

## **Confluent, Inc. Welfare Benefits Plan**

January 1, 2026

This plan document, when executed, will constitute a legal instrument with important tax and legal implications. Before you adopt it, you should verify its accuracy, and your legal advisor(s) should confirm and approve it.

**PREAMBLE AND EXECUTION**

WHEREAS, Confluent, Inc., ("the Company") maintains the Confluent, Inc. Welfare Benefits Plan  
and

WHEREAS, the Company desires to amend and restate the plan;

NOW, THEREFORE, the Confluent, Inc. Welfare Benefits Plan (the "Plan") is hereby amended  
and restated effective January 1, 2026

IN WITNESS WHEREOF, the undersigned has caused the Plan to be executed by its duly  
authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Confluent, Inc.

By \_\_\_\_\_

Title \_\_\_\_\_

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2.2 Actively at Work means that the Employee currently works at their assigned place of employment for an Employer during assigned working hours. Notwithstanding the foregoing, an Employee shall be deemed to be Actively at Work on a day that is not a regularly scheduled work day or a day that is eligible for pay under paid time off policies of the Employer, provided that the Employee performed, in the customary manner, all of the regular duties of their job on the last preceding scheduled work day. ....	3
2.3 Affiliate means any corporation or other business entity which is: (a) a member of a controlled group of corporations (within the meaning of Section 414(b) of the Code) of which the Company is also a member, except that control shall be based on an interest of not less than 25%; (b) a trade or business under common control with the Company, within the meaning of Section 414(c) of the Code, except that control shall be based on an interest of not less than 25%; (c) a member of an affiliated service group (within the meaning of Section 414(m) of the Code) of which the Company is also a member; (d) required to be aggregated with the Company pursuant to regulations issued under Section 414(o) of the Code; or (e) related closely enough to the Company that such corporation or entity’s participation in this Plan would not be considered a “multiple employer welfare arrangement” under Section 3 of ERISA.....	3
2.4 Affordable Care Act or “ACA” means the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, as such amends the applicable provisions of the Code, ERISA and the Public Health Service Act (“PHSA”), and the applicable regulations promulgated from time to time pursuant thereto. ....	3
2.5 Benefits or Benefit Program mean the health and welfare coverages provided under the Plan and as described in the Incorporated Documents. Certain benefits are provided to any Employee who meets the eligibility requirements of Section 3.1, while certain other benefits are provided only upon selection by an Employee who meets the eligibility requirements of Section 3.1. ....	3
2.6 Change in Status means: .....	4

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2.8	Claimant means any person who believes they are entitled to receive a benefit under the Plan and files a claim in accordance with a Benefit Program’s claims procedures. ....	5
2.9	Child means a Covered Employee’s: biological child, stepchild, child of a Covered Employee’s Domestic Partner, legally adopted child (including any child under age 18 placed in the home during a probationary period in anticipation of the adoption where there is a legal obligation for support), foster child, a child for whom a Covered Employee is responsible under court order, a child for whom the Covered Employee is appointed as a legal guardian, or an eligible child for whom the Covered Employee is required to provide coverage under the terms of a Qualified Medical Child Support Order (“QMCSO”) or a National Medical Support Notice (“NMSN”). ....	5
2.10	Claim Administrator means the Plan Administrator or such other person(s) or entity (or entities) authorized by the Plan Administrator as responsible for receiving and reviewing claims for benefits under the Plan; determining what amount, if any, is due and payable; making appropriate disbursements to persons entitled to benefits under the Plan; and reviewing and determining denied claims and appeals. ....	5
2.11	COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272, Title X), as amended, and the regulations issued thereunder or pursuant thereto. ....	5
2.12	Code means Internal Revenue Code of 1986, as amended, and regulations issued thereunder or pursuant thereto. ....	5
2.13	Company means Confluent, Inc. a corporation and any successor, by merger or otherwise. ....	5
2.14	Compensation means the total remuneration paid to the Participant by the Company for services rendered as an Employee of such entity with respect to the period during which the Employee is a Participant of this Plan for any Plan Year as reported in Box 1 of Form W-2. ....	5
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	Company and shall not be considered a Program Document, is not incorporated herein, and does not constitute part of the official Plan document. ....	9
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**ARTICLE I**  
**PLAN ESTABLISHMENT**

**1.1 Establishment and Effective Date**

The Confluent, Inc. Welfare Benefits Plan ("the Plan") is hereby amended and restated effective January 1, 2026. The Plan includes a Code Section 125 Program. The Plan and the Section 125 Program are considered a single Plan for purposes of the annual Form 5500 filing requirement. The Plan is filed as plan number 501.

**1.2 Purpose**

The Plan has been created to provide specified health and welfare benefits for the exclusive benefit of Covered Persons, as defined in Article II.

The Plan is also intended to give Covered Employees, as defined in Article II, the means to pay for certain benefits provided under the Plan on a pre-tax basis or receive taxable compensation in lieu thereof.

**1.3 Qualification**

To the extent this Plan provides specified health and welfare benefits, it is intended to satisfy the written plan document requirements of Section 402 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The portion of the Plan that constitute the health and welfare plan under ERISA are: the Medical Benefits, Dental Benefits, Vision Benefits, Employee Assistance Plan Benefits, Basic Life Benefits, Supplemental Life Benefits, Dependent Life Benefits, Basic AD&D Benefits, Supplemental AD&D Benefits, Short-Term Disability Benefits, Long-Term Disability Benefits, Business Travel Accident Benefits and the Health Care Spending Account and Limited Purpose Health Care Spending Account, along with those other provisions of this document that are necessary or appropriate to the implementation and administration of listed benefits. The inclusion of the Dependent Care Spending Account and Health Savings Account in this Plan document, and the inclusion of any other benefit that is not otherwise subject to ERISA shall not subject such benefit to ERISA. To the extent this Plan provides permitted taxable benefits and qualified benefits under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"), it is intended also to qualify as a cafeteria plan under Section 125 of the Code. This document is intended to satisfy the written plan document requirements of Proposed Treasury Regulations Section 1.125-1(c). The portions of the Plan that constitute the cafeteria plan and the term "Cafeteria Plan" shall mean those provisions of this document that are necessary or appropriate to the implementation and administration of Employee elections among the following listed benefits to the extent pre-tax elections are available: the unreduced compensation benefit, the Medical Premium Payment Benefit, Dental Premium Payment Benefit, Vision Premium Payment Benefit, Health Care Spending Account Premium Payment Benefit, Limited Purpose Health Care Spending Account Premium Payment Benefit, Dependent Care Spending Account Premium Payment Benefit and Health Savings Account Premium Payment Benefit. The cafeteria plan is for Covered Employees only.

The Dependent Care Spending Account Plan, as defined in Article II and set forth in Appendix A, is part of this Plan and is intended to qualify as a dependent care assistance

program under Section 129 of the Code. Appendix A is intended to satisfy the written plan document requirement of Code Section 129(d)(1).

The Health Care Spending Account Plan, as defined in Article II and set forth in Appendix B, is part of this Plan and is intended to be an employee welfare benefit plan under Section 3(3) of ERISA. Appendix B is intended to satisfy the written plan document requirement of ERISA Section 402. The Health Care Spending Account Plan is intended to qualify as a health plan under Section 105(e) of the Code. Appendix B is also intended to satisfy the written plan document requirement of Treasury Regulations Section 1.105-11(b)(1)(i).

The Limited Purpose Health Care Spending Account Plan, as defined in Article II and as set forth in Appendix C, is part of this Plan and is intended to be an employee welfare benefit plan under Section 3(3) of ERISA. Appendix C is intended to satisfy the written plan document requirement of ERISA Section 402. The Limited Purpose Health Care Spending Account Plan is intended to qualify as a health plan under Section 105(e) of the Code. Appendix C is also intended to satisfy the written plan document requirement of Treasury Regulations Section 1.105-11(b)(1)(i).

#### **1.4 Duration**

The Plan is established with the intention of being maintained for an indefinite period of time; however, the Company, as defined in Article II, in its sole discretion and in accordance with the provisions of Article XI may amend or terminate the Plan or any provision of the Plan at any time.

#### **1.5 Benefit Programs**

The Plan consolidates a range of welfare plan benefits (as defined in Section 3(1) of ERISA) and the Cafeteria Plan. The component Benefit Programs of the Plan are set forth in Appendix A. The Administrator will maintain records as to the particular Benefit Programs from time to time forming part of the Plan. Benefits are provided to Covered Persons through one or more Benefit Programs sponsored or maintained by the Company.

Such Benefit Programs may be funded or unfunded, insured or uninsured, or a combination thereof, and may provide varying benefits to certain groups of Eligible Employees (and their respective covered Dependents). The Program Documents which describe the specific benefits provided by each Benefit Program, the individuals covered by each Benefit Program, and the other terms and conditions of each Benefit Program, as amended from time to time, are incorporated herein by reference. The Plan supersedes and replaces any program document defining the terms of or describing a Benefit Program which is not incorporated and made part of the Plan. If the Benefit Program is insured and there is a conflict between the specific terms of a Program Document and the terms of the Plan, the Program Document will control. For all other Benefit Programs, if there is a conflict between the specific terms of a Program Document and the terms of the Plan, the Plan will control (unless contrary to applicable law), except that any terms exclusively applicable to a Benefit Program will be set forth in the applicable Program Document.

## ARTICLE II

### DEFINITIONS

The following words and phrases, when capitalized, shall have the following meanings. Words and phrases not defined in this Article shall have the meaning set forth in an applicable Incorporated Document, and if not defined in an applicable Incorporated Document, then such words and phrases shall have the meaning customarily given them by the applicable insurance company, third party administrator, or other service provider, as the case may be.

- 2.1 Account** means a bookkeeping record maintained by the Plan with respect to a Participant which reflects, from time to time, the amounts attributable to Compensation reduction contributions made on the Participant's behalf under the Health Care Flexible Spending Account Program or the Dependent Care Flexible Spending Account Program subject to any distributions or forfeitures incurred thereunder. The Accounts will not be funded and will not earn or accrue any interest for the benefit of any Participant.
- 2.2 Actively at Work** means that the Employee currently works at their assigned place of employment for an Employer during assigned working hours. Notwithstanding the foregoing, an Employee shall be deemed to be Actively at Work on a day that is not a regularly scheduled work day or a day that is eligible for pay under paid time off policies of the Employer, provided that the Employee performed, in the customary manner, all of the regular duties of their job on the last preceding scheduled work day.
- 2.3 Affiliate** means any corporation or other business entity which is: (a) a member of a controlled group of corporations (within the meaning of Section 414(b) of the Code) of which the Company is also a member, except that control shall be based on an interest of not less than 25%; (b) a trade or business under common control with the Company, within the meaning of Section 414(c) of the Code, except that control shall be based on an interest of not less than 25%; (c) a member of an affiliated service group (within the meaning of Section 414(m) of the Code) of which the Company is also a member; (d) required to be aggregated with the Company pursuant to regulations issued under Section 414(o) of the Code; or (e) related closely enough to the Company that such corporation or entity's participation in this Plan would not be considered a "multiple employer welfare arrangement" under Section 3 of ERISA.
- 2.4 Affordable Care Act or "ACA"** means the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, as such amends the applicable provisions of the Code, ERISA and the Public Health Service Act ("PHSA"), and the applicable regulations promulgated from time to time pursuant thereto.
- 2.5 Benefits or Benefit Program** mean the health and welfare coverages provided under the Plan and as described in the Incorporated Documents. Certain benefits are provided to any Employee who meets the eligibility requirements of Section 3.1, while

certain other benefits are provided only upon selection by an Employee who meets the eligibility requirements of Section 3.1.

**2.6 Change in Status means:**

- A. A “special enrollment” event under HIPAA,
- B. The Employee's marriage, divorce, legal separation, or annulment,
- C. Commencement and dissolution of domestic partnership,
- D. The birth, adoption, placement for adoption, or change in dependency or custody of an Employee's Child,
- E. The death of the Employee's Spouse or Dependent Child,
- F. A change in employment status by the Employee, Spouse or Dependent, including commencement or termination of employment, a change in work shift, a change in worksite, a reduction or increase in hours of employment including changing from part-time to full-time employment status, a strike or lockout,
- G. A change in worksite or personal residence resulting in eligibility or loss of eligibility of coverage for the Employee, Spouse or Dependent under any health maintenance organization offered through the Plan,
- H. A change in legal custody (including the issuance of a Qualified Medical Child Support Order) that affects the Child’s eligibility for coverage under this Plan or the plan of the Child's other parent,
- I. Entitlement or loss of entitlement to Medicare or Medicaid by the Employee, Spouse or Dependent,
- J. Attainment by Dependent Child of limiting age for a benefit provided under this Plan,
- K. Loss of “qualifying individual” status, as defined in Article II of the Dependent Care Spending Account Plan,
- L. Experiencing a change in employment that does not otherwise affect eligibility for coverage under the Plan, after which the Covered Employee is reasonably expected to average fewer than 30 hours of service per week, if the Covered Employee (and any Dependents also revoking coverage) intend(s) to enroll in another plan that provides minimum essential coverage effective no later than the first day of the second month after the date that Plan coverage is revoked. This rule permits the Covered Employee to revoke Group Health Plan Benefits only, for the Covered Employee and their Dependents, and does not apply to Health Care Spending Account or Limited Purpose Health Care Spending Account elections,
- M. Eligibility for special enrollment in a qualified health plan (QHP) through the public Marketplace, or seeking to enroll in a QHP offered through the public

Marketplace during the Marketplace's annual open enrollment. This rule permits the Covered Employee to revoke group health plan Benefits only, for the Covered Employee and/or their Dependents who are eligible for and intend to enroll in QHP coverage. The revocation must correspond with the intended enrollment of the Covered Employee and their Dependents in a QHP effective beginning no later than the day immediately following the last day of the of the Plan coverage that is revoked. This rule does not apply to Health Care Spending Account or Limited Purpose Health Care Spending Account elections,

- N. Commencing or returning from a leave of absence under the FMLA, or
- O. Any other event the Plan Administrator determines permits revocation of an election without violating the Code.

**2.7 Board of Directors** means the board of directors of the Company or a committee thereof delegated the responsibilities with respect to this Plan.

**2.8 Claimant** means any person who believes they are entitled to receive a benefit under the Plan and files a claim in accordance with a Benefit Program's claims procedures.

**2.9 Child** means a Covered Employee's: biological child, stepchild, child of a Covered Employee's Domestic Partner, legally adopted child (including any child under age 18 placed in the home during a probationary period in anticipation of the adoption where there is a legal obligation for support), foster child, a child for whom a Covered Employee is responsible under court order, a child for whom the Covered Employee is appointed as a legal guardian, or an eligible child for whom the Covered Employee is required to provide coverage under the terms of a Qualified Medical Child Support Order ("QMCSO") or a National Medical Support Notice ("NMSN").

**2.10 Claim Administrator** means the Plan Administrator or such other person(s) or entity (or entities) authorized by the Plan Administrator as responsible for receiving and reviewing claims for benefits under the Plan; determining what amount, if any, is due and payable; making appropriate disbursements to persons entitled to benefits under the Plan; and reviewing and determining denied claims and appeals.

**2.11 COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272, Title X), as amended, and the regulations issued thereunder or pursuant thereto.

**2.12 Code** means Internal Revenue Code of 1986, as amended, and regulations issued thereunder or pursuant thereto.

**2.13 Company** means Confluent, Inc. a corporation and any successor, by merger or otherwise.

**2.14 Compensation** means the total remuneration paid to the Participant by the Company for services rendered as an Employee of such entity with respect to the period during

which the Employee is a Participant of this Plan for any Plan Year as reported in Box 1 of Form W-2.

**2.15 Covered Employee** means an Employee who satisfies the eligibility, participation, and coverage requirements of Article III.

**2.16 Covered Person** means a Covered Employee or Dependent who has satisfied the eligibility and enrollment provisions of Article III or, if applicable, the provisions of Article VII.

A Covered Person may have Plan coverage with respect to certain benefits, but not all benefits, as hereinafter described in the Plan.

**2.17 Dependent** means a Spouse, Domestic Partner, or Child of an Employee who is a Covered Person as determined under the applicable Incorporated Document.

Regardless of whether a Dependent is eligible for a Benefit under this Plan, a Covered Employee may only make Salary Reduction Contributions for Benefits for an Employee's dependent who is a Covered Person as follows:

- A. Spouse,
- B. dependent as defined in Code Section 152 (without regard to (b)(1), (b)(2), and (d)(1)(B)) or,
- C. for health Benefits for the Covered Employee's Child as defined in Code Section 152(f)(1) who has not attained age 27 as of the end of the taxable year.

A Dependent may be eligible for coverage with respect to certain benefits, but not all benefits, as hereinafter described in the Plan. A Dependent that lives outside the U.S. may be restricted from coverage under the Plan unless the Dependent has established primary residency with the Covered Employee.

**2.18 Dependent Care Spending Account Plan** means the plan set forth in Appendix A.

**2.19 Domestic Partner** means an individual who (a) has entered into a civil union with the Covered Employee in accordance with the laws of the state in which they reside; (b) has registered as the Covered Employee's "domestic partner" with the state of California's or another state's domestic partnership registry; or (c) who has satisfied the Administrator's requirements for establishing a domestic partnership under the terms of a particular Benefit Program.

An individual who is not registered as your domestic partner or entered into a civil union with you will be considered by the Plan to be your domestic partner if you both have a dedicated relationship characterized by all of the following:

You have an ongoing and committed spouse-like relationship, which has existed for at least 6 months,

You are both 18 years of age or older and competent to contract,

Neither of you are married, as defined by state law, nor the domestic partner of anyone else. You intend to remain each other's domestic partner indefinitely. You are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which you reside.

You have shared the same place of residence for at least the last 6 months and intend to do so indefinitely. You are also responsible to each other for the direction and financial management of your household and intend this to remain the case indefinitely. You are jointly responsible for each other's financial obligations.

You are not in this relationship solely for the purpose of obtaining benefits coverage.

**2.20 Effective Date** means the date the Plan becomes operative, as set forth in Article I.

**2.21 Employee** means an individual who is treated as a regular active employee of an Employer (a) who is paid a salary, wages or other compensation by an Employer; (b) who is considered by an Employer to be an employee at the time of the payment of such salary, wages or other compensation; and (c) whose salary, wages or other compensation is treated by an Employer at the time of such payment as being subject to statutorily required payroll tax withholding, such as withholding of federal or state income or withholding of the Employee's share of social security and Medicare tax. The determination of whether an individual is an Employee, versus an independent contractor or any other classification of worker or service provider and the determination of whether an individual is a member of any particular class of Employees shall be made solely by the Company and is not dependent on, nor changes due to, the treatment of the individual for any purposes under the Code, common law or any other law, or any determination made by any court or government agency.

Without limiting who is excluded, the following individuals are expressly excluded from the definition of the term "Employee":

- A. Any nonresident alien employee with no U.S. sourced income, or undocumented resident alien employee;
- B. Any individual who is performing services under an independent contractor or consultant agreement or arrangement (even if a court, the Internal Revenue Service, or any other entity determines that such individual is a common law employee), unless a Program Document specifically provides coverage for such individuals;
- C. Any individual who must be treated as an employee for limited purposes under the leased employee provisions of Section 414(n) of the Code;
- D. Any individual covered by a collective bargaining agreement that does not provide for coverage under the Plan, provided that the type of benefits provided under the Plan was the subject of good faith bargaining between the individual's bargaining representative and an Employer;
- E. Any individual classified by an Employer as a temporary or contract employee to the extent consistent with the law;

- F. Any individual providing services for an Employer pursuant to an agreement between an Employer and a third party (even if a court, the Internal Revenue Service, or any other entity determines that such individual is a common law employee); or
- G. A person who performs services for an Employer but who is treated for payroll purposes as other than an Employee of an Employer (even if a court, the Internal Revenue Service, or any other entity determines that such individual is a common law employee).

A person the Plan Administrator determines is not an "Employee" as defined above shall not be eligible to participate in the Plan regardless of whether such determination is upheld by a court or tax or regulatory authority having jurisdiction over such matters. However, a person the Company determines is not an "Employee" as defined above and who later is required to be reclassified as an Employee shall be eligible to participate in the Plan benefits under the Plan prospectively only, provided that the Employee is otherwise eligible pursuant to Section 3.1.

**2.22 Employer** means the Company and any subsidiary or affiliated organization and any successor(s) of any of them which, with the approval of the Company, and subject to such conditions as the Company may impose, adopts the Plan, including any Participating Employer.

For purposes of satisfying the nondiscrimination requirements of Code Section 125(b), Sections 105(h) and 129(d), the term "Employer" shall include any other corporation or other business entity which must be aggregated with the Employer under Sections 414(b), (c), (m) or (o) of the Code, but only for such period of time when the Employer or such other corporation or other business entity must be aggregated as aforesaid.

**2.23 ERISA** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations issued thereunder or pursuant thereto.

**2.24 FMLA** means the Family and Medical Leave Act of 1993, as amended, and the regulations issued thereunder or pursuant thereto.

**2.25 Health Care Spending Account Plan** means the plan set forth in Appendix B.

**2.26 Health Savings Account** means an individual savings account described in Appendix B OR that qualifies under Code Section 223 established to pay for medical expenses as defined in Section 213(d) of the Code.

**2.27 HIPAA** means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations issued thereunder or pursuant thereto.

**2.28 Incorporated Document** means an insurance policy, administrative services agreement, plan, trust, certificate of coverage, evidence of coverage, summary plan description or other document incorporated by reference, together with any exhibits,

supplements, addendums or amendments thereto. The Incorporated Documents are listed in Appendix D.

**2.29 Insurance Company** means an insurance company through which Benefit Program benefits are insured or which provides administrative services to a Benefit Program. For purposes of this definition, a health maintenance organization, exclusive provider organization or preferred provider organization may constitute an Insurance Company. Any services agreement, master contract, or agreement to provide insurance between an Insurance Company and the Company shall not be considered a Program Document, is not incorporated herein and does not constitute part of the official Plan document.

**2.30 Insurance Contract** means a services agreement, master contract, or agreement to provide insurance between an Insurance Company and the Company and shall not

be considered a Program Document, is not incorporated herein, and does not constitute part of the official Plan document.

- 2.31 Insurance Policy** means a policy issued by an Insurance Company providing insured benefit coverage under this Plan.
- 2.32 Limited Purpose Health Care Spending Account Plan** means the plan set forth in Appendix C.
- 2.33 Maximum Carryover Amount** means the term as defined in Appendix B and Appendix C.
- 2.34 Plan** means the Confluent, Inc. Welfare Benefits Plan as herein set forth and as amended from time to time.
- 2.35 Plan Administrator** means the person(s) authorized and responsible for managing and directing the operation and administration of the Plan.
- 2.36 Plan Sponsor** means the Company.
- 2.37 Plan Year** means the 12-month period beginning January 1 and ending December 31.
- 2.38 Salary Deduction Agreement** means the authorization to the Employer by the Covered Employee to reduce such Employee's pay by an amount on an after-tax basis for selected Plan benefits.
- 2.39 Salary Deduction Contributions** means the contributions taken from the Covered Employee's salary on an after-tax basis, pursuant to a Salary Deduction Agreement.
- 2.40 Salary Reduction Agreement** means the authorization to the Employer by the Covered Employee to reduce such Employee's pay by an amount on a before-tax basis for selected Plan benefits.
- 2.41 Salary Reduction Contributions** means the contributions taken from the Covered Employee's salary on a before-tax basis, pursuant to a Salary Reduction Agreement.
- 2.42 Spouse** means, for purposes of this Plan only, a person recognized as married to the Covered Employee by a state, possession, or territory of the United States in which the marriage is entered into, regardless of domicile. Where the marriage was entered into in a foreign jurisdiction, a person is recognized as married to the Covered Employee or territory of the United States, regardless of domicile. Spouse does not include an individual who is legally separated or divorced from a Covered Employee, unless recognized under the applicable Incorporated Document or required by law or a common law spouse unless the person otherwise qualifies as the Covered Employee's Domestic Partner.

