

This CLIENT SERVICES AGREEMENT and the exhibits attached hereto (collectively, the "Agreement") are entered into on August 26, 2022 (the "Effective Date"), by and between Benefitfocus.com, Inc., on behalf of itself, its' subsidiaries, and its' affiliates (collectively "Benefitfocus"), with a principal place of business at 100 Benefitfocus Way, Charleston, SC 29492, and Mount Diablo Unified School District with a principal place of business at 1936 Carlotta Dr, Concord CA 94519 (hereinafter the "Client") individually each a "Party" and collectively the "Parties".

RECITALS

- A. Benefitfocus provides certain services for employee benefit administration through Benefitfocus proprietary software, databases, business rules, connectivity to third parties, and data transmission, developed and hosted by Benefitfocus, accessed over the Internet (the "Software Services"), and certain professional services (the "Professional Services") related to the Software Services (collectively, the "Services"); and
- B. Client desires to receive the Services, as described in the applicable Order Form and corresponding appendices (the "Order Form") and the Software Services documentation, including the current versions of the any software guides, as updated with each new release (collectively the "Documentation"), for itself, its affiliates and subsidiaries, and for individuals who are authorized by Client to use the Services, and who have been supplied user identifications and passwords by Client or by Benefitfocus at Client's request (the "Authorized Users"), under the terms and conditions of this Agreement; and
- C. In consideration of the mutual covenants contained herein, the payment of the fees as required hereunder, and other good and valuable consideration, the sufficiency of which is acknowledged, and intended to be legally bound the Parties agree as follows.

I. SCOPE OF SERVICES

- A. **Software and Support Services:** Subject to Client's and its Authorized Users' compliance with the terms and conditions of this Agreement, Benefitfocus shall make the Services available to Client for use by Authorized Users pursuant to this Agreement and the applicable Order Form during the term of the applicable Order Form(s).
- B. **Professional Services:** From time to time, Benefitfocus may make certain Professional Services available to the Client. Professional Services shall be described within the applicable Order Form.
- C. **Future Functionality:** Client acknowledges and agrees that this Agreement and/or Order Form(s) are not contingent upon the delivery of any future functionality by Benefitfocus.
- D. **Client Responsibilities:** Client shall, (i) be responsible for Authorized Users compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Client Data and of the means by which it acquired Client Data (as Client Data is defined in Section II.A), (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Benefitfocus promptly of any such unauthorized access or use, (iv) use the Services only in accordance with the Documentation and applicable laws and government regulations; (v) cooperate with Benefitfocus, as reasonably requested in order for Benefitfocus to provide or Client to receive the Services or in resolving any issues associated with Client's vendors and service providers. Client shall not, (i) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (ii) use the Services to store or transmit malicious code, (iii) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (iv) attempt to gain unauthorized access to the Services or their related systems or networks. It is the sole responsibility of the Client to maintain all Client benefit plan documents and to exercise all discretionary authority with respect to such Client benefit plans.
- E. **Client Instructions:** Client is responsible for the consequences of any instructions Client may give to Benefitfocus in the course of performing the Services. Benefitfocus shall have the right to rely and act upon such instructions provided by Client, and Authorized Users, and their respective data entry systems, or any other instructions provided by Client to Benefitfocus. Benefitfocus shall be under no obligation to offset fees for Client's failure to communicate accurate instructions.
- F. **Source Documents:** Benefitfocus will, to the extent it deems necessary to perform the Services, keep copies of all source documents provided by Client or on behalf of Client into the Benefitfocus system. Benefitfocus shall not perform as Client's designated record keeper, or official document repository or system of record.

II. PROPRIETARY RIGHTS AND OWNERSHIP

- A. **Client Ownership of Client Data:** Any data provided by Client or Authorized Users including personally identifiable information and benefit plan data (collectively, the "Client Data") to Benefitfocus in the use of the Software Services, in any format, is and shall remain Client's property.
- B. **Reservation of Rights in Services:** Except for, and subject to the limited rights expressly granted hereunder for Client and Authorized User to utilize the Services, Benefitfocus reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No other rights are granted to Client hereunder other than as may be expressly set forth in this Agreement or the applicable Order Form.
- C. **Restrictions:** Client shall not, (i) create derivative works based on the Services, (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on Client's own intranets or otherwise for its own internal business purposes, (iii) reverse engineer the Services, (iv) lease, rent, resell, transfer, assign, lend or sublicense, or permit the unauthorized use of the Software

Services to any other third party, (v) use the Software Services to provide service bureau, time sharing, rental, application services providing, hosting, or other computer services to unauthorized third parties without Benefitfocus' prior written consent, (vi) access the Services in order to, (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Services.

