immediately notify all of the Covered Persons that this Agreement has been terminated.

19. Liability Limitation. Employer agrees that, except to the extent caused by BRMS' gross negligence or willful misconduct, BRMS shall not be responsible for any damage, loss, demand, benefit, liability, payment, tax, penalty, cost or fee (including, all costs and fees of litigation and its threat, including attorneys' fees), of any nature whatsoever (collectively, "Costs"), arising from or related to claims, allegations or actions (each an "Action") pertaining to (i) the Plan, (ii) any of the Services, (iii) any refusal by BRMS to provide Services due to Employer's failure to perform any of Employer's obligations under this Agreement; or (iv) any Employer Information posted to Vbas.

20. Employer Indemnity. Employer agrees to indemnify, defend and hold harmless BRMS, its shareholders, directors, officers, employees, agents and subcontractors from and against any and all Costs arising from or related to any and all third party Actions regarding: (i) the action or inaction of Employer in connection with this Agreement (ii) the provision of the Services by BRMS, except to the extent the Action pertains directly to BRMS' gross negligence or willful misconduct; (iii) attempts to recover benefits alleged to be payable under the terms of the Plan, except to the extent the Action pertains to BRMS' gross negligence or willful misconduct; (iv) any Employer Information posted to Vbas; (v) any breach of this Agreement by an Authorized User of Vbas.

21. BRMS Indemnity. BRMS agrees to indemnify, defend and hold harmless Employer from and again any and all Costs actually incurred by Employer in connection with any party Action only to the extent directly attributable to BRMS' gross negligence or willful misconduct in performing the Services and subject to the provisions of Section 25.2.

22. Insurance Requirements. BRMS shall provide and keep in force during the term of this Agreement, at its own expense:

<u>Insurance Type</u>	<u>Coverage</u>
Workers' compensation	Compliance with California requirements
General liability	\$1,000,000/per occurrence; \$2,000,000/ general aggregate
Errors and omissions	\$1,000,000 per individual Claim
Comprehensive crime	\$250,000/ employee dishonesty

23. No Underwriting by BRMS. Employer expressly agrees and understands that BRMS does not insure or underwrite the liability of Employer under any Plan. BRMS verifies the eligibility of an individual for benefits under the Plan only and in no event guarantees payment of benefits. Employer retains sole responsibility for payment of all Claims made under the Plan and all expenses and fees incurred incident thereto.

24. Agency Authority. Employer hereby grants to BRMS, on Employer's own behalf and on behalf of its employees, the authority to act as their limited agent (solely as provided herein) and to contact, interact with and transact business with vendors, brokers of record and contracted consultants of Employer through Vbas or otherwise. This authorization includes, but is not limited to, the release of file specifications, eligibility data and premium information.

25. General Provisions.

25.1 Notice. All notices provided for hereunder shall be in writing and shall be deemed to be given (i) upon receipt after being sent by overnight courier which issues a receipt, charges pre-paid, (ii) upon the date indicated in the return receipt when sent by United States mail, first class, registered or certified, return receipt requested, with proper postage prepaid, or (iii) upon receipt, by commercial express document delivery service which issues an individual delivery receipt, in each case to the address set forth on the Summary. The parties hereto may change their notice address or add additional addresses for the giving of notice by giving notice of such changed or additional addresses to the other party hereto in the manner set forth herein.

25.2 Limitation of Liability. BRMS SHALL NOT BE LIABLE TO EMPLOYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING

DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER PECUNIARY LOSS, WHETHER ARISING IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL BRMS' AGGREGATE LIABILITY HEREUNDER BE GREATER THAN THE FEES ACTUALLY RECEIVED BY BRMS FROM EMPLOYER FOR THE PARTICULAR SERVICES GIVING RISE TO THE LIABILITY. THE LIMITATION SHALL APPLY EVEN IF BRMS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

25.3 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 two (2) years after the cause of action has arisen or, if the action involves nonpayment, more than two (2) years after the date of the last payments.

25.4 No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall be construed, to create any rights by or on behalf of any person who is not a party to this Agreement.

25.5 Force Majeure. Excepting Employer's payment obligations hereunder, neither party shall be liable for failure to perform any of its obligations under this Agreement to the extent that such failure is caused by circumstances beyond such party's reasonable control, including acts of God, civil disturbances, natural disasters, actions or decrees of governmental bodies. Upon the occurrence of any such event, the affected party promptly shall give notice to the other party and shall use reasonable efforts to resume performance.

