

**Town of Falmouth  
Health Reimbursement Arrangement  
Plan Document  
This Document is Effective: January 1, 2016**

Federal law requires that a Health Reimbursement Arrangement be in writing. This document has been prepared to assist you in meeting this requirement. Once you adopt a written plan, neither Group Dynamic, Inc. nor its representatives can assume responsibility for its contents. In addition, the plan provisions will be legally binding on you, and the rights of employees under the plan will be legally enforceable. We advise you to have the plan reviewed by your legal counsel prior to adopting the Plan.

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## **PREAMBLE**

The Employer identified in the Appendix has established the Health Reimbursement Arrangement (the "Plan") for its Employees for purposes of reimbursing eligible Employees of the Employer for the cost of certain Eligible Medical Expenses incurred by them, their Spouses and eligible Dependents. It is intended that the Plan meet the requirements for qualification under Internal Revenue Code Sec. 106, and that benefits paid to employees hereunder be excludable from their gross incomes by virtue of Internal Revenue Code Sec. 105(b).

**Town of Falmouth  
Health Reimbursement Arrangement**

**ARTICLE I  
DEFINITIONS**

**1.01 “Affiliated Employer”** means any entity who is considered with the Employer to be a single employer in accordance with Code Section 414(b), (c), or (m).

**1.02 “Anniversary Date”** means the first day of any Plan Year.

**1.03 “Board of Directors”** means the Board of Directors or other governing body of the Employer (the “Board”). The Board of Directors, upon adoption of this Plan, appoints the Plan Administrator to act on the Employer's behalf in all matters regarding the Plan.

**1.04 “Code”** means the Internal Revenue Code of 1986, as amended.

**1.05 “Component Medical Plan”** means the comprehensive accident and health plan sponsored by the Employer and specifically identified in the SPD. This HRA shall be considered with the Component Medical Plan to be a single employee welfare benefit plan.

**1.06 “Covered Dependent”** means a Dependent who becomes covered by the Plan in accordance with the terms of the Summary Plan Description.

**1.07 “Dependent”** means any individual who is a tax dependent of the Participant as defined in Code Section 105(b).

**1.08 “Effective Date”** of this Plan means the date this Plan was established, as set forth in the SPD. This date may be different from the effective date of the plan document set forth on the beginning page of this document.

**1.09 “Eligible Medical Expenses”** means those expenses incurred by a Participant or Covered Dependent that satisfy the conditions set forth in the Summary Plan Description.

**1.10 “Employee”** means an individual who the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include any of the following: (a) any individual classified by the Employer as a leased employee (including, but not limited to, those individuals defined in Code § 414(n)); (b) an individual classified by the Employer as a contract worker or independent contractor; (c) an individual classified by the Employer as a temporary employee or casual employee, whether or not any such persons are on the Employer's W-2 payroll; and (d) any individual who performs services for the Employer but who is paid by a temporary or other employment agency such as “Kelly,” “Manpower,” etc.

**1.11 “Employer”** means the entity identified as the Employer in the SPD, and any Affiliated Employer who adopts the Plan in accordance with the Plan's procedures. Notwithstanding the previous sentence when the Plan provides that the Employer has a certain power (e.g., the appointment of a third party administrator, entering into a contract with a third party insurer, or amendment or termination of the plan) the term “Employer” shall mean only the Employer identified in the SPD. Affiliated Employers who adopt the Plan shall be bound by the Plan as adopted and subsequently amended unless they clearly withdraw from participation herein. Affiliated Employers who have adopted the Plan are set forth in the Summary Plan Description.

**1.12 “Health Reimbursement Account”** means the notional bookkeeping account (except as otherwise set forth herein or in the SPD) to which HRA Dollars (as defined in 1.14 herein) are allocated to each Participant to be used for reimbursement of Eligible Medical Expenses. No money shall actually be allocated to any individual Participant Account(s); any such Account(s) shall be of a memorandum nature, maintained by the Plan Administrator for accounting purposes, and shall not be representative of any identifiable trust assets. No interest will be credited to or paid on amounts credited to the Participant Account(s).

