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## **SISC FLEX SERVICE AGREEMENT**

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### **RECITALS**

A. \_\_\_\_\_ School District ("Employer") has established certain employee benefit programs, including one or more of the following: a Health Care Spending Account under Code Section 105; a Dependent Care Spending Account under Code Section 129 Health Care Spending Account and the Dependent Care Spending Account are each offered under a Code Section 125 cafeteria plan.

B. Employer has requested SISC ("SISC FLEX") to act as its agent for the payment of certain benefits and to furnish certain administrative services for one or more of the Health Care Spending Account and Dependent Care Spending Account as described in this Agreement (collectively, the "Program").

In consideration of the mutual promises contained in this Agreement, Employer and SISC FLEX agree as follows:

### **ARTICLE I. INTRODUCTION**

#### **1.1 Effective Date and Term**

The effective date of this Agreement is \_\_\_\_\_ ("Effective Date"). If this Agreement commences on October 1, 2002, the initial term shall be the initial three (3) month period commencing on the Effective Date; thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions of Section 6.8. If this Agreement commences on January 1, of 2003 or January 1 of a subsequent year, the initial term shall be a twelve (12) month period commencing on the Effective Date; thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions of Section 6.8. If this Agreement commences on a date other than January 1, the initial term shall be a period shorter than a full twelve month plan year commencing on the Effective Date and ending December 31 of the same calendar year; thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions of Section 6.8. If the plan commences on a date other than January 1 of a calendar year the contributions to the plan will be appropriately prorated according to the number of pay periods remaining in the year. In addition, the maximum contribution to the plan for the short plan year will be pro rated according to the remaining number of months in the plan year. The Effective Date of this Agreement must be on the first day of a calendar month.

#### **1.2 Scope of Undertaking**

SISC FLEX is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Employer. Nor shall SISC FLEX and Employer be deemed partners, or engaged in a joint venture. SISC FLEX does not assume any responsibility for any act or omission or breach of duty by Employer. Nor is SISC FLEX in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Program. Nothing in this Agreement shall be deemed to impose upon SISC FLEX any obligation to any employee of Employer or any person who is participating in the program ("Participant").

#### **1.3 Definitions**

"**Agreement**" means this Service Agreement, including all Appendices hereto.

"**COBRA**" means Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"**Code**" means Internal Revenue Code of 1986, as amended.

"**Dependent Care Spending Account**" has the meaning given in the Recitals.

"**Contribution Billing Reports**" have the meaning as described in Section 2.3.

"**Employer**" has the meaning given in the Recitals.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Effective Date**" has the meaning given in Section 1.1.

"**Health Care Spending Account**" has the meaning given in the Recitals.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended.

"**Named Fiduciary**" means the named fiduciary as defined in ERISA Section 402(a)(1).

"**Participant**" has the meaning given in Section 1.2.

"**Plan**" means the Health Care Spending Account or, Dependent Care Spending Account, as applicable.

"**Plan Administrator**" means the administrator as defined in ERISA Section 3(16)(A).

"**Program**" and "**SISC FLEX**" have the meanings given in the Recitals.

## **ARTICLE II. EMPLOYER RESPONSIBILITIES**

### **2.1 Sole Responsibilities**

Employer gives SISC FLEX the authority to act on behalf of Employer in connection with the Program but only as expressly stated in this Agreement, the Plan Document or as mutually agreed in writing by Employer and SISC FLEX. All final determinations as to a Participant's entitlement to Program benefits are to be made by SISC FLEX, including any determination upon appeal of a denied claim for Program benefits.

### **2.2 Service Changes; Funding**

Employer shall promptly fund an account maintained for the payment of Program benefits as described in Article IV.

