

St. John's University

St. John's University
8000 Utopia Parkway
Jamaica, NY 11439

St. John's University MERP Plan

Plan Document

Amended and Restated January 01, 2023

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St. John's University MERP Plan

INTRODUCTION

St. John's University hereby amends and restates effective January 01, 2023, a health reimbursement arrangement, known as the St. John's University MERP Plan (the "HRA") with an original effective date of January 01, 2016, the terms of which are set forth in this document. The HRA provides for the reimbursement of expenses as described in the Appendices of this document that have been incurred by Eligible Employees, their spouses and certain eligible Dependents of such Employees.

It is intended that the HRA meet the requirements for qualification under Code Section 105 with respect to Employees, and that benefits paid Employees hereunder be excludible from their gross incomes pursuant to Code Section 105(b).

I. ARTICLE - DEFINITIONS

As used in this HRA, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

01. **"Plan Administrator"** means the individual(s) or committee appointed by the Employer to carry out the administration of the HRA. In the event the Administrator has not been appointed, or resigns from an appointment, the Employer shall be deemed to be the Administrator.
02. **"Code"** means the Internal Revenue Code of 1986, as amended.
03. **"Coverage Period"** means the period of the current plan year in which the individual is an eligible employee on or after his or her plan entry date.
04. **"Dependent"** means any individual who qualifies as a dependent under Code Section 152 (as modified by Code Section 105(b)). Any child of a Participant who is an "alternate recipient" under a qualified medical child support order under ERISA Section 609 shall be considered a Dependent under this Arrangement.
05. **"Effective Date"** means January 01, 2016.
06. **"Eligible Employee"** means an Employee who is eligible to participate in the Employer's group medical plan. An individual shall not be an "Eligible Employee" if such individual is not eligible for the Employer's group medical plan.

The term "Eligible Employee" shall exclude the following:

- Employees who are not enrolled in Employers Aetna Core Medical Plan

07. **"Employee"** means you are an active employee working 0 hours or more per week. The term "Employee" shall also include any person who is a Leased Employee deemed to be an Employee as provided in Code Section 414(n) or (o).
08. **"Employer"** means St. John's University, a Non-Profit Organization or any successor which shall maintain this HRA and any predecessor which has maintained this HRA. In addition, unless the context requires otherwise, the term "Employer" shall include any Participating Employer which shall adopt this HRA.
09. **"Employer Contribution"** means the amounts contributed to the HRA by the Employer.
10. **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time.
11. **"HRA"** means the St. John's University MERP Plan as adopted by the Employer, including all amendments thereto.
12. **"Leased Employee"** means, effective with respect to Plan Years beginning on or after January 1, 1997, any person (other than an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person or entity ("leasing organization"), has performed services for the Employer (or for the Employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the Employer. Contributions or benefits provided to a Leased Employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer. Furthermore, compensation for a Leased Employee shall only include compensation from the leasing organization that is attributable to services performed for the Employer.

A Leased Employee shall not be considered an Employee of the Employer if:

1. such employee is covered by a money purchase pension plan providing:

- i. a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(e)(3), 402(h) or 403(b),
 - ii. immediate participation, and
 - iii. full and immediate vesting; and
2. leased employees do not constitute more than twenty percent (20%) of the recipient Employer's non-highly compensated workforce.
13. **"Participant"** means any Eligible Employee who has satisfied the requirements of the Section titled: "Eligibility" and has not for any reason become ineligible to participate further in the HRA.
14. **"Permissible Employee Class(es)"** means the permitted classifications for distinguishing among employees defined by law.
15. **"Plan Year"** means the 12-month period beginning January 01 and ending December 31.
16. **"Premiums"** mean the Participant's cost for any health plan coverage.
17. **"Qualifying Medical Expenses"** means any expenses as described in the Appendices of this document that meets the definition of "qualified medical expenses" (within the meaning of Code Section 213(d) and as allowed under Code Section 105 and the rulings and Treasury regulations thereunder) of the Participant, the Participant's spouse or a Dependent and that are not otherwise used by the Participant as a deduction in determining the Participant's tax liability under the Code or reimbursed under any other health coverage, including a health Flexible Spending Account. If the Employer provides Health Savings Accounts for Participants, Qualifying Medical Expenses reimbursed shall be limited to those allowed under Code Section 223.