25.6 Governing Law and Arbitration. Any dispute or claim arising out of or relating to this Agreement, in the interpretation, performance, breach or termination thereof, shall be finally settled by binding arbitration in Sacramento County, California, under the rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with such rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall apply California law to the merits of any dispute or claim, without reference to rules of conflict of law. Nothing in this Section 25.6 shall prevent or delay either party from applying to any court of competent jurisdiction for temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, and such action shall not serve as an abridgement of the powers of the arbitrator provided, that the arbitrator shall have the authority to determine whether such temporary restraining order, preliminary injunction, or other interim or conservatory relief shall continued or terminated. The parties shall share the costs of the arbitration, including the arbitrator's fee, equally. Each party shall bear the cost of its own attorney's fees and expert witness fees. Each party consents to the personal jurisdiction and venue of the state and federal courts located in Sacramento County for the enforcement of any arbitrator's award.

25.7 Severability. The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision. The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions hereof shall not in any way be affected or impaired thereby and shall nevertheless be binding between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof shall be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law or applicable court decisions.

25.8 Waiver. A waiver of a breach of any term of this Agreement must be in writing and shall not be construed as a waiver of any succeeding breach of that term or as a waiver of the term itself. A party's performance after the other's breach shall not be construed as a waiver of that breach.

25.9 Assignment. Neither party shall assign this Agreement or any rights hereunder, by law or otherwise, without the other party's prior written consent. Notwithstanding the foregoing, BRMS may assign or transfer this Agreement in whole or in part without the prior written consent of Employer in connection with (i) a financing of BRMS or any of its assets, (ii) a merger of BRMS with a third party, (iii) the sale of all or any part of the outstanding capital stock of BRMS, (iv) the sale of all or substantially all of BRMS' assets or those assets of BRMS related to this Agreement. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or relevant provisions shall be binding upon, and inure to the benefit of, the successors, representatives, administrators and assigns of the parties hereto. All purported assignments or transfers in violation of this Section shall be null and void. For avoidance of doubt, BRMS may subcontract any or all of the services

required hereunder to any of BRMS' affiliates and subsidiaries, contracted providers, and approved vendors without the written consent of Employer.

25.10 Headings/Interpretation. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement. Where the context provides, the singular shall include the plural and terms shall be interpreted as gender neutral. The word "including" shall be read as "including without limitation". When a reference is made in this Agreement to an Article or a Section or Schedule, such reference shall be to a Section of, or Schedule to this Agreement unless otherwise indicated.

25.11 Consent. Wherever this Agreement requires either party's approval, consent or satisfaction, such approval, consent or satisfaction may not be unreasonably or arbitrarily withheld, conditioned or delayed.

25.12 Independent Contractors. BRMS is an independent contractor, and no partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Except as expressly set forth herein in connection with the Services, BRMS has no authority to contract for or bind Employer in any manner whatsoever. This Agreement confers no rights upon either party except those rights expressly granted herein. Each party assumes full responsibility for its actions and the actions of its personnel in rendering performance pursuant to this Agreement.

25.13 Entire Agreement. This Agreement including the Schedules hereto sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and any and all previous agreements, representations or understandings, whether oral or written, which are inconsistent with or additional to any of the various terms and conditions of this Agreement are hereby canceled, rendered null and void and superseded in their entirety. No agreement or understanding to modify this Agreement shall be binding upon a party unless agreed to in writing by an authorized representative of such party.

25.14 Counterparts. This Agreement may be executed in counterparts with the same force and effect as if each of the signatories had executed the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both parties named below have duly executed or caused to be executed a counterpart of this Agreement.

25.15 Survival. The following provisions shall survive the expiration or termination of this Agreement for any reason: Sections 18.4, 18.6, 18.7, 21, and 25.

~~25.16 Costs, Expenses and Attorneys' Fees. In the event either party takes any action to enforce any of the terms and conditions hereof, the unsuccessful party to such action shall pay to the successful party all costs and expenses, including reasonable attorneys' fees incurred by the successful party in the defense and resolution of such action.~~

25.17 Authority. Each party represents and warrants to the other that the person executing this Agreement on its behalf does so with full corporate authority and as the expressly authorized agent of such party.