**1.13 “HRA Dollars”** means any amount that the Employer, in its sole discretion, may contribute on behalf of each Participant to provide benefits for such Participant and his or her Covered Dependents, if applicable, under the Plan. The amount of employer contributions may be adjusted upward or downward at any time in the contributing Employer's sole discretion. The amount shall be calculated for each Plan Year in a uniform and nondiscriminatory manner and may be based upon the Participant's dependent status, commencement or termination date of the Participant's employment during the Plan Year, and such other factors as the Employer shall prescribe. In no event will any employer contributions be disbursed to a Participant in the form of additional, taxable Compensation.

**1.14 “Highly Compensated Individual”** means an individual defined under Code Section 105(h), as amended, as a “highly compensated individual” or a “highly compensated employee.”

**1.15 “Participant”** means an Employee who becomes a Participant pursuant to Article II.

**1.16 “Plan”** means this Health Reimbursement Arrangement.

**1.17 “Plan Administrator”** means the person(s) or Committee identified in the Summary Plan Description that is appointed by the Employer with authority, discretion, and responsibility to manage and direct the operation and administration of the Plan. If no such person is named, the Plan Administrator shall be the Employer.

**1.18 “Plan Year”** shall be the period of coverage set forth in the Summary Plan Description.

**1.19 “Spouse”** means an individual who is legally married to a Participant and who is treated as a spouse under the Code.

**1.20 “Summary Plan Description” or “SPD”** means the Health Reimbursement Arrangement SPD with the same name as this Plan and all appendices incorporated into and made a part of the SPD that is adopted by the Employer and attached to this Plan Document as Appendix I, as amended from time to time. The SPD and appendices are incorporated hereto by reference.

## **ARTICLE II ELIGIBILITY AND PARTICIPATION**

**2.01 Eligibility to Participate.** Each Employee who satisfies the eligibility requirements set forth in the SPD shall be eligible to participate in this Plan as of the effective date of coverage set forth in the SPD.

**2.02 Termination of Participation.** Participation shall terminate as of the date set forth in the SPD and as of the date an adopting Affiliated Employer by whom the Participant is employed terminates participation in the Plan.

**2.03 Qualifying Leave Under FMLA and USERRA.** Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the Family and Medical Leave Act of 1993 (the “FMLA”) or a military leave covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) the Participant will be entitled to continue coverage under this HRA on the same terms and conditions as if the Participant were still an active Employee to the extent set forth in FMLA or USERRA (for military leaves of absence, such protection will only apply for the leave period up to 30 days). The requirements for continuing coverage will be set forth in the SPD.

**2.04 Non-FMLA Leave.** If a Participant goes on an unpaid leave of absence coverage will be continued in accordance with the terms of the SPD.

### **ARTICLE III BENEFITS**

**3.01 Source of Benefits.** All benefits provided under this HRA shall be funded with HRA Dollars. No benefits provided under this HRA shall be funded, directly or indirectly, with any employee contributions (including pre-tax salary reductions under a Code Section 125 Cafeteria Plan) except as otherwise required for Continuation Coverage set forth in Article IX.

**3.02 Reduction or Termination of Coverage to Prevent Discrimination.** If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any requirement imposed by the Code, the Plan Administrator shall take such action(s) as he deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation. Such action may include, without limitation, a modification or termination of such Highly Compensated Employee’s coverage under this HRA without the consent of such Employee.

**3.03 Health Care Reimbursement.** Each year, the Participant's Health Reimbursement Account will be credited with HRA Dollars for reimbursement of Eligible Medical Expenses in accordance with the terms of the SPD. The Health Reimbursement Account will be debited for reimbursements of Eligible Medical Expenses disbursed to the Participant in accordance with the SPD and Section 4.10 and 4.11 herein. The Employer may credit such Health Reimbursement Account with the entire annual HRA Dollar amount as of the effective date of coverage for such Plan Year or the Employer may credit the Health Reimbursement Account with HRA Dollars on a pro-rata basis throughout the Plan Year. The manner in which HRA Dollars are credited to the Participant’s Health Reimbursement Account will be described in the SPD. The maximum amount of Reimbursement at any particular time during the Plan Year shall not exceed the amount credited to the Health Reimbursement Account. Any amount credited to the Health Reimbursement Account that is not applied towards Eligible Medical Expenses prior to the end of the Plan Year is not forfeited to the extent set forth in the SPD. Any amounts that are forfeited in accordance with the SPD may be used by the Employer in a manner determined within the Employer’s sole discretion. The maximum reimbursement provided under this HRA shall be set forth in the SPD.