### **2.3 Information to SISC FLEX**

Employer shall furnish the information requested by SISC FLEX as determined necessary to perform SISC FLEX's functions hereunder, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits ("Contribution Billing Reports "). Such information shall be provided to SISC FLEX in the time and in the manner agreed to by Employer and SISC FLEX. SISC FLEX shall have no responsibility with regard to benefits paid in error due to Employer's failure to timely update such information. On a monthly basis, SISC FLEX shall provide Employer with updated Contribution Billing Reports by electronic medium unless otherwise agreed by the parties. Any changes made to the Contribution Billing Reports by the employer shall specify the effective date for each Participant who is added to or terminated from participation in the Program. All changes must be supported with appropriate enrollment or change of status forms. Employer shall be responsible for ensuring the accuracy of its Contribution Billing Reports, and bears the burden of proof in any dispute with SISC FLEX relating to the accuracy of its Contribution Billing Reports. SISC FLEX shall have no liability to Employer or any Participant as a consequence of an inaccurate Contribution Billing Reports, and SISC FLEX shall not have any obligation to credit Employer for any claims expenses or administrative fees incurred or paid to SISC FLEX as a consequence of Employer failing to review Contribution Billing Reports for accuracy. SISC FLEX shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information.

### **2.4 Plan Documents**

Employer is responsible for the Program's compliance with all applicable federal and state laws and regulations. SISC FLEX shall provide Employer with the Plan Document and any Program amendments. SISC FLEX will notify Employer of any changes to the Program at least thirty (30) days before the effective date of such changes. Employer acknowledges that SISC FLEX is not providing tax or legal advice and that Employer shall be solely responsible for determining the legal and tax status of the Program.

### **2.5 Liability for Claims**

SISC FLEX is responsible for payment of claims made pursuant to, and the benefits to be provide by, the Program. Except for expenses specifically assumed by SISC FLEX in this Agreement, Employer is responsible for all expenses incident to the Program.

### **2.6 Indemnification**

Employer shall indemnify SISC FLEX and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees or other obligations, resulting from, or arising out of, any act or omission of Employer in connection with the Program or claim, demand, or lawsuit by Program Participants and beneficiaries against SISC FLEX in connection with benefit payments or services performed hereunder. In addition, Employer shall indemnify SISC FLEX and hold it harmless from and against any liability, expense, demand, or other obligation resulting from, or out of any premium charge, tax or similar assessment (federal or state), for which the Program or Employer is liable. Employer shall also have the indemnification obligation described in Section 3.3.

## **ARTICLE III. SISC FLEX RESPONSIBILITIES**

### **3.1 Sole Responsibilities**

SISC FLEX's sole responsibilities shall be as described in this Agreement (including the obligations listed in any Appendix to this Agreement). SISC FLEX generally provides certain reimbursement and recordkeeping services, as described further below.

### **3.2 Service Delivery**

SISC FLEX shall provide customer service personnel during normal business hours as determined by SISC FLEX by telephone. SISC FLEX shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

### **3.3 Benefit Payment**

SISC FLEX shall, as agent of Employer, operate under the express terms of this Agreement and the Program. SISC FLEX shall initially determine if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Article II and Article IV. SISC FLEX shall have no duty or obligation with respect to claims incurred prior to the Effective Date ("Prior Reimbursement Requests"), if any, and/or Program administration (or other) services arising prior to the Effective Date ("Prior Administration"), if any, regardless of whether such services were/are to be performed prior to or after the Effective Date. Employer agrees that: (a) SISC FLEX has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration; (b) Employer will be responsible for processing Prior Reimbursement Requests (including any run-off claims submitted after the Effective Date and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g. IRS substantiation) requirements; and (c) Employer shall indemnify and hold SISC FLEX harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

### **3.4 Coverage for Employee Dishonesty**

Self-Insured Schools of California (SISC) maintains a crime insurance policy for officers of the company and all SISC employees involved in collecting money or making claim payments. This policy covers the loss of money resulting directly from the fraudulent or dishonest acts committed by an employee acting alone or in collusion with others.