EXHIBIT A

Sacramento City Unified School District

FEES 2012-2013

Service Description	Fee
<u>TPA CLAIMS SERVICE/GROUP HEALTH:</u>	
Two Year Rate Guarantee Effective 7/1/2011-6/30/2013	
(a) Retiree Administration Services a. Billing Retirees difference from STRS b. Billing Retirees for Dental and Vision c. Running Retirees monthly through SSA Website d. Retiree Reimbursement Checks e. Confirmation Statements	\$2.10 pepm
(b) Dental Claims Administration	N/A
(c) Vision Claims Administration	N/A
(d) Claims Administration Set up Fee	N/A
(e) Medical PPO Network Access & Repricing	N/A
(f) Dental Network Access Fee	N/A
(g) BRMS Medical Management – Utilization Review Includes: Preadmission review, concurrent review, and discharge planning.	N/A
(h) Large Case Management	N/A
(i) BRMS Rx Integration and Administration Fee Note: Pricing does not include the per script fee charged by PBM	N/A
(j) <u>Annual Renewal Fee</u> Note: Vbas Renewal fees are calculated multiplying \$1.50 times the number effected employee's times the number of Plan or Rate changes. Fee includes inputting all benefits rules, plan summaries, carrier links, census data uploads and all other customizations for each plan. Renewal costs only incur if there is a change in plans/carrier.	Waived
<u>Cobra Administration: Dental and Vision Only</u>	\$0.90 pepm
Set up Fees	N/A
<u>FSA Administration:</u>	
Flexible spending account administration	N/A
<u>Virtual Benefit Administration System (Vbas):</u>	
Vbas Access	\$3.50 pepm

Consolidated Billing	N/A
Customer Support Call Center	N/A
<u>SUPPLEMENTAL SERVICES:</u>	
Special Reporting Fee	\$125 / hour
Programmer Fee	\$125 / hour
Additional Training Fee	\$125/ hour
Auditing Fee	\$125 / hour

BRMS has the right to adjust the dollar amounts above at any time upon a thirty (30) day notice in the event that the Plan is amended or the composition of the group of individuals covered under the Plan is changed in a material way; or, if the cost of operation is increased solely by virtue of a change in charges to the BRMS by a governmental unit or a third party vendor. Such adjustment shall be limited to the amount of increased cost incurred by BRMS due to any of the above listed changes that affect any of the listed charges on this exhibit.

IN WITNESSETH WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, on their behalf by their officers or duly authorized representatives, as of the day and year first above written.

<u>Sacramento Unified School District</u>	<u>BENEFIT & RISK MANAGEMENT SERVICES INC</u>
By: _____	By: <u>Matthew Schaefer</u>
Printed Name: _____	Printed Name: <u>Matthew Schaefer</u>
Title: _____	Title: <u>Chief Executive Officer</u>
Date: _____	Date: <u>6.13.12</u>

EXHIBIT B

HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement by and between Benefit & Risk Management Services (BRMS) (henceforth referred to as "Client") and Sacramento Unified School District (henceforth referred to as "Business Associate") is jointly entered for the exchange of information supporting a participating employer of the Trust.

A. Definitions. For the purpose of this Agreement, the following terms shall have the meaning ascribed to them in this Schedule. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

- (1) Designated Record Set shall mean a group of records maintained by or for Client that is (i) the medical records and billing records about Individuals maintained by or for Group Benefit Plan; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Client to make decisions about individuals. As used herein the term "Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by or for Group Benefit Plan. "Designated Record Set" shall have the meaning assigned to such term in 45C.F.R. § 164.501.
- (2) HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated there under by the U.S. Department of Health and Human Services.
- (3) HIPAA Privacy Regulations shall mean the regulations at Title 45, Parts 160 through 164 of the Code of Federal Regulations, as the same may be amended from time to time.
- (4) Individual shall mean the person who is the subject of the Protected Health Information and has the same meaning as the term "individual" is defined by 45 C.F.R. § 164.501. "Individual" will also include that person's personal representative as defined by 45 C.F.R. § 164.502 (g) (1).
- (5) Individually Identifiable Health Information shall mean Information that is a subset of health information, including demographic information collected from an Individual, and: (i) is created or received by a health care provider, health plan, Group Benefit Plan, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (a) identifies the Individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- (6) Protected Health Information (PHI) shall mean Individually Identifiable Health Information received by Business Associate from or on behalf of a Client that is (i) transmitted by electronic

media; (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium.

- (7) Secretary shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority involved has been delegated, specifically including, but not limited to, the Office for Civil Rights.
- (8) Transaction Standard Regulation shall mean the regulations at Title 45, Parts 160 and 162 of the Code of Federal Regulations, as the same may be amended from time to time.
- (9) Covered Electronic Transactions shall have the same meaning as defined in 45 C.F.R. § 160.103.
- (10) Electronic Protected Health Information shall have the same meaning as defined in 45 C.F.R. § 160.103.
- (11) Security Incident shall have the same meaning as defined in 45 C.F.R. § 164.304.
- (12) Security rule shall mean the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and 164, subpart C.

