

BENEFITBRIDGE SERVICES AGREEMENT

This **BenefitBridge Services Agreement** (“Agreement”) is made and entered into by and between **City of Rialto** (“Client”) and **Keenan & Associates** (“Keenan”), as of **July 1, 2020** (“Effective Date”).

WHEREAS, Client offers its employees and their dependents an Employee Benefits Program (the “Program”);

WHEREAS, Keenan offers a web-based application named BenefitBridge (the “Platform”) which provides services for their Users (employers, employees and employees’ dependents) to manage, view and control various aspects of employee benefits programs;

WHEREAS, Client desires to gain access to and use of the Platform to support Client’s Program pursuant to the terms of this Agreement;

NOW, therefore, in consideration of the mutual obligations contained herein, the Parties agree as follows:

1. TERM

The term of this Agreement is from the “Effective Date” through **June 30, 2021** (“Termination Date”) and shall automatically renew for subsequent one (1) year periods unless either party gives the other at least sixty (60) days written notice of its intent not to renew.

2. KEENAN SERVICES AND RELATIONSHIP OF THE PARTIES

- A. The services provided by Keenan under this Agreement shall be limited to the Platform Services described in Exhibits A and B, the terms of which are incorporated herein by reference. Client shall remain responsible for all other aspects of the Program.
- B. Keenan agrees that for the purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Keenan is considered a Business Associate of Client and, therefore, agrees to comply with the terms and conditions of, 45 CFR, Subchapter C, Part 160 et seq., with respect to the Privacy and Security Standards of HIPAA and will execute a Business Associate Agreement with the Client.
- C. In addition, Keenan agrees to the following, with respect to the use, disclosure and ownership of data:
 - 1. Ownership of data: Client is the owner of the data inputted into the Platform.
 - 2. Permitted uses: Keenan shall be allowed to create and use Aggregated Data (combination of data inputted by Client with similar information inputted into the Platform by other Keenan Clients) for the purposes of running trend reports and for benchmarking purposes. Keenan shall own all right, title and interest in and to the Aggregated Data.

3. Reports: Client and Keenan are allowed to run various reports from the information inputted into the Platform as outlined in Exhibit A.
- D. Keenan shall not provide any legal, tax, or accounting service, advice, or opinion, and the Services shall not be interpreted as representing any such service, advice or opinion. Client shall consult its own attorney on all legal issues, and its own tax and accounting experts on all tax, accounting, and financial matters relating to its operations, including without limitation, the establishment and/or operation of the Plans.
- E. The relationship of Keenan and Client shall be that of an independent contractor and Keenan shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers' compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.
- F. Keenan's responsibility to Client, upon notification by Client of a Platform's failure to perform or upon Keenan's discovery of such failure, is expressly limited to the use of all reasonable commercial methods available to search for the failure and fix it within a reasonable period of time. If the problems encountered cannot be fixed, Client's sole remedy is to cease using the Platform.
- G. Keenan shall assist Client with the transfer of certain information into the Platform such as the eligibility rules.

3. CLIENT'S RESPONSIBILITIES

- A. Client shall provide Keenan with timely access to such information and individuals, including its outside advisors and consultants, as may be necessary for Keenan to perform the Services. Keenan shall not be responsible for any delay in its performance that results from the failure of Client, or any person acting on behalf of Client, to make available any information or individual in a timely manner.
- B. All information provided to Keenan by Client, either in anticipation of or during the term of this Agreement, shall be complete and accurate, and Keenan may rely upon such information.
- C. Client agrees that the Platform is intended for the use of its employees and their dependents. Client shall not provide access to the Platform to any other party or entity without the written consent of Keenan.
- D. Client agrees to use the Platform only for the purposes set forth in this Agreement and that it shall not at any time: (i) create any derivative work based on the Platform Services, except for the reports that Client is allowed to run from the Platform; (ii) copy or modify the Platform services in any form.

- E. Client shall immediately notify Keenan upon termination of any employee who has been given administrative rights to the BenefitBridge system so that Keenan can take such steps as may be necessary to terminate all such rights.

