

Sample Consulting Agreement

*California Education Coalition for Health Care Reform
A Joint Labor-Management Committee*

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement,") is made on this 1 day of May, 2005, by and between Gallagher Benefit Services, Inc., a Delaware corporation ("GBS"), and ██████████ County Office of Education, hereinafter referred to as the ██████████

██████████ wishes to enter into a consulting relationship with GBS with the terms and conditions set forth in this Agreement, and GBS is willing to accept such a consulting relationship.

In consideration of and in reliance upon the previous paragraph and the obligations and agreements contained in this document, ██████████ and GBS agree as follows:

1. *Engagement*

██████████ engages GBS as a consultant as stated in this document and GBS accepts this engagement. During the time that GBS is performing services for ██████████ under this Agreement, and for all purposes outlined in this document, GBS' status will be that of an independent contractor of ██████████

2. *Term and Termination*

The Effective Date of this Agreement is 5/1/05. The term of GBS engagement under this Agreement (the "Consulting Period") will begin as of the Effective Date and will remain in effect for one (1) year from the Effective Date. The Consulting Period will be automatically extended on a month to month basis, at the current rate, until modified and agreed to in writing by both parties. Either party may terminate this Agreement at no cost after the first year, by giving the other party at least thirty (90) days notice of termination.

3. *Services*

GBS will provide benefits management consulting services ██████████ and consult with its employees, representatives; agents and contractors as to such matters as more fully described in Exhibit A attached to this agreement, and will perform other services as ██████████ and GBS may reasonably agree in writing.

4. *Compensation*

Subject to any changes as may be mutually agreed by the parties, GBS will receive, as compensation for its services under this Agreement Professional commission or service fees in the target amount of \$92,000 per year. Annual actual compensation may vary from target based on actual employee enrollment and participation in the health & welfare plans listed in Exhibit A. Annual compensation will be reviewed and appropriate adjustments will be made to the commission and fees contracts in order to approximate the annual \$92,000 cost of services.

If in the future GBS enters into contingent commission agreements with insurers providing for compensation in addition to commissions, to be paid by such insurers to GBS or its affiliates, based on, among other things, the volume of premium, growth of premium and or underwriting profitability of the insurance coverage written through GBS by such insurers. Any said income identified as related to the ██████████ will be used to offset the ██████████ consulting fees.

5. *Performance and Scope*

- (a) Not a Fiduciary. In spite of any other provision of this Agreement to the contrary the parties agree and acknowledge that GBS is not a health plan fiduciary.
- (b) Reliance. In the performance of its duties, GBS may rely upon and will have no obligation to independently verify the accuracy, completeness, or authenticity of any written instructions or information provided to GBS by ██████████ or its designated representatives and reasonably believed by GBS to be genuine and authorized by ██████████

- (c) No Practice of Law. GBS will not be obligated to perform, and [REDACTED] will not request performance of, any services which may constitute unauthorized practice of law. [REDACTED] will be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of GBS under the scope and terms as provided herein, conform in all respects with applicable State and Federal laws and regulations (including the Internal Revenue Code, California Ed Code, State and securities laws and implementing regulations).
- (d) Subcontractors. GBS may cause another person or entity, as a subcontractor of GBS, to provide some or all of the services required to be performed by GBS hereunder.

6. Confidentiality

- (a) [REDACTED] Information. GBS recognizes that certain confidential information may be furnished by [REDACTED] to GBS in connection with its services pursuant to this Agreement ("Confidential Information"). GBS agrees that it will disclose Confidential Information only to those who, in GBS' reasonable determination, have a need to know such information. Confidential Information will not include information that (i) is in the possession of GBS prior to its receipt of such information from [REDACTED] (ii) is or becomes publicly available other than as a result of a breach of this Agreement by GBS, or (iii) is or can be independently acquired or developed by GBS without violating any of its obligations under this Agreement. Notwithstanding the foregoing, disclosure by GBS of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee will not constitute a violation of this Agreement.
- (b) GBS Proprietary Material. [REDACTED] agrees that GBS is the sole owner of the following material and that the Company will not use or disclose such material following termination of this Agreement except to the extent (i) specific written consent to such use or disclosure is obtained from GBS or (ii) required pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee:
 - (1) Proprietary computer programs;
 - (2) Proprietary procedures and methods of administration; and
 - (3) Underwriting and client files and/or reports developed by GBS.
- (c) HIPAA Privacy. Notwithstanding Sections 6(a) and 6(b) above, GBS and [REDACTED] will each comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent they apply to them directly or indirectly pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulation concerning privacy of individually identifiable health information as set forth in 45 CFR Parts 160-164, as amended from time to time. Where required, [REDACTED] as a representative of the health plans, and GBS will enter into a separate Business Associate Agreement.

7. Indemnification

GBS and the [REDACTED] mutually agree to indemnify, defend, and save harmless each other, its officers, agents, employees, and volunteers from any and all claims and losses accruing or resulting to any and all persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement and from any and all claims and losses resulting to any person, firm, or corporation who may be injured or damaged by either party in the performance of this agreement.