**3.04 Repayment of Excess Reimbursements.** If it is determined that you have received payments under this Plan that exceed the amount of Eligible Medical Expenses that have been properly substantiated during the Plan Year as set forth herein or reimbursements have been made in error (e.g. expenses were reimbursed for ineligible expenses or for an ineligible dependent), the Plan Administrator may recoup the excess reimbursements in one or more of the following ways: (i) the Plan Administrator will notify the Participant of any such excess amount, and the Participant will be required to repay the excess amount to the Employer within sixty (60) days of receipt of such notification; (ii) the Plan Administrator may offset the excess reimbursement against any other Eligible Medical Expenses submitted for reimbursement (regardless of the Plan Year in which submitted); or (iii) the Plan



Administrator may withhold such amounts from the Participant's compensation (to the extent permitted under applicable law). If the Plan Administrator is unable to recoup the excess reimbursements by the means set forth in (i) – (iii), the Plan Administrator will notify the Employer that the funds could not be recouped and the Employer will treat the excess reimbursement as it would any other bad business debt.

**3.05 Termination of Health Reimbursement Account.** Coverage under the HRA shall cease in accordance with Section 2.02. However, Participants may submit claims for reimbursement for Eligible Medical Expenses arising before the termination date in accordance with Section 4.10 herein and the SPD. Unless a COBRA election is made as set forth in the SPD, Participants shall not be entitled to receive reimbursement for Eligible Medical Expenses incurred after coverage ceases under this Plan. Any unused HRA Dollars credited to the Health Reimbursement Account in accordance with Section 3.03 herein will be forfeited and may be used by the Employer in a manner determined within the sole discretion of the Employer. In addition, Participants may permanently opt out of and waive future reimbursements from the HRA during the annual open enrollment period for the Employer's Component Medical Plan and upon termination of employment.

**3.06 Coordination of Benefits Under the HRA.** The HRA is intended to pay benefits solely for otherwise unreimbursed medical expenses. Accordingly, it shall not be considered a group health plan for coordination of benefits purposes, and its benefits shall not be taken into account when determining benefits payable under any other plan. In addition, Eligible Medical Expenses that are potentially eligible for reimbursement under this HRA and also a Health Flexible Spending Arrangement (as defined in accordance with the rules set forth in Code Section 125) sponsored by the Employer will be processed in accordance with the terms of the SPD.

#### **ARTICLE IV PLAN ADMINISTRATION**

**4.01 Allocation of Authority.** The Board of Directors or the applicable governing body of the Employer (or an authorized officer of the Employer) appoints a Plan Administrator that keeps the records for the Plan and shall control and manage the operation and administration of the Plan. The Plan Administrator shall have the exclusive right to interpret the Plan and to decide all matters arising thereunder, including the right to make determinations of fact, and construe and interpret possible ambiguities, inconsistencies, or omissions in the Plan and the SPD issued in connection with the Plan. All determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following powers and duties:

- To require any person to furnish such reasonable information as he may request for the purpose of the proper administration of the Plan as a condition to receiving any benefits under the Plan;
- To make and enforce such rules and regulations and prescribe the use of such forms as he shall deem necessary for the efficient administration of the Plan;
- To decide on questions concerning the Plan and the eligibility of any Employee to participate in the Plan and to make or revoke elections under the Plan, in accordance with the provisions of the Plan;
- To determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan; to inform the Employer and insurer as appropriate, of the amount of such benefits; and to provide a full and fair review to any Participant whose claim for benefits has been denied in whole or in part;

- To designate other persons to carry out any duty or power which may or may not otherwise be a fiduciary responsibility of the Plan Administrator, under the terms of the Plan. Such entity will be referred to as a third party administrator and shall be identified in the SPD;
- To keep records of all acts and determinations, and to keep all such records, books of account, data and other documents as may be necessary for the proper administration of the Plan; and
- To do all things necessary to operate and administer the Plan in accordance with its provisions.

**4.02 Provision for Third-Party Plan Service Providers.** The Plan Administrator, subject to approval of the Employer, may employ the services of such persons, as it may deem necessary or desirable in connection with the operation of the Plan and to rely upon all tables, valuations, certificates, reports and opinions furnished thereby. Such entity will be identified in the SPD as a Third Party Administrator. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

**4.03 Fiduciary Liability.** To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for acts or failures to act involving the Plan Administrator's own gross negligence, willful neglect, willful misconduct or willful breach of this Plan.