II. ARTICLE - PARTICIPATION

01. **Eligibility**

Any Eligible Employee shall be eligible to participate hereunder on the date such Employee is enrolled in the Employer's group medical plan.

02. **Effective Date of Participation**

An Eligible Employee who has satisfied the conditions of eligibility pursuant to the Section titled "Eligibility" shall become a Participant effective on the date such Employee is enrolled in the Employer's group medical plan.

03. **Termination of Participation**

Terminated Employees may not continue to participate in the HRA, and any unused amounts shall be forfeited. In the case of the death of the Participant, any remaining balances may only be paid out as reimbursements for Qualifying Medical Expenses as stated in the Section titled: "Health Reimbursement Arrangement Claims" under the Article titled: "Benefits" and shall not constitute a death benefit to the Participant's estate and/or the Participant's beneficiaries. A Participant shall be permitted at least annually to opt out of the HRA and waive future reimbursements from the HRA. This Section shall be applied and administered consistent with any rights a Participant and the Participant's Dependents may be entitled to pursuant to Code Section 4980B or the Section of the HRA titled: "Continuation of Coverage".

III. ARTICLE - BENEFITS

01. Establishment of HRA

- a. The HRA is intended to qualify as a Health Reimbursement Arrangement under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder.
- b. Participants in this Health Reimbursement Arrangement may submit claims for the reimbursement of Qualifying Medical Expenses as defined under the HRA.
- c. The Employer shall make available to Participant an Employer Contribution in the amounts listed in the Appendices of this document.

The amounts provided to the HRA by The Employer will be made available on the first day of the plan year.

- d. This HRA shall not be coordinated or otherwise connected to the Employer's cafeteria plan (as defined in Code Section 125), except as permitted by the Code and the Treasury regulations thereunder in order for this HRA to be maintained as a Health Reimbursement Arrangement. No salary reduction contributions may be made to this Health Reimbursement Arrangement.
- e. If the Employer maintains Health Savings Accounts for Participants, this Arrangement shall be operated in accordance with the restrictions under Code Section 223.

02. Debit Cards

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the HRA for payment of Qualifying Medical Expenses, as described under the Definition titled: "Qualifying Medical Expenses", subject to the following terms:

- a. Card only for Medical expenses. Each Participant issued a card shall certify that such card shall only be used for Qualifying Medical Expenses, as described under the Definition titled: "Qualifying Medical Expenses". The Participant shall also certify that any Qualifying Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.
- b. Card issuance. Such card shall be issued on the Participant's Effective Date of Participation and reissued or remain in effect for each Plan Year the Participant remains a Participant in the HRA. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the HRA.
- c. Maximum dollar amount available. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in the Appendices of this document.
- d. Only available for use with certain service providers. The cards may only be used at such merchants and service providers as have been approved by the Administrator.
- e. Card use. The cards may only be used for Qualifying Medical Expenses, as described under the Definition titled: "Qualifying Medical Expenses".
- f. Substantiation. All purchases with the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a provider describing the product or service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.
- g. Correction methods. If a purchase is later determined by the Administrator to not qualify as a Qualifying Medical Expense, as described under the Definition titled: Qualifying Medical Expenses, the Administrator, in its discretion, shall use one of the following correction methods to make the HRA whole. Until the amount is repaid, the Administrator may take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card. Correction methods include:
 1. Repayment of the improper amount by the Participant;
 2. Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
 3. Claims substitution or offset of future claims until the amount is repaid; and

4. If subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

03. Nondiscrimination Requirements

- a. It is the intent of this Health Reimbursement Arrangement to not discriminate in violation of the Code and the Treasury regulations thereunder.
- b. If the Administrator deems it necessary in order to avoid discrimination under this Health Reimbursement Arrangement, it may, but shall not be required to reduce benefits provided to "highly compensated individuals" (as defined in Code Section 105(h)) in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner.

