

Sample Plan Document for Premium-only Plan

**PLAN DOCUMENT  
FOR  
“PREMIUM ONLY”  
  
SECTION 125 CAFETERIA PLAN**

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**[Amended and Restated], Effective July 1, 2007**

**FOR REVIEW BY EMPLOYER AND ITS LEGAL COUNSEL**

Section 125 Cafeteria Plan

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## Section 125 Cafeteria Plan

### Article 1. Introduction.

1.1. Establishment; Purpose of Plan. The Employer [adopts] [amends, restates and continues] the Plan consisting of this Plan document, the Adoption Agreement, the attached Schedules, and amendments thereto. The name of the Plan shall be the name stated in Section I.A. of the Adoption Agreement. The purpose of this Plan is to provide Participants with a choice between regular cash compensation and Optional Benefit Coverages.

1.2. Cafeteria plan status. This Plan is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code of 1986, as amended, and is to be interpreted in a manner consistent with the requirements of Section 125. To the extent required, this Plan is also intended to be maintained as required by, and in accordance with, M.G.L. c. 151F, 956 CMR 4.00 and such other rules and regulations of the Commonwealth Health Insurance Connector Authority, as amended from time to time.

### Article 2. Definitions.

Wherever used in this Plan, the singular includes the plural and the following terms have the following meanings, unless a different meaning is clearly required by the context:

2.1. "Administrator" means the Employer or such other person or committee as may be appointed from time to time by the Employer to supervise the administration of the Plan.

2.2. "Code" means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any regulations thereunder and any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

2.3. "Coverage Period" means the Plan Year.

2.4. "Effective Date" means the date set forth in Section I.C. of the Adoption Agreement.

2.5. "Eligible Employee" means an Employee who meets the eligibility requirements described in Section III of the Adoption Agreement. An individual who does not meet the eligibility requirements in the Adoption Agreement shall not be eligible to participate in the Plan under any circumstances.

2.6. "Employee" means any individual who is employed by the Employer at a Massachusetts location, whether or not the individual is a Massachusetts resident. Employee includes, by way of example and not by way of limitation, full-time Employees, part-time Employees, Temporary Employees, and Seasonal Employees. Employee shall not include an Independent Contractor or an individual who is self-employed in accordance with Code section 401(c).

2.7. "Employer" means the entity identified in Section I.A of the Adoption Agreement and any successor to all or a major portion of its assets or business, by merger or otherwise, that assumes the obligations of the Employer under the Plan.

2.8. "Independent Contractor" means an individual that provides services not deemed to be employment under M.G.L. c. 151A, § 2.

2.9. "Key Employee" means any person who is a key employee, as defined in section 416(i)(1) of the Code, with respect to the Employer.

2.10. "Multiemployer Health Benefit Plan" means a health benefit plan to which more than one employer is required to contribute, which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and there is evidence that such employer contributions to the Multiemployer Health Benefit Plan were the subject of good faith bargaining between such employee representatives and such employers.

2.11. "Optional Benefit Coverages" means the medical care coverage option(s) ("MCCO") available to a Participant as set forth in Section V of the Adoption Agreement.

2.12. "Participant" means any individual who participates in the Plan in accordance with

Article 3.

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

2.14. "Plan" means the cafeteria plan set forth in this Plan document and the Adoption Agreement, the name of which is designated in the Adoption Agreement, together with any and all Schedules and amendments thereto. The terms of this Plan document shall be interpreted in accordance with the elections made by the Employer in the Adoption Agreement.

2.15. "Plan Year" means the period set forth in Section I.E of the Adoption Agreement.

2.16. "Seasonal Employee" means an Employee who is a seasonal employee that works for an Employer that is a seasonal employer, as such terms are defined in M.G.L. c. 151A, section 1.

2.17. "Temporary Employee" means an individual that works for an Employer on either a full or part time basis; whose employment is explicitly temporary in nature and does not exceed 12 consecutive weeks during the period from October 1 through September 30.

Article 3. Participation.