## ARTICLE III

### ELIGIBILITY, PARTICIPATION AND COVERAGE

#### 3.1 Eligibility

An Employee who is classified by the Employer as regularly scheduled to work at least 20 hours per week shall become eligible for Plan participation in the benefits identified in Article IV on the later of the Effective Date or the Employee's date of hire.

The following individuals are not eligible to participate in the Plan:

- A. Employees regularly scheduled to work fewer than 20 hours per week;
- B. Leased employees, as defined in Code Section 414(n);
- C. A temporary or project employee, if they are eligible for health coverage through a leasing company or PEO, unless otherwise required by the ACA;
- D. Employees in an employee unit covered by a collective bargaining agreement between Employee representatives and one or more Employers if this Plan's benefits were the subject of good faith bargaining between the Employee representatives and the Employer, unless such agreement provides for coverage for such bargaining employees in the Plan;
- E. Nonresident aliens who receive no earned income (within the meaning of the Code Section 911(d)(2)) from an Employer that constitutes income from sources within the United States, as defined in Code Section 861(a)(3); or
- F. Otherwise eligible employees, but the employee or a dependent committed fraud or misrepresentation with respect to the Plan and any of the Benefit Programs.

Specific eligibility requirements for certain benefits shall be set forth in Article IV or in the applicable Incorporated Documents.

#### 3.2 Participation

Employees become Plan participants with respect to non-elective Benefits on the date they satisfy the eligibility requirements of Section 3.1. Employees become Plan participants with respect to elective Benefits on the date they also satisfy the enrollment and election requirements of Section 5.4.

#### 3.3 Coverage

- A. Date Coverage Begins

The provisions and requirements describing when and how Employees, and Dependents become Covered Persons, the conditions and limitations to coverage, and the circumstances wherein coverage terminates shall be set forth as applicable in the Incorporated Documents by reference under Section 4.1. In addition, coverage is governed by the rules stated below and in Section 5.8.

B. Coverage During Leave of Absence

1. Paid Leave

During a paid leave of absence, a Covered Employee continues to participate in all benefits.

2. Unpaid Leave

For Plan benefits not requiring Employee contributions, a Covered Employee remains covered for such benefits during an unpaid leave of absence.

If a Benefit Program requires a Covered Employee to continue contributions while they are on a Leave of Absence, the Covered Employee must make timely contributions in the form and manner prescribed by the Administrator.

The Administrator may in its sole discretion, allow Covered Employees to pre-pay their premium contributions prior to the scheduled Leave of Absence, pay the premium contributions on a monthly basis during the Leave of Absence, or repay the premium contributions upon the Covered Employee's return to Active Service via additional payroll deductions.

If the Covered Employee elects to pay the contributions on a monthly basis and fails to timely make such required contributions (other than due to an unforeseen hardship), the Covered Employee's failure to make premium contributions within the required time period may result in the loss or a suspension of coverage.

If the Covered Employee fails to timely make such required contributions during their Leave of Absence due to unforeseen hardship, the Administrator shall have sole discretion to allow the Covered Employee to make such contributions retroactively (to the extent permitted by relevant federal and/or state or local law, if applicable). The Administrator shall also have sole discretion to retroactively reinstate the Covered Employee's coverage under such Benefit Program if the Covered Employee's coverage terminated due to the failure to make timely contributions pursuant to an unforeseen hardship. Such contributions shall be set forth in a schedule determined by the Administrator.

Coverage during an approved leave of absence, whether paid or unpaid will end on the earliest of (i) the date set forth in the Benefit Program document, (ii) the last day of the month following the date that is six (6) months from the date the Covered Employee's leave of absence begins, provided however, coverage may continue for a longer period of time if required for an insured Benefit Program under applicable state law or (iii) the date of an event set forth in Section 3.3(C) below.

The terms of the Benefit Program to which the participant's selected premium payment benefits were paid control whether and to what extent coverage and benefits under that Benefit Plan will continue.

With respect to premium payment benefits described in Section 4.4(D and E), if the Covered Employee elects to revoke such coverage during the unpaid leave, no expenses incurred during the leave shall be reimbursed. Upon return from leave, the Employee can either: i) elect to be reinstated in the prior election amount, reduced by the dollar amount of the annual election not contributed during the unpaid leave, or ii) elect to be reinstated to the full annual election amount, with the Salary Reduction Contribution adjusted accordingly for the balance of the Plan Year.

With respect to premium payments benefits described in Section 4.4 (G, H, I and J) Employee may elect to continue participation by paying premium payment benefits during the FMLA leave on an after-tax basis.

C. Date Coverage Ceases

Coverage for a specific benefit offered under the Plan ceases on the earliest of:

1. The last day of the month in which you cease to satisfy the eligibility requirements for the medical, dental and vision Benefit Programs.
2. The date you cease to satisfy the eligibility requirements for life insurance, short and long term disability insurance, AD&D insurance, and the Health and Dependent Care Flexible Spending Accounts. This may result from your death, reduction in hours, or termination of active employment.,
3. Where participation continues during an unpaid leave of absence, the date coverage ends under Section 3.3(B)(2).
4. The last day of the last pay period for which a Covered Employee makes a Salary Reduction Contribution or Salary Deduction Contribution with respect to an elective Benefit,
5. The effective date of a Plan amendment that terminates coverage for the Covered Employee's job category,
6. The date the Plan terminates.

A Covered Employee's Dependent shall cease to be a Covered Person if the Employee ceases to be a Covered Person or as provided for in an applicable Incorporated Document, except as otherwise provided in Article VII.

D. Effect of Terminated Coverage

Termination of coverage automatically cancels a Covered Employee's Salary Reduction Agreement and Salary Deduction Agreement on the date coverage terminates. Coverage and benefits may continue in effect to the extent provided in an applicable Incorporated Document.

E. Reinstatement of Coverage

1. If Previously Suspended

A Covered Employee who returns to an Employer's service during the same Plan Year in which they took an unpaid leave of absence will have reinstated automatically the Benefits in effect when Plan coverage was suspended provided such benefits continue to be provided by the Company. If an unpaid leave of absence was taken in accordance with FMLA, such Covered Employee may reinstate their election and Salary Reduction Agreement for the remainder of the Plan Year if participation has not continued pursuant to Section 3.3(B). In all other cases, the Covered Employee may only make any new benefit elections for the remainder of the Plan Year, as described in Section 5.8.

2. If Previously Terminated

A Covered Employee who returns to an Employer's service shall be eligible to participate in the Plan and make new benefit elections, provided such Employee satisfies the eligibility requirements of Section 3.1.

Notwithstanding the foregoing, if a former Covered Employee returns to service during the same Plan Year and within 30 days of the date prior participation ended, their elections for Benefits described in Section 4.4 (A, B, C, D, E and F) shall be reinstated for the remainder of the Plan Year, except as described in Section 5.8. The above rule shall not apply and the rehired Employee shall be eligible to make new elections for Benefits described in Section 4.4 (A, B, C, D, E and F) for the balance of the Plan Year, if it is determined to the satisfaction of the Plan Administrator that the prior termination of employment and reinstatement was bona fide and not an attempt to avoid the irrevocable rule described in Section 5.8(A).

**3.4 Coverage under the Family and Medical Leave Act and Section 609 of ERISA**

A. Family and Medical Leave Act of 1993

If not otherwise provided for herein, the Plan shall provide coverage for a Covered Employee solely to the extent necessary to comply with FMLA, and the Plan shall be interpreted and administered as necessary to comply with FMLA and the rulings and regulations issued thereunder.

B. Section 609 of ERISA

If not otherwise provided for herein, the Plan shall provide coverage to a child solely to the extent required by a qualified medical child support order defined under Section 609(a) of ERISA or to an adoptive child or child placed for adoption solely to the extent required by Section 609(c) of ERISA. Further, the Plan shall be interpreted and administered as necessary to comply with Section 609 of ERISA and the rulings and regulations issued thereunder.

C. Coverage Contingent Upon Contribution

Any coverage provided as a result of this Section 3.4 shall be conditioned upon payment of applicable contributions by the Employee.

**3.5 Uniformed Services Employment and Reemployment Rights Act**

Solely to the extent required by the Uniformed Services Employment and Reemployment Rights Act (hereafter the "Uniformed Services Act"), a Covered Person who is an Employee who enters military service shall have the right to continue coverage under the Plan for the period prescribed under the Uniformed Services Act. Continuation of coverage shall be conditioned upon payment of the required premiums, if any.

This Section 3.5 shall be interpreted and applied to give an Employee only those rights as are prescribed under the Uniformed Services Act and rulings and regulations issued thereunder.

**3.6 Health Insurance Portability and Accountability Act of 1996**

A. HIPAA Title I

Solely to the extent required by the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA"), an Employee shall be a Covered Person under the Plan no later than such time as required under HIPAA, and the Plan shall be subject to the special enrollment and nondiscrimination in health status provisions of HIPAA. This Section 3.6 shall be interpreted and applied to give a Covered Person only those rights as prescribed under HIPAA and the rulings and regulations issued thereunder Confluent, Inc. Welfare Benefits Plan, except that an Employer may extend certain HIPAA special enrollment rights to Domestic Partners if designated in the Confluent, Inc. Welfare Benefits Plan Summary Plan Description.

B. HIPAA Title II

The Plan shall comply with the privacy and security regulations of HIPAA, in accordance with the provisions set forth in Article XIII.

**3.7 Coordination with State Medicaid Program**

The fact that a Covered Person is eligible for coverage by, or is covered by, a State Medicaid program shall not affect the Covered Person's eligibility to participate in the Plan or to receive benefits. While a Covered Person's purported assignments are void under Section 12.4 in all other cases, the payment of benefits under the Plan with respect to any Covered Person shall be made in accordance with any assignment of rights made by or on behalf of the Covered Person or a beneficiary of the Covered Person as and to the extent required by any State Medicaid program, as provided in Section 609(b) of ERISA. To the extent a payment has been made to or with respect to a Covered Person pursuant to a State Medicaid program and the amount so paid is for a medical expense that the Plan has a legal liability to pay, the Plan will pay such expense in accordance with any State law that provides that the State has acquired the right with respect to the Covered Person to receive payment for such expense.

### **3.8 Mental Health Parity and Addiction Equity Act**

Solely to the extent required by the Mental Health Parity and Addiction Equity Act of 2008, as amended, the Plan shall provide mental health and substance use disorder benefits in parity with the provided medical and surgical benefits.

This Section 3.8 shall be interpreted and applied to give Covered Persons only those rights as prescribed under the Mental Health Parity and Addiction Equity Act, and the rulings and regulations issued thereunder.

### **3.9 Women's Health and Cancer Rights Act**

Solely to the extent required under the law of the Women's Health and Cancer Rights Act (hereinafter "WHCRA"), the Plan shall provide certain benefits related to benefits received in connection with a mastectomy.

In the case of a Covered Person who is receiving benefits under the Plan in connection with a mastectomy and who elects breast reconstruction, the coverage shall be provided in a manner determined in consultation with the attending physician and the patient for reconstruction of the breast on which the mastectomy was performed; surgery and reconstruction of the other breast to produce a symmetrical appearance; and prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas.

Such reconstructive benefits are subject to annual plan deductibles and coinsurance provisions such as other medical and surgical benefits covered under the Plan.

This Section 3.9 shall be interpreted and applied to give Covered Persons only those rights as prescribed under WHCRA, and the rulings and regulations issued thereunder.

### **3.10 Newborns' and Mothers' Health Protection Act**

Solely to the extent required by the Newborns' and Mothers' Health Protection Act (hereinafter "NMHPA"), the Plan shall provide that coverage for childbirth may not be limited to a hospital stay of less than 48 hours for normal delivery, or less than 96 hours for cesarean section, or require the provider to obtain approval for shorter hospital stays. The requirement shall not apply if the attending provider, in consultation with the mother, decides to discharge the mother or newborn earlier than the time prescribed by the NMHPA.

This Section 3.10 shall be interpreted and applied to give Covered Persons only those rights as prescribed under the NMHPA, and the rulings and regulations issued thereunder.

### **3.11 Genetic Information Nondiscrimination Act of 2008**

The Plan shall also comply with the Genetic Information Nondiscrimination Act of 2008 (hereinafter "GINA").

This Section 3.11 shall be interpreted and applied to give Covered Persons only those rights as prescribed under GINA, and the rulings and regulations issued thereunder.

### **3.12 Children’s Health Insurance Program Reauthorization Act of 2009**

The Plan shall also comply with the Children’s Health Insurance Program Reauthorization Act of 2009 (hereinafter “CHIP”).

This Section 3.12 shall be interpreted and applied to give Covered Persons only those rights as prescribed under CHIP, and the rulings and regulations issued thereunder.

### **3.13 Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act**

The Plan shall also comply with the applicable provisions of the Patient Protection and Affordable Care Act (hereinafter “PPACA”) as amended by the Health Care and Education Reconciliation Act (hereinafter “HCERA”).

This Section 3.13 shall be interpreted and applied to give Covered Persons only those rights as prescribed under PPACA as amended by HCERA, and the rulings and regulations issued thereunder.

### **3.14 Transparency in Coverage Regulations and Consolidated Appropriations Act, 2021**

The Plan shall also comply with the applicable provisions of the Transparency-In-Coverage Regulations and the Consolidated Appropriations Act, 2021 (“CAA”) as they become effective, based on a good faith, reasonable interpretation of the statute, existing regulations and other official guidance.

This Section 3.14 shall be interpreted and applied to give Covered Persons only those rights as prescribed under the Transparency-in-Coverage Regulations and the CAA, and the rulings and regulations issued thereunder.

## **ARTICLE IV**

### **BENEFITS**

#### **4.1 Benefits**

The benefits provided under the Plan are described as set forth below and as further described in any applicable Incorporated Document. Any such applicable Incorporated Document is hereby incorporated by reference as if set forth in full herein. Pursuant to Section 8.1(B) any Salary Reduction Agreements and/or Salary Deduction Agreements issued in conjunction with the Plan are incorporated by reference.

#### **4.2 Options**

Covered Employees must elect one of the following:

- A. to receive the full unreduced compensation benefit described in Section 4.3, and receive automatic coverage under Benefits described in Section 4.5;
- B. to forgo all or part of the unreduced compensation benefit described in Section 4.3 and make before- or after-tax contributions in exchange for one or a combination of Benefits described in Section 4.4 and receive automatic coverage under Benefits described in Section 4.5;

Employee contributions for Benefits described in Sections 4.4 (A, B, C, D, E, F and K) must be made on an entirely before-tax basis through a Salary Reduction Agreement. Employee contributions for Benefits described in Section 4.4 (G, H, I and J) may be made only on an after-tax basis through a Salary Deduction Agreement. There are no Employee Contributions for Benefits described in Section 4.5. Notwithstanding the foregoing, Employee contributions for coverage for Domestic Partners and their children who are not the Employee's tax dependent will be made on a after-tax basis through a Salary Reduction Agreement.

#### **4.3 Unreduced Compensation Benefit**

In lieu of all or some of the Benefits described in Section 4.4 that a Covered Employee otherwise could elect, they may elect to receive unreduced compensation in an amount equal to the value of the Benefits available for election that are not elected. The unreduced compensation benefit is subject to the Employer's regular payroll practices; applicable local, state, and federal income tax withholding; and other applicable deductions. The unreduced compensation benefit is not additional compensation; it is the amount by which a Covered Employee's compensation is not reduced each pay period by not electing a premium payment benefit. The unreduced compensation benefit shall cease whenever the Covered Employee commences an unpaid leave of absence, terminates employment, or the Covered Employee's Employer determines, in its sole discretion, that compensation is not payable to such Employee.

#### 4.4 Elective Benefits

By electing one or more premium payment benefits, an Employee converts a portion of their compensation for the Plan Year into contributions for the Benefits selected. Covered Employees may elect one or more of these premium payment benefits:

A. Medical Premium Payment Benefit

Covered Persons shall have the right to the medical benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such applicable Incorporated Document. A description of such benefits, including the amount payable, required deductibles, co-payments, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for medical benefits, they may elect any of the medical plan options as the medical premium payment benefit.

B. Dental Premium Payment Benefit

Covered Persons shall have the right to the dental benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such applicable Incorporated Document. A description of such benefits, including the amount payable, required deductibles, co-payments, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for dental benefits, they may elect any of the dental plan options as the dental premium payment benefit.

C. Vision Premium Payment Benefit

Covered Persons shall have the right to the vision benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such applicable Incorporated Document. A description of such benefits, including the amount payable, required deductibles, co-payments, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for vision benefits, they may elect any of the vision plan options as the vision premium payment benefit.

D. Health Care Spending Account Premium Payment Benefit

Employees who are Covered Persons shall have the right to the health care spending account benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for the health care spending account benefits, they may elect any whole dollar annual contribution amount of not more than an amount to be communicated annually by the Plan Administrator, which amount shall not exceed the maximum amount allowed under Section 125(i) of the Code, as the health care spending account premium payment benefit. If the Covered

E. Limited Purpose Health Care Spending Account Premium Payment Benefit

Employees who are Covered Persons shall have the right to the limited purpose health care spending account benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for the limited purpose health care spending account benefits, they may elect any whole dollar annual contribution amount of not more than an amount to be communicated annually by the Plan Administrator, which amount shall not exceed the maximum amount allowed under Section 125(i) of the Code, as the limited purpose health care spending account premium payment benefit.

F. Dependent Care Spending Account Premium Payment Benefit

Employees who are Covered Persons shall have the right to the dependent care spending account benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for dependent care spending account benefits, they may elect any whole dollar annual contribution amount not more than \$7,500 as the dependent care spending account premium payment benefit. The Dependent Care Spending Account Premium Payment Benefit is not subject to ERISA.

G. Supplemental Life Premium Payment Benefit

Employees who are Covered Persons shall have the right to the supplemental life insurance benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions, the procedure for naming beneficiaries and consequences for failure to name a beneficiary, shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for supplemental life benefits, they may elect any of the supplemental life coverage options as the supplemental life premium payment benefit.

H. Dependent Life Premium Payment Benefits

Covered Persons shall have the right to the dependent life insurance benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions, the procedure for naming beneficiaries and consequences for failure to name a beneficiary, shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for dependent life benefits, they may elect any of the dependent life options as the dependent life premium payment benefit.

I. Supplemental AD&D Premium Payment Benefit

Employees who are Covered Persons shall have the right to the supplemental AD&D insurance benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions, the procedure for naming beneficiaries and consequences for failure to name a beneficiary, shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for supplemental AD&D benefits, they may elect any of the supplemental AD&D coverage options as the supplemental AD&D premium payment benefit.

J. Dependent AD&D Premium Payment Benefit

Employees who are Covered Persons shall have the right to the dependent AD&D insurance benefits described in the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations and exclusions, the procedure for naming beneficiaries and consequences for failure to name a beneficiary, shall be as set forth in the applicable Incorporated Document.

If an Employee is eligible for dependent AD&D benefits, they may elect any of the dependent AD&D coverage options as the dependent AD&D premium payment benefit.

K. Health Savings Account Premium Payment Benefit

Employees who are Covered Persons and who participate in an Employer-sponsored high deductible health plan that meets the requirements of Section 223 of the Code shall have the right to the health savings account benefits described in Appendix G. Such benefits shall be subject to the terms, conditions and limitations set forth in such Incorporated Document. A description of such benefits, including

the amount payable, maximums, conditions precedent to payment, limitations and exclusions shall be as set forth in the applicable Incorporated Document.

Employees who participate in an Employer-sponsored high deductible health plan that meets the requirements of Section 223 of the Code and who are eligible to contribute to a Health Savings Account under Section 223, may elect any whole dollar annual contribution amount of not more than the maximum allowed under Section 223 of the Code as the health savings account premium payment benefit.

Covered Employees forfeit unused Salary Reduction Contributions and/or Salary Deduction Contributions, if any. Covered Employees may not receive a cash out of Salary Reduction Contributions that are forfeited, nor may Covered Employees apply such forfeitures toward any other Plan benefit. Notwithstanding the foregoing, a Covered Employee shall not forfeit unused Salary Reduction Contributions applicable to the Health Care Spending Account or Limited Purpose Health Care Spending Account that do not exceed the lesser of the Maximum Carryover Amount or the unused balance of such Covered Employee's Health Care Spending Account or Limited Purpose Health Care Spending Account at the end of the Plan Year (after the claim runout period). But a Covered Employee may elect to carry over up to the Maximum Carryover Amount or, if less, the unused balance in their Health Care Spending Account or Limited Purpose Health Care Spending Account at the end of the Plan Year to a subsequent Plan Year. Such unused balance cannot be cashed out. Any amounts in excess of the Maximum Carryover Amount shall be forfeited in the same manner as forfeitures for other Salary Reduction Contributions. If a Covered Employee elects medical coverage under a high deductible health plan offered by the Company in the following Plan Year, any amounts carried over shall be allocated to a Limited Purpose Health Care Spending Account for such Covered Employee. If a Covered Employee was covered under a general purpose Health Care Spending Account, and elects a Limited Purpose Health Care Spending Account in the following Plan Year, any amounts carried over shall be allocated to a Limited Purpose Health Care Spending Account for such Covered Employee.

#### **4.5 Non-Elective Benefits**

##### **A. Basic Life Benefits**

Employees who are Covered Persons shall have the right to the basic life benefits provided under the applicable Incorporated Documents. Such benefits shall be subject to the terms conditions, and limitations set forth in such applicable Incorporated Documents. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations, exclusions, and the procedure for naming beneficiaries and consequences for failure to name a beneficiary, shall be as set forth in the applicable Incorporated Document.

##### **B. Basic AD&D Benefits**

Employees who are Covered Persons shall have the right to the basic AD&D benefits provided under the applicable Incorporated Documents. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Documents. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations, and exclusions shall be set forth in the applicable Incorporated Documents.

C. Business Travel Accident Benefits

Employees who are Covered Persons shall have the right to the business travel accident benefits provided under the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such applicable Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations, and exclusions shall be set forth in the applicable Incorporated Document.

D. Employee Assistance Plan Benefits

Covered Persons shall have the right to the employee assistance plan benefits provided under the applicable Incorporated Document. Such benefits shall be subject to the terms, conditions, and limitations set forth in such applicable Incorporated Document. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations, and exclusions shall be set forth in the applicable Incorporated Document.

E. Short-Term Disability Benefits

Employees who are Covered Persons shall have the right to the short-term disability benefits provided under the applicable Incorporated Documents. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Documents. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations, and exclusions shall be set forth in the applicable Incorporated Documents.