B. Business Associate's Use and Disclosure of Protected Health Information. Business Associate represents and warrants that (i) it has the right and authorization to disclose Protected Health Information to perform its obligations and provide services to Client and (ii) Business Associate's use of Protected Health Information to perform its obligations and provide services requested by Client does not violate the Privacy Rules, Group Benefit Plan's privacy notice or any applicable law. Client shall not request and/or disclose in any manner Protected Health Information in any manner that would not be legally permissible. Business Associate shall be permitted to use and/or disclose minimum necessary Protected Health Information provided or made available from Client for the following stated purposes:

- (1) Business Associate may use or disclose the Protected Health Information for the purposes necessary to fulfill its obligations and perform functions, activities, or services, for, or on behalf of, the Client as specified in the service agreements or contracts between the Client and the Business Associate.
- (2) Business Associate is permitted to disclose Protected Health Information received from Client for the proper management and administration of Business Associate or to carry out legal responsibilities of

Business Associate, provided: (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed by the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached. Additionally, Business Associate may use and disclose Protected Health Information to a third party if otherwise authorized by Client or as authorized by Individual in accordance with Section 164.508 of the HIPAA Privacy Regulations with respect to his or her own Protected Health Information.

- (3) In addition to the other uses and disclosures of Protected Health Information permitted under this Agreement, Business Associate may use Protected Health Information to create information that is not Individually Identifiable Health Information, or may disclose Protected Health Information to an agent or subcontractor of Business Associate for such purpose, whether or not the de-identified information is to be used by Business Associate. Business Associate may use or disclose such de-identified information in any manner Business Associate deems appropriate.
- (4) Business Associate is also permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to the health care operations of Client and Plan, or as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (5) Business Associate may use Protected Health Information for purposes of research and marketing. If Business Associate uses or discloses Protected Health Information for research or marketing purposes, Client agrees to obtain the necessary prior authorization from the Individual.

C. Business Associate Obligations:

- (1) Limits on Use and Further Disclosure Established by Contract and Law. Business Associate agrees that the Protected Health information provided or made available by Client shall not be further used or disclosed other than as permitted or required by this Agreement or as required by law. However, Business Associate reserves the right to use PHI for its own internal management and compliance purposes.
- (2) Appropriate Safeguards. Business Associate agrees to use commercially reasonable safeguards to prevent any use or disclosure of the Protected Health Information, other than as provided for by this Agreement. Business Associate also agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Client.

- (3) Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (4) Reports of Improper Use or Disclosure. Business Associate agrees that it shall report to Client within a reasonable time period discovery of any use or disclosure of Protected Health Information not provided for or allowed by this Agreement. Business Associate also agrees to report any security incident of which it becomes aware. Security incident shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.
- (5) Subcontractors and Agents. Business Associate agrees that anytime Protected Health Information is provided or made available to any subcontractors or agents, Business Associate must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Protected Health Information as contained in this Agreement. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Client's PHI.
- (6) Right of Access to Information. Within thirty (30) days of a written request by Client for access to Protected Health Information about an Individual contained in a Designated Records Set, Business Associate shall make available to Client such Protected Health Information for so long as such information is maintained in the Designated Record Set. A decision on what constitutes a Designated Record Set shall be jointly determined by the parties. If Business Associate is unable to provide Client or Individual with access within required time frame, or records are maintained offsite, Business Associate will notify Client so Client may request, in writing, an extension from the Individual. In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within five (5) days forward such request to Group Benefit Plan. Any denials of access to the Protected Health Information requested shall be the responsibility of Group Benefit Plan.
- (7) Amendment and Incorporation of Amendments. Within forty-five (45) days of receipt of a request from Client for the amendment of an Individual's Protected Health Information or a record regarding an Individual's Protected Health Information or a record regarding an Individual contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set), Business Associate shall provide such information to Client for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. § 164.526. What constitutes a Designated Record Set shall be jointly determined by the parties. If Business Associate is unable to amend Protected Health Information within required time frames, Business Associate will notify Client so Client may request, in writing, an extension from the Individual.

(8) Disputed Information. For PHI that is the subject of a disputed amendment, Business Associate shall take such actions as are specified by Client to identify in the Designated Record Set the disputed PHI, and shall append or otherwise link to the Designated Record Set the individual's request for amendment, Group Benefit Plan's denial of the request, the individual's statement of disagreement, if any, and Group Benefit Plan's rebuttal to the individual's statement of disagreement, if any (collectively, the "Disputed Information"). The Disputed Information, or an accurate summary thereof, shall accompany all subsequent disclosure by Business Associate of PHI that is the subject of a disputed amendment.