3.1. Commencement of participation. Each Eligible Employee will become a Participant in this Plan on the date he or she becomes an Eligible Employee, subject to

his or her completion of any applicable waiting period set forth on the attached Adoption Agreement. Participation in this Plan means only that the Participant is entitled to contribute toward his or her share of the cost of Optional Benefit Coverages on a pre-tax basis. The date participation in this Plan commences does not necessarily correspond with the effective date of any Optional Benefit Coverage elected by the Participant. Each Participant may elect Optional Benefit Coverages in accordance with, and subject to, the procedures set forth in Article 4 and such other procedures as may be established by the Administrator from time to time.

3.2. Cessation of participation. A Participant shall cease to be a Participant as of the earlier of (a) the date on which the Plan terminates or (b) the date on which he or she ceases to be an Eligible Employee.

3.3. Reinstatement of former Participant. A former Participant who meets the requirements for an Eligible Employee will become a Participant again if and when he or she becomes an Eligible Employee, subject to the completion of any applicable waiting period.

#### Article 4. Optional Benefit Coverages.

4.1. Coverage options. Each Participant may choose under this Plan to receive his or her full compensation in cash or to have all or a portion of such compensation applied by the Employer toward the cost of the Optional Benefit Coverages elected by the Participant. Notwithstanding anything herein to the contrary, Optional Benefit Coverages shall be limited to those medical care coverage options (MCCO ) identified in Section V of the Adoption Agreement to the extent they are available to the Participant.

4.2. Description of Optional Benefit Coverages. While the election of Optional Benefit Coverages may be made under this Plan, the coverages and benefits elected by Participants will be provided not by this Plan but by the applicable MCCO identified in the Adoption Agreement. The types and amounts of benefits available under each MCCO, the requirements for participating in such MCCO, the effective date of the

MCCO coverage and the other terms and conditions of coverage and benefits under such MCCO are as set forth from time to time in the insurance policy forms that constitute (or are incorporated by reference in) the applicable MCCO. The benefit descriptions in such MCCO and in the evidence of coverage corresponding to such MCCO, as in effect from time to time, are hereby incorporated by reference into this Plan.

4.3. Election of Optional Benefit Coverages in Lieu of Cash. A Participant may elect under this Plan, in accordance with the procedures described in Sections 4.4, 4.5 and 4.6, to receive one or more Optional Benefit Coverages to the extent available to the Participant under the Adoption Agreement. If a Participant elects an Optional Benefit Coverage for a Coverage Period, and if the Participant is required to pay all or a share of the cost of such coverage in accordance with Section IV of the Adoption Agreement, such share shall be paid by a reduction in the Participant's regular compensation for the Coverage Period. The balance of the cost of each such coverage, if any, shall be paid by the Employer under this Plan with nonelective Employer contributions. In the event that the Participant's regular compensation is insufficient in amount to pay the Participant's share of the monthly cost of such Optional Benefit Coverage by compensation reduction, the Employer has no responsibility under this Plan to cover, pay or advance on behalf of the Participant any such shortfall and the Participant shall make immediate arrangements to pay any such shortfall on an after-tax basis in accordance with the procedures specified by the Administrator.

4.4. Election procedure. Prior to the commencement of each Coverage Period, the Administrator shall provide (or make available) a means of election for each Participant and for each other individual who is expected to become a Participant at the beginning of the applicable Coverage Period. The election shall be effective as of the first day of the Coverage Period. Each Participant who desires to elect an Optional Benefit Coverage available for the Coverage Period shall so specify in his or her election. The Participant shall agree to a reduction in his or her compensation equal to the cost of the Optional Benefit Coverages elected by the Participant. Each election must be made on or before such date as the Administrator shall specify.

4.5. New Participants. Before, or as soon as practicable after, an individual becomes a Participant under Section 3.1 or 3.3, the Administrator shall provide the means of election described in Section 4.4 to the individual. If the individual desires one or more Optional Benefit Coverages for the balance of the Coverage Period, the individual shall so specify in his or her election. The Participant shall agree to a reduction in his or her compensation equal to the cost of the Optional Benefit Coverages elected by the Participant. Each election must be made on or before such date as the Administrator shall specify.

4.6. Failure to make election.

(a) A new Participant's failure to make an election under Section 4.4 or 4.5 on or before the due date specified by the Administrator for the Coverage Period in which he or she becomes a Participant shall constitute an election by the Participant to receive his or her full compensation in cash.