4. **COMPENSATION TO KEENAN**

Monthly Fee

In exchange for the Client's use of the Platform and Platform Services, Client shall pay to Keenan an amount of \$20,000 per annum. Charges will be billed on a monthly basis.

Payment for the Services shall be due upon receipt of Keenan's invoice. Any balance not paid within thirty (30) days following the date on the invoice shall be deemed late. A late payment charge shall accrue as of the date of Keenan's original invoice, at the rate of 1½ percent per month, or the maximum rate permitted by applicable law, whichever is lower. Keenan shall have the right to suspend its Services if any balance owed by Client remains unpaid for more than sixty (60) days from the date of the invoice.

Installation Fee

The fee for the installation and activation of the BenefitBridge Platform shall be \$7,500.

Reactivation Fee

If, for any reason whatsoever, the Client stops the BenefitBridge installation process once it has begun, Client will be charged a \$10,000.00 Reactivation Fee to reactivate the BenefitBridge installation.

Open Enrollment Fee

Client is entitled to one annual online Open Enrollment at no charge. Client shall be charged a flat fee of \$15,000.00 for each additional online Open Enrollment that is performed in a given plan year.

5. **INSURANCE**

Keenan shall procure and maintain during the term of this Agreement the following insurance coverages and shall provide certificates of insurance to Client upon Client's request.

- (1) Workers' Compensation. Workers' Compensation Insurance in conformance with the laws of the State of California and applicable federal laws.
- (2) Bodily Injury, Death and Property Damage Liability Insurance. General Liability Insurance (including motor vehicle operation) with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.
- (3) Professional Liability Insurance. Professional Liability Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

- (4) Cyber Liability/Privacy Insurance. Cyber Liability Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

6. CONFIDENTIALITY

- A. As a result of their relationship under this Agreement each party may gain access to confidential information concerning the other. For purposes of this Agreement, the term “Confidential Information” includes, without limitation, i) any information or data about a party’s business operations, clients, employees, marketing plans, method of operation, trade secrets, and financial performance; ii) information about any individual participating in the Programs, such as name, address, social security number, compensation, and medical history, and iii) any other information about a party that is not available to the general public. Neither party shall, without the written consent of the other release, disclose, or disseminate the other party’s Confidential Information except as is necessary for the performance of the Services.
- B. In the event that either party becomes the subject of a subpoena or court order compelling the disclosure of the other party’s Confidential information, that party shall immediately notify the other so that the party whose Confidential Information is being sought can take such action as may be necessary to prevent or limit the release of its Confidential Information.
- C. Neither party shall be deemed to be in breach of this Section 6 if it has notified the other before it releases the Confidential Information pursuant to a subpoena or court order, and the party whose Confidential Information was requested fails to provide, before the deadline for disclosure, a copy of court order quashing the subpoena or otherwise limiting the original demand for the Confidential Information.

7. WARRANTY DISCLAIMERS

- A. Client understands that the services, the Platform and the content related thereto are provided on an informational basis only and are not intended and shall not be taken to substitute professional medical advice, diagnosis or treatment.
- B. Keenan does not warrant and is not responsible for any third-party products or services and Client understands that its sole and exclusive rights and remedies with respect to any third-party products or services are against the third-party vendor and not against Keenan.
- C. Subject to the specific services set forth herein, Keenan shall not be responsible for any damages that Client or its authorized participants suffer or incur because of their failure to (i) seek the advice of a physician or other qualified health provider in connection with any medical condition; (ii) comply with professional medical advice; or (iii) delay to seek medical advice for any reason, including but not limited to, information provided in connection with the services, the Platform and any content related thereto.
- D. If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys’ fees and expenses) arising from such breach. In addition, if

Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by one of Client's employees, Plan beneficiaries, or Plan vendors ("Third-Party Demand") relating to the Services and such Third-Party Demand is not a direct result of Keenan's negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand.

8. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for any punitive damages, fines, penalties, taxes or any indirect, incidental, or special damages incurred by the other party, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort claims or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage.

Keenan's liability to Client shall not exceed the amount actually paid by Client under this Agreement during the period of six (6) months preceding the occurrence of the alleged damage.

9. DISPUTE RESOLUTION

- A. In the event of any dispute arising out of or relating to this Agreement that cannot be settled through informal discussion or mediation, such dispute shall be resolved by submission to binding arbitration before Judicial Arbitration & Mediation Services ("JAMS") or ADR Services, at the claimant's choice, in Los Angeles County, California, before a retired judge or justice. If the parties are unable to agree on a retired judge or justice, the selected arbitration service (JAMS or ADR Services) will select the arbitrator.
- B. In any such arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.
- C. The prevailing party in any action, arbitration, or proceeding arising out of or to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action, arbitration or proceeding, or in the enforcement of any judgment or award rendered.

10. TERMINATION

- A. The term of this Agreement shall be in effect until the termination date specified in Section 1 above, unless terminated in accordance with this Section, in which case until the occurrence date. This Agreement shall be terminated immediately upon:
 - 1. The filing of a voluntary petition (or an involuntary petition that remains unstayed for sixty (60) days) in bankruptcy by (against) either Party to this Agreement; or the dissolution or insolvency of Client;

2. The enactment of any government or regulatory authority, agency or federal or state court law, rule or regulation, or the adoption of new interpretations of existing laws, rules or regulations, or the issuance of any order or policy, which renders the continued performance by either party under this Agreement unlawful;
 3. The breach of this Agreement by the other party, but only after the terminating party has given written notice of the breach to the other party, and such breach continues unremedied for a period of thirty (30) days after such notice.
- B. This Agreement may be terminated by either Party upon sixty (60) days notice.
- C. Any continued performance by the non-breaching party shall not be construed as a waiver of the other party's right to terminate the Agreement under this section.
- D. All terms of this Agreement (other than Keenan's obligation to provide services and Client's obligation to pay for future services), shall survive the expiration or termination of this Agreement.

11. **GENERAL**

- A. This Agreement, its recitals and all attached exhibits constitute the entire understanding of the parties related to the subject matter of the Agreement, and supersede all prior and collateral statements, presentations, communications, reports, agreements or understandings, if any, related to such matter(s).
- B. Notwithstanding any provision herein to the contrary, this Agreement is not intended and shall not be construed as creating or conferring any rights or remedies on any third parties that are not Parties to the Agreement. Enforcement of any remedy for breach of this Agreement may only be pursued by the Parties to this Agreement.
- C. No modification or amendment to this Agreement shall be binding unless in writing and signed by authorized representatives of both parties. Any waiver or delay by a party in enforcing this Agreement shall not deprive that party of the right to take appropriate action at a later time or due to another breach. This Agreement shall be interpreted as if written jointly by the parties.
- D. No failure or delay in exercising any right, power or privilege under this Agreement shall be construed as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.
- E. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any of the other provisions of this Agreement, all of which shall remain in full force and effect.
- F. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

- G. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make a good faith effort to perform under this Agreement in the event of any such circumstances, and shall resume full performance of its contract duties once the cause of the delay has abated.
- H. In the event of any dispute relating to this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs, including but not limited to, those incurred in resolving the dispute.
- I. Any rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, or any amendments or exhibits hereto.
- J. All notices hereunder shall be in writing and shall be sent to the parties at the addresses as set forth below, or to such other individual or address as a party may later designate. Notices shall be sent via personal delivery, courier service, United States mail (postage pre-paid, return receipt requested), express mail service, electronic mail, or fax. Notice shall be effective when delivered, or if refused, when delivery is attempted. Notices delivered during non-working hours shall be deemed to be effective as of the next business day.
- If the notice relates to a legal matter or dispute, a copy shall be sent to:
- Keenan & Associates
2355 Crenshaw Blvd., Ste. 200
Torrance, CA 90501
Attn: Legal Department
Fax: (310) 533-0573
- K. This Agreement may be executed in counterparts and by fax signatures and each shall be deemed to be an original.