**4.04 Compensation of Plan Administrator.** Unless otherwise determined by the Employer and permitted by law, any Plan Administrator who is also an employee of the Employer shall serve without compensation for services rendered in such capacity, but the Employer shall pay all reasonable expenses incurred in the performance of their duties.

**4.05 Bonding.** Unless otherwise determined by the Employer, or unless required by any federal or state law, the Plan Administrator shall not be required to give any bond or other security in any jurisdiction in connection with the administration of this Plan.

**4.06 Payment of Administrative Expenses.** The Employer has discretion to pay the administrative expenses arising from the Plan or to pass the expenses on to the Participants of the Plan.

**4.07 Funding Policy.** The Employer shall have the sole discretion to determine the manner in which benefits under the Plan are paid. The Employer may pay benefits from a trust (taxable or non-taxable) established in accordance with applicable law. The Employer may pay benefits solely as needed from the Employer's general assets and/or the Employer may enter into one or more contracts with one or more insurance companies for the purpose of providing benefits under the Plan. Any dividends, retroactive rate adjustments or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and shall be retained by the Employer. The Employer will not be liable for any loss or obligation relating to any insurance coverage except as is expressly provided by this plan. Such limitation shall include, but not be limited to, losses or obligations that pertain to the following:

- Once insurance is applied for or obtained, the Employer will not be liable for any loss which may result from the failure to pay premiums to the extent premium notices are not received by the Employer;
- To the extent premium notices are received by the Employer, the Employer's liability for the payment of such premiums will be limited to such premiums and will not include liability for any other loss which results from such failure;
- The Employer will not be liable for the payment of any insurance premium or any loss that may result from the failure to pay an insurance premium if the benefits available under this plan are not enough to provide for such premium cost at the time it is due. In such circumstances, the

Employee will be responsible for and see to the payment of such premiums. The Employer will undertake to notify a Participant if available benefits under this plan are not enough to provide for an insurance premium, but will not be liable for any failure to make such notification;

- When employment ends, the Employer will have no liability to take any step to maintain any policy in force except as may be specifically required otherwise in this plan, and the Employer will not be liable for or responsible to see to the payment of any premium after employment ends.

**4.08 Disbursement Reports.** The Plan Administrator shall issue directions to the Employer concerning all benefits that are to be paid from the Employer's general assets pursuant to the provisions of the Plan.

**4.10 Substantiation of Expenses.** Each Participant must submit a written Claim Form to the third party administrator identified in the SPD to receive reimbursements from the HRA, on a form provided by the Plan Administrator, accompanied by a written statement/bill from an independent third party stating that the expense has been incurred, and the amount thereof except as otherwise provided in the SPD with regard to electronic payment cards, if offered under the Plan. The forms shall contain such evidence, as the Plan Administrator shall deem necessary as to substantiate the nature, the amount, and timeliness of any expenses that may be reimbursed. All claim forms must be submitted on or before the end of the Run Out Period described in the SPD.

**4.11 Reimbursement.** Reimbursements shall be made as soon as administratively feasible after the required forms have been received by the Plan Administrator.

**4.12 Statements.** The Plan Administrator or its designated third party administrator may periodically furnish each Participant with a statement, showing the amounts paid or expenses incurred by the Employer in providing reimbursement under this Plan and the respective Health Reimbursement Account balance.

**4.13 Integration with Component Medical Plan.** Although established pursuant to separate documents, this Plan and the Component Medical Plan identified in the SPD should be considered a single plan for all purposes. Notwithstanding the previous sentence, nothing in this document (including the SPD incorporated hereto by reference) should be construed to provide benefits under the Component Medical Plan other than as set forth in the separate governing documents for the Component Medical Plan. In addition, nothing in this document shall modify, supersede, or revise the terms set forth in the governing documents of the Component Medical Plan as they relate to the Component Medical Plan.

## **ARTICLE V CLAIMS PROCEDURES**

The Plan has established procedures for full and fair review of claims denied under this Plan and those claims review procedures are set forth in the SPD.

## **ARTICLE VI AMENDMENT OR TERMINATION OF PLAN**

**6.01 Permanency.** While the Employer fully expects that this Plan will continue indefinitely, permanency of the Plan will be subject to the Employer's right to amend or terminate the Plan, as provided in Sections 6.02 and 6.03, below. Nothing in this Plan is intended to be or shall be construed to entitle any Participant, retired or otherwise, to vested or non-terminable benefits.