(9) Provide Accounting. Within forty-five (45) days of notice by Client to Business Associate that it has received a request for an accounting of disclosures of Protected Health Information regarding an Individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to Client such information as in Business Associate's possession and is required for Client to make the accounting required by 45 C.F.R. § 164.528. At a minimum, Business Associate shall provide Client with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person, (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes a brief explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within ten (10) days forward such request to Group Benefit Plan. It shall be Group Benefit Plan's responsibility to prepare and deliver any such accounting requested. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

(10) Access to Books and Records. Until the expiration of four (4) years after the furnishing of Business Associate services contemplated by this Agreement, and thereafter if and to the extent, and so long as, required by law, Business Associate shall make available to the Secretary, after five (5) days written request, this Agreement and all other books, documents and records relating to the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Group Benefit Plan, to determine Group Benefit Plan's compliance with the HIPAA Privacy rule.

a. In all events, Business Associate shall immediately notify Client and Plan upon receipt by Business Associate of any such request for this Agreement and any other books, documents, and records, and shall provide Client and Plan with copies of any such materials.

b. Nothing contained in this Section is intended to or shall constitute a waiver of Client and Plan's or Business Associate's attorney-client privilege, the attorney work product doctrine, or any other statutory or other protection afforded clients of lawyers.

c. Client and Business Associate do not intend to make any private individual or entity or the Secretary, the United States Comptroller General, or any other governmental agencies or parties a

third-party beneficiary of this Agreement. The parties specifically intend that the Secretary shall not be a third-party beneficiary and shall have no contractual rights or powers to enforce this Agreement.

- d. Any inspection of Business Associate's books and documents pursuant to this Section shall take place at a location selected by Business Associate that is reasonably convenient to the Secretary or Group Benefit Plan. In no event shall the Secretary or Client have unrestricted access to the books and records of Business Associate; it instead being the intent of the parties that the Secretary or Client may request information, and, if Business Associate determines that such information is required to be produced pursuant to this Agreement and is responsive, Business Associate will furnish the information to the Secretary or Client for review and inspection.

- e. Notwithstanding anything herein to the contrary, Client acknowledges and agrees that Business Associate may store, analyze, access, and use de-identified information derived from Protected Health Information, provided none of such information contains Individually Identifiable Health Information, and further provided that any such use is then consistent with applicable law.

(11) Disposition of PHI. The parties agree that the return or destruction of PHI received from, or created or received by Business Associate on behalf of, Client is not feasible and that such PHI must be retained by Business Associate for further audits. Business Associate will extend the protections provided by this Addendum to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI unfeasible.

(12) Requested Restrictions. Client will not provide to Business Associate any PHI that is subject to any arrangement permitted or required of Client that may impact in any manner the use or disclosure of PHI by Business Associate under this Addendum including, but not limited to, any restriction on the use or disclosure of PHI as provided in 45 C.F.R. § 164.522 and agreed to by Group Benefit Plan.

(13) Implementation of Security Rule. Business Associate will implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of Client as required by the Security Rule.

D. Client to Inform Business Associate of Privacy Practices and Restrictions

- (1) Client shall provide Business Associate with the notice of privacy practices that Client and Plan produces in accordance with 45 C.F.R § 164.520, as well as any changes to such notice.

(2) Client shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses or disclosures, pursuant to 45 C.F.R. § 164.508.

(3) Client shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Client has agreed to in accordance with 45 C.F.R. § 164.522.

E. Breach. If Business Associate breaches a provision of this Article, related to disclosure of Protected Health Information, that is not curable within the time provided for elsewhere in this Agreement, the parties shall, in good faith, negotiate a reasonable cure period for Business Associate to remedy its breach. If such breach is not curable, the parties will negotiate in good faith for thirty (30) days to develop safeguards to ensure that a subsequent breach of this Article does not occur. If the parties are unable to cure the breach or develop acceptable safeguards following negotiations for such specified time, Client may terminate this Agreement in accordance with the termination provisions of this Agreement.

F. Termination and Return of Information. Upon the termination of this Agreement, Business Associate agrees to return or destroy all Protected Health Information received from, or created or received by, Business Associate on behalf of Group Benefit Plan. Business Associate agrees not to retain any copies of the Protected Health Information after the termination of this Agreement. If return or destruction of the Protected Health Information is not feasible, Business Associate agrees to extend the protections of this Agreement for as long as necessary to protect the Protected Health Information and to limit any further use or disclosure.

G. HIPAA Indemnity. In no event is or shall Business Associate be construed to be an indemnitor of compliance with the HIPAA Privacy Regulations, under the terms of this Agreement, or otherwise.

H. New Laws and Amendments. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations governing Protected Health Information, including without limitation regulations promulgated pursuant to HIPAA.

I. Conflict. Except as specifically set forth herein, all terms of the Agreement will continue in full force and effect. In the case of any conflict among the provisions of this Addendum and the Agreement, the terms of this Addendum will prevail.