8. *Insurance*

GBS will maintain general liability insurance, automobile coverage, and workers compensation coverage in such an amount as may be reasonably necessary to assure compliance with the Indemnification provision, herein above. GBS shall maintain professional liability insurance covering his or her performance. GBS agrees to produce copies of the required policies of insurance upon request of the [REDACTED]. The requirement of this provision may be waived by the [REDACTED] Risk Manager; however, any waiver shall not affect GBS's liability to the [REDACTED] under the Indemnification provision.

9. *Non-Discrimination*

No discrimination shall be made in the employment of persons under this agreement because of the race, religion, sex, age, national origin, ancestry, political affiliations, disability, medical condition, marital status, or sexual orientation.

10. *Conflict of Interest*

Before executing this agreement, GBS shall disclose to the [REDACTED] the identities of any board member, officer, or employee of the [REDACTED] or relatives thereof, who GBS knows or should know will have any financial interest resulting from this agreement.

11. *License and Authority*

GBS will maintain all necessary licenses during the term of this agreement. If other than a natural person, GBS is duly authorized to enter into this agreement by its governing or controlling body. Evidence or copies of all necessary licenses will be provided on request.

12. *Equipment and Facilities*

GBS will provide all necessary equipment and facilities to render his/her services pursuant to this agreement, unless otherwise agreed to by the parties.

13. *Withholding*

The [REDACTED] shall not withhold or set aside any money on behalf of GBS for Federal Income Tax, State Income Tax, Social Security Tax, Unemployment Insurance, Disability Insurance, or any other federal or state fund whatsoever.

14. *Changes or Alterations*

No changes, alterations, or variations of any kind to this agreement are authorized without the written mutual consent of GBS and the [REDACTED].

15. *Headings*

All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of the agreement.

16. *Severability*

In the event any portion of this agreement shall hold by a Court to be invalid, such holding shall not invalidate the remainder of this agreement.

17. *Ambiguity*

The language herein shall be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

18. *Expenses*

GBS shall be responsible for all costs and expenses incident to the performance of services for the [REDACTED] except as provided by this agreement, including but not limited to: all costs of equipment

provided by GBS; all fees, fines, licenses, bonds or taxes required of or imposed against GBS; and all other of GBS's costs of doing business.

19. Vendor is a Contractor and not an Employee

This agreement is not a contract of employment. At all times GBS shall be deemed to be an independent contractor and is not authorized to bind the [redacted] to any contracts or other obligations, or to state or imply that he or she is an employee of the [redacted] or to utilize the [redacted] letterhead or logo without the prior consent of the [redacted]. Each of the following factors, in addition to other provisions of this Agreement, confirms GBS's status as an independent contractor and not an employee.

20. Notices

Any notices, requests and other communications pursuant to this Agreement will be in writing and will be deemed to have been duly given, if delivered in person or by courier, telegraphed, or by facsimile transmission (provided that the sender received electronic confirmation of receipt by recipient) or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to [redacted] 1290 Ridder Park Drive
San Jose, CA 95131-2398
Attention: Laura Kidwiler
(Fax: 408-453-6932)

If to GBS: Gallagher Benefit Services, Inc.
One Market, Spear Tower, Suite 200
San Francisco, CA 94105
Attention: David Wiesner
(Fax: 415-536-5765)

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

21. Miscellaneous

- (a) Severability. The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.
- (b) Entire Agreement: Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by both parties.
- (c) Governing Law: Rule of Construction. This Agreement will be construed, interpreted and enforced in accordance with the laws of the State of California, without giving effect to the choice of law principles thereof or any canon, custom or rule of law requiring construction against the drafter.

IN WITNESS WHEREOF, the parties hereto have caused this Consulting Agreement to be duly executed on the date first written above.

[redacted] County Office of Education

GALLAGHER BENEFIT SERVICES, INC.

By: _____

By: _____

Name: _____

Name: David Wiesner

Title: _____

Title: Area Executive Vice President

EXHIBIT A
SCOPE OF SERVICES

GBS will:

1. Provide benefits management consulting services to the [REDACTED] to assist with the administration of the following employee welfare benefit program(s) (together, the "Program"):

Medical
Dental
Vision
Short Term Disability
Long Term Disability
Life
Section 125
Voluntary Benefit Offerings
Superintendent Term Life
Travel Accident Program
2. GBS' services hereunder will include, but are not limited to, assistance with coordination of the administration, financial structure, and service standards for the Program;
3. Assist in the evaluation of vendors and monitor vendors for compliance with agreed upon structures and service standards;
4. Negotiation of renewals on behalf of the [REDACTED]
5. Assist the [REDACTED] staff with Employee Benefit Committee meetings;
6. Attendance at Board meetings as requested;
7. Assist with the coordination of appropriate employee benefit communications; and
8. Help secure insurance for the [REDACTED] and in the event an insurance company cancels or refuses to place the necessary insurance, seek to obtain appropriate replacement coverage from another insurance company; provided, however, that GBS will not assume any responsibility or liability for the non-payment of insurance carrier claims.