**6.02 Employer's Right to Amend.** The Employer reserves the right to amend at any time any or all of the provisions of the Plan. All amendments shall be made in writing and shall be approved by the Employer in accordance with its normal procedures for transacting business (e.g., by approval by the Board of Directors through a meeting or unanimous consent of all Board members). Such amendments may apply retroactively or prospectively as set forth in the amendment. Any amendment made by the Employer shall be deemed to be approved and adopted by any Affiliated Employer who has adopted the Plan.

**6.03 Employer's Right to Terminate.** The Employer reserves the right to discontinue or terminate the Plan without prejudice at any time and for any reason without prior notice. Such decision to terminate the Plan shall be made in writing and shall be approved by the Employer in accordance with its normal procedures for transacting business. Affiliated Employers who have adopted the Plan may withdraw from participation in the Plan, but may not terminate the Plan.

**6.04 Determination of Effective Date of Amendment or Termination.** Any such amendment, discontinuance or termination shall be effective as of such date as the Employer shall determine.

## **ARTICLE VII GENERAL PROVISIONS**

**7.01 Not an Employment Contract.** Neither this Plan nor any action taken with respect to it shall confer upon any person the right to continue employment with any Employer.

**7.02 Applicable Laws.** The provisions of the Plan shall be construed, administered and enforced according to applicable federal law and the laws of the State of Maine to the extent not preempted.

**7.03 Post-Mortem Payments.** Any benefit payable under the Plan after the death of a Participant shall be paid to his surviving Spouse, otherwise, to his estate. If there is doubt as to the right of any beneficiary to receive any amount, the Plan Administrator may retain such amount until the rights thereto are determined, without liability for any interest thereon.

**7.04 Non-Alienation of Benefits.** Except as expressly provided by the Administrator, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.

**7.05 Mental or Physical Incompetency.** Every person receiving or claiming benefits under the Plan shall be presumed to be mentally and physically competent and of age until the Plan Administrator receives a written notice, in a form and manner acceptable to it, that such person is mentally or physically incompetent or a minor, and that a guardian, conservator or other person legally vested with the care of his estate has been appointed.

**7.06 Inability to Locate Payee.** If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because he cannot ascertain the identity or whereabouts of such Participants or other person after reasonable efforts have been made to identify or locate such person, such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited after a reasonable time after the date any such payment first became due.

**7.07 Requirement for Proper Forms.** All communications in connection with the Plan made by a Participant shall become effective only when duly executed on any forms as may be required and furnished by, and filed with, the Plan Administrator.

**7.08 Source of Payments.** The Employer and any insurance company contracts purchased or held by the Employer or funded pursuant to this Plan shall be the sole sources of benefits under the Plan. No Employee or beneficiary shall have any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under the Plan, and then only to the extent of the benefits payable under the Plan to such Employee or beneficiary.

**7.09 Multiple Functions.** Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan.

**7.10 Tax Effects.** Neither the Employer, nor the Plan Administrator makes any warranty or other representation as to whether any benefits made to or on behalf of any Participant hereunder will be treated as excludable from gross income for local, state, or federal income tax purposes. If for any reason it is determined that any amount paid for the benefit of a Participant or Beneficiary are includable in an Employee's gross income for local, federal, or state income tax purposes, then under no circumstances shall the recipient have any recourse against the Plan Administrator or the Employer with respect to any increased taxes or other losses or damages suffered by the Employees as a result thereof.

**7.11 Gender and Number.** Masculine pronouns include the feminine as well as the neuter genders, and the singular shall include the plural, unless indicated otherwise by the context.

**7.12 Headings.** The Article and Section headings contained herein are for convenience of reference only, and shall not be construed as defining or limiting the matter contained thereunder.

**7.13 Incorporation by Reference.** The SPD for this Plan contains many of the actual terms and conditions of this Plan. To that end, the SPD, as amended from time to time, is incorporated herein.

**7.14 Severability.** Should a court of competent jurisdiction subsequently invalidate any part of this Plan, the remainder thereof shall be given effect to the maximum extent possible.

**7.15 Effect of Mistake.** In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of distributions made or to be made to a Participant or other person, the Plan Administrator shall, to the extent it deems possible, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as will in its judgment accord to such Participant or other person the credits to the account or distributions to which he is properly entitled under the Plan. Such action by the Administrator may include withholding of any amounts due the Plan or the Employer from Compensation paid by the Employer.