04. Health Reimbursement Arrangement Claims

- a. The Administrator shall direct the reimbursement to each eligible Participant of all Qualifying Medical Expenses. Qualifying Medical Expenses shall be reimbursed, even though the submission of such a claim occurs after participation hereunder ceases, provided that the Qualifying Medical Expenses were incurred during a Coverage Period. In order to claim reimbursement, claims must include receipts or documentation that the expense being incurred is eligible for reimbursement. Expenses may be reimbursed in a subsequent Coverage Period, subject to subsection (b) below. However, a Participant may not submit claims incurred prior to beginning participation in the HRA and/or the Effective Date of the HRA, whichever is earlier.
- b. Claims for the reimbursement of Qualifying Medical Expenses incurred in any Coverage Period shall be paid as soon after a claim has been filed as is administratively practicable. However, if a Participant fails to submit a claim within 90 days immediately following the end of the Coverage Period (that is, by 03/30), those Medical Expense claims shall not be eligible for reimbursement by the Administrator.
- c. Reimbursement payments under this HRA shall be made directly to the Participant or the Provider, as requested.
- d. If the maximum amount available for reimbursement for a Coverage Period is not utilized in its entirety, refer to Appendix A for information on how these funds will be handled.
- e. Reimbursement requests for Terminated Employees must be received within 90 days following the end of the Plan Year, or remaining funds will be forfeited.

05. Recovery of Excess or Mistaken Payments

If any reimbursement or other payment made under this HRA Plan is subsequently found to have been excessive or made in error, the Plan shall notify the Participant and be entitled to recover the amount of such mistaken payments in accordance with the procedures set forth in this subsection. The Administrator and the Employer shall pursue recovery of mistaken payments utilizing one or more of the following correction methods: (a) Require the Participant or other person receiving the mistaken payment to reimburse the Plan for the amount of the mistaken payment; (b) If the HRA Administrator and the Employer are unable to obtain repayment per (a) above, deny the Participant reimbursement of subsequently submitted claims incurred during the same Plan Year until the amount of the mistaken payment is fully recovered by the Plan; or (c) Take such other action that the HRA Administrator and Employer reasonably deem necessary to ensure recovery of mistaken payments and that such mistaken payments do not recur. If none of the above correction methods are successful in recovering a mistaken payment, the Employer, consistent with its business practice, may treat the amount owed by the Employee as it would any other business debt. To the extent the Employer forgives the debt after requesting payment consistent with collection procedures for other business debt, the Employer shall report the amount of the mistaken payment to the Employee and IRS as taxable wages. Any of the above correction methods shall be pursued only in accordance with and to the extent permitted by applicable law.

IV. ARTICLE - ERISA PROVISIONS

01. Claim for Benefits

Any claim for Benefits shall be made to the Administrator. The following time frames for claims and the rules below apply:

Notification of whether claim is accepted or denied	30 days
Extension due to matters beyond the control of the Plan	15 days
Insufficient information on the claim:	
Notification of	15 days
Response by Participant	45 days
Review of claim denial	60 days

The Administrator will provide written or electronic notification of all claim denials. The notice will state:

1. Information sufficient to identify the claim involved, including the date of service, the health care provider, the claim amount (if applicable), the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning.
2. The specific reason or reasons for the adverse determination.
3. Reference to the specific HRA provisions on which the determination is based.
4. A description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary.
5. A description of the HRA's internal review procedures and time limits applicable to such procedures, available external review procedures, as well as the claimant's right to bring a civil action under Section 502 of ERISA following a final appeal decision.
6. That upon request and free of charge, the following will be provided: a copy of any internal rule, guideline, protocol or other similar criterion that was relied upon in making the adverse determination regarding the claim, and an explanation of the scientific or clinical judgment for a determination that is based on a medical necessity, experimental treatment or other similar exclusion or limit.
7. In the case of a claim involving urgent care, a description of the expedited review process applicable to such claim.
8. The availability of and contact information for an applicable office of health insurance consumer assistance or ombudsman established under PHS Act Section 2793.

