

**APPENDIX A**  
**SISC FLEX SERVICE AGREEMENT**

**RECITALS**

\_\_\_\_\_ School District ("Qualified Employer") has established certain employee benefit programs, including one or more of the following: a Health Benefit Plan under Code Section 105; a Qualified Health Care Expense account under Code Section 105; a Qualified Dependent Care Expense account under Code Section 129; each offered under a Code Section 125 cafeteria plan. Qualified 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 Benefit Costs for a Health Benefit Plan, a Qualified Health Care Expense account and/or a Qualified Dependent Care Expense account as described in this Service Agreement ("Agreement"). In consideration of the mutual promises contained in this Agreement, Qualified 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 Service 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 6.6. If the Qualified Employer's plan of benefits commences on a date other than January 1 of a calendar year, the contributions to this Plan will be appropriately prorated. In addition, the maximum contribution to this Plan for the short Plan Year will be prorated 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 Qualified Employer. Nor shall SISC FLEX and Qualified 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 Qualified Employer. Nor is SISC FLEX in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Plan. Nothing in this Agreement shall be deemed to impose upon SISC FLEX any obligation to any employee of Qualified Employer or any Participant.

**1.3 Definitions**

The capitalized terms used in this Agreement shall have the meaning as set forth in the Plan document, unless specifically defined within the text of this Agreement.

## **ARTICLE II. EMPLOYER RESPONSIBILITIES**

### **2.1 Sole Responsibilities**

Qualified Employer gives SISC FLEX the authority to act on behalf of Qualified Employer in connection with the Plan but only as expressly stated in this Agreement, the Plan document or as mutually agreed in writing by Qualified Employer and SISC FLEX. All final determinations as to a Participant's entitlement to Plan benefits are to be made by SISC FLEX, including any determination upon appeal of a denied claim for Plan benefits. Qualified Employer is responsible for all legal requirements and administrative obligations of the Plan, except as specifically described in Article III.

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

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

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

Qualified Employer shall furnish the information requested by SISC FLEX as determined necessary to perform SISC FLEX's functions hereunder, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits ("Contribution Billing Reports "). Such information shall be provided to SISC FLEX in the time and in the manner agreed to by Qualified Employer and SISC FLEX. SISC FLEX shall have no responsibility with regard to benefits paid in error due to Qualified Employer's failure to timely update such information. On a monthly basis, SISC FLEX shall provide Qualified 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 Qualified Employer shall specify the effective date for each Participant who is added to or terminated from participation in the Plan. All changes must be supported with appropriate enrollment or change of status forms. Qualified 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 Qualified Employer or any Participant as a consequence of an inaccurate Contribution Billing Reports, and SISC FLEX shall not have any obligation to credit Qualified Employer for any claims expenses or administrative fees incurred or paid to SISC FLEX as a consequence of Qualified 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 Changes**

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

## **2.5 Liability for Claims**

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

## **2.6 Indemnification**

Qualified 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 Qualified Employer in connection with the Plan or claim, demand, or lawsuit by Participants and beneficiaries against SISC FLEX in connection with benefit payments or services performed hereunder. In addition, Qualified 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 Plan or Qualified Employer is liable. Qualified 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. SISC FLEX generally provides the following administrative, reimbursement and recordkeeping services:

- (a) SISC FLEX shall make available (by electronic medium and paper copy) enrollment and reimbursement forms and instruction for filing Participant claims.
- (b) Upon receiving instructions from Qualified 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 Participant's election in accordance with the Plan document.
- (c) SISC FLEX shall prepare nondiscrimination tests for the Plan as necessary or appropriate under IRS rules.
- (d) 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 directly to the Participant.
- (e) 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.

SISC FLEX is not responsible for the Qualified Employer's compliance with COBRA and HIPAA.

### **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 Qualified Employer, operate under the express terms of this Agreement and the Plan. SISC FLEX shall initially determine if persons covered by the Plan (as described in the Contribution Billing Reports) are entitled to benefits under the Plan and shall pay Plan benefits in its usual and customary manner, to Participants as set forth in this Article III 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 Plan 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. Qualified Employer agrees that: (a) SISC FLEX has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration; (b) Qualified 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) Qualified 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 Qualified 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 Plan; (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 Plan 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 Non-Discretionary Duties; Additional Duties**

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

## **ARTICLE IV BENEFIT PAYMENTS; EMPLOYER'S FUNDING RESPONSIBILITY**

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

For each applicable pay period, the Qualified Employer shall promptly forward all SISC FLEX Participant contributions to SISC. Qualified Employer authorizes SISC FLEX to pay Plan 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 Plan benefits. SISC FLEX shall have sole authority to provide whatever notifications, instructions or directions as may be necessary to accomplish the disbursement of such Plan funds to or on behalf of Participants in payment of approved claims. If a Participant fails to claim any amounts in the Qualified Health Care Expense account or Qualified Dependent Care Expense 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 Qualified 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 Qualified 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 Plan. When a Qualified Employer or bargaining unit becomes ineligible for the SISC Flex Plan, the Qualified Employer will be responsible to pay \$10 per month for each Participant at the time of ineligibility for the Qualified Health Care Expense account and \$10 per month for each Participant at the time of ineligibility for the Qualified Dependent Care Expense 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 Plan until the end of the Plan Year at which time the employer will no longer be permitted to participate, unless eligibility for the 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 Qualified 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 Qualified 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 Qualified Employer and SISC FLEX.

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

(a) General. Qualified 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. Qualified 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. Qualified Employer agrees that SISC FLEX may communicate confidential, protected, privileged or otherwise sensitive information to Qualified Employer through a named contact designated by Qualified Employer ("Named Contact") and specifically agrees to indemnify SISC FLEX and hold it harmless; (a) for any such communication directed to Qualified 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 Plan and/or this Agreement illegal; (ii) the date Qualified Employer becomes insolvent, or bankrupt or subject to liquidation, receivership or conservatorship; or (iii) the termination date of the Plan, subject to any agreement between Qualified Employer and SISC FLEX regarding payment of benefits after the Plan is terminated.

(b) Optional. This Agreement may be terminated as of the earliest of the following: (I) by SISC

FLEX upon the failure of Qualified Employer to submit required payments; (ii) by SISC FLEX upon the failure of Qualified Employer to perform its obligations in accordance with this Agreement (iii) by Qualified Employer upon the failure of SISC FLEX to perform its obligations in accordance with this Agreement; or (iv) by either Qualified 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 Plan is terminated, Qualified Employer and SISC FLEX may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Plan benefit, expense or claims incurred prior to the date of Plan termination. In addition, if this Agreement is terminated while the Plan 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 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, Qualified 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.

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

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

Title \_\_\_\_\_

**SISC**  
By: \_\_\_\_\_

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