F. Long-Term Disability Benefits

Employees who are Covered Persons shall have the right to the long-term disability benefits provided under the applicable Incorporated Documents. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Documents. A description of such benefits, including the amount payable, maximums, conditions precedent to payment, limitations, and exclusions shall be set forth in the applicable Incorporated Documents.

G. Legal Assistance

Employees who are Covered Persons shall have the right to the legal assistance benefits provided under the applicable Incorporated Documents. Such benefits shall be subject to the terms, conditions, and limitations set forth in such Incorporated Documents. The Legal Assistance benefits are not subject to ERISA.

#### **4.6 Limits for Certain Employees**

Benefits payable under the Plan to each highly compensated participant, as defined in Code Section 125(e)(1) or highly compensated individual, as defined in Code Section 125(e)(2), shall be limited to the extent necessary to avoid violating Code Section 125(b)(1), as applicable.

Benefits payable under the Plan to each key employee, as defined in Code Section 416(i)(1), shall be limited to the extent necessary to avoid violating Code Section 125(b)(2), as applicable.

Benefits payable under the Plan to each highly compensated individual, as defined in Code Section 105(h)(5) shall be limited to the extent necessary to avoid violating Code Section 105(h)(l) as applicable.

Benefits payable under the Dependent Care Spending Account Plan to a highly compensated employee, as defined in Code Section 414(q), are limited to the extent necessary to avoid violating Code Section 129(d)(8). The Employer may determine prior to or during a Plan Year that the salary reductions contributions of a highly compensated employee must be reduced to avoid violating Code Section 129(d)(8). Any amounts that are in excess of the Code Section 129(d)(8) limit and have not been used shall be returned to a highly compensated employee in the form of taxable compensation.

#### **4.7 Notification of Premium Payment Amounts**

The Company shall provide written notification to eligible Employees of the amount of the premium payment benefits prior to the initial and annual enrollment/election period. The amount of the premium payment benefits shall be the contributions required of the Employee to participate in the group health or welfare benefit plan(s) for which a premium payment benefit is available under the Plan. Any such written notification is hereby incorporated by reference and made part of the Plan.

#### **4.8 Application of Other Plans**

Notwithstanding any other provision of the Plan, Covered Employees electing one or more premium payment benefits under the Plan shall be subject to the provisions, conditions, limitations, and exclusions of each Benefit listed in Article IV for which they elect the premium payment benefit.

**ARTICLE V**  
**ELECTIONS**

**5.1 Enrollment for Non-Elective Benefits**

All Employees meeting the eligibility requirements of Section 3.1 shall be automatically covered for Benefits described in Section 4.5 and such benefits shall not be subject to the provisions of this Article V.

**5.2 Enrollment for Elective Benefits**

A. Initial Enrollment/Election

Employees meeting the eligibility requirements of Section 3.1 shall be eligible to elect Benefits described in Section 4.4.

B. Annual Enrollment/Election

Approximately 60 to 90 days before each Plan Year begins, the Plan Administrator shall conduct an enrollment during which Employees may make new elections or change existing ones for the next Plan Year.

**5.3 Salary Reduction/Deduction Agreements**

During the applicable election period determined by the Employer, an Employee shall enter into a Salary Reduction Agreement with the Employer if such Employee selects Benefits requiring Employee pre-tax contributions. The Salary Reduction Agreement shall authorize the Employer to reduce the Employee's salary by the amount of required Employee contributions. All elections of Benefits shall be null and void if the Covered Employee fails to execute a Salary Reduction Agreement as provided for herein.

During the applicable election period determined by the Employer, an Employee shall enter into a Salary Deduction Agreement with the Employer if such Employee selects Benefits requiring Employee after-tax contributions. The Salary Deduction Agreement shall authorize the Employer to deduct the amount of required Employee contributions from the Employee's pay on an after-tax basis. All elections of Benefits shall be null and void if the Covered Employee fails to execute a Salary Deduction Agreement as provided for herein.

**5.4 Forms and Agreements**

Employees may enroll, make elections, and direct their Employer to make Salary Reduction Contributions and/or Salary Deduction Contributions only by filing the appropriate, completed forms or agreements with the Plan Administrator before the deadline described in Section 5.6.

**5.5 Default Benefits**

The Plan Administrator shall conduct an enrollment during which Employees may make new elections or change existing ones for the next Plan Year. For any year in which the Plan Administrator allows a passive enrollment, unless the Plan Administrator approves a

supplemental election, as described in Section 5.8(B), a Covered Employee who fails to submit a valid enrollment/election and Salary Reduction Agreement and/or Salary Deduction Agreement, as required in Section 5.4, is deemed to have reelected benefits in effect for the prior year, except that the Covered Employee will be deemed to have declined participation in the Health Care Spending Account, Limited Purpose Health Care Spending Account, Dependent Care Spending Account and Health Savings Account.

An Employees enrolling for the first time who fails to submit a valid enrollment/election and Salary Reduction Agreement and/or Salary Deduction Agreement, as required in Section 5.4, is deemed to have made the following applicable elections:

- **Medical (EPO)**

Contributions required for the default coverage shall be deducted from the Employee's pay as Salary Reduction Contributions, as permitted under the Code, or as Salary Deduction Contributions.

## **5.6 Deadlines**

### **A. Initial Enrollment/Election**

For Employees who become eligible after the Effective Date but before the annual enrollment described in Section 5.2(B), the deadline for enrolling and making initial elections is the 30-day period from the Employee's date of hire. Salary Reduction Agreements and/or Salary Deduction Agreements completed by Eligible Employees shall be effective as soon as administratively practicable. Annual Enrollment/Election

For Covered Employees and Employees who become eligible as of the first day of a Plan Year, the deadline for enrolling and making elections is the date the Plan Administrator specifies, but no later than the day preceding the first day of the Plan Year to which the enrollment, elections, and Salary Reduction Agreement and/or Salary Deduction Agreement apply.

## **5.7 Validity of Election Forms**

### **A. Plan Administrator Approval**

Enrollments and elections and Salary Reduction Agreement and/or Salary Deduction Agreements take effect only if valid, as determined by the Plan Administrator. Except for supplemental elections described in Section 5.8(B), the Plan Administrator shall substitute the unreduced compensation benefit, described in Section 4.3, for any invalid premium payment benefit election.

### **B. Remedial Modification or Rejection**

The Plan Administrator may modify or reject any enrollment or election and/or Salary Reduction Agreement and/or Salary Deduction Agreement or take other action the Plan Administrator deems appropriate under rules uniformly applicable to similarly situated persons to satisfy nondiscrimination requirements of Code Section 125(b). Any remedial modification, rejection, or other action the Plan

Administrator takes must be on a reasonable basis that does not discriminate in favor of highly compensated individuals or participants, as defined in Code Section 125(e)(1) and (2), respectively, or key employees, as defined in Code Section 416(i)(1).

## **5.8 Changing Elections**

### **A. General Rule**

All elections and Salary Reduction Agreements stay in force during the entire Plan Year to which they apply unless changed or revoked as provided in this Section 5.8. During annual enrollment, however, Covered Employees may make new benefit elections or change existing ones for the forthcoming Plan Year. Notwithstanding the foregoing, elections and Salary Deduction Agreements for Benefits described in Section 4.4 (G, H, I and J) are not subject to the rules of this Section 5.8.

This rule does not apply to the Health Savings Account. With respect solely to the Health Savings Account, a participant who makes an election to contribute Salary Reduction Contributions to their Health Savings Account may change such election on a prospective basis at least once per month. Such election change is effective no later than the first day of the next calendar month following the date that the election was filed.

### **B. Supplemental Elections**

Section 5.8(A) notwithstanding, the Plan Administrator may approve a supplemental election to correct an enrollment or election form or Salary Reduction Agreement or Salary Deduction Agreement that is invalid for any reason if approval would not violate Code Section 125.

### **C. Revocation of Elections**

Except as provided in Section 3.3(C), Covered Employees may revoke elections (including default elections) and Salary Reduction Agreements and Salary Deduction Agreements during a Plan Year only in accordance with the provisions described in this Section 5.8(C). Except for changes made in accordance with Section 5.8(C)(7) and, changes made pursuant to a HIPAA special enrollment due to initial entitlement to state premium assistance under Medicaid or CHIP or loss of entitlement to Medicaid or a state children's health insurance program (CHIP), a Covered Employee must make the change within 30 days of the event giving rise to the election change. In the event of a HIPAA special enrollment due to the loss of Medicaid or a state children's health insurance program (CHIP) or initial entitlement to state premium assistance by an Employee, Spouse or Dependent a Covered Employee will have 60 days from the date of the event to make an election change. Notwithstanding the provisions of this Section 5.8(C), an Employee's or Covered Employee's ability to elect or revoke certain benefit option midyear may be restricted by the terms of the plan governing that benefit option.

1. Separation from Service

Covered Employees may revoke elections and Salary Reduction Agreements or Salary Deduction Agreements on separating from the Employer's service. Regardless of previous claims or reimbursements, the Plan Administrator must reimburse a Covered Employee for any amounts the Covered Employee already paid for coverage relating to the period after the effective date of termination of coverage.

2. Change in Status

A Covered Employee may revoke any election and make a new one if such revocation and new election are both on account of and necessary or appropriate because of a Change in Status.

Election and Salary Reduction Agreement changes must be consistent with the Change in Status, except for elections:

- a. Made pursuant to the special enrollment provisions of HIPAA, or
- b. Made pursuant to a Change in Status event expressly identified in Article II as not requiring that Plan eligibility be affected, and only to the extent permitted under applicable law or guidance, or
- c. Made to increase Salary Reduction Contributions in the event the Employee or Dependent elects COBRA coverage.

For purposes of this paragraph (2), the term "consistent" means that the Change in Status event must cause the Employee or Employee's Spouse or Dependent children to gain or lose eligibility under an employer-sponsored benefit offered through this Plan or the plan of the Spouse or Dependent, including a Change in Status that results in an increase or decrease in the number of an Employee's Dependents who may benefit from coverage under the Plan. The election shall take effect the first of the month following the election change, but not earlier than the date of the Change in Status. With respect to an election made pursuant to a birth, adoption or placement for adoption of a child, the election change shall take effect as of the birth, adoption or placement for adoption.

The Plan Administrator may require such evidence as it deems necessary to satisfy the consistency requirement imposed by Section 125 of the Code.

3. Cost Changes

If the cost of a premium payment benefit increases or decreases during a Plan Year, the Plan may, on a reasonable and consistent basis, automatically make a prospective change to Covered Employees' contributions to reflect the cost of this change.

If the Plan Administrator determines that the decrease or increase in cost of such premium payment benefit is significant, however, Covered Employees who have elected that premium payment benefit may either change their Salary Reduction Agreement correspondingly. Such changes include, if there is an increase in cost, revoking their premium payment benefit election and — in lieu thereof — elect, prospectively, a premium payment benefit with similar coverage, or may revoke the existing premium payment benefit if no other option providing similar coverage is available. Employees who previously waived participation may elect benefits if the cost of the coverage significantly decreases during the Plan Year.

This opportunity for making new elections does not apply to the Health Care Spending Account Plan Premium Payment Benefit or Limited Purpose Health Care Spending Account Plan Premium Payment Benefit and applies to the Dependent Care Spending Account Plan only if a cost change is imposed by a dependent care provider who is not a relative of the Covered Employee. For purposes of this subparagraph (c), a “relative” is an individual who is related as described in Code Section 152(d)(2) (A) through (G), incorporating the rules of Code Sections 152(f)(1)(B) and 152(f)(4).

#### 4. Coverage Changes

This subparagraph does not apply to the Health Care Spending Account Plan or Limited Purpose Health Care Spending Account Plan.

##### a. Significant curtailment without a *loss of coverage*

If coverage offered under the Plan is significantly curtailed without a *loss of coverage* during a Plan Year, affected Covered Employees may revoke their election and make a new election on a prospective basis for coverage under another option providing similar coverage. For purposes of this subsection, a significant curtailment occurs if there is an overall reduction in coverage generally.

##### b. Significant curtailment with *loss of coverage*

If coverage offered under the Plan is significantly curtailed to the extent that the Covered Employee experiences a *loss of coverage*, affected Covered Employees may revoke their election and make a new election on a prospective basis for coverage under another option providing similar coverage, or may revoke existing coverage if no other option providing similar coverage is available. For purposes of this subsection, a *loss of coverage* means a complete loss of coverage under the benefit option and shall include the elimination of a benefit option, an HMO ceasing to be available where the individual resides, the individual losing all coverage under the option by reason of an overall lifetime or annual limitation, or other fundamental loss of coverage as determined by the Plan Administrator.

c. Significantly improved or new benefit option

If the coverage offered under the Plan is significantly improved or if a new benefit option is made available under the Plan, then: (A) a Covered Employee who is enrolled in a benefit option other than the new or significantly improved benefit option may change their election on a prospective basis to elect the new or significantly improved benefit option, or (B) a Eligible Employee who had previously elected to waive coverage under a benefit option may elect to enroll on a prospective basis in the new or significantly improved benefit option. The Plan Administrator, in its sole discretion, will determine whether there has been an addition of, or a significant improvement in, a benefit option in accordance with Internal Revenue Service guidance.

5. Change in Coverage of Employee, Spouse or Dependent under Another Employer's Plan

This subparagraph does not apply to the Health Care Spending Account Plan or Limited Purpose Health Care Spending Account Plan.

If the Employee or the Employee's Spouse or Dependent is covered under another plan of the Employer or a plan of the employer of the Employee's Spouse or Dependent, the Employee may make an election change under this Plan in the following situations, provided such election change is on account of and corresponds with a change under the other plan:

- a. if the plan year of such other employer plan is different than the Plan Year of this Plan, or
- b. if the other employer plan permits the Employee, Spouse or Dependent to make changes for any of the situations described in this Section 5.8(C).

6. Loss of Coverage under another Health Plan

This subparagraph does not apply to the Health Care Spending Account Plan or Limited Purpose Health Care Spending Account Plan.

If an Employee, Spouse or Dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, the Employee may make a new election on a prospective basis for health coverage provided under this Plan, provided such Employee, Spouse or Dependent is otherwise eligible for coverage under this Plan. For purposes of this subsection, a governmental or educational institution shall include the following:

- a. A state children's health program (CHIP) under Title XXI of the Social Security Act,

- b. A medical program of an Indian Tribal government (as defined in Section 7701(a)(40) of the Code), the Indian Health Service, or a tribal organization,
- c. A state health benefits risk pool, or
- d. A foreign government group health plan.

7. Automatic Adjustment of Election

The election and Salary Reduction Agreement of a Covered Employee who loses a Spouse or Dependent due to death for purposes of a premium payment benefit described in Section 4.4 but fails to make a timely election in accordance with Section 5.8(C)(2)—shall be automatically adjusted in accordance with this subsection.

**ARTICLE VI**  
**COORDINATION OF BENEFITS**

**6.1 Applicability**

Except as provided in Section 6.10, the following Coordination of Benefits (“COB”) provisions apply to this Plan, as outlined in this Article VI, when a Covered Person has health care coverage under more than one Health Care Arrangement.

**6.2 COB Definitions**

- A. “Health Care Arrangement” means any of the following coverages which provides benefits or services to the Covered Person for, or because of, medical, dental, surgical or hospital care treatment:
1. Group or nongroup coverage, whether insured or uninsured, including HMOs;
  2. The medical care component of long-term care contracts, such as skilled nursing care
  3. Coverage under a labor-management trustee plan, a union welfare plan, an employer organization plan or an employee benefits plan;
  4. Coverage under federal government programs, except that coverage under a federal government program may be limited to hospital, medical and surgical benefits of the governmental program. Coverage does not include Medicare supplemental policies or Medicaid policies;
  5. The medical benefits coverage in group or individual automobile “fault” or “no-fault” coverage.

The term Health Care Arrangement shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other Health Care Arrangements into consideration in determining its benefits and that portion which does not.

- B. “Allowable Expense” means an expense for health care, when the item of expense is covered at least in part by one or more Health Care Arrangements covering the individual for whom the claim is made.

When a Health Care Arrangement provides benefits in the form of services instead of cash payments, the reasonable cash value of each service rendered will be considered both an Allowable Expense and a benefit paid.

### 6.3 Order of Benefit Determination Rules

This Plan determines its order of paying benefits using the first of the following rules which applies:

A. COB/Non-COB Provision

The benefits of a Health Care Arrangement which does not contain a COB provision always shall be determined before the benefits of a Health Care Arrangement which does contain a COB provision.

B. No Fault Auto Insurance

The benefits of the Health Care Arrangement which covers the person as a beneficiary under a no-fault automobile insurance policy required by law shall be determined prior to this Plan, regardless of whether the no-fault policy has been selected as secondary.

C. Non-Dependent/Dependent

Subject to paragraph I, the benefits of the Health Care Arrangement which covers the person as an employee, member or subscriber (that is, other than as a dependent) shall be determined before those of the Health Care Arrangement which covers the person as a dependent.

D. Dependent Child/Parents not Separated or Divorced

Except as stated in Paragraph (E) below, when this Plan and another Health Care Arrangement cover the same child as a dependent of different persons, called "parents":

1. the benefits of the Health Care Arrangement of the parent whose birthday falls earlier in a year are determined before those of the Health Care Arrangement of the parent whose birthday falls later in that year; but
2. if both parents have the same birthday, the benefits of the Health Care Arrangement which covered the parent longer are determined before those of the Health Care Arrangement which covered the other parent for a shorter period of time.

However, if the other Health Care Arrangement does not have the rule described in (1) immediately above, but instead has a rule based upon the gender of the parent, and if, as a result, the Health Care Arrangements do not agree on the order of benefits, the rule in the other Health Care Arrangement will determine the order of benefits.

For a dependent who has coverage under either or both parents and also has coverage as a dependent under a spouse's plan, the rule in paragraph H applies.

E. Dependent Child/Separated or Divorced Parents

If two or more Health Care Arrangements cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

1. first, the Health Care Arrangement of the parent with custody of the child;
2. then, the Health Care Arrangement of the spouse of the parent with custody of the child;
3. then, the Health Care Arrangement of the parent not having custody of the child; and
4. finally, the Health Care Arrangement of the spouse of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the Health Care Arrangements of that parent has actual knowledge of those terms, the benefits of that Health Care Arrangement are determined first. This paragraph does not apply with respect to any Plan Year starting before the Plan is given notice of the court decree.

This Plan will not cover the expenses of any child who does not meet the Plan's definition of Dependent as defined in Article II, except as may be required pursuant to a qualified medical child support order under Section 609(a) of ERISA.

F. Active/Inactive Employee

The benefits of a Health Care Arrangement which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a Health Care Arrangement which covers that person as a laid off or retired employee (or as that employee's dependent). If the other Health Care Arrangement does not have this rule, and if, as a result, the Health Care Arrangements do not agree on the order of benefits, this rule is ignored.

G. Continuation Coverage

If an individual is covered under a continuation plan as a result of the purchase of coverage as provided under federal or state law, and also under another group plan, the following shall be the order of benefit determination:

1. First, the benefits of a plan covering the person as an employee or retiree (or as the dependent or employee or retiree);
2. Second, the benefits of coverage under the continuation plan.

If the other plan does not have the rule described above, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

#### H. Longer-Shorter Length of Coverage

If none of the above rules determines the order of benefits, the benefits of the Health Care Arrangement which has covered the person longer are determined before those of the Health Care Arrangement which has covered that person for the shorter time.

The start of a new plan does not include:

1. A change in the amount or scope of a plan's benefits;
2. A change in the entity that pays, provides or administers the plan's benefits; or
3. A change from one type of plan to another, such as from a single employer plan to a multiple employer plan.

#### I. Medicare Coordination

##### 1. Employees and/or Spouses Entitled to Medicare Due to Age

Unless an active Employee entitled to Medicare due to age gives the Plan notice, in the form and manner requested by the Plan Administrator, waiving their right to Plan benefits, the Plan is Primary. With respect to the Spouse of an active Employee who is entitled to Medicare due to the Spouse's age, unless the Employee gives the Plan notice, in the form and manner requested by the Plan Administrator, waiving Plan benefits, the Plan is primary.

##### 2. Medicare Disabled Covered Persons

If required by law, the Plan is primary with respect to a Covered Person who is also entitled to Medicare because of disability. Otherwise, the Plan is secondary.

##### 3. Covered Persons with End-Stage Renal Disease

For the period required by law, if any, the Plan is primary with respect to a Covered Person entitled to Medicare because of end-stage renal disease. Otherwise, the Plan is secondary.

### **6.4 Effect on the Benefits of this Plan**

#### A. When this Section Applies

This Section 6.4 applies when, in accordance with Section 6.3, "Order of Benefit Determination Rules", this Plan is a secondary payor of benefits to one or more other Health Care Arrangements. In that event, the benefits of this Plan may be reduced under this Section. Such other Health Care Arrangement or Arrangements are referred to as "the other Arrangements" in (B) immediately below.

B. Reduction in this Plan's Benefits

The benefits that would be payable under this Plan in the absence of the COB provisions specified in this Article VI will be reduced by the benefits payable under the other Arrangements for the expenses covered in whole or in part under this Plan. This applies whether or not claim is made under a Health Care Arrangement.

When a Health Care Arrangement provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an expense incurred and a benefit payable.

C. This Plan shall credit against its plan deductible any amounts it would have credited to its deductible in the absence of the other Health Care Arrangement.

**6.5 Disagreement on Order of Benefits**

If the Plan and other Health Care Arrangement(s) cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the Plan shall immediately pay half of the claim and will determine its liability following payment, except that the Plan shall be required to pay no more than it would have paid had it been the primary plan.

**6.6 Limitation of Benefits**

In applying this Article's provisions, the Plan does not pay health care benefits in an amount greater than it would have if it were primary.

**6.7 Right to Receive and Release Necessary COB Information**

The Company has the right to obtain any information necessary to apply the COB provisions of this Article VI. The Company has the right to obtain COB information from or give that information to any other organization or person involved in the administration of the COB provisions of this Plan or any other Health Care Arrangement. The Company need not tell, or get the consent of, any person prior to obtaining that information. Each person claiming benefits under this Plan must give the Company any information it needs to process the claim.

**6.8 Facility of Payment**

A payment made under another Health Care Arrangement may include an amount which should have been paid under this Plan. If it does, the Company may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under this Plan. The Company will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

## **6.9 Right of Recovery**

If the amount of the payments made by the Company is more than it should have paid under the COB provisions specified in this Article VI, it may recover the excess from one or more of:

- A. the persons it has paid or for whom it has paid;
- B. insurance companies; or
- C. other Health Care Arrangements, including Workers' Compensation.

The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

## **6.10 Governing Provisions**

When the provisions describing coordination of benefits are set forth in an applicable Incorporated Document, such Incorporated Document shall govern except to the extent the provisions fail to establish order of responsibility, in which case the provisions of this Article VI shall govern.

## ARTICLE VII

### COBRA CONTINUATION COVERAGE

#### 7.1 Eligibility for Continuation Coverage

The provisions contained in this Article VII apply only to medical, dental, vision, employee assistance plan, health care spending account and limited purpose health care spending account, provided under the Plan. The provisions of this Article VII do not govern to the extent provided in Section 7.9.

Certain Employees and Dependents shall have the right to purchase continuation coverage under this Plan in accordance with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, Title X (COBRA), provided such individuals were Covered Persons under the Plan on the date immediately preceding the date of a Qualifying Event or become Covered Persons during the continuation period because such Dependent is born to or placed for adoption with the Employee.