### **3.5 Reporting**

SISC FLEX shall make available to Employer each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month. SISC FLEX shall also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

### **3.6 Claims Appeals**

SISC FLEX shall make final determination regarding any claim for benefits on coverage that is appealed after initial rejection including: (a) any question of eligibility or entitlement of the claimant for coverage under the Program; (b) any question with respect to the amount due; or (c) any other appeal.

### **3.7 Recordkeeping**

SISC FLEX shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records, that relate to the Program and its Participants that SISC FLEX has prepared or that has otherwise come within its possession. These books, records and documents, including electronic records are the property of SISC FLEX.

### **3.8 Standard of Care; Erroneous Payments**

SISC FLEX shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If SISC FLEX makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, SISC FLEX shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, SISC FLEX will not be liable for such payment, unless SISC FLEX would otherwise be liable under another provision of this Agreement.

### **3.9 Notices to Participants; Amendment to Comply with Privacy Rules**

SISC FLEX agrees to amend this Agreement as is necessary from time to time to comply with the requirements of the privacy rules under HIPAA or other legislation.

### **3.10 Non-Discretionary Duties; Additional Duties**

SISC FLEX and Employer agree that the duties to be performed hereunder by SISC FLEX are non-discretionary duties. SISC FLEX and Employer may agree to additional duties in writing as may be specified in the Appendices from time to time.

## **ARTICLE IV BENEFIT PROGRAM PAYMENT; EMPLOYER'S FUNDING RESPONSIBILITY**

### **4.1 Funding and Payment of Benefits**

For each applicable pay period, the employer shall promptly forward all SISC FLEX participant contributions to SISC. Employer authorizes SISC FLEX to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of SISC FLEX for the payment of Program benefits. SISC FLEX shall have sole authority to provide whatever notifications, instructions or directions as may be necessary to accomplish the disbursement of such Program funds to or on behalf of Participants in payment of approved claims. If a Participant fails to claim any amounts in the Health Care Spending Account or Dependent Care Spending Account by the time allowed, such amounts shall not be carried over to reimburse the Participant for expenses incurred during a subsequent Plan Year and rights to such amounts shall be forfeited by the Participant. All forfeitures under this Plan shall be used first to offset any losses experienced by SISC during the Plan Year as a result of making reimbursements with respect to any Participant in excess of the contributions made by such Participant via salary reductions. Second, forfeitures shall be used to reduce SISC's cost of administering this Plan.

### **4.2 Penalties for Non Payment of Contributions**

In the case that a Participating Employer does not forward the Participant Contributions to SISC in a timely manner, SISC reserves the right to take appropriate action including revocation of the right to participate in the SISC FLEX Plan. In any event, the Participating Employer will be required to pay SISC all monies owed.

## **ARTICLE V. SISC FLEX COMPENSATION**

### **5.1 Service Charges**

There will be no service charge to active and qualified employers (or their bargaining units) participating in the SISC Flex program. When an employer or bargaining unit becomes ineligible for the SISC Flex program, the employer will be responsible to pay \$10 per month for each participant at the time of ineligibility for the Health Care Spending Account and \$10 per month for each participant at the time of ineligibility for the Dependent Care Spending Account. These monthly payments will be required until the end of the Plan Year in which the ineligibility occurred. In the event of an employer's ineligibility during a Plan Year, the employer will continue participating in the Flex Plan until the end of the Plan Year at which time the employer will no longer be permitted to participate, unless eligibility for the Flex Plan is reestablished.

## **ARTICLE VI GENERAL PROVISIONS**

### **6.1 Severability; Headings**

If any term of this Agreement is declared invalid by a court, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of Sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## **6.2 Compliance; Non-Waiver**

Failure by Employer or SISC FLEX to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 6.3.

## **6.3 Assignment; Amendment**

Neither Employer nor SISC FLEX can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Employer and SISC FLEX.