When the Participant receives a notice of a decision of denial, the Participant shall have 180 days following receipt of the notification within which to appeal the decision. The Participant may submit written comments, documents, records, and other information relating to the Claim. If the Participant requests, the Participant shall be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the HRA. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a Claim if it:

1. was relied upon in making the claim determination;
2. was submitted, considered, or generated in the course of making the claim determination, without regard to whether it was relied upon in making the claim determination;
3. demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that claim determinations are made in accordance with HRA documents and that HRA provisions have been applied consistently with respect to all claimants; or
4. constituted a statement of policy or guidance with respect to the HRA concerning the denied claim.

The review will 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 claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the HRA who is neither the individual who made the adverse determination nor a subordinate of that individual.

After receiving notice of an adverse benefit determination or a final internal adverse benefit determination, a claimant may file with the HRA a request for an external review. A claimant may request from the Administrator additional information describing the HRA's external review procedure.

02. **Named Fiduciary**

The "named Fiduciaries" of this HRA are (1) the Employer and (2) the Administrator. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the HRA including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for providing benefits under the HRA; and shall have the sole authority to appoint and remove the Administrator; and to amend or terminate, in whole or in part, the HRA. The Administrator shall have the sole responsibility for the administration of the HRA, which responsibility is specifically described in the HRA. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the HRA, and is not required under the HRA to inquire into the propriety of any such direction, information or action. It is intended under the HRA that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the HRA. Any person or group may serve in more than one Fiduciary capacity.

03. **General Fiduciary Responsibilities**

The Administrator and any other fiduciary under ERISA shall discharge their duties with respect to this HRA solely in the interest of the Participants and their beneficiaries and

- a. for the exclusive purpose of providing Benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the HRA;
- b. with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- c. in accordance with ERISA and the documents and instruments governing the HRA, insofar as such documents and instruments are consistent with ERISA.

04. **Nonassignability of Rights**

The right of any Participant to receive any reimbursement under the HRA shall not be alienable by the Participant by assignment or any other method, and shall not be subject to the rights of creditors, and any attempt to cause such right to be so subjected shall not be recognized, except to such extent as may be required by law.

V. ARTICLE - ADMINISTRATION

01. **HRA Administration**

The operation of the HRA shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the HRA is carried out in accordance with its terms, and for the exclusive benefit of Eligible Employees entitled to participate in the HRA. The Administrator shall have full power to administer the HRA in all of its details, subject, however, to the pertinent provisions of ERISA and the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this HRA:

- a. To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the HRA;
- b. To interpret the HRA, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits under the HRA;
- c. To decide all questions concerning the HRA and the eligibility of any person to participate in the HRA and to receive benefits provided under the HRA;
- d. To limit benefits for certain highly compensated individuals if it deems such to be desirable in order to avoid discrimination under the HRA in violation of the applicable provisions of the Code;
- e. To approve reimbursement requests and to authorize the payment of benefits;
- f. To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the HRA; and
- g. To establish and communicate procedures to determine whether a medical child support order is qualified under ERISA Section 609.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the HRA shall continue to comply with the terms of Code Section 105(h) and the Treasury regulations thereunder.

02. **Examination of Records**

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer, for examination at reasonable times during normal business hours, such records as pertain to that person's interest under the HRA.

03. **Indemnification of Administrator**

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the HRA, if such act or omission is or was in good faith.

VI. ARTICLE - AMENDMENT OR TERMINATION OF HRA

01. **Amendment**

The Employer, at any time or from time to time, may amend any or all of the provisions of the HRA without the consent of any Employee or Participant.