#### 7.2 Definitions

For purposes of this Article VII, the following terms have the following meanings:

- A. "Employee" means a person who is (or was) covered under the Plan by virtue of the person's performing services for the Employer on the day before the occurrence of the event giving rise to the right to elect COBRA continuation coverage.
- B. "Dependent" means, with respect to an Employee as defined in this Section 7.2, any individual who, on the day before the occurrence of the event giving rise to the right to elect COBRA continuation coverage, is covered under the Plan as (1) the Spouse of such Employee or (2) the Dependent child of such Employee. Domestic Partners and their children covered under the Plan on the day before the event giving rise to the COBRA-equivalent coverage, although not a Dependent under COBRA, will be offered COBRA-equivalent coverage and will be treated as Dependents under this Article VII. The term Dependent shall include any child born to or placed for adoption with the Employee during the continuation period.
- C. "Qualified Beneficiary" means an Employee or Dependent as defined in this Section 7.2 but shall not mean Dependents defined in Section 7.7(B), except that the term Qualified Beneficiary shall include Dependents born to or placed for adoption with the Employee during the continuation period.
- D. "Qualifying Event" means any of the following, the occurrence of which would result in loss of coverage under the Plan were it not for the right to purchase COBRA continuation coverage:
  - 1. for Employees, termination of employment for any reason other than gross misconduct, or loss of eligibility due to reduction in hours worked by the Employee;

2. for Dependents:
  - a. death of the Employee;
  - b. divorce or legal separation of the Employee and Spouse or dissolution of a domestic partnership;
  - c. reduction in hours worked by the Employee or termination of employment by the Employee for any reason other than gross misconduct;
  - d. entitlement of the Employee to benefits under Title XVIII of the Social Security Act (relating to Medicare); or
  - e. ceasing to qualify as a Dependent child under the Plan.

The Qualifying Event shall be deemed to occur on the date of the Qualifying Event — not on the date coverage ends because of the Qualifying Event.

### **7.3 Loss of Eligibility for Continuation Coverage**

A Qualified Beneficiary shall not be eligible for COBRA continuation coverage unless:

- A. the Company or Plan Administrator is notified of the election of COBRA continuation coverage, on a form provided for that purpose, within 60 days of the later of:
  1. the date the Qualified Beneficiary's coverage under the Plan would otherwise terminate by reason of an event described in Section 7.2(D); or
  2. the date notice of eligibility is sent to the individual in accordance with Section 7.5(C); and
- B. the Qualified Beneficiary pays the initial required premium, as set forth in Section 7.8, no later than the date 45 days after the date on which COBRA continuation coverage was elected.

Until expiration of the election period, a Qualified Beneficiary may change or revoke any election. Failure to elect COBRA continuation coverage within the prescribed election period shall result in a waiver of the right to COBRA continuation coverage.

### **7.4 Termination of COBRA Continuation Coverage**

COBRA continuation coverage shall terminate on the date on which the earliest of the following occurs:

- A. the last day of the month preceding the date the Qualified Beneficiary fails to pay a subsequent required premium within 30 days of the date it is due;
- B. the date the Qualified Beneficiary first becomes, after the date of making a COBRA election, entitled to Medicare;

- C. the date the Qualified Beneficiary first becomes, after the date of making a COBRA election, covered under another group health plan, as defined in Code Section 5000(b)(1), not containing a limitation or exclusion as to any pre-existing condition of such individual (other than such an exclusion or limitation which does not apply to, or is satisfied by, such beneficiary by reason of the Health Insurance Portability and Accountability Act of 1996);
- D. 36 months from the date on which a Qualifying Event described in Sections 7.2(D)(2)(a), 7.2(D)(2)(b), 7.2(D)(2)(d), or 7.2(D)(2)(e) occurs;
- E. 18 months from the date on which a Qualifying Event described in Sections 7.2(D)(1) or 7.2(D)(2)(c) occurs. If a Qualifying Event described in Sections 7.2(D)(2)(a), 7.2(D)(2)(b), or 7.2(D)(2)(e) occurs subsequent to a Qualifying Event described in Section 7.2(D)(2)(c), an additional period of coverage shall be allowed for Dependents who have properly and timely elected and paid for COBRA continuation coverage; but, in no event shall the sum of the first and second periods of coverage exceed 36 months from the date of the first Qualifying Event giving rise to the Qualified Beneficiary's eligibility for COBRA continuation coverage;
- F. the date the Company terminates all group health plans;
- G. in the case of a Qualified Beneficiary who is determined under Title II or XVI of the Social Security Act to have been disabled (i) at the time of the Qualifying Event or (ii) at any time during the first 60 days of continuation coverage, the 18-month period set forth in Section 7.4(E) shall be extended to 29 months; provided that such individual notifies the Plan Administrator of such determination in accordance with Section 7.5(D) before the end of such 18-month period; and provided further that if the Qualified Beneficiary does not remain disabled during the extended period, coverage shall cease with the month that begins more than 30 days after the date of the final determination under Title II or XVI of the Social Security Act that the Qualified Beneficiary is no longer disabled;
- H. in the case of a Qualifying Event described in Section 7.2(D)(2)(c) that occurs less than 18 months after the date the Employee becomes entitled to Medicare, 36 months from the date the Employee becomes entitled to Medicare; or
- I. for the Health Care Spending Account Plan or Limited Purpose Health Care Spending Account Plan, the last day of the Plan Year in which the Qualifying Event occurs (subject to any applicable grace period). Notwithstanding the preceding sentence, a Qualified Beneficiary shall carry over up to the Maximum Carryover Amount or, if less, the unused balance in their Health Care Spending Account or Limited Purpose Health Care Spending Account at the end of the Plan Year, to a subsequent Plan Year. The carryover shall only be available for the duration of the period of COBRA continuation coverage. No premium will be charged for the subsequent Plan Year.

## **7.5 Notice Requirements**

- A. The Employer shall notify the Plan Administrator of the occurrence of an event described in Sections 7.2(D)(1), 7.2(D)(2)(a), 7.2(D)(2)(c), and 7.2(D)(2)(d) within 30 days of the date of the described event.
- B. The Qualified Beneficiary shall be responsible for notifying the Plan Administrator of the occurrence of an event described in Sections 7.2(D)(2)(b) or 7.2(D)(2)(e) within 60 days of the date of the described event.
- C. The Plan Administrator shall provide notice to Qualified Beneficiaries of their COBRA continuation coverage rights within 14 days of the date it receives the notice described in Sections 7.5(A) and (B).
- D. A Qualified Beneficiary, who is determined under Title II or XVI of the Social Security Act to have been disabled at any time within the first 60 days of the continuation period, shall be responsible for notifying the Plan Administrator of such determination within 60 days after the date of such determination, but in no event later than the end of the 18-month period set forth in Section 7.4(E). Such Qualified Beneficiary further shall be responsible for notifying the Plan Administrator of any final determination under such Title(s) that they are no longer disabled, within 30 days of the date of such determination.
- E. At the commencement of coverage under the Plan, the Plan Administrator shall provide each Employee or Spouse or Domestic Partner who is a Covered Person with notice of their rights under COBRA.
- F. The Plan Administrator shall provide notice to each Qualified Beneficiary of any termination of COBRA continuation coverage that takes effect earlier than the end of the maximum period of COBRA continuation coverage applicable to the Qualified Beneficiary.
- G. The Plan Administrator shall provide notice to each Employee, Spouse or Domestic Partner or Dependent of the unavailability of COBRA continuation coverage if the Plan Administrator determines after receiving notice of a Qualifying Event that the Employee, Spouse or Domestic Partner or Dependent is not entitled to COBRA continuation coverage.

## **7.6 Coverage Available for Continuation**

A Qualified Beneficiary may elect to continue receiving the health care coverage (as defined in COBRA regulations) they were receiving immediately before the event giving rise to the right to elect COBRA continuation coverage. If coverage provided to similarly situated active Employees is changed or eliminated, COBRA continuation coverage also shall be changed or eliminated. If the Company terminates the Plan but continues to maintain one or more other group health plans, as defined in Code Section 5000(b)(1), COBRA continuation coverage recipients may elect coverage under one of those other group health plans. A Qualified Beneficiary may elect to continue to receive coverage for the level of reimbursement, if any, that the individual had in effect under their Health Care Spending Account or Limited Purpose Health Care Spending Account immediately before

the Qualifying Event after reflecting debits for health care reimbursements made up to the Qualifying Event.

## **7.7 Election Rules**

### **A. Scope of Election**

Each affected Qualified Beneficiary generally shall have an independent right to elect or reject COBRA continuation coverage under this Article VII; provided, however, that in the event an Employee or their Spouse or Domestic Partner makes an election to continue coverage on behalf of the other or on behalf of any other Qualified Beneficiary, such election shall be binding on such other party; and provided further, that in the event the Qualified Beneficiary is a minor or an incapacitated person, the parent or legal guardian of such minor or the legal representative of such incapacitated person shall have the right to elect or reject continuation coverage on behalf of such minor or incapacitated person, and any such election or rejection of coverage shall be binding on such minor or incapacitated person. Each Qualified Beneficiary is entitled to a separate election with respect to any choice of coverages available under the Plan.

### **B. After Acquired Dependents**

A Qualified Beneficiary eligible for COBRA continuation coverage may elect to cover Dependents (as defined in Section 7.2(B)) acquired after the date of eligibility described under Section 7.3 to the same extent as Covered Persons, provided the Company or Plan Administrator is notified of the election to cover such Dependent(s) in the manner and within the time set forth in an applicable document incorporated by reference under the Plan, except that in no event shall notice be required within a period of less than 30 days. Such newly acquired Dependent(s), other than Qualified Beneficiaries defined in Section 7.2(C), shall have no independent right to COBRA continuation coverage. Failure to notify the Company or Plan Administrator within the prescribed time shall result in a waiver of the right to elect COBRA continuation coverage for such newly acquired Dependent(s).

### **C. Open Enrollment Periods**

During an open enrollment period occurring during the COBRA coverage period, a Qualified Beneficiary may elect to cover Dependents not previously covered, subject to the terms and conditions set forth in the applicable document incorporated by reference under the Plan. This subsection (C) shall not apply to Health Care Spending Account or Limited Purpose Health Care Spending Account benefits.

## **7.8 Required Premium**

In order to receive COBRA continuation coverage, Qualified Beneficiaries shall agree, on forms furnished by the Plan Administrator, to pay any required premiums to the Plan and shall make such premium payments when and as required. All premiums other than the initial premium shall be due on the first day of the calendar month. The amount of the premium shall be no more than 102 percent of the cost of coverage. In the case of a

Qualified Beneficiary who is determined under Title II or XVI of the Social Security Act to have been disabled at any time within the first 60 days of continuation coverage, the cost of coverage for the 19th month through the 29th month of coverage shall be no more than 150 percent of the cost of coverage. Notwithstanding the foregoing, the cost of coverage shall not exceed the maximum, nor be changed more frequently than, permitted by law.

## **7.9 Governing Provisions**

When the provisions for COBRA continuation coverage are set forth in an applicable Incorporated Document, such applicable Incorporated Document shall govern except to the extent such language fails to comply with requirements of applicable law or fails to determine the right or liability of the party, in which case the provisions of this Article VII shall govern.

**ARTICLE VIII**  
**CONTRIBUTIONS, FUNDING AND PLAN ASSETS**

**8.1 Contributions**

A. Employer Contributions

The Employer shall pay premiums for Benefits listed in Section 4.4 to the Employer-sponsored plans to which such benefits are payable provided that the Covered Employee shall authorize Salary Reduction Contributions and/or Salary Deduction Contributions in a corresponding amount pursuant to Section 8.1(B)(2).

The Employer shall make Employer contributions for benefits listed in Section 4.5 to the Employer-sponsored plans to which such benefits are payable.

The Employer shall make the required contribution to a Health Savings Account for Employees who elect such premium payment benefit under Article IV.

Notwithstanding any contrary Plan provision, an Employer is not obligated to contribute to the Plan after it is terminated except to the extent required to pay benefits outstanding on the date the termination is adopted or, if later, effective.

B. Salary Reduction and/or Salary Deduction Contributions

As a condition of Plan participation, Employees must agree to direct the Employer to:

1. not reduce their compensation and not provide premium payment benefits pursuant to Section 4.4, or
2. reduce their compensation and make Salary Reduction Contributions and/or Salary Deduction Contributions to the plan(s) governing their selected premium payment benefits.

Any election of premium payment benefits shall be null and void unless the Employee authorizes a Salary Reduction Agreement and/or a Salary Deduction Agreement as provided for herein. An Employer must take Salary Reduction Contributions and/or Salary Deduction Contributions and apply them as directed, except that the Employer may not apply a Salary Reduction Contribution or a Salary Deduction Contribution for a selected premium payment benefit to any other premium payment benefit nor may a Salary Reduction Contribution or a Salary Deduction Contribution be applied during a subsequent Plan Year to any participating plan that provides benefits or coverage. Any such Salary Reduction Agreements and/or a Salary Deduction Agreements are hereby incorporated by reference into the Plan as if set forth in full herein.

C. Priority of Contributions

Contributions shall be deemed to come first from amounts contributed by Covered Employees and then from amounts contributed by the Employer.

D. COBRA Contributions

To the extent a former Covered Employee, Dependent or Spouse has exercised their continuation rights under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) with respect to benefits described in Section 7.1, the Plan shall accept contributions from such individuals as COBRA premiums.

**8.2 Funding**

A. Funding Policy

The Employer shall establish and carry out, and may revise from time to time, the funding policy for the Plan.

B. Funding Mechanism

Contributions from the Employer and/or Employees may be held under or paid to one or more of the following vehicles: insurance policies or arrangements, arrangements with health maintenance organizations, or trust funds established by the Employer. In addition, benefits may be paid directly from the general assets of the Employer. Benefits provided through insurance or pursuant to an arrangement with a health maintenance organization shall be only paid by the Insurance Company issuing the insurance policy or by the health maintenance organization. The Employer shall have no liability for benefits provided through insurance or pursuant to an agreement with a health maintenance organization.

**8.3 Plan Assets**

The Employer shall make payments provided for in Section 8.1(A) from its general assets. The Employer shall make payments provided for in Section 8.1(B) and (D) by collecting Employee contributions and COBRA contributions and transmitting such amounts to the applicable benefits described in Article IV.

**8.4 Treatment of Certain Payments to the Plan**

Where an Insurance Policy provides for payment of premiums directly from the Employer, unless the Insurance Policy states otherwise, payable dividends, retroactive rate adjustments, rebates or experience refunds are not plan assets. For certain insurance policies, these dividends, retroactive rate adjustments, rebates or experience refunds are Employer property, which the Employer may retain to the extent they do not exceed the Employer's aggregate contributions to Plan cost made from its own funds, except as required by law.

For administrative services agreements and any other applicable non-insured arrangement, any dividends, retroactive rate adjustments, rebates or experience refunds are Employer property that may be used to reduce Employer contributions and pay for Plan expenses.

## ARTICLE IX

### CLAIM AND PAYMENT PROCEDURES

#### 9.1 General Claims Procedures

A Covered Person shall comply with such rules and procedures as the Claims Administrator may prescribe with respect to the completion and filing of a written claim application form or forms and shall furnish such other pertinent information as the Claims Administrator may require, together with documentary evidence in support of the claim. A Covered Person must also provide the Claims Administrator with written authorization to obtain information from their Physician pertaining to the diagnosis and related matters. The Plan Administrator, at its own expense, shall have the right and opportunity to require the examination of the person whose Illness or Injury is the basis of a claim hereunder, when and so often as may reasonably be required during the pendency of such claim.

Claims for benefits provided through Insurance Policies will be determined by the insurance carrier providing such benefits. Claims for benefits that are funded by the Employer shall be determined by the appropriate Claims Administrator as delegated by the Plan Administrator.

These provisions shall not apply to the extent that claims and appeals procedures are set forth differently in an Incorporated Document, except to the extent that claims and appeals procedures set forth in an Incorporated Document fail to comply with requirements of applicable law, in which case the provisions of this Article IX shall govern. In addition, the provisions of this Article IX shall not be interpreted so as to override applicable state laws that are more protective of Covered Persons' rights with respect to claims and appeals under ERISA plans, to the extent such state laws are not preempted by ERISA.

Solely with respect to the Benefits described in Section 4.4(A), notwithstanding any other Plan provision to the contrary, the Plan intends to comply with Section 2719 of the Public Health Service Act, as set forth in the Patient Protection and Affordable Care Act, and all regulations and guidance issued thereunder.

Claim procedures for the Dependent Care Spending Account shall be as modified in Article VI of Appendix A.

Claim procedures for the Health Care Spending Account shall be as modified in Article VI of Appendix B.

Claim procedures for the Limited Purpose Health Care Spending Account shall be as modified in Article VI of Appendix C.

#### 9.2 Claim Administrator

The Plan Administrator and/or the Company shall have the authority to appoint, remove, and replace one or more Claim Administrators. A Claim Administrator shall have the duties, powers, and responsibilities set forth herein. In the absence of such an appointment and except as hereinafter provided, the Plan Administrator shall also be the Claim Administrator.

Claims with respect to benefits provided on an insured basis shall be determined by the Insurance Company issuing the Insurance Policy as Claim Administrator, except that, if the Employer and Insurance Company so agree in writing, the Plan Administrator shall retain final authority over the disposition of any review pursuant to Section 9.9.

With respect to claims for benefits provided on a self-funded basis, the Plan Administrator shall retain final authority over the disposition of any review pursuant to Section 9.9 unless otherwise delegated to a Claim Administrator.

### **9.3 Claims Administration**

The Claim Administrator shall have the duty to receive and review claims for benefits under the Plan; to determine what amount, if any, is due and payable under the terms and conditions of the Plan; to make or authorize appropriate disbursements of benefit payments to persons entitled thereto; to inform the Company or any other third party, as appropriate, of the amount of such benefits; to make claims decisions under the terms of the Plan; and to provide a full and fair review to any individual whose claim for benefits has been denied in whole or in part, except as described in Section 9.2 as applied to self-funded benefits.

### **9.4 Claimants and Designation of Authorized Representative**

A Covered Person may file a claim for benefits to which such claimant believes they are entitled. A Covered Person may designate an authorized representative for the initial claim, an appeal of an adverse benefit determination, or both. An "authorized representative" means a person authorized by the Covered Person, in writing, to act on their behalf. To designate an authorized representative, the Covered Person must submit a written request on a form approved by the Plan Administrator, which the Covered Person signs and which authorizes the representative to act on their behalf with respect to the benefit claim. If a party is not properly designated as an authorized representative under the Plan, the Plan Administrator will not communicate with that party with respect to any benefit claim or other exercise of a Covered Person's rights under the Plan. With respect to any urgent, pre-service, or concurrent care claim (discussed in Section 9.8(C) below), a Covered Person's treating physician or other health care professional may act as an authorized representative in exercising a Covered Person's rights under the Plan. The Plan will also recognize a court order giving a person authority to submit claims on a Covered Person's behalf. Any attempt to assign benefits by a Covered Person to a health care provider is void pursuant to Article XII, and does not constitute a designation of an authorized representative for purposes of the Plan.

### **9.5 Claim Forms**

The Claim Administrator shall furnish to a claimant, upon request, the form(s) required for filing a claim for benefits under the Plan.

### **9.6 Deadline for Filing a Claim**

No claim for benefits shall be payable unless a properly completed claim form, including all necessary documentation of services or supplies received, is received by the Claims Administrator or Insurance Company within the timeframe set forth in the applicable Incorporated Document. Failure to submit a properly completed claim form within the

prescribed period shall neither invalidate nor reduce a claim if it is shown that it was not reasonably possible to furnish the claim form within that time and that the claim form was submitted as soon as reasonably possible.

### **9.7 Proof of Claim**

As a condition of receiving a Plan benefit and as often as the Plan Administrator determines is reasonably necessary, a claimant must submit such evidence as the Plan Administrator shall require that a claim is reimbursable under the terms of the Plan.

### **9.8 Decision on the Claim**

The following rules shall apply to claims filed with respect to an ERISA-covered Benefit under the Plan. Unless otherwise specified in an applicable Incorporated Document, these claim procedures will also apply to any non-ERISA Benefit under the Plan. An “adverse benefit determination” is a denial, reduction or termination of a benefit, failure to provide or pay for (in whole or in part) a benefit, a denial to participate in the Plan, or a claim adverse benefit determination on the grounds that the treatment is experimental, investigational or not medically necessary. This also includes concurrent care determinations. With respect to claims for disability benefits and claims for benefits under Section 4.4(A), certain retroactive terminations of coverage will be considered adverse benefit determinations, whether or not there is an adverse effect on any particular benefit at that time, to the extent required by applicable regulations and by guidance from the relevant government agencies.

- A. Any time a claimant receives an adverse benefit determination for benefits, other than group health plan and disability benefits as described in paragraphs B and C below, the claimant shall be given written notice of such action within a reasonable period of time but not later than 90 days after the claim is received by the plan, unless special circumstances require an extension of time for processing. If there is an extension, the claimant shall be notified of the extension and the reason for the extension within the initial 90-day period. The extension shall not exceed 180 days after the claim is filed.

If a claim is denied, in whole or in part, the claimant shall be notified of the adverse benefit determination in writing. The notice of adverse benefit determination shall contain the following information:

1. the specific reason(s) for the adverse benefit determination;
2. a reference to the specific provision(s) in the Plan on which the adverse benefit determination is based;
3. a description of additional material or information necessary to perfect the claim and an explanation of why the material or information is needed;
4. a description of the Plan’s claim and appeal procedures and applicable timeframes; and

5. a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA after the Plan's appeal procedure (set forth below) has been exhausted.
- B. Any time a claimant receives an adverse benefit determination for disability benefits, the claimant shall be given written notice of such action within a reasonable period of time, no later than 45 days after the claim is received by the plan, unless the Claim Administrator determines that an extension of up to 30 days is necessary due to matters beyond the Plan's control. If there is an extension, the claimant shall be notified, before the initial 45-day period of time expires, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. The 30-day extension period is tolled until the claimant responds to any information request. A second 30-day extension is also permitted if the Claim Administrator determines that, due to matters beyond the Plan's control, a decision cannot be rendered within the first extension period. In that case, the claimant shall be notified, before the end of the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. Such extension notices shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues. The claimant shall be afforded at least 45 days within which to provide the specified information.

If a claim is denied, in whole or in part, the claimant shall be notified of the adverse benefit determination in writing. The notice of adverse benefit determination shall contain the following information:

1. the specific reason(s) for the adverse benefit determination;
2. a reference to the specific provision(s) in the Plan on which the adverse benefit determination is based;
3. a description of additional material or information necessary to perfect the claim and an explanation of why the material or information is needed;
4. a description of the Plan's claim and appeal procedures and applicable timeframes;
5. a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA after the Plan's appeal procedure (set forth below) has been exhausted;
6. a discussion of the decision, including an explanation of the basis for disagreeing with or not following:
  - a. the views of health care professionals treating the claimant and vocational professionals who evaluated the claimant;

- b. the views of medical or vocational experts obtained by the plan, without regard to whether the advice was relied upon for the adverse benefit determination; and
    - c. any Social Security Administration disability determination regarding the claimant presented to the Plan;
  - 7. for adverse benefit determinations based on medical necessity, experimental treatment, or other similar exclusions or limits, an explanation of the scientific or clinical judgment used in the decision, or a statement that an explanation will be provided free of charge upon request;
  - 8. either the specific rule, guideline, protocol, standards, or other similar criteria relied upon in making the adverse benefit determination, or a statement that such rules, guidelines, protocols, standards or other similar criteria do not exist; and
  - 9. a statement that reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits are available free of charge, upon request.
- C. The following rules shall apply to: medical, dental, vision, employee assistance plan, health care spending account or limited purpose health care spending account benefits except that claims for health care spending account or limited purpose health care spending account benefits shall be considered "post-service" only.
- 1. Urgent Care Claims – Claims for which the application of non-urgent care time frames could seriously jeopardize the life or health of the patient or the ability of the patient to regain maximum function, or, in the judgment of a physician, would subject the patient to severe pain that cannot be adequately managed otherwise. The Plan shall defer to an attending provider to determine if a medical claim under Section 4.4(A) is urgent.