J. **Indemnification.** The Client and Benefit & Risk Management Services agree to abide by all federal and state statute and regulations concerning the confidentiality and privacy of all information, in whatever form, exchanged among the parties pursuant to this Agreement, including privacy of Protected Health Information

IN WITNESSETH WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, on their behalf by their officers or duly authorized representatives, as of the day and year first above written.

Sacramento City Unified School District

By: _____

Title: _____

Date: _____

Benefit & Risk Management Services (BRMS)

By: *Marlene A. Schatz*

Title: Chief Executive Officer

Date: 6-20-11

BUSINESS ASSOCIATE ADDENDUM

BENEFIT & RISK MANAGEMENT SERVICES (BRMS) ("Covered Entity") and Sacramento Unified School District ("Business Associate") (jointly "the Parties") wish to incorporate the terms of this Addendum to comply with the requirements of: (i) the implementing regulations at 45 C.F.R. Parts 160, 162, and 164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (i.e., the HIPAA Privacy Rule, the HIPAA Security Standards, and the HIPAA Standards for Electronic Transactions (collectively referred to in this Addendum as "the HIPAA Regulations")), and (ii) the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services ("DHHS") as of September 2009. Covered Entity and Business Associate agree to incorporate into this Addendum any regulations issued by DHHS with respect to the HITECH Act that relate to the obligations of business associates and that are required to be (or should be) reflected in a business associate agreement. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH Act.

DEFINITIONS

- (a) "Electronic PHI" shall mean protected health information that is transmitted or maintained in any electronic media, as this term is defined in 45 C.F.R. § 160.103.
- (b) *Limited Data Set* shall mean protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
- (i) Names;
 - (ii) Postal address information, other than town or city, State, and zip code;
 - (iii) Telephone numbers;
 - (iv) Fax numbers;
 - (v) Electronic mail addresses;
 - (vi) Social security numbers;
 - (vii) Medical record numbers;
 - (viii) Health plan beneficiary numbers;
 - (ix) Account numbers;
 - (x) Certificate/license numbers;
 - (xi) Vehicle identifiers and serial numbers, including license plate numbers
 - (xii) Device identifiers and serial numbers;
 - (xiii) Web Universal Resource Locators (URLs);
 - (xiv) Internet Protocol (IP) address numbers;
 - (xv) Biometric identifiers, including finger and voice prints; and
 - (xvi) Full face photographic images and any comparable images.
- (c) "Protected Health Information" or "PHI" shall mean information created or received by a health care provider, health plan, employer, or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present, or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the

individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. The use of the term "Protected Health Information" or "PHI" in this Addendum shall mean both Electronic PHI and non-electronic PHI, unless another meaning is clearly specified.

- (d) "*Security Incident*" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (e) All other terms used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Regulations and/or the security and privacy provisions of the HITECH Act that are applicable to business associates along with any regulations issued by the DHHS.

GENERAL TERMS

- (a) In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA Regulations (as these terms may be expressly amended from time to time by the DHHS or as a result of interpretations by DHHS, a court, or another regulatory agency with authority over the Parties), the interpretation of DHHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.
- (b) Where provisions of this Addendum are different from those mandated by the HIPAA Regulations or the HITECH Act, but are nonetheless permitted by the Regulations or the Act, the provisions of this Addendum shall control.
- (c) Except as expressly provided in the HIPAA Regulations, the HITECH Act, or this Addendum, this Addendum does not create any rights in third parties.

SPECIFIC REQUIREMENTS

(a) Privacy of Protected Health Information

(i) *Permitted Uses and Disclosures of PHI.* Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Addendum or the HIPAA Privacy Rule and only in connection with providing the services to Covered Entity identified in the Agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for "treatment, payment, and health care operations" in accordance with the HIPAA Privacy Rule.

- (1) Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Addendum.
- (2) Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Addendum.

(ii) *Business Associate Obligations.* As permitted by the HIPAA Privacy Rule, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity for Business Associate's own operations if:

- (1) the use relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or
- (2) the disclosure of information received in such capacity will be made in connection with a function, responsibility, or services to be performed by the Business Associate, and

such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

- (iii) *Minimum Necessary Standard and Creation of Limited Data Set.* Business Associate's use, disclosure, or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, in performing the functions and activities as specified in the Agreement and this Addendum, Business Associate agrees to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.
- (iv) *Access.* In accordance with 45 C.F.R. § 164.524 of the HIPAA Privacy Rule and, where applicable, in accordance with the HITECH Act, Business associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity who then will share the PHI with the individual, by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location. Business Associate shall make such information available in an electronic format where directed by the Covered Entity.
- (v) *Disclosure Accounting.* Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. § 164.528 of the HIPAA Privacy Rule, and where so required by the HITECH Act and/or any accompanying regulations, Business Associate shall make such information available directly to the individual. Business Associate further shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.