- D. **Suggestions:** Benefitfocus shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by anyone, including but not limited to Client and Authorized Users, relating to the operation of the Services.

III. PAYMENT

- A. **Payment:** Client shall pay to Benefitfocus the fees and expenses specified within an applicable Order Form. Except as otherwise set forth within an applicable Order Form, amounts payable by Client are due 30 days from the invoice date and are not subject to set-off. Benefitfocus reserves its right to charge Client accrued interest for undisputed past due amounts at the rate of 1.5% per month, or the maximum rate permitted by law, whichever is lower. Benefitfocus reserves the right to charge Client for costs associated with collection efforts for undisputed past due fees. Client's or Authorized User's failure to utilize the Services shall in no way relieve the Client of any obligation to pay applicable fees.
- B. **Taxes:** All fees and other amounts payable by Client under this Agreement are exclusive of taxes and duties. Client shall be responsible for, and promptly pay all taxes and duties (including but not limited to sales, use, and withholding taxes) associated with the Agreement, or any Order Form, except for taxes based on Benefitfocus income. Client shall be liable for all taxes until such time as Client provides a tax exemption certificate to Benefitfocus.
- C. **Disputed Amounts:** Client shall pay all disputed amounts when due. If Client disputes in good faith any invoiced amount, Client shall provide notice to Benefitfocus setting forth the reasonable basis for such disputed amount prior to the due date of the invoice. The Parties shall meet as soon as possible in order to resolve the dispute.
- D. **Suspension for Delinquent Account:** Benefitfocus reserves the right to suspend Client's and any Authorized Users' access to and/or use of the Service if any undisputed payment is due but unpaid 60 days past the due date. Client agrees that Benefitfocus shall not be liable to Client or to any Authorized User or other third party for any suspension of the Service pursuant to this Section.

IV. CONFIDENTIALITY

- A. **Definition of Confidential Information:** As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Client shall include any personally identifiable information or protected health information of Client's employees, Client Data and benefit plans. Confidential Information of Benefitfocus shall include the Services and Documentation. Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, trade secrets, and business processes disclosed by such Party. However, Confidential Information (other than Client Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- B. **Protection of Confidential Information:** The Receiving Party shall (i) protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, (ii) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement or otherwise in any manner to the Disclosing Party's detriment, and (iii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement. Neither Party shall disclose the terms of this Agreement, any Order Form or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other Party's prior written consent.
- C. **Compelled Disclosure:** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
- D. **Protection of Client Data:** Benefitfocus shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data in accordance with the Business Associate Addendum attached hereto. Benefitfocus shall not (i) modify Client Data, (ii) disclose Client Data except as compelled by law or as expressly permitted herein or in writing by Client, or (iii) access Client Data except to provide the Services and prevent or address service or technical problems,

or at Client's request in connection with support matters. Upon written request by Client no more than once annually, Benefitfocus will provide Client with Benefitfocus' most recent AICPA Service Organizational Control Type 2 (or the equivalent successor thereto) ("SOC") Reports, HiTrust Certification, or industry equivalent, which may be redacted as applicable, but shall include at a minimum the controls that Benefitfocus may audit from time to time in the ordinary course of its business.

- E. **Return or Destruction of Confidential Information:** Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (i) required by applicable law or (ii) it would be unreasonably burdensome to destroy (such as archived computer records). In the event that return or destruction of Confidential Information is unduly burdensome, or not feasible, the Parties shall extend the protections of this Section IV to the retained Confidential Information, and which protections and provisions shall survive the termination of this Agreement.