The Claim Administrator shall notify the claimant of the Plan's determination not later than 72 hours after receipt of the claim, unless the claimant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the Plan. In the case of such a failure, the Claim Administrator shall notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim by the Plan, of the specific information necessary to complete the claim. The claimant shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. The Claim Administrator shall notify the claimant of the Plan's benefit determination as soon as possible, but no later than 48 hours after the earlier of the Plan's receipt of the specified information or the end of the period afforded the claimant to provide the specified additional information.

2. Pre-service Claims – Claims which must be decided before a patient will be afforded access to health care (e.g., preauthorization requests).

The Claim Administrator shall notify the claimant of the Plan's determination not later than 15 days after receipt of the claim. This period may be extended by 15 days, provided the Claim Administrator or its delegate determines that an extension is necessary due to matters beyond the control of the Plan and notifies the claimant within the initial period of the circumstances requiring the extension and the date by which the Plan expects to render a decision. If such an extension is necessary due to the claimant's failure to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information. The claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

If the claim is improperly filed, the Claim Administrator shall notify the claimant as soon as possible, but not later than five (5) days after receipt of the claim by the Plan, of the specific information necessary to complete the claim.

3. Post-service Claims – Claims involving the payment or reimbursement of costs for medical care which has already been provided.

For non-urgent post-service health claims, the Plan has up to 30 days, to evaluate and process claims for benefits covered by ERISA. The 30-day period begins on the date the claim is first filed. This period may be extended by 15 days provided the Claim Administrator or its delegate determines that an extension is necessary due to matters beyond the control of the Plan and notifies the claimant within the initial period, of the circumstances requiring the extension and the date by which the Plan expects to render a decision. The claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

4. Concurrent Care Claims – Claims where the Plan has previously approved a course of treatment over a period of time or for a specific number of treatments, and the Plan later reduces or terminates coverage for those treatments.

Concurrent care claims may fall under any of the other three categories, depending on when the appeal is made. However, the Plan must give the claimant sufficient advance notice to appeal the claim before a concurrent care decision takes effect.

5. Notification of Adverse Benefit Determination - applicable to all health claims

In the event of an adverse benefit determination, the claimant will receive notice of the determination.

If a claim is denied, in whole or in part, the claimant shall be notified of the adverse benefit determination in writing. The notice of adverse benefit determination shall contain the following information:

- a. the specific reason(s) for the adverse benefit determination;
- b. a reference to the specific provision(s) in the Plan on which the adverse benefit determination is based;
- c. a description of additional material or information necessary to perfect the claim and an explanation of why the material or information is needed;
- d. a description of the Plan's claim and appeal procedures and applicable timeframes;
- e. a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA after the Plan's appeal procedure (set forth below) has been exhausted;
- f. if any internal rules, guidelines, protocols or similar criteria were used as a basis for the adverse benefit determination, either the specific rule, guideline, protocol, or other similar criteria or a statement that a copy of such information will be made available free of charge upon request;
- g. for adverse benefit determinations based on medical necessity, experimental treatment, or other similar exclusions or limits, an explanation of the scientific or clinical judgment used in the decision, or a statement that an explanation will be provided free of charge upon request; and
- h. For adverse determinations involving urgent care (for medical claims only), the notice will also include a description of the expedited review process for such claims. This notice can be provided orally within the timeframe for the expedited process, as long as written notice is provided no later than 3 days after the oral notice.

For medical claims only, the notice of adverse benefit determination shall include information sufficient to identify the claim involved, including

- i. the date of service;
- j. the health care provider;
- k. the claim amount (if applicable);
- l. the denial code and its corresponding meaning;

In addition, for medical claims only, the notice of adverse benefit determination shall include the following information:

- m. a statement that diagnosis and treatment codes (and their meanings) shall be provided upon request;
- n. description of the Plan's standard used in denying the claim;
- o. a description of the external review processes; and
- p. the availability of, and contact information for, any applicable office of health insurance consumer assistance or ombudsman to assist enrollees with the internal claims and appeals and external review processes.

## **9.9 Right to Appeal**

A claimant who has received an adverse benefit determination, shall have the right to appeal the adverse benefit determination.

The following rules shall apply to claims filed with respect to an ERISA-covered benefit under the Plan. .

- A. A claimant who has received an adverse benefit determination for benefits, other than the group health plan and disability benefits as described in paragraphs B and C below, or is otherwise adversely affected by action of the Claim Administrator, shall have the right to request review of the claim. Such request must be in writing and must be made within 60 days after such claimant is advised of the Claim Administrator's action. The requested review must take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. If written request for review is not made within the 60-day period, the claimant shall forfeit their right to review. The claimant or a duly authorized representative of the claimant may review all relevant information and submit issues, comments, documents, records, and other information in writing.

The Claim Administrator or Plan Administrator or its delegate, as applicable, shall then review the claim. It may hold a hearing if it deems it necessary and shall issue a written decision reaffirming, modifying, or setting aside its former action within a reasonable period of time, but not later than 60 days after receipt of the written request for review, unless the Plan Administrator determines that special circumstances, such as a hearing, require an extension. The claimant shall be notified in writing of any such extension within 60 days following the request for review, and such extension shall not exceed 60 days from the end of the initial period.

A copy of the review determination shall be furnished to the claimant. If the claim is denied, the review determination notice shall contain the following information:

- 1. the specific reason(s) for the adverse benefit determination;

2. a reference to the specific provision(s) in the Plan on which the adverse benefit determination is based;
3. a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access and copies of all relevant information;
4. a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA;
5. a description of any voluntary appeals procedures offered by the Plan, if any; and
6. a statement that the claimant has the right to obtain information about the voluntary appeals process, if any.

The decision shall be final and binding upon the claimant and all other persons or entities involved, except to the extent that the Plan provides for a voluntary appeals procedure subsequent to this appeals process, or the decision is subject to judicial review.

- B. A claimant who has received an adverse benefit determination for disability benefits or is otherwise adversely affected by action of the Claim Administrator shall have the right to request review of the claim. Such request must be in writing and must be made within 180 days after such claimant is advised of the Claim Administrator's action. If written request for review is not made within the 180-day period, the claimant shall forfeit their right to review. The claimant or a duly authorized representative of the claimant may review all relevant information and submit issues and comments in writing.

The Claim Administrator or Plan Administrator or its delegate, as applicable, shall then review the claim. It shall issue a written decision reaffirming, modifying, or setting aside its former action within a reasonable period of time, but not later than 45 days after receipt of the written request for review, or an additional 45 days if the Plan Administrator determines that special circumstances require an extension. The claimant shall be notified in writing of any such extension before the initial period of time expires, and such notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review. The extension period is tolled until the claimant responds to any information request.

A copy of the review determination shall be furnished to the claimant. If the claim is denied, the review determination notice shall contain the following information:

1. the specific reason(s) for the adverse benefit determination;
2. a reference to the specific provision(s) in the Plan on which the adverse benefit determination is based;
3. a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access and copies of all relevant information;

4. a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA;
5. a description of any voluntary appeals procedures offered by the Plan, if any;
6. a statement that the claimant has the right to obtain information about the voluntary appeals process, if any;
7. a discussion of the decision, including an explanation of the basis for disagreeing with or not following:
  - a. the views of health care professionals treating the claimant and vocational professionals who evaluated the claimant;
  - b. the views of medical or vocational experts obtained by the plan, without regard to whether the advice was relied upon for the adverse benefit determination; and
  - c. any Social Security Administration disability determination regarding the claimant presented to the Plan;
8. a description of any applicable contractual limitations period, including the date on which the claim expires;
9. either the specific rule, guideline, protocol, standards, or other similar criteria relied upon in making the adverse benefit determination, or a statement that such rules, guidelines, protocols, standards or other similar criteria do not exist; and
10. for adverse benefit determinations based on medical necessity, experimental treatment, or other similar exclusions or limits, an explanation of the scientific or clinical judgment used in the decision, or a statement that an explanation will be provided free of charge upon request.

The Plan will provide for the identification of experts whose advice was obtained on behalf of Plan in connection with an adverse determination, without regard to whether the advice was relied on in making the determination.

In deciding an appeal of any adverse benefit determination based in whole or in part on a medical judgment, the Plan Administrator will consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, and such individual shall not have been consulted in connection with the adverse benefit determination that is the subject of the appeal nor the subordinate of any such individual. In deciding an appeal, no deference will be afforded to the initial adverse benefit determination and the review of the appeal will be conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal nor the subordinate of such individual.

The Claim Administrator will ensure that all claims and appeals for disability benefits are handled impartially. The Claim Administrator shall ensure the independence and impartiality of the persons involved in making the decision. Accordingly, decisions regarding hiring, compensation, termination promotion, or other similar matters with respect to any individual (such as a claims adjudicator or medical expert) must not be made based upon the likelihood that the individual will support an adverse benefit determination of benefits. The Claim Administrator shall ensure that health care professionals consulted are not chosen based on the expert's reputation for outcomes in contested cases, rather than based on the professional's qualifications.

A claimant shall be able to review their file and present information as part of the appeal. Before making a benefit determination on review, the Claim Administrator shall provide the claimant with any new or additional evidence considered or generated by the Plan, as well as any new or additional rationale to be used in reaching the decision. The claimant shall be given this information in advance of the date on which the notice of final appeal decision is made to give such claimant a reasonable opportunity to respond.

If the Plan fails to strictly adhere to the requirements in this subsection with respect to the claim, the claimant is deemed to have exhausted the Plan's administrative remedies and may pursue any remedies under Section 502(a) of ERISA. However, this shall not apply if the error was de minimis, if the error does not cause harm to the claimant, if the error was due to good cause or to matters beyond the Plan's control, if it occurs in context of good faith exchange of information, or if the error does not reflect a pattern or practice of noncompliance. If a court rejects the claimant's demand for immediate review based on the exceptions above, the claim will be considered as refiled on appeal upon receipt of the court's decision, and the plan will notify the claimant of the resubmission.

The decision shall be final and binding upon the claimant and all other persons or entities involved, except to the extent that the Plan provides for a voluntary appeals procedure subsequent to this appeals process, or the decision is subject to judicial review.

- C. A claimant who has received an adverse benefit determination for medical, dental, vision, employee assistance plan, health care spending account or limited purpose health care spending account benefits or is otherwise adversely affected by action of the Claim Administrator, shall have the right to request review of the claim. Such request must be in writing and must be made within 180 days after such claimant is advised of the Claim Administrator's action. If written request for review is not made within the 180-day period, the claimant shall forfeit their right to review. The claimant or a duly authorized representative of the claimant may review all relevant information and submit issues and comments in writing.

The Claim Administrator or Plan Administrator or its delegate, as applicable, shall then review the claim. It shall issue a written decision reaffirming, modifying, or

setting aside its former action within a reasonable period of time, but not later than:

1. for urgent health claims, as soon as possible considering the medical situation, but no later than 72 hours,
2. for pre-service claims, within a reasonable period of time given the medical situation, but no later than 30 days (or 15 days following each appeal if there are two mandatory appeals),
3. for post-service claims, within a reasonable period of time, but not later than sixty (60) days after receipt of the request for review (or 30 days following each appeal if there are two mandatory appeals).

If a claim for medical benefits is an urgent health claim or a claim requiring an ongoing course of treatment, the claimant may begin an expedited external review, as described in Section 9.10, before the Plan's internal appeals process has been completed.

Medical coverage as described in Section 4.4(A) shall continue pending the outcome of an internal appeal.

A copy of the review determination shall be furnished to the claimant. If the claim is denied, the review determination notice shall contain the following information:

4. the specific reason(s) for the adverse benefit determination;
5. a reference to the specific provision(s) in the Plan on which the adverse benefit determination is based;
6. a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access and copies of all relevant information;
7. a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA;
8. a description of any voluntary appeals procedures offered by the Plan, if any;
9. a statement that the claimant has the right to obtain information about the voluntary appeals process, if any, and information as to how the claimant may obtain information about alternative dispute resolution options from the Department of Labor or state regulators;
10. if any internal rules, guidelines, protocols or similar criteria were used as a basis for the adverse benefit determination, either the specific rule, guideline, protocol, or other similar criteria or a statement that a copy of such information will be made available free of charge upon request;
11. for adverse benefit determinations based on medical necessity, experimental treatment, or other similar exclusions or limits, an explanation

of the scientific or clinical judgment used in the decision, or a statement that an explanation will be provided free of charge upon request; and

12. for adverse determinations involving urgent care, the notice will also include a description of the expedited review process for such claims (for medical claims only). This notice can be provided orally within the timeframe for the expedited process, as long as written notice is provided no later than 3 days after the oral notice.

For claims for medical benefits, the notice of adverse benefit determination shall include information sufficient to identify the claim involved, including

13. the date of service;
14. the health care provider;
15. the claim amount (if applicable);
16. the denial code and its corresponding meaning;

In addition, for medical claims only, the notice of adverse benefit determination shall include the following information:

17. a statement that diagnosis and treatment codes (and their meanings) shall be provided upon request;
18. description of the Plan's standard used in denying the claim;
19. a description of the external review processes; and
20. the availability of, and contact information for, any applicable office of health insurance consumer assistance or ombudsman to assist enrollees with the internal claims and appeals and external review processes.

Upon request by the claimant, the Plan will provide for the identification of experts whose advice was obtained on behalf of Plan in connection with an adverse determination, without regard to whether the advice was relied on in making the determination.

In deciding an appeal of any adverse benefit determination based in whole or in part on a medical judgment, the Plan Administrator shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, and such individual shall not have been consulted in connection with the adverse benefit determination that is the subject of the appeal nor the subordinate of any such individual. In deciding an appeal, no deference shall be afforded to the initial adverse benefit determination and the review of the appeal shall be conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal nor the subordinate of such individual.

The Claim Administrator will ensure that all claims and internal appeals for medical benefits are handled impartially. The Claim Administrator shall ensure the independence and impartiality of the persons involved in making the decision. Accordingly, decisions regarding hiring, compensation, termination promotion, or other similar matters with respect to any individual (such as a claims adjudicator or medical expert) must not be made based upon the likelihood that the individual will support an adverse benefit determination of benefits. The Claim Administrator shall ensure that health care professionals consulted are not chosen based on the expert's reputation for outcomes in contested cases, rather than based on the professional's qualifications.

In connection with an internal appeal of a medical claim, a claimant shall be able to review their file and present information as part of the review. Before making a benefit determination on review, the Claim Administrator shall provide the claimant with any new or additional evidence considered or generated by the Plan, as well as any new or additional rationale to be used in reaching the decision. The claimant shall be given this information in advance of the date on which the notice of final appeal decision is made to give such claimant a reasonable opportunity to respond.

For medical claims only, if the Plan fails to strictly adhere to all the requirements of the internal claims and appeals process with respect to the claim, the claimant is deemed to have exhausted the internal claims and appeals process and may request an expedited external review before the Plan's internal appeals process has been completed. However, this shall not apply if the error was de minimis, if the error does not cause harm to the claimant, if the error was due to good cause or to matters beyond the Plan's control, if it occurs in context of good faith exchange of information, or if the error does not reflect a pattern or practice of noncompliance. In that case, the claimant may resubmit the claim for internal review and the claimant may ask the Plan to explain why the error is minor and why it meets this exception.

The decision shall be final and binding upon the claimant and all other persons or entities involved, except to the extent that the Plan provides for a voluntary appeals procedure subsequent to this appeals process, or the decision is subject to judicial review.

#### **9.10 Right to an External Review of Claims**

To the extent required by PPACA, as amended by HCERA, as required by the No Surprises Act provisions of the CAA, and as interpreted by applicable guidance and regulations from the relevant government agencies, the following rules shall apply to claims filed for benefits under Section 4.4(A) of the Plan. This Section 9.10 shall not be interpreted to give claimants any rights to external review beyond what is expressly required under these laws and as interpreted by applicable guidance and regulations from the relevant government agencies. This Section 9.10 is not applicable to any other benefits offered under the Plan.

The claimant shall be entitled to request an external review of a medical claim involving medical judgment, as determined by the external reviewer; a coverage rescission; or, in the event there is a question as to whether the claim should have been subject to surprise

billing protections, as required by the No Surprises Act provisions of the CAA, provided the claimant requests the external review within four (4) months of the date of receipt of an adverse benefit determination. If the claimant's request for an external review is determined eligible for such a review, an independent organization shall review the Claim Administrator's decision and provide the claimant with a written determination, as described in the Incorporated Documents.

The external review decision is binding on the claimant and the Plan, except to the extent that other remedies are available under federal law.

The external review process does not apply to an adverse benefit determination or final internal adverse benefit determination beyond those listed herein.

### **9.11 Legal Remedy**

Before pursuing a legal remedy, a claimant shall first exhaust all claims, review, and appeals procedures required under the Plan.

### **9.12 Subrogation, Reimbursement and Recovery for Third Party Liability**

- A. This Section shall govern with respect to Plan benefits for injuries or illnesses of Covered Persons related to a third party's actions or inactions.

With respect to benefits provided on an insured basis, to the extent that conflicting subrogation, reimbursement or recovery provisions exist in an Incorporated Document, such provisions in the Incorporated Document shall govern.

With respect to benefits provided on a self-insured basis, to the extent that any Incorporated Document also contains subrogation, reimbursement, or recovery provisions, this subsection and the applicable Incorporated Document will both apply so as to grant the Plan the greatest possible rights with respect to subrogation, reimbursement, and recovery.

- B. Subrogation

As a condition for receiving benefits under the Plan, each Covered Person agrees to and grants the Plan the right to subrogation, the right to reimbursement, and the right of recovery as set forth herein. When a Covered Person becomes sick or injured as a result of the act or omission of another person or party and the Covered Person received benefits under the Plan for such injuries, the Covered Person must reimburse the Plan for benefits received from all recoveries from a third party (whether by lawsuit, settlement or otherwise) and the Plan's share of the recovery will not be reduced because the Covered Person has not received the full damages for the claims, unless the Plan agrees, in writing, to such a reduction. If the Covered Person breaches this third party reimbursement provision, then the Covered Person agrees to indemnify the Plan for all costs of recovering third party reimbursements.

The Plan's right of recovery applies to the extent the Plan has paid expenses related to the injury or illness, regardless of whether any related settlement or other third-party payment states that the payment (all or part of it) is for health care

expenses or of any allocation or itemization of such recovery to specific types of injuries.

To the extent that any Program Document also contains provisions regarding subrogation, reimbursement, or right to recovery of expenses, this Section 9.12 and the applicable Program Document will both apply so as to grant the Plan the greatest possible rights with respect to subrogation, reimbursement, and recovery of such expenses or benefits. Except as specifically provided otherwise in an applicable Program Document, this Section 9.12 will apply to any health or disability benefit provided through the Benefit Programs.

By accepting Plan benefits to pay for treatments, devices or other products or services related to such injury or illness, the Covered Person agrees to place such third-party payments in Covered Person's separate identifiable account (in an amount equal to related expenses paid by the Plan or, if less, the full third-party payment amount) and that the Plan has an equitable lien on such funds, without regard to whether the Covered Person has been made whole or fully compensated for the injury or illness. The Covered Person also agrees to serve as a constructive trustee over the funds until the time they are paid to the Plan. The Covered Person further agrees to cooperate with the Plan's recovery efforts and do nothing to prejudice the Plan's recovery rights.

The Plan's right of subrogation will apply to the first dollar of any recovery obtained from the third-party, without regard to whether the Covered Person has been made whole or fully compensated for the injury or illness, and shall not be subject to the principles of unjust enrichment, assertion of a "common fund" doctrine or its equivalent or any other equitable defenses. At its option, the Plan may file suit or intervene in any pending lawsuit to secure and protect its rights on any third-party recovery. The Plan is not required to participate in or contribute to any expenses or fees (including attorney's fees and costs) incurred in obtaining the funds.

#### C. Plan's Right of Recovery

If a Covered Person becomes injured or ill because of the actions or inactions of a third party, the Plan shall have the right to recover related Plan expenses out of any payments made by (or on behalf of) the third party (whether by lawsuit, settlement, no-fault automobile insurance statute or otherwise) to or on behalf of a Covered Person. The Plan's right of recovery applies to the extent the Plan has paid expenses related to the injury or illness, regardless of whether any related settlement or other third-party payment states that the payment (all or part of it) is for health care expenses, regardless of the label assigned to the recovery and regardless of the allocation or itemization of such recovery to specific types of injuries.

The Plan may require the Covered Person to sign a reimbursement agreement in a form acceptable to the Plan Administrator, but whether or not such an agreement is executed, in the event that the Plan provides benefits and the Covered Person receives a third-party payment as described in this paragraph, the Covered Person shall immediately reimburse the Plan for the lesser of the amount of the third-party payment or the full amount of all benefits paid by the Plan. If expenses are incurred by a minor, the Administrator may require that the minor's parent or legal

guardian execute the reimbursement agreement and agree to be bound by it. The Administrator may, in its sole discretion, withhold benefit payments that might otherwise be advanced, and/or initiate an action at law or in equity in its own name or in the name of the Covered Person, in order to enforce, secure, or protect the Plan's rights under this provision. If the Covered Person elects not to execute such an agreement, the Plan is not obligated to provide any benefit payments.

By accepting Plan benefits to pay for treatments, devices or other products or services related to such injury or illness, the Covered Person agrees to place such third-party payments in Covered Person's separate identifiable account (in an amount equal to related expenses paid by the Plan or, if less, the full third-party payment amount) and that the Plan has an equitable lien on such funds, without regard to whether the Covered Person has been made whole or fully compensated for the injury or illness. The Covered Person also agrees to serve as a constructive trustee over the funds until the time they are paid to the Plan. Covered Person further agrees to cooperate with the Plan's recovery efforts and do nothing to prejudice the Plan's recovery rights.

The Plan is not required to participate in or contribute to any expenses or fees (including attorney's fees and costs) incurred in obtaining the funds.

D. Cooperation

If so requested by the Claim Administrator, the Covered Person (or if a minor, their parent or legal guardian) shall:

1. provide proof, satisfactory to the Claim Administrator, that no right, claim, interest or cause of action against a third party has been, or will be, discharged or released without the written consent of the Claim Administrator;
2. execute a written agreement assigning to the Plan all rights, claims, interests, and causes of action that the Covered Person has against a third party in connection with the expenses paid by the Plan;
3. notify the Plan within 30 days of the date any notice is given by any party, including an attorney, of an intent to pursue or investigate a claim to recover damages or obtain compensation due to sustained injuries or illness;
4. provide all information requested by the Plan, the Claim Administrator, or their representatives;
5. authorize the Plan, in writing, to sue, compromise or settle, in the Covered Person's name or otherwise, all rights, claims, interests, or causes of action to the extent of benefits paid by the Plan and shall do nothing to prejudice the rights given to the Plan under this section; and
6. agree, in writing, to assist the Plan in prosecuting any rights, interests, claims, or causes of action that have been assigned to the Plan against a

third party, including, if requested by the Claim Administrator or Plan Administrator, the institution of a formal proceeding against a third party.