Business Associate is not required to record disclosure information or otherwise account for disclosures of PHI that this Addendum or the Agreement in writing permits or requires: (i) for the purpose of payment activities or health care operations (except where such recording or accounting is required by the HITECH Act, and as of the effective dates for this provision of the HITECH Act), (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative, (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; and (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented.

- (vi) *Amendment.* Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA privacy Rule.
- (vii) *Right to Request Restrictions on the Disclosure of PHI and Confidential Communications.* If an individual submits a Request for Restriction or Request for Confidential Communications to the Business Associate, Business Associate and Covered Entity agree that Business Associate, on behalf of Covered Entity, will evaluate and respond to these requests according to Business Associate's own procedures for such requests.
- (viii) *Return or Destruction of PHI.* Upon the termination or expiration of the Agreement or this Addendum, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if Business Associate determines that return or destruction is not feasible.

- (ix) *Availability of Books and Records.* Business Associate shall make available to DHHS or its agents the Business Associate's internal practices, books, and records relating to the use and disclosure of PHI in connection with this Addendum.
- (x) *Termination for Breach.*
 - (1) Business Associate agrees that Covered Entity shall have the right to terminate this Addendum or seek other remedies if Business Associate violates a material term of this Addendum.
 - (2) Covered Entity agrees that Business Associate shall have the right to terminate this Addendum or seek other remedies if Covered Entity violates a material term of this Addendum.

(b) Information and Security Standards

- (i) Business Associate will develop, document, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the integrity, confidentiality, and availability of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Covered Entity.
- (ii) Business Associate agrees that with respect to PHI, these safeguards, at a minimum, shall meet the requirements of the HIPAA Security Standards applicable to Business Associate.
- (iii) More specifically, to comply with the HIPAA Security Standards for PHI, Business Associate agrees that it shall:
 - (1) Implement administrative, physical, and technical safeguards consistent with (and as required by) the HIPAA Security Standards that reasonably protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall develop and implement policies and procedures that meet the Security Standards documentation requirements as required by the HITECH Act.
 - (2) As also provided for in Section 4(d) below, ensure that any agent, including a subcontractor, to whom it provides such PHI agrees to implement reasonable and appropriate safeguards to protect it;
 - (3) Report to Covered Entity, Security Incidents of which Business Associate becomes aware that result in the unauthorized access, use, disclosure, modification, or destruction of the Covered Entity's PHI, (hereinafter referred to as "Successful Security Incidents"). Business Associate shall report Successful Security Incidents to Covered Entity as specified in Section 4(e);
 - (4) For any other Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example and not for purposes of limitation, pings on business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter "Unsuccessful Security Incidents"), Business Associate shall aggregate the data and, upon the Covered Entity's written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 4(e);

- (5) Take all commercially reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a Security Incident;
- (6) Permit termination of this Addendum if the Covered Entity determines that Business Associate has violated a material term of this Addendum with respect to Business Associate's security obligations and Business Associate is unable to cure the violation; and
- (7) Upon Covered Entity's request, Business Associate will provide Covered Entity with access to and copies of documentation regarding Business Associate's safeguards for PHI.

(c) Compliance with HIPAA Transaction Standards

(i) *Application of HIPAA Transaction Standards.* Business Associate will conduct Standard Transactions consistent with 45 C.F.R. Part 162 for or on behalf of the Covered Entity to the extent such Standard Transactions are required in the course of Business Associate's performing services under the Agreement and this Addendum for the Covered Entity. As provided for in Section 4(d) below, Business Associate will require any agent or subcontractor involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162. Further, Business Associate will not enter into, or permit its agents or subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Covered Entity that:

- (1) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- (2) Adds any data element or segment to the maximum defined data set;
- (3) Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
- (4) Changes the meaning or intent of the Standard Transaction's implementation specification.