V. TERM AND TERMINATION

- A. **Term:** The term of this Agreement shall begin on the Effective Date and shall continue thereafter until: (i) the expiration or termination of all Order Forms hereunder; or (ii) terminated by a non-breaching Party due to a material breach or default under this Agreement, which breach continues for thirty (30) days after a written notice to cure such breach, or if cure is not possible within said thirty (30) day period, the breaching Party has not commenced reasonable steps to cure such breach.
- B. **Termination by Insolvency:** Either Party may terminate this Agreement by providing written notice to the other Party if the other Party becomes insolvent, makes an assignment for the benefit of creditors, files a petition in bankruptcy, permits a petition in bankruptcy to be filed against it, or admits in writing its inability to pay its debts as they mature, or if a receiver is appointed for a substantial part of its assets. In the event that this Agreement is terminated or rejected by a Party or its receiver or trustee under applicable bankruptcy laws due to such Party's bankruptcy, the Parties agree that this is a services agreement, and that there are no rights and licenses granted under or pursuant to this Agreement by such Party to the other Party which shall be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code and any similar laws in any other country, licenses of rights to "intellectual property" as defined under Section 101(35A) of the U.S. Bankruptcy Code.
- C. **Effect of Termination:** Upon termination or expiration of this Agreement, except as permitted under this Article V, Client shall have no rights to continue to use or access the Services. If this Agreement is terminated by Client for any reason other than a termination expressly permitted by this Agreement, then all of the fees due under this Agreement for the remainder of the then current term shall be deemed earned and payable.
- D. **Retrieval and Deletion of Client Data:** Upon the expiration or termination of this Agreement or Order Form(s), as applicable, Benefitfocus shall immediately deactivate the applicable Client account(s). For a term of 30 days following the termination or expiration of this Agreement or the applicable Order Form(s), and upon Client request, Benefitfocus will grant to Client, at no charge, limited access to the Services, solely to Client's Administrator, for the sole purpose of permitting Client to retrieve or download any Client Data stored within the Software Services, provided that Client has paid in full all undisputed amounts owed to Benefitfocus, and Client is not otherwise in breach of any other provision of this Agreement. Thereafter, Benefitfocus shall have the right and be entitled to delete or securely archive any Client Data from Benefitfocus' production or test environments. After such 30-day period, unless otherwise required by applicable law, Benefitfocus shall have no obligation to maintain or provide any Client Data. Client further agrees that Benefitfocus shall not be liable to Client, nor to any Authorized User or third party, for any termination of Client access to the Service or deletion of Client Data, provided that Benefitfocus is in compliance with the terms of this Section.
- E. **Transition Services:** In the event that this Agreement or applicable Order Form expires, or is not renewed, then upon notice reasonably received prior to the date of expiration, in addition to the periodic and limited access provided pursuant to Section V.D, Client may elect to request that Benefitfocus continue to provide the Software Services to a limited number of Authorized Users, for the period of time requested by Client (but in no event to exceed six (6) months). Such Transition Services shall be subject to Benefitfocus then current fees and will be available only if Client is current on all undisputed invoices (and to the extent there are disputed invoices pursuant to Section III.C, Client and Benefitfocus have resolved such invoices within 30 days of termination of the applicable Order Form), Client continues to pay all fees when due, and is not otherwise in breach of this Agreement or Order Form.

VI. INDEMNIFICATION

- A. **Infringement Indemnification:** If during the term of this Agreement or any Order Form, the Benefitfocus proprietary software or any aspect of the Software Services is, or in Benefitfocus' opinion is likely to be, enjoined due to infringement of a third party's intellectual property rights, Benefitfocus will notify Client and at its own expense and option do any one or more of the following: (i) procure the right for Client to continue using the infringing item; (ii) replace at no charge to Client the infringing item with a non-infringing item that is reasonably equivalent in functionality; (iii) modify the infringing item to be non-infringing and reasonably equivalent in functionality; or (iv) terminate Client's rights to access or use the infringing item and equitably adjust the fees for any Software Services impacted by such termination. For the avoidance of doubt, Benefitfocus will indemnify, defend and hold harmless Client for any Claims that allege the Services infringe on the intellectual property rights of a third-party.