E. Enforcement of Plan's Subrogation and Recovery Rights

Should it be necessary for the Plan to institute proceedings against the Covered Person for failure to reimburse the Plan or to otherwise honor the Plan's equitable interest in obtaining amounts described in this Section, the Covered Person shall be liable for the costs of collection relating to such failure, including reasonable attorney's fees.

The Plan shall have the right to terminate a Covered Person's participation in the Plan or offset future benefits to which a claimant (or a Covered Person through whom the claimant derives their claim) may be entitled, until the amount otherwise due the Plan under this Section, plus interest, has been received by the Plan.

The Plan's rights under this Section shall be enforceable regardless of whether the third party admits liability for the injury or illness to a Covered Person, and shall remain enforceable against the heirs and estate of any Covered Person.

F. Procedures for Subrogation and Reimbursement

Each Covered Person or their legal representative must do whatever is requested by the Administrator with respect to the exercise of the subrogation and reimbursement rights of the Benefit Program and the Employers and will do nothing to prejudice those rights. In addition, each Covered Person or their legal representative, in conjunction with making a claim for Benefit Program benefits, must inform the Administrator in writing whether the Covered Person was injured by a Third Party, and must provide the following information in a timely, prompt fashion as a condition to receipt of Benefit Program benefits:

1. The name, address, and telephone number of the Third Party that in any way caused the injury, illness or disability, and of the attorney representing the Third Party;
2. The name, address, and telephone number of the Third Party's insurer and any insurer of the Covered Person;
3. The name, address, and telephone number of the Covered Person's attorney with respect to the Third Party's act;
4. Prior to the meeting, the date, time and location of any meeting between the Third Party or their attorney and the Covered Person, or their attorney;
5. All terms of any settlement offer made by the Third Party or their insurer or the Covered Person's insurer;
6. All information discovered by the Covered Person, or their attorney, concerning the insurance coverage of the Third Party;
7. The amount and location of any funds that are recovered by the Covered Person from the Third Party or their insurer or the Covered Person's insurer, and the date that the funds were received;

8. Prior to settlement, all information related to any oral or written settlement agreement between the Covered Person and the Third Party or their insurer or the Covered Person's insurer;
9. All information regarding any legal action that has been brought on behalf of a Covered Person against the Third Party or their insurer; and
10. All other information requested by the Administrator.

No Covered Person (or the person's legal representative) may retain an attorney with respect to the Third Party without the prior written consent of the Administrator. As a condition of receiving benefits under the Benefit Program, each Covered Person (and that person's legal representatives) hereby:

Waives the assertion of any attorney-client privilege against an Employer with regard to an attorney retained by the Covered Person;

Agrees that an Employer may assume, at its discretion, the defense of any action that has been or could be brought against the Third Party by the Covered Person (or that person's legal representatives);

Agrees that an Employer must be given the opportunity to approve any settlements before they are made with the Third Party;

Agrees to consent to judgment for the Plan;

Agrees not to assert a defense under Section 502 of ERISA to a claim made by the Plan; and

Agrees that a claim brought by the Plan to enforce its rights under this Section 19.12 is an equitable claim.

Any funds recovered by a Covered Person (or that person's legal representative) from a Third Party (or the Third Party's insurer) must and are deemed to be held in constructive trust for the benefit of the Benefit Program and the Employer to the extent of the amount of Benefit Program benefits until reimbursement, with the Covered Person (or that person's legal representative) as trustee and fiduciary.

### **9.13 Payment Procedures**

#### **A. Payment of Claim**

Subject to Section 12.4, benefits shall be payable to the claimant upon establishment of the right thereto.

#### **B. Facility of Payment**

If a claimant dies before all amounts payable under the Plan have been paid, or if the Plan Administrator determines that the claimant is a minor or is incompetent or incapable of executing a valid receipt and no guardian or legal representative has been appointed, or if the claimant fails to provide the Plan with a forwarding

address, the amount otherwise payable to the claimant may be paid to any other person or institution reasonably determined by the Plan Administrator to be entitled equitably thereto and without prejudice therefor. Any payment made in accordance with this provision shall discharge the obligation of the Plan hereunder to the extent of such payment.

C. Forfeiture

The Plan Administrator shall take reasonable steps to ascertain the whereabouts of a claimant so as to affect delivery of benefits payable under the Plan. If a claimant has not collected benefits payable to him or her within 15 months from the date the claim was filed, the Plan Administrator may, three months after sending by certified mail a written notice of benefits to the last known address of such claimant as shown on the records of the Administrator, deem the claimant's right to such benefit waived. Upon such waiver, the Plan shall have no liability for payment of the benefit otherwise payable.

**ARTICLE X**  
**ADMINISTRATION**

**10.1 Plan Administrator**

The Company shall appoint a person, entity or committee to serve as Plan Administrator. In the absence of such appointment, the Company shall be the Plan Administrator. The Plan Administrator shall be the "named fiduciary" for purposes of ERISA. The principal duty of the Administrator is to see that the Plan is carried out, in accordance with its terms, for the exclusive purposes of providing benefits to the Participants and their beneficiaries and defraying reasonable administrative expenses of the Plan and is operated consistently for similarly situated individuals.

**10.2 Plan Administrator's Duties**

The Plan Administrator shall:

- A. manage and carry out the Plan's operation and administration according to the Plan's terms and for Covered Employees' exclusive benefit;
- B. maintain:
  - 1. whatever records and data are necessary or desirable for the Plan's proper operation and administration, and
  - 2. the Plan's governing documentation for inspection by anyone who participates or is eligible to participate in the Plan;
- C. notify Employees eligible to participate in the Plan of:
  - 1. the Plan's availability and terms,
  - 2. the premium payment benefits available for election,
  - 3. the maximum annual Salary Reduction Contribution and/or Salary Deduction Contribution amounts for each available premium payment benefit, and
  - 4. the procedures for enrolling and making and changing elections;
- D. supply eligible Employees with any forms and agreements they must complete;
- E. prepare and file all annual reports or returns, plan descriptions, financial statements, and other documents required by law or under the Plan's terms; and
- F. record its and the Employer's acts and determinations regarding the Plan and preserve these records in its custody.

### 10.3 Plan Administrator's Powers

Except as expressly limited or reserved in the Plan to the Company, the Board of Directors, or an Employer, the Plan Administrator shall have the right to exercise, in a uniform and nondiscriminatory manner, full discretion with respect to the administration, operation, and interpretation of the Plan. Without limiting the generality of the foregoing rights, the Plan Administrator shall have full power and discretionary authority to:

- A. require any person to furnish such information as the Plan Administrator may request from time to time and as often as the Plan Administrator determines reasonably necessary for the purpose of proper administration of the Plan and as a condition to the individual's receiving benefits under the Plan;
- B. make and enforce such rules and prescribe the use of such forms as the Plan Administrator determines reasonably necessary for the proper administration of the Plan;
- C. interpret the Plan and decide all matters arising under the Plan, including the right to remedy possible ambiguities, inconsistencies, or omissions;
- D. determine all questions concerning the eligibility of any individual to participate in, be covered by, and receive benefits under the Plan pursuant to the provisions of the Plan;
- E. determine whether objective criteria set forth in the Plan have been satisfied respecting any term, condition, limitation, exclusion, and restriction or waiver thereof;
- F. determine the amount of benefits payable, if any, to any person or entity in accordance with the provisions of the Plan; to inform the Employer or any other third party, as appropriate, of the amount of such benefits; to make claim decisions under the terms of the Plan; and to provide a full and fair review to any individual whose claim for benefits has been denied in whole or in part;
- G. delegate to other person(s) any duty that otherwise would be a fiduciary responsibility of the Plan Administrator under the terms of the Plan;
- H. engage the services of such person(s) and entity or entities as it deems reasonably necessary or appropriate in connection with the administration of the Plan;
- I. make such administrative or technical amendments to the Plan as may be reasonably necessary or appropriate to carry out the intent of the Company, including such amendments as may be required or appropriate to satisfy the requirements of the Code and ERISA and the rules and regulations from time to time in effect under any such laws, or to conform the Plan with other governmental regulations or policies; and
- J. pay all reasonable and appropriate expenses incurred in connection with the management and administration of the Plan including, but not limited to, premiums or other considerations payable under the Plan and fees and

expenses of any actuary, accountant, legal counsel, or other specialist engaged by the Plan Administrator.

- K. reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable sections of the Code.

#### **10.4 Finality of Decisions**

The Plan Administrator shall have full power, authority and discretion to enforce, construe, interpret and administer the Plan. All decisions and determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on Covered Persons and all other interested parties.

#### **10.5 Compensation and Bonding of Plan Administrator**

Unless otherwise agreed to by the Company, the Plan Administrator shall serve without compensation for services as such, but all reasonable expenses incurred in the performance of the Plan Administrator's duties shall be paid as specified in Article XII. Unless otherwise determined by the Company or unless required by federal or state law, the Plan Administrator shall not be required to furnish bond or other security in any jurisdiction.

#### **10.6 Indemnification**

The Company and any person to whom it may delegate any duty or power in connection with administering the Plan, the Administrator and the officers and directors of the Company, will be entitled to rely conclusively upon, and will be fully protected in any action taken or suffered by them in good faith in the reliance upon, any accountant, counsel, other specialist or other person selected by the Administrator or in reliance upon any tables, valuations, certificates, opinions or reports which will be furnished by any of them. The Administrator (and the individual members thereof) will be indemnified by the Company against any and all liabilities arising by reason of any act or failure to act made in good faith in accordance with the Plan, including expenses reasonably incurred in the defense of any related claim. A Plan fiduciary that is a third party service provider or an insurer will be entitled to indemnification only to the extent provided in a written agreement with such service provider.

#### **10.7 Liability Insurance**

The Company may obtain liability coverage at the Company's expense to insure any Employee serving as Plan Administrator against legal liability that may arise from being the Plan Administrator or performing the Plan Administrator's duties.

#### **10.8 Reserved Powers**

The Company reserves the powers, among others:

- A. to adopt the Plan;
- B. to amend, terminate, or merge the Plan according to Article XI; and

- C. to appoint and remove any Claim Administrator or Plan Administrator.

## **ARTICLE XI**

### **AMENDMENT, TERMINATION OR MERGER OF PLAN**

#### **11.1 Right to Amend the Plan**

Except as provided in Section 11.3, the Company reserves the unlimited right to amend the Plan in any way. Any amendment to the Plan shall be in writing and shall be adopted by the Company in accordance with its normal procedures. However, the Plan Administrator shall have the authority to amend the Plan to comply with applicable law or regulation or to reflect the Company's intent.

#### **11.2 Right to Terminate or Merge the Plan**

Notwithstanding that the Plan is established with the intention that it be maintained indefinitely, the Company (or its duly authorized representative) reserves the unlimited right to terminate or merge the Plan. Any termination or merger of the Plan shall be in writing and shall be adopted by the duly authorized representative of the Company acting in accordance with its regular duties for the Company.

#### **11.3 Effect of Amendment, Termination or Merger**

Any amendment, termination or merger of the Plan shall be effective at such date as the Company shall determine. If no date is specified by the Company in the written instrument amending, terminating or merging the Plan, the amendment, termination or merger shall be effective upon the date that the written instrument is adopted or executed.

In the event that the Plan is terminated, plan assets will be used for the benefit of participants and beneficiaries or to defray reasonable administrative expenses, as applicable.

**ARTICLE XII**  
**MISCELLANEOUS**

**12.1 No Employment Rights**

The Plan is a voluntary undertaking of the Employer and does not constitute a contract with any person. The Plan is not an inducement or condition of an Employee's employment with any Employer. Neither the establishment of the Plan, nor any modification thereof, nor any payments hereunder, shall be construed as giving to any Employee or any other person, any legal or equitable rights against their Employer, the Company or their shareholders, directors, officers, employees or agents, or as giving any person the right to be retained in the employ of the Employer.

**12.2 Exclusive Rights**

No individual shall have a right to benefits under the Plan except as specified herein; and in no event shall any right to benefits under the Plan be or become vested. This Plan is not a guarantee of continuation of any benefits or coverage offered through the Plan.

**12.3 No Property Rights**

No one has any right, title, or interest in the property of the Company or the Employer by virtue of the Plan, nor is any person entitled to interest on any benefit amounts that may be allocated or available to him or her.

**12.4 No Assignment of Benefits**

Except when the Plan is required by law or applicable guidance to recognize an assignment of Benefits to a State Medicaid program, Benefits payable under the Plan and the right to assert legal or equitable rights, including but not limited to bringing an administrative claim for benefits, action under state law or filing a lawsuit against the Plan, the Plan Administrator, a Claim Administrator, or any Plan fiduciary, or the Company and Participating Employers, or officers, shareholders or employees thereof, shall not be subject in any manner to liability, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge of any kind, and any attempt to effect same shall be void. This includes, but is not limited to, any attempt by a Covered Person to assign their right to receive Plan benefits and legal rights relating to the Plan—including any rights to bring an administrative claim or lawsuit—to any other party, including any health care provider; such assignment is not permitted under the Plan and is void. The Plan reserves the right to make payment directly to the Covered Person, or, solely at the discretion of the Plan Administrator or the Claim Administrator, directly to a doctor, hospital, or other provider of health care. Where payments are made directly to a doctor, hospital, or other provider of health care, such direct payments are provided at the discretion of the Plan Administrator or Claim Administrator and do not imply or create an enforceable assignment of benefits or the right to receive such benefits or the right to assert any legal or equitable rights (including but not limited to claims for breach of fiduciary duty or the right to bring an injunction), or to bring any administrative claim, action under state law or lawsuit against the Plan, the Plan Administrator, a Claim Administrator, or any Plan fiduciary, or the Company and Participating Employers, or officers, shareholders or employees thereof, under any federal or state law, including ERISA. For purposes of exercising the rights to

benefits conferred under this Plan, an individual's "authorized representative" shall not include a provider, hospital, or any third-party organization acting on behalf of such entities. The right of any Participant to receive any benefits under the Plan will not be alienable by assignment, either before or after benefits under this Plan are conferred. Further, the right of any Participant to receive any benefits under the Plan will not be subject to any claims by any creditor of or claimant against the Participant; and any attempt to reach such amounts by any such creditor or claimant, or any attempt by the Participant to confer on any such creditor or claimant any right or interest with respect to such amounts, will be null and void, except as provided in Section 609 of ERISA with respect to QMCSOs. No Compensation reduction elections or other contributions under this Plan will cause any Company to be liable for, or subject to, any manner of debt or liability of any Participant.

### **12.5 Right to Offset Future Payments**

In the event a payment or the amount of a payment is made erroneously to an individual, the Plan shall have the right to reduce future payments payable to or on behalf of such individual by the amount of the erroneous or excess payment. This right to offset shall not limit the right of the Plan to recover an erroneous or excess payment in any other manner.

### **12.6 Right to Recover Payments**

Whenever a payment has been made by the Plan, including erroneous payments, in a total amount in excess of the amount payable under the Plan, irrespective of to whom paid, the Plan shall have the right to recover such payments, to the extent of the excess, from the person to or for whom the payment was made.

### **12.7 Misrepresentation or Fraud**

A Covered Person who receives benefits under the Plan as a result of false, incomplete, or incorrect information or a misleading or fraudulent representation may be required to repay all amounts paid by the Plan and may be liable for all costs of collection, including attorney's fees and court costs. The Plan Administrator shall decide such matters on a case by case basis. An Employee may be asked to provide proof of eligibility for their Dependents. If a Covered Person makes any intentional misrepresentation or uses fraudulent means concerning eligibility for coverage, changing existing coverage, or benefits under the Plan, the Employee's and their Dependents' coverage may be terminated irrevocably (retroactively to the extent permitted by law), and could be grounds for Employee discipline up to and including termination. Failure to provide timely notice of loss of eligibility will be considered intentional misrepresentation.

### **12.8 Legal Action**

Before pursuing legal action, a person claiming Plan benefits or seeking redress related to the Plan must first exhaust the Plan's claim, review, and appeal procedures. Unless otherwise provided by law, the Company and the Plan Administrator are the only necessary parties to any action or proceeding that involves the Plan or its administration. No Employee, Employer, or other person or entity is entitled to notice of any legal action, unless a court with appropriate jurisdiction orders otherwise.

Unless an Incorporated Document specifies a shorter timeframe, no action at law or in equity in any court or agency shall be brought to recover benefits under the Plan prior to the exhaustion of the claims and appeals procedures set forth in Article IX, nor shall an action be brought at all unless within 36 months after the date a claim is incurred under the Plan.

## **12.9 Governing Law**

The provisions of the Plan shall be administered, and all questions pertaining to the validity or construction of the Plan and the acts and transactions of the parties shall be determined, construed, and enforced, in accordance with applicable federal law and, to the extent not preempted, the laws of the State of California.

## **12.10 Venue**

Any lawsuits brought pursuant to ERISA shall be filed and litigated in the U.S. District Court for the Northern District of California.

## **12.11 Arbitration**

Any controversy or dispute arising out of or relating to this Plan that is not a claim for benefits under ERISA shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in the state of California.

## **12.12 Governing Instrument**

This document, together with any documentation incorporated by reference herein, is the legal instrument governing the Plan. In case of conflict between this document and any other writing or evidence, the terms of this document shall govern.

## **12.13 Savings Clause**

If a provision of the Plan or the application of a provision of the Plan to any person, entity, or circumstance is held invalid under governing law by a court of competent jurisdiction, the remainder of the Plan and the application of the provision to any other person, entity, or circumstance shall not be affected. In such event, the Plan will be construed and enforced as if such severed provision had not been included herein, to the extent necessary to preserve the Section 125 Program's as a qualified "cafeteria plan" under Section 125 of the Code.

## **12.14 Captions and Headings**

The captions and headings of an Article, Section or provision of the Plan are for convenience and reference only and are not to be considered in interpreting the terms and conditions of the Plan.

### **12.15 Notices**

No notice or communication in connection with the Plan made by a claimant or an Employee shall be effective unless duly executed on a form provided or approved by, and filed with, the appropriate Plan Administrator (or their representative).

### **12.16 Waiver**

No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in a writing signed by the party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and only for the stated period, and such waiver shall operate only as to the specific term, condition, or provision waived.

### **12.17 Parties' Reliance**

The Company, the Employer, the Plan Administrator and anyone to whom the Plan's operation or administration is delegated may rely conclusively on any advice, opinion, valuation, or other information furnished by any actuary, accountant, appraiser, legal counsel, or physician the Plan engages or employs. A good faith action or omission based on this reliance is binding on all parties, and no liability can be incurred for it except as the law requires. No liability shall be incurred for any other action or omission of the Company, the Employer or their employees, except for willful misconduct or willful breach of duty to the Plan.

### **12.18 Disclaimer**

The Company makes no assertion or warranty about:

- A. health care services and supplies that Covered Persons obtain reimbursement for as Plan benefits, or
- B. whether Plan benefits are or will be excludable from a Covered Employee's gross income for federal or state income tax purposes, or
- C. whether any other tax treatment is or will be applicable.

### **12.19 Expenses**

All expenses of the Plan shall be paid from forfeitures, Employee contributions, or by the Plan, unless otherwise paid by the Employer. The Employer may advance expenses to the Plan, subject to reimbursement, without obligating itself to pay such expenses.

### **12.20 Indemnification**

The Employer, to the extent permitted by law, shall indemnify and hold harmless any employee or officer or shareholder of the Company or the Employer from and against all loss, damages, liability and reasonable costs and expenses incurred in carrying out their responsibilities under the Plan, unless due to the bad faith or willful misconduct of such person, provided that such individual's attorney's fees and any amount paid in settlement shall be approved by the Company.

## 12.21 Employees' Tax Obligations

### A. Excludability Determination

Covered Employees themselves must determine whether Plan benefits are excludable for tax purposes, and must notify the Plan Administrator if they have reason to believe a payment is not excludable.

### B. Liability and Payment

If the Plan Administrator determines at any time after a Plan Year's end that Employees' Salary Reduction Contributions or Salary Deduction Contributions or other Employer contributions exceeded limits allowed by law for any reason including, but not limited to, erroneous information, administrative error, or a final determination that the Plan does not qualify as a cafeteria plan under Code Section 125 for the Plan Year, then Covered Employees must:

1. pay any local, state, and federal income taxes and related penalties and interest due with respect to the excess Salary Reduction Contributions or other Employer contributions for which the Covered Employee is liable, and
2. reimburse the Employer for the Employee's share of any local, state, and federal tax contributions the Employer would have withheld or other applicable deductions the Employer would have taken had the excess Salary Reduction Contributions or other Employer contributions been treated as taxable income.

**ARTICLE XIII**  
**HIPAA PRIVACY AND SECURITY**

**13.1 Scope**

The provisions of this Article XIII shall apply to any self-insured group health plan Benefit and any insured group health plan Benefit from which the Plan Sponsor receives Protected Health Information.

**13.2 Definitions**

For purposes of this Article XIII, the following terms have the following meanings:

- A. “Business Associate” means a person or entity that performs a function or activity regulated by HIPAA on behalf of the group health plans provided under the Plan and involving individually identifiable health information. Examples of such functions or activities are claims processing, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation and financial services. A Business Associate may be a Covered Entity. However, Insurers and HMOs are not Business Associates of the plans they insure. A person or entity that transmits PHI to a covered entity (or its business associate) and routinely requires access to that PHI may also be a business associate. Examples of such entities include health information exchange organizations, regional health information organizations and e-prescribing gateways. Vendors that contract with covered entities offering certain personal health records to individuals may also be considered business associates, and vendors that contract with Business Associates (“subcontractors”) and require or have access to PHI or ePHI on a routine basis may also be Business Associates with respect to the Plan.
- B. “Covered Entity” means a group health plan (including an employer plan, Insurer, HMO and government coverage such as Medicare); a health care provider (such as a doctor, hospital or pharmacy) that electronically transmits any health information in connection with a transaction for which the U.S. Department of Health and Human Services has established an electronic data interchange standard; and a health care clearinghouse (an entity that translates electronic information between nonstandard and HIPAA standard transactions).
- C. “Protected Health Information or PHI” means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. Information is “individually identifiable” if it names the individual person or there is a reasonable basis to believe components of the information could be used to identify the individual. “Health Information” means information, including genetic information, whether oral or recorded in any form or medium, that (i) is created by a health care provider, health care plan, employer, life insurer, public health authority, health care clearinghouse, or school or university; and (ii) relates to the past, present, or future physical or mental health or condition of a person, the provision of health care to a person; or the past, present or future payment for health care.

### **13.3 Uses and Disclosures of PHI**

The Plan may disclose a Covered Employee's PHI or ePHI to the Plan Sponsor (or to the agent of the Plan Sponsor) for the plan administration functions under 45 CFR 164.504(a), to the extent not inconsistent with the HIPAA regulations. The Plan will not disclose PHI or ePHI to the Plan Sponsor except upon receipt of a certification by the Plan Sponsor that the Plan incorporates the agreements of Sections 13.4 and 13.5, except as otherwise permitted or required by law.