**7.16 Forfeiture of Unclaimed Health Reimbursement Account Benefits.** A Participant will forfeit any rights to a Health Reimbursement Account benefit payment if it is unclaimed (e.g., uncashed benefit checks) by the claims payment date set forth in the SPD.

## ARTICLE VIII HIPAA PRIVACY

**8.01 Scope and Purpose.** The HRA (the “Plan”) will use protected health information (“PHI”) to the extent of and in accordance with the uses and disclosures permitted by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care and health care operations as set forth below.

**8.02 Definitions.** For purposes of this Article, the following definitions shall apply:

(a) “Breach” shall mean the acquisition, access, use, or disclosure of an individual’s PHI in a manner not permitted under the Privacy Rule that compromises the security or privacy of the PHI. A Breach does not include:

(i) an unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was in good faith and within the scope of authority and does not result in a further impermissible use or disclosure;

(ii) an inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI at the same covered entity or business associate or organized health care arrangement and the information received is not further used or disclosed in a manner not permitted under the Privacy Rule; or

(iii) a disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

(b) “Electronic Protected Health Information” or “Electronic PHI” means PHI that is transmitted by or maintained in electronic media.

(c) “Health Care Operations,” as defined under 45 C.F.R. Section 164.501, means any of the following activities to the extent that they are related to the Health Plan’s covered functions:

(i) Conducting quality assessment and improvement activities; population-based activities related to health improvement, reduction of health care costs, case management and care coordination; contacting health care providers and patients regarding treatment alternatives; and related functions that do not include treatment;

(ii) Reviewing competence or qualifications of health care professionals and evaluating provider and Health Plan performance;

(iii) Underwriting and other activities that relate to the creation, renewal or replacement of a contract of health insurance or health benefits; and ceding, securing or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance);

(iv) Conducting or arranging for medical review, legal services and auditing functions, including fraud and abuse detection and compliance programs;

(v) Business planning and development, such as cost-management and planning-related analysis related to managing and operating the Health Plan, and development or improvement of coverage policies; and

(vi) Business management and general administrative activities, including, but not limited to: (A) management activities related to implementation of and compliance with the requirements of the Privacy Rule; (B) customer service, including the provision of data analyses for the Health Plan sponsor, provided that PHI is not disclosed to the Health Plan sponsor; (C) resolution of internal grievances; (D) due diligence related to the sale, transfer, merger or consolidation of all or part of the Health Plan with another entity directly regulated under the Privacy Rule, or an entity that, following such activity, will be subject to the Privacy Rule; and (E) consistent with applicable requirements of the Privacy Rule, creating de-identified information, as defined in 45 C.F.R. Section 164.514(b)(2), or a limited data set, as defined under 45 C.F.R. Section 164.514(d)(2).

(d) “Health Plan” means each “group health plan,” as defined in 45 C.F.R. Section 160.103, sponsored by the Employer to provide health care benefits for its employees, former employees and dependents, including this Plan. The Plan Administrator intends this Plan to form part of an Organized Health Care Arrangement, as defined in 45 C.F.R. §160.103, along with any other benefit under a covered health plan (under 45 C.F.R. § 160.103) provided by the Employer.

(e) “Payment,” as defined under 45 C.F.R. Section 164.501, means activities undertaken by the Health Plan to obtain contributions or to determine or fulfill its responsibility for coverage and provision of benefits, or to obtain or provide reimbursement for the provision of health care. Such activities include, but are not limited to:

(i) Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance) and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of necessary information relating to collection of premiums or reimbursement.

(f) “Privacy Policy” means the Employer’s internal HIPAA privacy and security policies and procedures.

(g) “Protected Health Information” or “PHI” means individually identifiable health information that (i) relates to the past, present or future physical or mental condition of a current or former Participant, provision of health care to a Participant, or payment for such health care; (ii) can either identify the Participant, or there is a reasonable basis to believe the information can be used to identify the Participant; and (iii) is received, created, maintained or transmitted by or on behalf of the Health Plan.

(h) “Responsible Employee” means an employee (including a contract, temporary or leased employee) of the Health Plans or of the Employer whose duties (A) require that the employee have access to PHI for purposes of Health Plan Payment or Health Care Operations; or (B) make it likely that he will receive or have access to PHI. Persons designated as Responsible Employees are described in Section 8.03. A Responsible Employee shall also include any other employee (other than a designated Responsible Employee) who creates, receives, maintains or transmits PHI on behalf of the Health Plan, even though his duties do not (or are not expected to) include creating, receiving, maintaining or transmitting PHI. Responsible Employees are within the Employer’s HIPAA firewall when they perform Health Plan functions.