(b) An existing Participant's failure to make an election relating to an Optional Benefit Coverage on or before the due date specified by the Administrator for any subsequent Coverage Period shall constitute (1) a re-election of the same coverage, if any, as was in effect just prior to the end of the preceding Coverage Period (to the extent such Optional Benefit Coverage remains available under the Plan), and (2) an agreement to a reduction in the Participant's compensation for the subsequent Coverage Period equal to the cost of such coverage.

4.7. Revocation or change of election by the Participant during the Coverage Period.

(a) Any election made under the Plan (including an election made through inaction under Section 4.6) shall be irrevocable by the Participant during the Coverage Period except as otherwise provided in (b) through (k) below.



(b) With respect to an Optional Benefit Coverage, a Participant may revoke an election for the balance of the Coverage Period and, if desired, file a new election in writing if, under the facts and circumstances, (1) a change in status occurs, and (2) the requested revocation and new election satisfy the consistency requirements in Section 4.8 below. For this purpose, a change in status includes the following events:

(1) Legal marital status. An event that changes a Participant's legal marital status, including marriage, death of spouse, divorce, or legal separation or annulment.

(2) Number of dependents. An event that changes a Participant's number of dependents (as defined in Code Section 152), including birth, death, adoption or placement for adoption.

(3) Employment Status. An event that changes the employment status of the Participant, the Participant's spouse or dependent, including termination or commencement of employment, a strike or lockout, a commencement or return from an unpaid leave of absence, or a change in worksite, as well as any other change in the individual's employment status that results in the individual becoming (or ceasing to be) eligible under a benefit plan of the Employer.

(4) Requirements For Unmarried Dependents. An event that causes a dependent to satisfy or cease to satisfy the requirements for coverage on account of attainment of age, student status, or any similar circumstance.

(5) Residence. A change in the place of residence of the Participant or his or her spouse or dependent.

(6) Other. Such other events that the Administrator determines will permit the revocation of an election (and, if applicable,



the filing of a new election) during a Coverage Period under regulations and rulings of the Internal Revenue Service.

(c) In the case of coverage under a medical plan identified in the Adoption Agreement, a Participant may revoke an election for the balance of the Coverage Period and file a new election that corresponds with the special enrollment rights provided in Code Section 9801(f) pertaining to HIPAA special enrollment rights, whether or not the change in election is permitted under Section 4.7(b) above.

(d) In the case of a judgment, decree or order resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order) that requires health coverage for a Participant's child or for a foster child who is a dependent of the Participant, a Participant may change his or her election (1) in order to provide coverage for the child under a health coverage identified in the Adoption Agreement if the order so requires, or (2) in order to cancel a health coverage identified in the Adoption Agreement for the Participant's child if such order requires the Participant's spouse or former spouse or another individual to provide coverage for the child and that coverage is, in fact, provided.

(e) In the case of a medical Optional Benefit Coverage, a Participant may revoke an election in writing for the balance of the Coverage Period and file a new election in writing in order to cancel or reduce such medical Optional Benefit Coverage for the Participant and/or for one or more covered dependents of the Participant to the extent that such individual becomes entitled to coverage under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). In addition, if the Participant or any eligible dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may file a new

election in writing for the balance of the Coverage Period to commence or increase a medical Optional Benefit Coverage.

(f) In the case of a medical Optional Benefit Coverage, if the Participant's share of the cost of such coverage significantly increases or significantly decreases during the Coverage Period, the Participant may make a corresponding change in election under the Plan for the balance of the Coverage Period, as follows:

(1) for a significant cost increase, Participants electing such coverage for the Coverage Period may revoke their election and either elect a similar Optional Benefit Coverage for the balance of the Coverage Period, or drop such coverage if there is no similar Optional Benefit Coverage; or

(2) for a significant cost decrease, Participants may elect to commence participation in the Optional Benefit Coverage with the significant cost decrease and may make corresponding election changes regarding similar coverage, for the balance of the Coverage Period.