### **13.4 Privacy Agreements of the Plan Sponsor**

As a condition for obtaining PHI from the Plan and its Business Associates the Plan Sponsor agrees it will:

- A. Not use or further disclose such PHI other than as permitted by Section 13.3, as permitted by 45 CFR 164.508, 45 CFR 164.512, and other sections of the HIPAA regulations, or as required by law;
- B. Ensure that any of its agents, including a subcontractor, to whom it provides the PHI agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such information;
- C. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Plan Sponsor;
- D. Report to the Plan any use or disclosure of the PHI that is inconsistent with the uses or disclosures provided for of which the Plan Sponsor becomes aware, including reporting any breach of unsecured PHI;
- E. Make the PHI of a particular participant available for purposes of the participant's requests for inspection, copying, and amendment, and carry out such requests in accordance with HIPAA regulations 45 CFR 164.524 and 164.526;
- F. Make the PHI of a particular participant available for purposes of required accounting of disclosures by the Plan Sponsor pursuant to the participant's request for such an accounting in accordance with HIPAA regulations 45 CFR 164.528;
- G. Make the Plan Sponsor's internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance by the Plan with HIPAA;
- H. If feasible, return or destroy all PHI received from the Plan that the Plan Sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, the Plan Sponsor agrees to limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

- I. Ensure that there is adequate separation between the Plan and the Plan Sponsor by implementing the terms of subparagraphs (1) through (3), below:
  1. Employees with Access to PHI: The employees, classes of former employees or other individuals under the control of the Plan Sponsor listed in Appendix E and/or in a separately maintained access control list are the only individuals that may access PHI received from the Plan.
  2. Use Limited to Plan Administration: The access to and use of PHI by the individuals described in (1), above, is limited to plan administration functions as defined in HIPAA regulations 45 CFR 164.504(a) that are performed by the Plan Sponsor for the Plan.
  3. Mechanism for Resolving Noncompliance: If the Plan Sponsor or the persons listed in Appendix E who are responsible for monitoring compliance determine that any person described in (1), above, has violated any of the restrictions of this Article XIII, then such individual shall be disciplined in accordance with the policies of the Plan Sponsor established for purposes of privacy and security compliance, up to and including dismissal from employment. The Plan Sponsor shall arrange to maintain records of such violations along with the persons involved, as well as disciplinary and corrective measures taken with respect to each incident.
  
- J. Notify participant(s) of an unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of the information (a "Breach") without unreasonable delay in a report which includes the following information:
  1. the circumstances surrounding the Breach;
  2. the date of the Breach and the date of its discovery;
  3. the information Breached;
  4. any steps the impacted individuals should take to protect themselves;
  5. the steps the Plan Sponsor is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and
  6. a contact person who can provide additional information about the Breach.

The Plan Sponsor will cooperate with participant(s) in the investigation of, and response to, the Breaches it reports to participant(s). For this purpose, the term "Breach" means an unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of the information.

Notwithstanding the foregoing, the terms of this Article XIII shall not apply to uses or disclosures of Enrollment, Disenrollment, and Summary Health Information made pursuant to 45 CFR 164.504(f)(1)(ii) or (iii); of PHI released pursuant to an Authorization that complies with 45 CFR 164.508; or in other circumstances as permitted by the HIPAA regulations.

### **13.5 Security Agreements of the Plan Sponsor**

As a condition of obtaining e-PHI from the Plan, its Business Associates, Insurers and HMOs, the Plan Sponsor agrees it will:

- A. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Plan;
- B. Ensure that the adequate separation between the Plan and the Plan Sponsor as set forth in 45 CFR 164.504(f)(2)(iii) is supported by reasonable and appropriate security measures;
- C. Ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information;
- D. Report to the Plan any security incident of which it becomes aware. For purposes of this Amendment, security incident shall mean successful unauthorized access, use, disclosure, modification or destruction of, or interference with, the e-PHI; and
- E. Upon request from the Plan, the Plan Sponsor agrees to provide information to the Plan on unsuccessful unauthorized access, use, disclosure, modification or destruction of the e-PHI to the extent such information is available to the Plan Sponsor.



## APPENDIX A

### CONFLUENT, INC. DEPENDENT CARE SPENDING ACCOUNT PLAN

#### ARTICLE I

#### PLAN ESTABLISHMENT

##### 1.1 Effective Date

The Confluent, Inc. Dependent Care Spending Account Plan ("the Plan") is amended and restated as of the Effective Date in Article I of the Confluent, Inc. Welfare Benefits Plan.

##### 1.2 Purpose

The Plan is created exclusively for Employees, as defined in Article II of the Cafeteria Plan. The Plan's purpose is to reimburse Covered Employees, as defined in Article II of this Appendix, for Dependent Care Expenses, as defined in Article II of this Appendix.

##### 1.3 Qualification

The Plan is intended to qualify as a dependent care assistance program under Section 129 of the Internal Revenue Code of 1986, as amended (the "Code"). The Plan's reimbursements of Dependent Care Expenses are intended to be eligible for exclusion from Covered Employees' gross income under Code Section 129(a). This document is intended to satisfy the written plan document requirement of Code Section 129(d)(1).

##### 1.4 Incorporation By Reference

The term Cafeteria Plan as used in this Appendix means the Cafeteria Plan as defined in Section 1.3 of the Confluent, Inc. Welfare Benefits Plan. The terms of the Cafeteria Plan are incorporated by reference wherever they apply to this Plan's operation to the extent such provisions do not conflict with the terms of this Plan.

##### 1.5 Duration

The Plan is established with the intention of being maintained for an indefinite period of time; however, the Company, as defined in Article II of the Cafeteria Plan, in its sole discretion and in accordance with the provisions of Article XI of the Cafeteria Plan may amend or terminate the Plan or any provision of the Plan.

**ARTICLE II**  
**DEFINITIONS**

When capitalized in this document, these words and phrases have the following meanings:

**2.1 Covered Employee**

Covered Employee means an Employee who satisfies the participation requirements of Article III of this Appendix A.

**2.2 Dependent Care Expenses**

Dependent Care Expenses means expenditures for dependent care as described in Section 4.4 of this Appendix A.

**2.3 Dependent Care Spending Account Plan**

Dependent Care Spending Account Plan means the notational account established on behalf of each Covered Employee who elects the dependent care spending account premium payment benefit under the Cafeteria Plan to which the Covered Employee allocates Salary Reduction Contributions for the reimbursement of Dependent Care Expenses.

**2.4 Effective Date**

Effective Date means the date this Plan becomes operative, which is the effective date identified in Article I of the Confluent, Inc. Welfare Benefits Plan.

**2.5 Exclusions**

Exclusions means the exclusions in Article V of this Appendix A.

**2.6 Maximum Annual Benefit**

Maximum Annual Benefit means the total Salary Reduction Contributions a Covered Employee authorizes to their Dependent Care Spending Account, according to the election requirements of Article VI, for Dependent Care Expense reimbursement, which amount must be not more than \$7,500, except as otherwise limited under Section 4.5(B).

**2.7 Plan**

Plan means the Confluent, Inc. Dependent Care Spending Account Plan as herein set forth and as amended from time to time.

## 2.8 Qualifying Individual

Qualifying Individual means an individual who is either:

- A. The Covered Employee's child under age 13 and claimable as a personal exemption deduction under Code Section 152(a)(1) on the Covered Employee's federal income tax return; or
- B. The Spouse of a Covered Employee who is *physically or mentally incapable of caring for him or herself*, and who resides with the Employee for more than half of the year; or
- C. Any other relative or household member who is *physically or mentally incapable of caring for him or herself* and is a qualifying relative under Section 152 of the Code (without regard to subsections (b)(1), (b)(2) and (d)(1)(B)) and who resides with the Employee for more than half of the year.

*Physically or mentally incapable of caring for him or herself* means:

- D. incapable of caring for one's own hygienic or nutritional needs, or
- E. requiring another person's full-time attention for one's own safety or the safety of others.

Whether a person is *physically or mentally incapable of caring for him or herself* is determined on a daily basis.

**ARTICLE III**  
**PARTICIPATION**

**3.1 Participation**

An Employee is a Covered Employee and participates in the Plan during those periods in which the Employee:

- A. participates in the Cafeteria Plan, and
- B. has allocated an amount to their Dependent Care Spending Account.

Except for Dependent Care Expenses incurred before Plan coverage ceases and subject to satisfying the procedural requirements of Article VI, no Plan benefits are payable after coverage terminates.

**3.2 Termination of Participation**

A Covered Employee shall cease to participate in the Plan when they are no longer a participant in the Cafeteria Plan, when the Covered Employee revokes their election to participate in the Plan, or when the Covered Employee terminates employment, retires or dies.

**ARTICLE IV**  
**DEPENDENT CARE REIMBURSEMENT**  
**BENEFIT**

**4.1 Right to Benefit**

Subject to the following terms and limits and the Exclusions, Covered Employees are entitled to reimbursement for Dependent Care Expenses.

**4.2 Maintenance of Accounts**

The Plan Administrator shall maintain a Dependent Care Spending Account for each Employee who elects the dependent care spending account premium payment benefit. The dependent care spending account premium payment benefit that the Employee elected under the Cafeteria Plan shall be credited to the Employee's Dependent Care Spending Account on a pro-rata basis over the period for which the Employee's election is effective.

**4.3 Amount Payable**

Subject to the procedural requirements of Article VI, payable Dependent Care Expenses may not exceed the dependent care spending account premium payment benefit the Covered Employee authorized and which was credited in accordance with Section 4.2, less any payments previously made during the Plan Year — up to the Maximum Annual Benefit.

If any balance remains in a Covered Employee's Dependent Care Spending Account at the end of the Plan Year after all reimbursements have been made, such balance shall not be carried over to reimburse the Covered Employee for Dependent Care Expenses incurred during a subsequent Plan Year nor returned to the Covered Employee and the Covered Employee shall forfeit all rights with respect to such balance. Any amounts forfeited under this Section 4.3 shall not be segregated or invested in an interest bearing account, but shall remain the property of the Employer to be used to pay administrative expenses, to cover expense losses, or used in any other manner as the Employer in its discretion, exercised in a uniform and nondiscriminatory manner, directs.

**4.4 Dependent Care Expenses**

Dependent Care Expenses means *employment-related* expenses that a Covered Employee *incurs* — while employed — for:

- A. *Household services*, and
- B. *Care of a Qualifying Individual*.

*Employment-related*, as defined in Code Section 21(b), means incurred to enable a Covered Employee to be gainfully employed. In the case of a married Covered Employee, to be employment-related, the expense must also enable the Covered Employee's

Spouse to: be gainfully employed, actively seek gainful employment, or be a *full-time student*, unless the Spouse is described in Section 2.8(B).

*Incurs* refers to the date services resulting in employment-related expenses are provided — not the date charged, billed, or paid.

*Household services* means services ordinarily necessary to maintain a Covered Employee's home and rendered as part of a Qualifying Individual's *care*.

*Care* means services primarily to assure the well-being and protection of at least one Qualifying Individual.

*Full-time student* means a person enrolled at and attending an educational institution during at least part of each of five calendar months of the Covered Employee's tax year for the number of course hours that the institution considers to be a full-time course of study.

## 4.5 Limits

### A. On What the Plan Pays

#### 1. For Care Furnished Outside Covered Employee's Household

Dependent Care Expenses for care provided outside a Covered Employee's home or in a *Qualified Dependent Care Center* is reimbursed only if such care is furnished for a Qualifying Individual:

- a. described in Section 2.8(A), or
- b. described in Section 2.8(B) or (C) who regularly spends at least 8 hours each day in the Covered Employee's home.

*Qualified Dependent Care Center* means a facility:

- c. in compliance with all applicable state and local laws and regulations, and
- d. providing care for more than 6 persons (other than facility residents) on a regular, compensation-for-service basis.

#### 2. To Certain "Highly Compensated" Employees

Benefits payable under the Plan to each highly compensated employee, as defined in Code Section 414(q), are limited to the extent necessary to avoid violating Code Section 129(d)(8).

B. On Exclusion from Gross Income

1. Individual Exclusion Limit

Plan reimbursement for Dependent Care Expenses is excludable from a Covered Employee's gross income only to the extent the Dependent Care Expense does not exceed:

a. the sum of the Covered Employee's actual Salary Reduction Contributions for the Plan Year,

or, if less,

b. the Maximum Annual Benefit.

2. Gross Income Exclusion Limit

The amount of dependent care expenses reimbursed during a Covered Employee's taxable year by all plans, including the Plan, that qualify as dependent care plans under Code Section 129 may not exceed:

a. \$7,500 (or \$3,750 for a married Covered Employee filing a separate federal income tax return),

or, if less,

b. the Covered Employee's *earned income* (or if less, the Covered Employee's Spouse's *earned income*, if the Covered Employee was married at the end of their tax year).

*Earned income* means wages, salaries, tips, and other compensation, to the extent such amounts are includible in taxable income for the year, like strike benefits, disability pay reported as wages, and net earnings from self-employment.

*Earned income* does not include pensions, annuities, social security payments, workers' compensation, unemployment compensation, or a nonresident alien's income not connected with United States business.

*Earned income* is computed without considering community property laws.

*Earned income* of a Spouse who is a full-time student, as defined in Section 4.4, or who is *physically or mentally incapable of caring for him or herself*, as defined in Article II of this Appendix, is deemed to be not less than \$250 per month for Covered Employees with one Qualifying Individual or \$500 per month for Covered Employees with two or more Qualifying Individuals.

3. Reporting Identifying Information Limit

Plan reimbursement for Dependent Care Expenses is excludable from a Covered Employee's gross income only if the Covered Employee reports on the federal income tax return to which the exclusion relates, the name, address, and taxpayer identification number (or other information acceptable to comply with federal reporting requirements) of each dependent care service provider furnishing dependent care services to the Covered Employee during the year.

**ARTICLE V**  
**EXCLUSIONS**

**5.1 General Rules**

- A. The Plan pays only those Dependent Care Expenses incurred by an Employee:
  - 1. during the current Plan Year, except that the Plan will allow a grace period of two and one half months following the end of the Plan Year in which Covered Employees may incur Dependent Care Expenses for reimbursement from amounts remaining unused at the end of the immediately preceding Plan Year. This reimbursement will be treated as if the expenses had been incurred in the prior year,
  - 2. while the Employee is a Covered Employee, and
  - 3. to allow the Covered Employee (and Spouse, if married) to continue gainful employment (or, if married and the Spouse is unemployed, to allow the Covered Employee's Spouse to actively seek gainful employment or be a full-time student, as defined in Section 4.4, unless the Spouse is described in Section 2.8(B) of this Appendix).
- B. Except as provided in Section 5.1(A)(3), the Plan does not reimburse amounts paid for Dependent Care Expenses incurred while a Covered Employee (or Spouse, if married) is off work for any reason, including illness or vacation. However, if Dependent Care Expenses are paid to the dependent care services provider on a weekly or longer basis, Dependent Care Expenses incurred during a temporary absence from work for illness or vacation will not be subject to this exclusion.

**5.2 Specific Exclusions**

The Plan does not reimburse amounts paid in connection with:

- A. a Qualifying Individual's overnight camp;
- B. services rendered by:
  - 1. a Covered Employee's (and if married, the Covered Employee's Spouse's) child (within the meaning of Code Section 151)(3)) under age 19 at the Plan year's end,
  - 2. a Covered Employee's Spouse or parent of the Covered Employee's child, or
  - 3. a person for whom the Covered Employee (or if married, the Covered Employee's Spouse) is entitled to a federal income tax deduction under Code Section 151(c) for the Covered Employee's tax year.

### **5.3 Conditional Exclusions**

Unless incidental, minimal, and inseparable from the cost of caring for a Qualifying Individual, the Plan shall not pay any charges in connection with a Qualifying Individual's:

- A. food,
- B. clothing,
- C. entertainment,
- D. education (kindergarten and above), or
- E. transportation between the Covered Employee's home and the place where dependent care is provided unless such transportation is furnished by the dependent care provider.

**ARTICLE VI**  
**PROCEDURES**

**6.1 Enrollment and Election Procedures**

Employees may enroll and make elections only by filing the appropriate, completed forms with the Plan Administrator within prescribed time limits. Rules and deadlines for enrolling and making or changing elections are stated in the Cafeteria Plan.

**6.2 Claim Procedures**

No claim for benefits shall be payable unless a properly completed claim, including all necessary documentation of services received, is received by the Claim Administrator within 90 days following the Plan Year to which the claim relates, or, if earlier, within 90 days of the last day on which the claimant is a Covered Employee unless spend down is permitted upon termination in Section 3.2, Appendix A. This period of time may be referred to as the "Runout Period."

**6.3 Claim Administrator**

The Plan Administrator and/or the Company shall have the authority to appoint, remove, and replace one or more Claim Administrators. A Claim Administrator shall have the duties, powers, and responsibilities set forth herein. In the absence of such an appointment and except as hereinafter provided, the Plan Administrator shall also be the Claim Administrator.

**6.4 Claims Administration**

The Claim Administrator shall have the duty to receive and review claims for benefits under the Plan, to determine what amount, if any, is due and payable under the terms and conditions of the Plan, and to make appropriate disbursements of benefit payments to persons entitled thereto.

**6.5 Proof of Claim**

As a condition of receiving Plan benefits, claimants must:

- A. submit to the Plan Administrator:
  - 1. a properly completed and timely filed claim form,
  - 2. a written declaration stating the dependent care expense has not been reimbursed and is not reimbursable under any other dependent care plan, and
  - 3. a written declaration from an independent third party stating the Covered Employee has incurred the dependent care expense and the amount of such expense; and
- B. prove any claimed status.

## APPENDIX B

### CONFLUENT, INC. HEALTH CARE SPENDING ACCOUNT PLAN

#### ARTICLE I

#### PLAN ESTABLISHMENT

##### 1.1 Effective Date

The Confluent, Inc. Health Care Spending Account Plan ("the Plan") is amended and restated effective as of the Effective Date, as defined in Article I of the Confluent, Inc. Welfare Benefits Plan.

##### 1.2 Purpose

The Plan is created exclusively for Employees, as defined in Article II of the Cafeteria Plan. The Plan's purpose is to reimburse Covered Employees, as defined in Article II of this Appendix, for Qualifying Medical Expenses, as defined in Article II of this Appendix.

##### 1.3 Qualification

###### A. ERISA

The Plan is an *employee welfare benefit plan*, as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This document is intended to satisfy the written plan document requirement of ERISA Section 402.

###### B. Internal Revenue Code

The Plan is intended to qualify as a health plan under Section 105(e) of the Internal Revenue Code of 1986, as amended ("the Code"). The Plan's Qualifying Medical Expense reimbursements are intended to be eligible for exclusion from Covered Employees' gross income under Code Section 105(b). This document is intended to satisfy the written plan document requirement of Treasury Regulations Section 1.105-11(b)(1)(i).

##### 1.4 Incorporation By Reference

The term Cafeteria Plan as used in this Appendix means the Cafeteria Plan as defined in Section 1.3 of the Confluent, Inc. Welfare Benefits Plan. The terms of the Cafeteria Plan are incorporated by reference wherever they apply to this Plan's operation, to the extent such provisions do not conflict with the provisions of this Plan.

##### 1.5 Duration

The Plan is established with the intention of being maintained for an indefinite period of time; however, the Company, as defined in Article II of the Cafeteria Plan, in its sole discretion and in accordance with the provisions of Article XI of the Cafeteria Plan may amend or terminate the Plan or any provision of the Plan.

**ARTICLE II**  
**DEFINITIONS**

When capitalized in this document, these words and phrases have the following meanings:

**2.1 Covered Employee**

Covered Employee means an Employee who satisfies the participation requirements of Article III.

**2.2 Dependent**

Dependent means a Covered Employee's:

- A. Spouse, and
- B. dependent(s) as defined in Code Section 152, (without regard to (b)(1), (b)(2), and (d)(1)(B)), and
- C. the Covered Employee's child as defined in Code Section 152(f)(1) who has not attained age 27 as of the end of the taxable year.

**2.3 Effective Date**

Effective Date means the date this Plan becomes operative, which is the effective date identified in Article I of the Confluent, Inc. Welfare Benefits Plan.

**2.4 Exclusions**

Exclusions means the exclusions in Article V.

**2.5 Health Care Spending Account**

Health Care Spending Account means the notational account established on behalf of each Covered Employee who elects the Health Care Spending Account premium payment benefit under the Cafeteria Plan to which the Covered Employee allocates Salary Reduction Contributions for the reimbursement of Qualifying Medical Expenses.

**2.6 Maximum Annual Benefit**

Maximum Annual Benefit means the total Salary Reduction Contributions a Covered Employee authorizes to their Health Care Spending Account, according to the election procedures of Section 6.1, for Qualifying Medical Expense reimbursement, which amount must be not more than an amount to be communicated annually by the Plan Administrator and shall not exceed the maximum amount allowed under Section 125(i) of the Code in addition to any amount the Covered Employee may elect to carry over from the previous Plan Year, up to the Maximum Carryover Amount or the amount of the account balance at the end of the previous Plan Year, whichever is less.

## **2.7 Maximum Carryover Amount**

Maximum Carryover Amount means the maximum unused amounts remaining as of the end of a Plan Year in the Confluent, Inc. Health Care Spending Account Plan, which shall be \$680 but may increase as the amount communicated annually by the Employer, in such an amount not to exceed 20 percent of the maximum allowed under Section 125(i) of the Code.

## **2.8 Plan**

Plan means the Confluent, Inc. Health Care Spending Account Plan as herein set forth and as amended from time to time.

## **2.9 Qualifying Medical Expenses**

Qualifying Medical Expenses means a Covered Employee's and a Dependent's expenses *incurred* during the Plan Year for medical care as permitted under Section 105 of the Code, but only to the extent that the Covered Employee or Dependent incurring the expense is not otherwise entitled to reimbursement for the expense through insurance or otherwise (other than under this Plan). However, the Plan will allow a grace period of two and one half months following the end of the Plan Year in which Covered Employees and Dependents may incur Qualifying Medical Expenses to be reimbursed under the current Plan Year's election. *Incurred* refers to the date the medical care is provided — not to the date charged, billed, or paid.

**ARTICLE III**  
**PARTICIPATION**

**3.1 Participation**

An Employee is a Covered Employee and participates in the Plan during those periods in which the Employee:

- A. participates in the Cafeteria Plan, and
- B. has allocated an amount to their Health Care Spending Account.

Except for Qualifying Medical Expenses incurred before Plan coverage ceases and subject to satisfying the procedural requirements of Article VI, no Plan benefits are payable after coverage terminates.

**3.2 Termination of Participation**

A Covered Employee shall cease to participate in the Plan when they are no longer eligible to participate in the Cafeteria Plan, when the Covered Employee revokes their election to participate in the Plan pursuant to an allowed change in status or during Open Enrollment, or when the Covered Employee terminates employment, retires or dies.

**ARTICLE IV**  
**MEDICAL EXPENSE BENEFIT**

**4.1 Right to Benefit**

Subject to the following terms and limits and the Exclusions, Covered Employees are entitled to reimbursement for Qualifying Medical Expenses.