- B. **Indemnification by Client:** Client shall defend Benefitfocus against any Claim by a third party that arises out of or relates to Client's or Authorized User's acts or omissions with regard to Client Data or that alleges that Client's use of the Services infringes or misappropriates the intellectual property rights of a third party or violates applicable law and shall indemnify and hold harmless Benefitfocus for any liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively "Losses") to the extent based upon such a Claim.
- C. **Conditions:** The obligations of indemnification are subject to the condition that the Party seeking indemnification give the other: (i) prompt written notice of any Claim or action for which indemnity is sought; (ii) complete control of the defense and settlement thereof by the Indemnifying Party, provided all settlements adverse to the interests of the indemnified Party shall be approved by that Party; and (iii) cooperation in the defense of the indemnified matter. This Section VI states the Indemnifying Party's sole liability, and the Indemnitee's exclusive remedy for any type of third-party Claim described in this section.
- D. For the purposes of this Section VI, a "Claim" is an allegation, threat, claim, suit, or proceeding brought by third party.

VII. WARRANTIES & REPRESENTATIONS

- A. **Warranties and Representations of Benefitfocus:** Benefitfocus warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Software Services shall perform materially in accordance with the Documentation, (iii) the functionality of the Services will not be materially decreased during the term of the applicable Order Form, and (iv) that the Professional Services hereunder shall be performed in a good and workmanlike manner consistent with generally accepted industry standards.
- B. **Remedy:** For any breach of a warranty stated, above Client's exclusive remedy shall be for Benefitfocus to cure the breach of warranty.
- C. **Warranties and Representations of Client:** Client represents and warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) Client will possess all necessary and required authority and permissions to permit Benefitfocus to perform all the obligations under this Agreement; and (iii) the Services provided by Benefitfocus shall not include or imply any discretionary authority by Benefitfocus over the operation of the Client benefit plan in any manner that would cause Benefitfocus to be deemed a "fiduciary", trustee, plan administrator or named fiduciary of the Client benefit plan pursuant to ERISA or any applicable law; and (iv) Client will make all necessary arrangements with its third party vendors to cause such vendors to send and receive Client Data from Benefitfocus as required for Benefitfocus to perform the Services.

VIII. DISCLAIMERS & LIMITATION OF LIABILITY

- A. **DISCLAIMER OF WARRANTIES: EXCEPT AS SPECIFICALLY REPRESENTED OR WARRANTED WITHIN THIS AGREEMENT, BENEFITFOCUS SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE, OR THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION. ALL THIRD-PARTY CONTENT AND/OR SERVICES SELECTED BY CLIENT ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY CONTENT OR SERVICES IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY CONTENT OR THIRD-PARTY SERVICE PROVIDER. CLIENT ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES MADE BY BENEFITFOCUS OTHER THAN AS SPECIFICALLY SET FORTH HEREIN.**
- B. **Limitation of Liability:** Except for Claims for indemnification under Article VI, or breach of a Party's obligations under Article IV (other than a Data Breach), or Client's infringement of Benefitfocus intellectual property rights, in no event shall either Party's aggregate liability arising out of or related to this Agreement, whether in contract, tort or under any other theory of liability, exceed the amounts actually paid by or due from Client under the applicable Order Form(s) for the services for the twelve (12) months immediately preceding the claim for such liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, COVER, OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, REVENUES OR OTHER FINANCIAL LOSSES,) ARISING UNDER OR RELATING IN ANY WAY TO THE SERVICES OR THIS AGREEMENT. The foregoing shall apply regardless of the negligence or other fault of the Party and regardless of whether such liability arises from contract, negligence, tort, strict liability or any other theory of legal liability. THE FOREGOING LIMITATIONS REPRESENT A BARGAINED FOR ALLOCATION OF RISK, WHICH ALLOCATION IS A MATERIAL ELEMENT OF THIS AGREEMENT, TO THE MAXIMUM EXTENT POSSIBLE UNDER APPLICABLE LAW.

IX. GENERAL PROVISIONS

- A. **Publicity:** Client agrees that Benefitfocus may: (i) use Client's name solely to name Client as a new Benefitfocus customer in its quarterly earnings release; and (ii) use Client's approved logo to identify Client as a Benefitfocus customer on the Benefitfocus website. The Parties further agree to jointly develop a mutually agreeable Press Release regarding the Parties' relationship prior to or within a reasonable time after Client commences use of the Software Services. Except as provided herein, or as required by law,

neither Party will use the other's name, customers or trademarks in any advertisement, news release or other public communication.