(g) In the case of a medical Optional Benefit Coverage, if the Participant or his or her spouse or dependent experiences a significant curtailment in coverage during the Coverage Period, the Participant may make a corresponding change in election under the Plan for the balance of the Coverage Period as follows:

(1) for a significant curtailment that is not a loss of coverage, the Participant electing such coverage for the Coverage Period may revoke his or her election and elect a similar medical Optional Benefit Coverage for the balance of the Coverage Period; or

(2) for a significant curtailment that is (or is deemed by the Administrator to be) a loss of coverage, the Participant electing such

coverage for the Coverage Period may revoke his or her election and either elect a similar Optional Benefit Coverage for the balance of the Coverage Period, or drop such coverage if there is no similar Optional Benefit Coverage.

(h) If during the Coverage Period a new Optional Benefit Coverage becomes available, or an existing Optional Benefit Coverage is significantly improved, Participants may elect the new or significantly improved coverage, and may make corresponding election changes regarding similar coverage, for the balance of the Coverage Period.

(i) In the event that a Participant's spouse or dependent makes an election change under a plan maintained by his or her employer, the Administrator may permit the Participant to revoke an election under this Plan and make a new election for the balance of the Coverage Period that is on account of and corresponds with the election change made by the Participant's spouse or dependent, if:

(1) the election change made by the Participant's spouse or dependent under his or her employer's plan satisfies the regulations and rulings under Code section 125; or

(2) the period of coverage under the plan maintained by the employer of the Participant's spouse or dependent does not correspond with the Coverage Period of this Plan.

(j) In the event that a Participant, his or her spouse or dependent loses group health coverage sponsored by a governmental or educational institution, the Participant may elect a medical Optional Benefit Coverage for the balance of the Coverage Period for the Participant, his or her spouse or dependent.

(k) Any application for a revocation and new election under this Section 4.7 must be made within the time specified by the Administrator following the date of the actual event and shall be effective at such time as the Administrator shall prescribe, unless otherwise required by law.

4.8. Consistency Rules. A Participant's requested revocation and new election will be consistent with a change in status if the election change is on account of and corresponds with a change in status that affects the eligibility for coverage under a plan of the Employer or under a plan maintained by the employer of the Participant's spouse or dependent. A change in status that affects eligibility under the Employer's plan shall include a change in status that results in the increase or decrease in the number of a Participant's family members or dependents who may benefit from coverage under the plan.

4.9. Changes by Administrator. If the Administrator determines, before or during any Coverage Period, that the Plan may fail to satisfy for such year any nondiscrimination or other requirement imposed by the Code or any limitation on benefits provided to Key Employees, the Administrator shall take such action as the Administrator deems appropriate, under rules uniformly applicable to similarly situated participants, to assure compliance with such requirement or limitation. Such action may include, without limitation, a modification of elections by highly compensated Employees (as defined by the Code for purposes of the nondiscrimination requirement in question) or Key Employees without the consent of such Employees.

4.10. Adjustment of Compensation Reductions. If the cost of an Optional Benefit Coverage provided to a Participant increases or decreases during a Coverage Period, including any increase or decrease due to a change in the Participant's salary, a corresponding change shall be made in the compensation reductions of the Participant in an amount reflecting such increase or decrease, as determined by the Administrator.

4.11. Automatic termination of election. Any election made under this Plan (including an election made through inaction under Section 4.6) shall automatically

terminate on the date on which the Participant ceases to be a Participant in the Plan, although coverage or benefits may continue if and to the extent provided by such coverage. In the event such a former Participant again becomes a Participant within 30 days of ceasing to be a Participant, the elections previously in effect for the Participant shall be automatically reinstated for the balance of the Coverage Period, except as otherwise elected by the Participant in accordance with Section 4.7.

4.12. Maximum elective contributions. The maximum amount of elective contributions under the Plan for any Participant shall be the total cost to the Participant for the Coverage Period of the most expensive Optional Benefit Coverages that any Participant could elect.

4.13. Cessation of required contributions. Nothing in this Plan shall prevent the cessation of coverage or benefits under any Optional Benefit Coverage, in accordance with the terms of such coverage, on account of a Participant's failure to pay the Participant's share of the cost of such coverage or benefits, through compensation reduction or otherwise.