## **6.4 Non-Disclosure of Proprietary Information**

- (a) General. Employer and SISC FLEX each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, information which is proprietary and/or confidential information of such party. Employer and SISC FLEX agree that each party shall: (a) keep such proprietary and/or confidential information of the other party in strict confidence; (b) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) shall not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure.)
- (b) Confidential Information Defined. Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof; (a) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (b) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records and correspondence concerning the parties respective businesses or finances. The terms and conditions of this Section shall survive the termination of this agreement.

## **6.5 Notices and Communications**

- (a) Notices. All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail with tracing capability or by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.
- (b) Addresses. The SISC FLEX address for notices as described above is: SISC FLEX, P.O. Box 1808, Bakersfield, CA 93303-1808
- (c) Communications. Employer agrees that SISC FLEX may communicate confidential, protected, privileged or otherwise sensitive information to Employer through a named contact designated by Employer ("Named Contact") and specifically agrees to indemnify SISC FLEX and hold it harmless; (a) for any such communication directed to Employer through the Named Contact attempted via fax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communication may be inadvertently misrouted or intercepted; and (b) from any claim for the improper use or disclosure of any health information by SISC FLEX where such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

**6.6 Termination of Agreement**

- (a) Automatic. This Agreement shall automatically terminate as of the earliest of the following: (I) the effective date of any legislation which makes the Program and/or this Agreement illegal; (ii) the date Employer becomes insolvent, or bankrupt or subject to liquidation, receivership or conservatorship; or (iii) the termination date of the Program, subject to any agreement between Employer and SISC FLEX regarding payment of benefits after the Program is terminated.
- (b) Optional. This Agreement may be terminated as of the earliest of the following: (I) by SISC FLEX upon the failure of Employer to submit required payments; (ii) by SISC FLEX upon the failure of Employer to perform its obligations in accordance with this Agreement (iii) by Employer upon the failure of SISC FLEX to perform its obligations in accordance with this Agreement; or (iv) by either Employer or SISC FLEX as of the end of the term of this Agreement by giving the other party sixty (60) days written notice.
- (c) Limited Continuation After Termination. If the Program is terminated, Employer and SISC FLEX may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Program benefit, expense or claims incurred prior to the date of Program termination. In addition, if this Agreement is terminated while the Program continues in effect, this Agreement shall continue for the purpose of payment of any claims for which request for reimbursements have been received by SISC FLEX before the date of such termination. If this Agreement is continued in accordance with this subsection, employer shall pay the required monthly post termination service charges.
- (d) Survival of Certain Provisions. Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity confidentiality and privacy provisions of this Agreement shall survive its termination.

**6.7 Complete Agreement; Governing Law**

This Agreement (including the Appendices) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties. This Agreement shall be construed, enforced, and governed by the laws of the State of California.

IN WITNESS WHEREOF, Employer and SISC FLEX have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorize to do so.

**Employer** \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

**SISC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **Appendix A**

Capitalized terms used in this Appendix and not defined have the meanings given in the Agreement.

### **Services Included:**

Employer is responsible for all legal requirements and administrative obligations with regard to the Health Care Spending Account and the Dependent Care Spending Account, except for the following administrative duties (to be performed by SISC FLEX):

- 1) SISC FLEX shall make available (by electronic medium and paper copy) enrollment and reimbursement forms and instruction for filing Participant claims.
- 2) Upon receiving instructions from Employer with regard to a Participant's change in status or other event that permits an allowable change under IRS regulations and the SISC FLEX Plan Document, SISC FLEX shall make the requested change in the participants election as soon as practicable.
- 3) SISC FLEX shall prepare mid-year and final nondiscrimination tests for the Program.
- 4) SISC FLEX shall make initial decisions with regard to Participant claims and typically disburse any benefit payments that it determines to be due within ten (10) business days of the day on which the SISC FLEX receives the claim. Benefit payments shall be made to the Participant.
- 5) SISC FLEX shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim.

### **Services Not Included:**

SISC FLEX is not responsible for the following:

- 1) Employer's compliance with COBRA nor compliance with HIPAA.