- B. **Relationship of the Parties:** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- C. **Assignment of Agreement:** Except as otherwise provided for in this Section, neither Party shall assign (whether by operation of law or otherwise) this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the written consent of the other Party to a successor entity or purchaser acquiring all or substantially all of its assets, provided, (i) such successor entity or purchaser is not a competitor of the non-assigning Party; and (ii), that such successor entity or purchaser agrees to assume in writing all of the rights, duties and obligations of the assigning Party under this Agreement for the term hereof. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
- D. **Entire Agreement; Precedence:** This Agreement contains the entire understanding between the Parties and supersedes and replaces any prior or contemporaneous agreement or understanding between the Parties with respect to the subject matter hereof. No amendment or modification of the Agreement shall be valid, unless made in writing and signed by both Parties hereto. Each of the Recitals, Order Forms, Amendments and Addenda, which may be attached hereto are incorporated by reference into this Agreement as if fully stated herein. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any term or condition of any exhibit hereto or any transactional or other document issued in connection herewith, any such conflict will be resolved by giving precedence in the following order, most recently dated document first: (i) the Order Forms, as may be amended from time to time, and any exhibits or attachments thereto; (ii) this Agreement, as may be amended; and (iii) Addenda to this Agreement.
- E. **Governing Law; Waiver of Jury Trial:** This Agreement is governed by and shall be construed in accordance with the laws of the State of Delaware, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. The Parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any dispute arising hereunder.
- F. **Notices:** Any notices required or permitted hereunder shall be in writing and shall be delivered in person, by nationally recognized overnight courier service, by certified U.S. mail, postage prepaid, return receipt requested, or if provided herein or in an Order Form – email, addressed to the Party to be notified and in the case of Benefitfocus, to General Counsel, email Legal1@benefitfocus.com; and in the case of Client, to President/Owner at the address for such Party first set forth above or such address as either Party may hereafter specify in accordance herewith.
- G. **Force Majeure:** Except for payment obligations set forth in Section III of this Agreement, neither Party hereto shall be in breach or default of any provision of this Agreement by reason of its delay or failure to meet any of its obligations hereunder due to any event, circumstance, or cause beyond its control such as, but not limited to, circumstances beyond Benefitfocus' reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Benefitfocus employees), Internet service provider failures or delays, failures of telecommunication, or denial of service attacks. The performance of this Agreement shall then be suspended for as long as any such event shall prevent the affected Party from performing its obligations under this Agreement.
- H. **No Third Party Beneficiaries:** Nothing herein shall confer, upon any person other than Benefitfocus, Client and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- I. **Invalidity; Waivers:** If any provision or portion of this Agreement is held invalid, illegal, void or unenforceable as it appears in this Agreement by reason of any rule of law, then such provision shall be construed as being enforceable to the extent allowed thereunder. All other provisions of this Agreement shall nevertheless remain in full force and effect. Neither of the Parties shall be deemed to have waived any of its rights, powers or remedies hereunder except in writing by the waiving Party.
- J. **Survival of Terms:** Notwithstanding the expiration or earlier termination of this Agreement for any reason, the provisions of Articles II, III, IV, VI, and IX of this Agreement shall remain in full force and effect.
- K. **Subcontractors:** Benefitfocus may subcontract third parties to perform Services under this Agreement (each, a "Subcontractor"). Benefitfocus shall remain responsible and liable for Subcontractor's performance of the Services.
- L. **Federal Government End Use Provisions:** To the extent applicable to Client, Benefitfocus provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Benefitfocus to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

M. **Securities Laws.** Client hereby acknowledges that it is aware, and agrees that it will advise all of those persons who are involved with Client in connection with this Agreement and applicable Order Form(s), that federal and state securities laws prohibit any person who has received material, non-public information concerning Benefitfocus (i.e. information that is not generally available to the public) from (i) purchasing or selling securities of Benefitfocus while in possession of such non-public information, or (ii) communicating such information to any other person who may purchase or sell securities of Benefitfocus or otherwise violate such laws. Client and Client's representatives shall not use or disclose such Confidential Information for trading in Benefitfocus securities or for any other purpose in violation of U.S. federal or state securities law or similar laws in foreign jurisdictions.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, in multiple counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement.

BENEFITFOCUS.COM, INC.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____