02. **Termination**

The Employer is establishing this HRA with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate the HRA, in whole or in part, at any time. In the event the HRA is terminated, no further reimbursements shall be made.

VII. ARTICLE - MISCELLANEOUS

01. **Adoption by Other Employers**

Notwithstanding anything herein to the contrary, and with the consent of the Employer, any other corporation or entity, whether an affiliate or subsidiary or not, may adopt this HRA and all of the provisions hereof, and participate herein and be known as a "Participating Employer", by a properly executed document evidencing said intent and will of such Participating Employer.

02. **HRA Interpretation**

All provisions of this HRA shall be interpreted and applied in a uniform, nondiscriminatory manner. This HRA shall be read in its entirety and not severed except as provided in the Section titled: "Severability".

03. **Gender and Number**

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

04. **Written Document**

This HRA, in conjunction with any separate written document which may be required by law, is intended to satisfy the written HRA requirement of Code Section 105 and any Treasury regulations thereunder.

05. **Exclusive Benefit**

This HRA shall be maintained for the exclusive benefit of the Employees who participate in the HRA.

06. **Not Employment Contract**

This HRA shall not be deemed to constitute an employment contract between the Employer and any Participant or Employee, or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this HRA shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this HRA.

07. **Action by the Employer**

Whenever the Employer under the terms of the HRA is permitted or required to do or perform any act or matter or thing, it shall be done and performed by an authorized representative of the Employer.

08. **No Guarantee of Tax Consequences**

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the HRA will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the HRA is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this HRA shall be legally enforceable.

09. **Indemnification of Employer by Participants**

If any Participant receives one or more payments or reimbursements under the HRA that are not for a permitted Medical Expense such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

10. **Funding**

Unless otherwise required by law, amounts made available by the Employer need not be placed in

trust, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the HRA may be made.

11. Governing Law

This HRA and Trust shall be construed and enforced according to the Code, ERISA, and the laws of the state of New York, other than its laws respecting choice of law, to the extent not pre-empted by ERISA.

12. Severability

If any provision of the HRA is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the HRA, and the HRA shall be construed and enforced as if such provision had not been included herein.

13. Headings

The headings and subheadings of this HRA have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

14. Continuation of Coverage

Notwithstanding anything in the HRA to the contrary, in the event any benefit under this HRA subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each qualified beneficiary (as defined in Code Section 4980B) will be entitled to continuation coverage as prescribed in Code Section 4980B.

15. Health Insurance Portability and Accountability Act

Notwithstanding anything in this HRA to the contrary, this HRA shall be operated in accordance with HIPAA and the regulations thereunder.

16. Uniformed Services Employment and Reemployment Rights Act

Notwithstanding any provision of this HRA to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with USERRA and the regulations thereunder.

17. HIPAA Privacy Standards

- a. If this HRA is subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.
- b. The HRA shall not disclose Protected Health Information to any member of Employer's workforce unless each of the conditions set out in this Section is met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.
- c. Protected Health Information disclosed to members of Employer's workforce shall be used or disclosed by them only for purposes of HRA administrative functions. The HRA's administrative functions shall include all HRA payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill HRA responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care.
- d. The HRA shall disclose Protected Health Information only to members of the Employer's workforce who are authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the HRA. "Members of the Employer's workforce" shall refer to all Employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.
 1. An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the HRA.
 2. In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the HRA's privacy officer. The privacy officer, or the

Employer, shall take appropriate action, including:

- i. investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;
 - ii. appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;
 - iii. mitigation of any harm caused by the breach, to the extent practicable; and
 - iv. documentation of the incident and all actions taken to resolve the issue and mitigate any damages.
- e. The Employer must provide certification to the HRA that it agrees to:
1. Not use or further disclose Protected Health Information other than as permitted or required by the HRA documents or as required by law;
 2. Ensure that any agent or subcontractor to whom it provides Protected Health Information received from the HRA, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;
 3. Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or Employee benefit plan of the Employer;
 4. Report to the HRA any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;
 5. Make available Protected Health Information to individual HRA members in accordance with Section 164.524 of the Privacy Standards;
 6. Make available Protected Health Information for amendment by individual HRA members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
 7. Make available the Protected Health Information required to provide an accounting of disclosures to individual HRA members in accordance with Section 164.528 of the Privacy Standards;
 8. Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the HRA available to the Department of Health and Human Services for purposes of determining compliance by the HRA with the Privacy Standards;
 9. If feasible, return or destroy all Protected Health Information received from the HRA that the Employer still maintains in any form, and retain no copies of such information, when no longer needed for the purpose for which disclosure was made, or, if and only if such return or destruction is not feasible, limit further uses and disclosures to those permitted purposes that make the return or destruction of the information infeasible; and
 10. Ensure adequate separation between the HRA and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

18. **HIPAA Electronic Security Standards**

If this HRA is subject to the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"), then this Section shall apply as follows:

- a. The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the HRA. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.
- b. The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.
- c. The Employer shall ensure that reasonable and appropriate security measures are

implemented to comply with the conditions and requirements set forth in the Section titled: "HIPAA Privacy Standards".

- d. The HRA shall not disclose Protected Health Information to any member of Employer's workforce unless each of the conditions set out in this Section is met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.
- e. Protected Health Information disclosed to members of Employer's workforce shall be used or disclosed by them only for purposes of HRA administrative functions. The HRA's administrative functions shall include all HRA payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill HRA responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care.
- f. The HRA shall disclose Protected Health Information only to members of the Employer's workforce, who are authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the HRA. "Members of the Employer's workforce" shall refer to all Employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.
 1. An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the HRA.
 2. In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the HRA's privacy officer. The privacy officer, or the Employer, shall take appropriate action, including:
 - i. investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;
 - ii. appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;
 - iii. mitigation of any harm caused by the breach, to the extent practicable; and
 - iv. documentation of the incident and all actions taken to resolve the issue and mitigate any damages.
- g. The Employer must provide certification to the HRA that it agrees to:
 1. Not use or further disclose Personal Health Information other than as permitted or required by the HRA documents or as required by law;
 2. Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the HRA, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;
 3. Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or Employee benefit plan of the Employer;
 4. Report to the HRA any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;
 5. Make available Protected Health Information to individual HRA members in accordance with Section 164.524 of the Privacy Standards;
 6. Make available Protected Health Information for amendment by individual HRA members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
 7. Make available the Protected Health Information required to provide an accounting of disclosures to individual HRA members in accordance with Section 164.528 of the Privacy Standards;

8. Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the HRA available to the Department of Health and Human Services for purposes of determining compliance by the HRA with the Privacy Standards;
9. If feasible, return or destroy all Protected Health Information received from the HRA that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, or, if and only if such return or destruction is not feasible, limit further uses and disclosures to those permitted purposes that make the return or destruction of the information infeasible; and
10. Ensure the adequate separation between the HRA and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

Appendix A - HRA Plan Benefit

Employee Class

- Individual

Qualified benefits

- Both In and Out of Network Medical Expenses
- Rx drugs - Health (prescriptions)

Plan Coverage

- Medical
- Vision

Reimbursement Schedule

- The HRA will pay \$200.00 of qualifying expenses up to a max benefit limit of \$200.00.

Unused HRA Funds

- Unused benefits at the end of the coverage period shall be forfeited.

Appendix A - HRA Plan Benefit

Employee Class

- Family

Qualified benefits

- Both In and Out of Network Medical Expenses
- Rx drugs - Health (prescriptions)

Plan Coverage

- Medical
- Vision

Reimbursement Schedule

- The HRA will pay \$400.00 of qualifying expenses up to a max benefit limit of \$400.00.

Unused HRA Funds

- Unused benefits at the end of the coverage period shall be forfeited.