(i) “Security Incident” as defined under 45 C.F.R. Section 164.304, means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(j) “Security Rule” means the regulations issued under HIPAA concerning the security of Electronic PHI.

**8.03 Responsible Employees.** Only Responsible Employees shall be permitted to use, disclose, create, receive, access, maintain, or transmit PHI or Electronic PHI on behalf of a Health Plan. The use or disclosure of PHI or Electronic PHI by Responsible Employees shall be restricted to the Health Plan administration functions that the Employer performs on behalf of a Health Plan pursuant to Section 8.04.

(a) Employer employees who perform the following functions on behalf of the Health Plans are Responsible Employees:

- (i) claims determination and processing functions;
- (ii) Health Plan vendor relations functions;
- (iii) benefits education and information functions;
- (iv) Health Plan administration activities;
- (v) legal department activities;
- (vi) Health Plan compliance activities;
- (vii) information systems support activities;
- (viii) internal audit functions; and
- (ix) human resources functions.



(b) In addition to those individuals described in subsection (a), the Administrator who performs claims appeals and other decision-making functions on behalf of the Health Plans, the Health Plans' HIPAA privacy officer and security official, and Employer employees to whom the Health Plans' HIPAA privacy officer and security official has delegated any of the following responsibilities shall also be Responsible Employees:

- (i) implementation, interpretation and amendment of the Privacy Policy;
- (ii) Privacy Rule or Security Rule training for Employer employees;
- (iii) investigation of and response to complaints by Participants and/or employees;
- (iv) preparation and maintenance of the Health Plans' privacy notice;
- (v) distribution of the Health Plans' privacy notice;
- (vi) response to requests by Participants to inspect or copy PHI;
- (vii) response to requests by Participants to restrict the use or disclosure of their PHI;
- (viii) response to requests by Participants to receive communications of their PHI by alternate means or in an alternate manner;
- (ix) amendment and response to requests to amend Participants' PHI;
- (x) response to requests by Participants for an accounting of disclosures of their PHI;
- (xi) response to requests for information by the Department of Health and Human Services;
- (xii) approval of disclosures to law enforcement or to the military for government purposes;
- (xiii) maintenance of records and other documentation required by the Privacy Rule or Security Rule;
- (xiv) negotiation of Privacy Rule and Security Rule provisions and/or reasonable security provisions into contracts with third party service providers;
- (xv) maintenance of Health Plan PHI or Electronic PHI security documentation; or
- (xvi) approval of access to Electronic PHI.

**8.04 Permitted Uses and Disclosures.** Responsible Employees may access, request, receive, use, disclose, create and/or transmit PHI only to perform certain permitted and required functions on behalf of the Health Plan, consistent with the Privacy Policy. This includes:

- (a) uses and disclosures for the Health Plans' own Payment and Health Care Operations functions;

- (b) uses and disclosures for another Health Plan's Payment and Health Care Operations functions;
- (c) disclosures to a health care provider, as defined under 45 C.F.R. Section 160.103, for the health care provider's treatment activities;
- (d) disclosures to the Employer, acting in its role as Plan Sponsor, of (i) summary health information for purposes of obtaining health insurance coverage or premium bids for the Health Plan or for making decisions to modify, amend or terminate the Health Plan; or (ii) enrollment or disenrollment information;
- (e) disclosures of a Participant's PHI to the Participant or his personal representative, as defined under 45 C.F.R. Section 164.502(g);
- (f) disclosures to a Health Plan for the other Health Plan's Payment or Health Care Operations activities;
- (g) disclosures to a Participant's family members or friends involved in the Participant's health care or payment for the Participant's health care, or to notify a Participant's family in the event of an emergency or disaster relief situation;
- (h) uses and disclosures to comply with workers' compensation laws;
- (i) uses and disclosures for legal and law enforcement purposes, such as to comply with a court order;
- (j) disclosures to the Secretary of Health and Human Services to demonstrate the Health Plan's compliance with the Privacy Rule or Security Rule;
- (k) uses and disclosures for other governmental purposes, such as for national security purposes;
- (l) uses and disclosures for certain health and safety purposes, such as to prevent or lessen a threat to public health, to report suspected cases of abuse, neglect, or domestic violence, or relating to a claim for public benefits or services;
- (m) uses and disclosures to identify a decedent or cause of death, or for tissue donation purposes;
- (n) uses and disclosures required by other applicable laws; and
- (o) uses and disclosures pursuant to the Participant's authorization that satisfies the requirements of 45 C.F.R. Section 164.508.