4.14. Elections Via Other Media. The Administrator may, in its discretion, use any telephonic, electronic or other alternative media form that it deems necessary or appropriate for the election of Optional Benefit Coverages under the Plan.

4.15. Coordination with FMLA. Notwithstanding any other provision of this Plan, the Administrator may (a) permit a Participant to revoke (and subsequently reinstate) his or her election of one or more Optional Benefit Coverages under the Plan, and (b) adjust a Participant's compensation reduction as a result of a revocation or reinstatement to the extent the Administrator deems necessary or appropriate to assure the Plan's compliance with the provisions of the Family and Medical Leave Act of 1993 and any regulations pertaining thereto.

4.16. Special Rule for Certain Covered Individuals. Notwithstanding anything in this Plan to the contrary, the cost of providing Optional Benefit Coverage to an individual as a dependent of the Participant (where the covered individual is not a

dependent of the Participant for purposes of Code section 152, as modified by Code section 105(b) and IRS Notice 2004-79) shall be paid by the Participant with after-tax contributions. Such costs shall either be deducted by the Employer from the after-tax compensation of the Participant or, to the extent the cost of such Optional Benefit Coverage is paid from compensation reduction or any other form of Employer contribution, shall be treated as taxable compensation received by the Participant and contributed by the Participant on an after-tax basis.

**Article 5. Administration of Plan.**

5.1. **Plan Administrator.** The administration of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in the Plan without discrimination among them. The Administrator will have full discretionary power to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Administrator's discretionary powers will include, but will not be limited to, the following discretionary authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and
- (e) To delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, any such delegation or designation to be in writing.

Any determination by the Administrator, or its authorized delegate, shall be final and conclusive on all persons, in the absence of clear and convincing evidence that the Administrator or delegate acted arbitrarily and capriciously. Notwithstanding the foregoing, any claim which arises under any Optional Benefit Coverage shall not be subject to review under this Plan, and the Administrator's authority under this Section 5.1 shall not extend to any matter as to which another administrator or entity is empowered to make determinations under such Optional Benefit Coverage.

5.2. Examination of records. The Administrator will make available to each Participant such of its records under the Plan as pertain to the Participant, for examination at reasonable times during normal business hours; provided, however, that the Administrator shall have no obligation to disclose any records or information which the Administrator, in its sole discretion, determines to be of a privileged or confidential nature.

5.3. Reliance on tables, etc. In administering the Plan, the Administrator will be entitled to the extent permitted by law to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by, or in accordance with the instructions of, the administrators of the plans identified in the Adoption Agreement, or by accountants, counsel or other experts employed or engaged by the Administrator.

5.4. Nondiscriminatory exercise of authority. Whenever, in the administration of the Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated will receive substantially the same treatment.

#### Article 6. Amendment and Termination of Plan.

6.1. Amendment of Plan. The power to amend the Plan, in whole or in part, shall be vested in the Employer, which shall have the sole discretion to make all amendments to the Plan or any of its provisions. Such amendment shall be effected by a

written instrument signed by a duly authorized representative of the Employer, or his or her authorized delegate, and delivered to the Administrator.

Subject to the foregoing provisions, the Schedules in the Adoption Agreement may be amended without the need to execute a new Adoption Agreement. Such amendment shall be made by the Employer in a written certification specifying that the Plan is amended by substituting the amended Schedule.

6.2. Termination of Plan. The Employer has established the Plan with the bona fide intention and expectation that it will be continued indefinitely, but the Employer will have no obligation whatsoever to maintain the Plan for any given length of time and may discontinue or terminate the Plan at any time, without liability, by a written instrument signed by a duly authorized representative of the Employer, or his or her authorized delegate, and delivered to the Administrator.

Article 7. Miscellaneous Provisions.

7.1. Information to be furnished. Participants shall provide the Employer and the Administrator with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.

7.2. Limitation of rights. Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right against the Employer or the Administrator, except as provided herein.

7.3. Employment Not Guaranteed. Nothing contained in the Plan nor any action taken hereunder shall be construed as a contract of employment or as giving any Employee any right to be retained in the employ of the Employer.

7.4. Governing law. Except to the extent federal law applies, this Plan shall be construed, administered and enforced according to the laws of the Commonwealth of Massachusetts.