(ii) *Specific Communications.* Business Associate, Plan Sponsor and Covered Entity recognize and agree that communications between the parties that are required to meet the Standards for Electronic Transactions will meet the Standards set by that regulation. Communications between Plan Sponsor and Business Associate, or between Plan Sponsor and the Covered Entity, do not need to comply with the HIPAA Standards for Electronic Transactions. Accordingly, unless agreed otherwise by the Parties in writing, all communications (if any) for purposes of "enrollment" as that term is defined in 45 C.F.R. Part 162, Subpart O or for "Health Covered Entity Premium Payment Data," as that term is defined in 45 C.F.R. Part 162, Subpart Q, shall be conducted between the Plan Sponsor and either Business Associate or the Covered Entity. For all such communications (and any other communications between Plan Sponsor and the Business Associate), Plan Sponsor shall use such forms, tape formats, or electronic formats as Business Associate may approve. Plan Sponsor will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

(iii) *Communications Between the Business Associate and the Covered Entity.* All communications between the Business Associate and the Covered Entity that are required to meet the HIPAA

Standards for Electronic Transactions shall do so. For any other communications between the Business Associate and the Covered Entity, the Covered Entity shall use such forms, tape formats, or electronic formats as Business Associate may approve. The Covered Entity will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

- (d) Agents and Subcontractors. Business Associate shall include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the agents or subcontractors, the same restrictions and conditions on the use, disclosure, and security of such PHI that are set forth in this Addendum.
- (e) Breach of Privacy or Security Obligations.
- (i) Notice and Reporting to Covered Entity. Business Associate will notify and report to Covered Entity (in the manner and within the timeframes described below) any use or disclosure of PHI not permitted by this Addendum, by applicable law, or permitted in writing by Covered Entity.
- (ii) Notice to Covered Entity. Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than ten (10) calendar days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the HITECH Act and any implementing regulations. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting the Covered Entity's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.
- (iii) Reporting to Covered Entity.
- (1) For Successful Security Incidents and any other use or disclosure of PHI that is not permitted by this Addendum, the Agreement, by applicable law, or without the prior written approval of the Covered Entity, Business Associate ~~without unreasonable~~ delay and in no event later than thirty (30) days after Business Associate learns of such non-permitted use or disclosure – shall provide Covered Entity a report that will:
- a. Identify (if known) each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach;
 - b. Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;
 - c. Identify the PHI accessed, used, or disclosed (e.g., name; social security number; date of birth);
 - d. Identify who made the non-permitted access, use, or received the non-permitted disclosure;
 - e. Identify what corrective action Business Associate took or will take to prevent further non-permitted accesses, uses, or disclosures;
 - f. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and

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

(2) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that (i) identifies the categories of Unsuccessful Security Incidents as described in Section 4(b)(iii)(4); (ii) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (iii) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

(iv) Termination for Breach.

(1) Covered Entity and Business Associate each will have the right to terminate this Addendum if the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's or the Covered Entity's respective obligations regarding PHI under this Addendum and, on notice of such material breach or violation from the Covered Entity or Business Associate, fails to take reasonable steps to cure the material breach or end the violation.

(2) If Business Associate or the Covered Entity fail to cure the material breach or end the violation after the other party's notice, the Covered Entity or Business Associate (as applicable) may terminate this Addendum by providing Business Associate or the Covered Entity written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

(v) Continuing Privacy and Security Obligations. Business Associate's and the Covered Entity's obligation to protect the privacy and security of the PHI it created, received, maintained, or transmitted in connection with services to be provided under the Agreement and this Addendum will be continuous and survive termination, cancellation, expiration, or other conclusion of this Addendum or the Agreement. Business Associate's other obligations and rights, and the Covered Entity's obligations and rights upon termination, cancellation, expiration, or other conclusion of this Addendum, are those set forth in this Addendum and/or the Agreement.

IN WITNESSETH WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, on their behalf by their officers or duly authorized representatives, as of the day and year first above written.

Benefit & Risk Management Services (BRMS)

Address: 80 Iron Point Road, Suite 200

Folsom, CA 95630

By: *Matthew Schatz*

Title: Chief Executive Officer

Date: 6-20-11

Sacramento Unified School District

Address: 5735 47th Avenue

Sacramento, CA 95824

By: _____

Title: _____

Date: _____



SERVICES AGREEMENT

Date: July 1, 2012 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Eaton Interpreting Services, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

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

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Deaf interpreting services for students as requested by the Special Education Department.

ARTICLE 2. TERM.

This Agreement shall commence on July 1, 2012 and continue through June 30, 2013 unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Fee Rate: \$47.25 per hour as may be requested by District, not to exceed a maximum of 3,300 hours of service. District shall not pay travel and other expenses. If payable, such expenses shall be limited to the standard allowances authorized by Board policy. Total fee shall not exceed One Hundred Fifty Five, Nine Hundred Twenty Five Dollars (\$155,925).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Rebecca Bryant, Director, Special Education, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.



ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870
Attn: Rebecca Bryant, Special Education

Contractor:
Eaton Interpreting Services
8213 Villa Oak Drive
Citrus Heights, CA 95610

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations

under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their 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. In the event of a 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 the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.



ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

EATON INTEPRETING SERVCIES

By: _____

Patricia A. Hagemeyer
Chief Business Officer

Date

By:

Signature

Print Name/Title

Date