**4.2 Maintenance of Accounts**

The Plan Administrator shall maintain a Health Care Spending Account for each Employee who elects the health care spending account premium payment benefit. The health care spending account premium payment benefit elected by the Employee shall be credited to their Health Care Spending Account as of the first day that the Employee's election is effective.

**4.3 Amount Payable**

Subject to the procedural requirements of Article VI, payable Qualifying Medical Expenses may not exceed the health care spending account premium payment benefit the Covered Employee elected to be credited to their Health Care Spending Account for the Plan Year, less any payments previously made during the Plan Year — up to the Maximum Annual Benefit, plus any amounts carried over from prior Plan Years pursuant to Section 4.4 of the Confluent, Inc. Welfare Benefits Plan.

If any balance remains in a Covered Employee's Health Care Spending Account at the end of the Plan Year after all reimbursements have been made, such balance shall not be carried over to reimburse the Covered Employee for Qualifying Medical Expenses incurred during a subsequent Plan Year (except for any carryover amounts described in Section 4.4 of the Confluent, Inc. Welfare Benefits Plan nor returned to the Covered Employee, and the Covered Employee shall forfeit all rights with respect to such balance. Such forfeitures shall be used to offset losses experienced by the Employer as a result of reimbursements exceeding Plan contributions in the aggregate, for reasonable administrative expenses of the Confluent, Inc. Welfare Benefits Plan, or in any other manner permitted by applicable law or regulation.

**4.4 Limits**

The Plan reimburses Qualifying Medical Expenses only to the extent the charge is not compensated for by any prepaid health coverage, group health plan, medical insurance, or otherwise. Qualifying Medical Expenses include deductibles and co-payments if not reimbursed through coordination of benefits with a secondary payor.

**ARTICLE V**  
**EXCLUSIONS**

**5.1 General Rules**

- A. The Plan pays only those Qualifying Medical Expenses incurred by an Employee or the Employee's Dependent:
  - 1. during the current Plan Year, except as permitted under Section 4.4 of the Confluent, Inc. Welfare Benefits Plan for amounts carried over into a subsequent Plan Year, and
  - 2. while the Employee is a Covered Employee.
- B. The Plan does not reimburse amounts paid for services or supplies that merely improve health or morale generally.

**5.2 Specific Exclusions**

The Plan does not reimburse amounts paid in connection with:

- A. cosmetic surgery or similar procedure unless the surgery or procedure is necessary to ameliorate a deformity arising from or directly related to a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease,
- B. custodial or domiciliary care,
- C. diaper service,
- D. funeral and burial expenses,
- E. health club membership fees and dues,
- F. household and domestic help,
- G. illegal services and supplies,
- H. insurance premiums of any kind including those for health maintenance organizations, life insurance, long term care, loss of earnings, accidental death or dismemberment, automobile insurance, and group medical or other health insurance,
- I. meals and lodging at a nonmedical facility,
- J. maternity clothes or uniforms,
- K. nursing services for a normal, healthy newborn baby, except for breast pumps and supplies that assist lactation,

- L. over-the-counter or nonprescription drugs or items unless permitted under applicable law or regulation,
- M. personal use items like cosmetics, toiletries, and items for personal hygiene or beautification, other than menstrual care products or PPE
- N. schooling or tuition for scholastic improvement or discipline,
- O. social activities like dancing or swimming lessons,
- P. special foods or dietary supplements like vitamins, minerals, bottled water, and diet foods,
- Q. transportation for nonmedical reasons,
- R. trips or vacations, and
- S. long term care expenses.

**ARTICLE VI**  
**PROCEDURES**

**6.1 Enrollment and Election Procedures**

Employees may enroll and make elections only by filing the appropriate, completed forms with the Plan Administrator within prescribed time limits. Rules and deadlines for enrolling and making or changing elections are stated in the Cafeteria Plan.

**6.2 Claim Procedures**

No claim for benefits shall be payable unless a properly completed claim, including all necessary documentation of services received, is received by the Claim Administrator within 90 days following the Plan Year to which the claim relates, or, if earlier, within 90 days of the last day on which the claimant is a Covered Employee. This period of time may be referred to as the "Runout Period."

**6.3 Claim Administrator**

The Plan Administrator and/or the Company shall have the authority to appoint, remove, and replace one or more Claim Administrators. A Claim Administrator shall have the duties, powers, and responsibilities set forth herein. In the absence of such an appointment and except as hereinafter provided, the Plan Administrator shall also be the Claim Administrator.

**6.4 Claims Administration**

The Claim Administrator shall have the duty to receive and review claims for benefits under the Plan, to determine what amount, if any, is due and payable under the terms and conditions of the Plan, and to make appropriate disbursements of benefit payments to persons entitled thereto.

**6.5 Proof of Claim**

As a condition of receiving Plan benefits, claimants must:

- A. submit to the Plan Administrator:
  - 1. a properly completed and timely filed claim form,
  - 2. a written declaration stating the Qualifying Medical Expense has not been reimbursed and is not reimbursable under any other health plan, and
  - 3. a written declaration from an independent third party stating the Covered Employee has incurred the medical expense and the amount of such expense; and
- B. prove any claimed status.

## APPENDIX C

### CONFLUENT, INC. LIMITED PURPOSE HEALTH CARE SPENDING ACCOUNT PLAN

#### ARTICLE I

#### PLAN ESTABLISHMENT

##### 1.1 Effective Date

The Confluent, Inc. Limited Purpose Health Care Spending Account Plan ("the Plan") is amended and restated effective as of the Effective Date, as defined in Article I of the Confluent, Inc. Welfare Benefits Plan.

##### 1.2 Purpose

The Plan is created exclusively for Employees, as defined in Article II of the Cafeteria Plan. The Plan's purpose is to reimburse Covered Employees, as defined in Article II of this Appendix, for Qualifying Medical Expenses, as defined in Article II of this Appendix.

##### 1.3 Qualification

###### A. ERISA

The Plan is an *employee welfare benefit plan*, as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This document is intended to satisfy the written plan document requirement of ERISA Section 402.

###### B. Internal Revenue Code

The Plan is intended to qualify as a health plan under Section 105(e) of the Internal Revenue Code of 1986, as amended ("the Code"). The Plan's Qualifying Medical Expense reimbursements are intended to be eligible for exclusion from Covered Employees' gross income under Code Section 105(b). This document is intended to satisfy the written plan document requirement of Treasury Regulations Section 1.105-11(b)(1)(i).

##### 1.4 Incorporation By Reference

The term Cafeteria Plan as used in this Appendix means the Cafeteria Plan as defined in Section 1.3 of the Confluent, Inc. Welfare Benefits Plan. The terms of the Cafeteria Plan are incorporated by reference wherever they apply to this Plan's operation, to the extent such provisions do not conflict with the provisions of this Plan.

##### 1.5 Duration

The Plan is established with the intention of being maintained for an indefinite period of time; however, the Company, as defined in Article II of the Cafeteria Plan, in its sole discretion and in accordance with the provisions of Article XI of the Cafeteria Plan may amend or terminate the Plan or any provision of the Plan.

**ARTICLE II**  
**DEFINITIONS**

When capitalized in this document, these words and phrases have the following meanings:

**2.1 Covered Employee**

Covered Employee means an Employee who satisfies the participation requirements of Article III.

**2.2 Dependent**

Dependent means a Covered Employee's:

- A. Spouse, and
- B. dependent(s) as defined in Code Section 152, (without regard to (b)(1), (b)(2), and (d)(1)(B)), and
- C. the Covered Employee's child as defined in Code Section 152(f)(1)) who has not attained age 27 as of the end of the taxable year.

**2.3 Effective Date**

Effective Date means the date this Plan becomes operative which is the effective date identified in Article I of the Confluent, Inc. Welfare Benefits Plan.

**2.4 Exclusions**

Exclusions means the exclusions in Article V.

**2.5 Limited Purpose Health Care Spending Account**

Limited Purpose Health Care Spending Account means the notational account established on behalf of each Covered Employee who elects the Limited Purpose Health Care Spending Account premium payment benefit under the Cafeteria Plan to which the Covered Employee allocates Salary Reduction Contributions for the reimbursement of Qualifying Medical Expenses.

**2.6 Maximum Annual Benefit**

Maximum Annual Benefit means the total Salary Reduction Contributions a Covered Employee authorizes to their Limited Purpose Health Care Spending Account, according to the election procedures of Section 6.1, for Qualifying Medical Expense reimbursement, which amount must be not more than an amount to be communicated annually by the Plan Administrator, and shall not exceed the maximum amount allowed under Section 125(i) of the Code , in addition to any amount the Covered Employee may elect to carry over from the previous Plan Year, up to the Maximum Carryover Amount or the amount of the account balance at the end of the previous Plan Year, whichever is less.

## **2.7 Maximum Carryover Amount**

Maximum Carryover Amount means the maximum unused amounts remaining as of the end of a Plan Year in the Confluent, Inc. Limited Purpose Health Care Spending Account Plan, which shall be \$680, but may increase as communicated annually by the Employer, in such an amount not to exceed 20 percent of the maximum amount allowed under Section 125(i) of the Code.

## **2.8 Plan**

Plan means the Confluent, Inc. Limited Purpose Health Care Spending Account Plan as herein set forth and as amended from time to time.

## **2.9 Qualifying Medical Expenses**

Qualifying Medical Expenses means a Covered Employee's and a Dependent's expenses *incurred* during the Plan Year for medical care as permitted under Section 105 of the Code, but only to the extent that the Covered Employee or Dependent incurring the expense is not otherwise entitled to reimbursement for the expense through insurance or otherwise (other than under this Plan).

Notwithstanding any other Plan provision, medical expenses that are not dental, vision or preventive care expenses are not considered Qualifying Medical Expenses under this Plan.

**ARTICLE III**  
**PARTICIPATION**

**3.1 Participation**

An Employee is a Covered Employee and participates in the Plan during those periods in which the Employee:

- A. participates in the Cafeteria Plan, and
- B. has allocated an amount to their Limited Purpose Health Care Spending Account.

Except for Qualifying Medical Expenses incurred before Plan coverage ceases and subject to satisfying the procedural requirements of Article VI, no Plan benefits are payable after coverage terminates.

**3.2 Termination of Participation**

A Covered Employee shall cease to participate in the Plan when they are no longer eligible to participate in the Cafeteria Plan, when the Covered Employee revokes their election to participate in the Plan pursuant to an allowed change in status or during Open Enrollment, or when the Covered Employee terminates employment, retires or dies.

## **ARTICLE IV**

### **MEDICAL EXPENSE BENEFIT**

#### **4.1 Right to Benefit**

Subject to the following terms and limits and the Exclusions, Covered Employees are entitled to reimbursement for Qualifying Medical Expenses.

#### **4.2 Maintenance of Accounts**

The Plan Administrator shall maintain a Limited Purpose Health Care Spending Account for each Employee who elects the limited purpose health care spending account premium payment benefit. The limited purpose health care spending account premium payment benefit elected by the Employee shall be credited to their Limited Purpose Health Care Spending Account as of the first day that the Employee's election is effective.

#### **4.3 Amount Payable**

Subject to the procedural requirements of Article VI, payable Qualifying Medical Expenses may not exceed the limited purpose health care spending account premium payment benefit the Covered Employee elected to be credited to their Limited Purpose Health Care Spending Account for the Plan Year, less any payments previously made during the Plan Year — up to the Maximum Annual Benefit, plus any amounts carried over from prior Plan Years pursuant to Section 4.4 of the Confluent, Inc. Welfare Benefits Plan.

If any balance remains in a Covered Employee's Limited Purpose Health Care Spending Account at the end of the Plan Year after all reimbursements have been made, such balance shall not be carried over to reimburse the Covered Employee for Qualifying Medical Expenses incurred during a subsequent Plan Year (except for any carryover amounts described in Section 4.4 of the Confluent, Inc. Welfare Benefits Plan, nor returned to the Covered Employee, and the Covered Employee shall forfeit all rights with respect to such balance. Such forfeitures shall be used to offset losses experienced by the Employer as a result of reimbursements exceeding Plan contributions in the aggregate, for reasonable administrative expenses of the Confluent, Inc. Welfare Benefits Plan, or in any other manner permitted by applicable law or regulation.

#### **4.4 Qualifying Medical Expenses**

Qualifying Medical Expenses, as defined by Article II, must be dental, vision, or preventive care expenses. The following are examples of Qualifying Medical Expenses to the extent they are not covered by any other health plan and meet the limitations described below:

- A. Vision Expenses
  - 1. Eyeglasses
  - 2. Contact lenses
  - 3. Ophthalmologist fees

4. The cost of a guide dog for the blind and special education devices for the blind (such as an interpreter)

B. Dental Expenses

1. Anesthesia
2. Cleaning
3. Charges in excess of Usual and Prevailing Fee Limits
4. Drugs and their administration
5. Experimental procedures
6. Extra sets of dentures or other Dental appliances
7. Medically Necessary orthodontia expenses for adults or dependents
8. Myofunctional therapy
9. Replacement of dentures or bridgework
10. Replacement of lost, stolen, or missing dentures or orthodontic devices

C. Preventive Care Expenses

**4.5 Limits**

The Plan reimburses Qualifying Medical Expenses only to the extent the charge is not compensated for by any prepaid health coverage, group health plan, medical insurance, or otherwise. Qualifying Medical Expenses may include certain deductibles and co-payments if not reimbursed through coordination of benefits with a secondary payor.

**ARTICLE V**  
**EXCLUSIONS**

**5.1 General Rules**

- A. The Plan pays only those Qualifying Medical Expenses incurred by an Employee or the Employee's Dependent:
  - 1. during the current Plan Year except as permitted under Section 4.4 of the Confluent, Inc. Welfare Benefits Plan for amounts carried over into a subsequent Plan Year, and
  - 2. while the Employee is a Covered Employee.
- B. The Plan does not reimburse amounts paid for services or supplies that merely improve health or morale generally.

**5.2 Specific Exclusions**

The Plan does not reimburse amounts that are not paid for dental, vision, or preventive services.

**ARTICLE VI**  
**PROCEDURES**

**6.1 Enrollment and Election Procedures**

Employees may enroll and make elections only by filing the appropriate, completed forms with the Plan Administrator within prescribed time limits. Rules and deadlines for enrolling and making or changing elections are stated in the Cafeteria Plan.

**6.2 Claim Procedures**

No claim for benefits shall be payable unless a properly completed claim, including all necessary documentation of services received, is received by the Claim Administrator within 90 days following the Plan Year to which the claim relates, or, if earlier, within 90 days of the last day on which the claimant is a Covered Employee. This period of time may be referred to as the "Runout Period."

**6.3 Claim Administrator**

The Plan Administrator and/or the Company shall have the authority to appoint, remove, and replace one or more Claim Administrators. A Claim Administrator shall have the duties, powers, and responsibilities set forth herein. In the absence of such an appointment and except as hereinafter provided, the Plan Administrator shall also be the Claim Administrator.

**6.4 Claims Administration**

The Claim Administrator shall have the duty to receive and review claims for benefits under the Plan, to determine what amount, if any, is due and payable under the terms and conditions of the Plan, and to make appropriate disbursements of benefit payments to persons entitled thereto.

**6.5 Proof of Claim**

As a condition of receiving Plan benefits, claimants must:

- A. submit to the Plan Administrator:
  - 1. a properly completed and timely filed claim form,
  - 2. a written declaration stating the Qualifying Medical Expense has not been reimbursed and is not reimbursable under any other health plan, and
  - 3. a written declaration from an independent third party stating the Covered Employee has incurred the medical expense and the amount of such expense; and
- B. prove any claimed status.

**APPENDIX D**

**APPLICABLE INCORPORATED DOCUMENTS**

<u>APPLICABLE BENEFIT</u>	<u>APPLICABLE INCORPORATED DOCUMENT</u>
Medical Benefits	<p>Kaiser Group policy #715622 (Northern CA); 235353 (Southern CA) and</p> <p>Kaiser Permanente Traditional HMO Plan Evidence of Coverage</p> <p>Kaiser Permanente HSA-Qualified High Deductible Health Plan (“HDHP”) HMO Evidence of Coverage</p> <p>Collective Health Medical Plans</p> <p>Collective Health PPO Plan SPD</p> <p>Collective Health EPO Plan SPD</p> <p>Collective Health HDHP Plan SPD</p>
Dental Benefits	Delta Dental Employee Benefit Booklet
Vision Benefits	VSP Evidence of Coverage & Disclosure Form
Employee Assistance Plan	Lyra Member Overview Flyer and Benefits Summary
Basic Life and Accidental Death and Dismemberment Benefits	Group Life Insurance Policy and Certificate of Coverage
Supplemental Life and Accidental Death and Dismemberment Benefits	Group Life Insurance Policy and Certificate of Coverage
Business Travel Accident Benefits	Chubb Group Accident Insurance Certificate
Short Term Disability Benefits	Confluent Short Term Disability Benefit Plan Summary Plan Description

Long Term Disability Benefits		Group Disability Income Policy and Certificate of Coverage
Group Legal Benefits (Not subject to ERISA)		Rocket Lawyer Legal Benefits Plan Summary
All Benefits		The Confluent, Inc. Welfare Benefits Plan Wraparound Summary Plan Description

This Appendix D shall be subject to modification without formal amendment of the Plan.

## **APPENDIX E**

### **EMPLOYEES OF THE EMPLOYER APPROVED TO HAVE ACCESS TO HIPAA PROTECTED HEALTH INFORMATION**

1. People Ops Specialist,
2. People Ops Generalist,
3. HRIS Analyst,
4. Benefits Specialist,
5. Benefits Manager,
6. Director of Global Benefits,
7. Payroll Manager,
8. Payroll Specialist,
9. Payroll Analyst
10. Employment Law Compliance Counsel
11. Chief Legal Officer
12. Associate General Counsel, Employment
13. Chief People Officer
14. People Business Partner
15. Vice President, Total Rewards
16. Director, HRIS
17. Manager, People Analytics
18. VP, People & Places Operations

This list of Employees with access to PHI shall be subject to modification without formal amendment of the Plan.

**APPENDIX F**  
**PARTICIPATING EMPLOYERS**

In addition to Confluent, Inc., the following entities are Participating Employers in this Plan:

1. Confluent Federal, LLC 85-2654484

The list of Participating Employers shall be subject to modification without formal amendment of the Plan.

**APPENDIX G**  
**CONFLUENT, INC.**  
**HEALTH SAVINGS ACCOUNT**  
**ARTICLE I**  
**PLAN ESTABLISHMENT**

**1.1 Trustee/Custodial Agreement**

Health Savings Account benefits under the Cafeteria Plan consist solely of the ability to make contributions to the Health Savings Account pursuant to the Salary Reduction Agreement. Terms and conditions of coverage and benefits (e.g., eligible medical expenses, claims procedures, etc.) will be provided by the applicable trustee/custodian for the Health Savings Account, not this Cafeteria Plan. The terms and conditions of each Covered Employee's Health Savings Account trust or custodial account are described in the Health Savings Account trust or custodial agreement provided by the applicable trustee/custodian to each electing Covered Employee and are not a part of this Plan.

**1.2 Health Savings Account Not Intended to be an ERISA Plan**

The Health Savings Account is not an employer-sponsored employee benefits plan. It is a savings account that is established and maintained by a Health Savings Account trustee/custodian outside this Plan to be used primarily for reimbursement of "qualified medical expenses" as set forth in Code Section 223(d)(2). The Employer has no authority or control over the funds deposited in a Health Savings Account. Even though this Cafeteria Plan may allow contributions to a Health Savings Account through salary reductions, the Health Savings Account is not intended to be an ERISA benefit plan sponsored or maintained by the Employer.

**1.3 Incorporation By Reference**

The term Cafeteria Plan as used in this Appendix means the Cafeteria Plan as defined in Section 1.3 of the Confluent, Inc. Welfare Benefits Plan. The terms of the Cafeteria Plan are incorporated by reference wherever they apply to this Plan's operation, to the extent such provisions do not conflict with the provisions of this Plan.

**ARTICLE II**  
**DEFINITIONS**

In this Appendix, references to an Article or Section refer to an Article or Section of this Appendix, unless otherwise specified. When capitalized in this document, these words and phrases have the following meanings:

**2.1 Covered Employee**

Covered Employee means an Employee who satisfies the participation requirements of Article III.

**2.2 Health Savings Account (HSA)**

An individual trust or custodial account established under Code Section 223 by a Covered Employee with a trustee/custodian that has contracted with the Company to receive pre-tax salary reduction contributions. Although funded by Salary Reduction Contributions under the Cafeteria Plan, the Health Savings Account is not part of or intended to be part of an ERISA-covered benefit plan.

**ARTICLE III**  
**PARTICIPATION**

**3.1 Participation**

An Employee is a Covered Employee and participates in the Health Savings Account during those periods in which the Employee:

- A. participates in the Cafeteria Plan and an Employer-sponsored high deductible health plan that meets the requirements of Section 223; and
- B. has elected the Health Savings Account Premium Payment Benefit as described in Article IV of the Cafeteria Plan.

## **ARTICLE IV**

### **HEALTH SAVINGS ACCOUNT BENEFIT**

#### **4.1 Contributions for Cost of Coverage for HSA/Maximum Limits**

The annual contribution for a Covered Employee's Health Savings Account is equal to the annual benefit amount elected by the Health Savings Account, but in no event shall the amount elected exceed the statutory maximum amount for HSA contributions applicable to the Covered Employee's high-deductible health plan coverage option (i.e., single or family) for the calendar year in which the contribution is made. An additional catch-up contribution of up to \$1,000 may be made for Covered Employees who are age 55 or older as of the end of the taxable year.

In addition, the maximum annual contribution shall be:

- A. reduced by any Employer contribution made on the Covered Employee's behalf; and
- B. prorated for the number of months in which the Covered Employee is an HSA-eligible individual, unless the Covered Employee chooses to use the full-year contribution rule described in Section 223(b)(8).

Because HSAs are individual accounts, complying with the maximum annual contribution is the responsibility of the Covered Employee.

#### **4.2 Recording Contributions for HSA**

As described in Article I, the HSA is not an employer-sponsored employee benefit plan—it is an individual trust or custodial account separately established and maintained by a trustee/custodian outside the Plan. Consequently, the HSA trustee/custodian, not the Employer, will establish and maintain the HSA. The HSA trustee/custodian will be chosen by the Participant, not by the Employer. The Employer may, however, limit the HSA provider to whom it will forward Employer contributions and contributions that the Participant makes via Salary Reduction Agreement.

The Plan Administrator will maintain records to track HSA contributions a Covered Employee makes pursuant to the Salary Reduction Agreement, but it will not create a separate fund or otherwise segregate assets for this purpose. The Company has no authority or control over the funds deposited in an HSA.

#### **4.3 Tax Treatment of HSA Contributions and Distributions**

The federal income tax treatment of the HSA (including contributions and distributions) is governed by Code Section 223.

#### **4.4 Failure to Establish HSA**

Participants that fail to establish a Health Savings Account in accordance with the HSA bank's procedures within a reasonable time following enrollment in the Plan will forfeit the Employer HSA contributions to which the Employee otherwise would have been

entitled, if any and Employee Salary Deduction Contributions attributable to the HSA shall be refunded to the Employee as taxable compensation. In no event will Employer HSA contributions (if any) be made following December 31<sup>st</sup> of the Plan Year during which the Employee becomes entitled to receive such Employer HSA contributions.