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- L. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

<u>City of Rialto</u>		<u>Keenan & Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>		<u>By:</u>	Laurie LoFranco
<u>Title:</u>		<u>Title:</u>	Senior Vice President
<u>Address:</u>		<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
			Torrance, CA 90501
<u>Telephone:</u>		<u>Telephone:</u>	310 212-0363
<u>Attention:</u>		<u>Attention:</u>	Ralph Gowen
<u>E-mail:</u>		<u>E-mail:</u>	rgowen@keenand.com
<u>Signature:</u>			
<u>By:</u>	Eric Vail		
<u>Title:</u>	City Attorney		
<u>Signature:</u>			
<u>By:</u>	Barbara McGee		
<u>Title:</u>	City Clerk		

EXHIBIT A

Platform Services and Reports

1. **Platform Services and Reports:**

- A. The Platform provides the following services:
1. Benefit administration functionality including the ability to manage eligibility rules for various classes of employees/dependents;
 2. Online enrollment functions enabling employee self-service or Client enrollment on the Client's employees' behalf;
 3. Benefits billing and eligibility functions including the ability to create and transmit carrier-billing reports;
 4. The ability to communicate general health and welfare information and for the Client to upload documents and web links germane to the Client;
 5. Other useful content as Keenan deems appropriate.
- B. With respect to the Platform, Keenan will:
1. Maintain the Platform and keep its contents updated and current;
 2. Provide technical support to the Client;
 3. Provide training on the Platform to the Client's Human Resources users and for employee trainers;
 4. Provide implementation support including the loading of the plan designs, the eligibility rules, Client census files, initial user data and other data required to enable the Platform;
 5. Provide annual updates to plan designs and related eligibility rules stored in the Platform;
 6. Identify employees, dependents, and retirees who are enrolled in plans for which they are defined as ineligible;
 7. Set up data transfers with the Client's carriers;
 8. Ensure that standard reports are available for the Client's census, carrier bills and related benefits.
- C. With respect to the Platform, the Client will:
1. Maintain user passwords and accounts for any employees given access;
 2. Provide initial census data files;
 3. Work with Keenan to acquire carrier membership files;
 4. Work with Keenan to fully define eligibility rules.

EXHIBIT B

Enhanced Services Option

1. Definitions

- a. **Futuris Care.** An Enhancement that will allow retirees and plan participants approaching retirement age to access options for Medicare supplement insurance products. This Enhancement is available only to those Clients who have executed a Supplement Services Addendum for Retiree Medical Services.
- b. **Voluntary Benefits.** An Enhancement that will allow employees to access, apply for, and purchase, on an individual basis, certain elective benefits that are not included in Client's benefit plans. Depending upon carrier practices Client may be required to collect premiums (e.g., payroll deduction) and submit to carriers.
- c. **Age Out Options.** An Enhancement that permits Keenan to use data from Benefit Bridge to identify dependants approaching 26 and alert them that they will no longer be eligible on their parents' plan and provides options for them to explore and/or purchase individual coverage.

2. Client hereby authorizes Keenan to install all Enhancements on its BenefitBridge Platform EXCEPT the following (check any Enhancements that you do NOT want):

- a. Futuris Care ☐
- b. Voluntary Benefits ☐
- c. Age Out Options ☐

3. Data stored on BenefitBridge may be transmitted electronically to carriers and other Vendors ("Vendors") to facilitate the application for and/or enrollment in products and programs offered through the Enhancements. No Data will be transmitted unless an individual has, through the use of an Enhancement, elected to purchase or participate in the Vendor's product or program.
4. The Enhancements will be installed without charge to Client. It is understood and agreed that Keenan may be compensated by the Vendors in exchange for facilitating the application/enrollment process by transmitting the data electronically from BenefitBridge, and that Keenan may receive a commission from one or more Vendors as a result of the sale of their products or programs to an individual employee.