Notwithstanding anything in the Plan to the contrary, the use or disclosure of Protected Health Information that is Genetic Information about an individual for underwriting purposes shall not be permitted use or disclosure. The term "underwriting purposes" includes determining eligibility or benefits, computation of premium or contribution amounts, or the creation, renewal or replacement of a contract of health insurance.

**8.05 Certification Requirement.** The Health Plan shall disclose PHI, including Electronic PHI, to Responsible Employees only upon receipt of a certification by the Employer that the Employer agrees:

- (a) not to use or further disclose PHI other than as permitted or required by this Article and the Privacy Policy or as required by law;
- (b) to take reasonable steps to ensure that any agents, including subcontractors, to whom the Employer provides PHI or Electronic PHI, received from the Health Plan agree:
  - (i) to the same restrictions and conditions that apply to the Employer with respect to such PHI; and
  - (ii) implement reasonable and appropriate security measures to protect such Electronic PHI.
- (c) not to use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer other than another Health Plan;
- (d) to report to the Health Plan any use or disclosure of PHI, including Electronic PHI, that is inconsistent with the uses or disclosures described in Section 8.04A, or any Security Incident, of which the Employer becomes aware;
- (e) to make available PHI for inspection and copying in accordance with 45 C.F.R. Section 164.524;
- (f) to make available PHI for amendment, and to incorporate any amendments to PHI in accordance with 45 C.F.R. Section 164.526;
- (g) to make available PHI required to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528;
- (h) to make its internal practices, books and records relating to the use and disclosure of PHI and Electronic PHI, received on behalf of the Health Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Health Plan with the Privacy Rule or the Security Rule;
- (i) if feasible, to return or destroy all PHI and Electronic PHI, received from the Health Plan that the Employer still maintains in any form and retain no copies of such PHI and Electronic PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of PHI infeasible and Electronic PHI;
- (j) to take reasonable steps to ensure that there is adequate separation between the Health Plan and the Employer's activities in its role as Plan sponsor and employer, and that such adequate separation is supported by reasonable and appropriate security measures; and
- (k) to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Electronic PHI that the Employer creates, receives, maintains or transmits on behalf of the Health Plan.

**8.06 Mitigation.** In the event of non-compliance with any of the provisions set forth in this Article:

(a) The HIPAA privacy officer or security official, as appropriate, shall address any complaint promptly and confidentially. The HIPAA privacy officer or security official, as appropriate, first will investigate the complaint and document his investigation efforts and findings.

(b) If PHI, including Electronic PHI, has been used or disclosed in violation of the Privacy Policy or inconsistent with this Article, the HIPAA privacy officer and/or the security official, as appropriate, shall take immediate steps to mitigate any harm caused by the violation and to minimize the possibility that such a violation will recur.

(c) If a Responsible Employee or other Employer employee is found to have violated the Privacy Policy and/or policy developed under the Security Rule, such personnel shall be subject to disciplinary action up to and including termination.

**8.07 Breach Notification.** Following the discovery of a Breach of unsecured PHI, the Health Plan shall notify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of a Breach, in accordance with 45 C.F.R. Section 164.404, and shall notify the Secretary of Health and Human Services in accordance with 45 C.F.R. Section 164.408. For a breach of unsecured PHI involving more than 500 residents of a State or jurisdiction, Health Plan shall notify the media in accordance with 45 C.F.R. Section 164.406. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified in regulations or other guidance issued by the Secretary of Health and Human Services.

**ARTICLE IX  
CONTINUATION COVERAGE UNDER COBRA**

The SPD includes continuation of coverage provisions under COBRA that shall apply to the HRA to the extent the Employer is subject to COBRA as set forth in the relevant Code and Public Health Safety Act ("PHSA") statutory provisions and the applicable regulations promulgated thereunder.

IN WITNESS WHEREOF, the Employer has executed this HRA as of the date set forth below.

**Town of Falmouth**

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

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

Date: \_\_\_\_\_