

**City of Lee's Summit, MO**  
**Administrative Services Agreement**

**This Administrative Services Agreement** (“Agreement”) dated as of January 1, 2018, between City of Lee's Summit, MO, a MO Municipality (“City of Lee's Summit”) and The Taben Group, a Kansas limited liability company (“Taben”).

**Background**

Taben is engaged as City of Lee's Summit’s administrative services provider and shall perform the services set forth in this Agreement for the following Component Benefits established and maintained by City of Lee's Summit:

***Check applicable boxes and attach Schedules.***

- A Cafeteria Plan** within the meaning of Internal Revenue Code § 125:
  - Premium Only Plan (POP) (as described in Schedule A)
  - Health Flexible Spending Account (Health FSA) (as described in Schedule B)
  - Dependent Care Flexible Spending Account (DCFSA) (as described in Schedule C)

*The Component Benefits elected by Client above will be collectively referred to as the Program in this Agreement.*

Accordingly, City of Lee's Summit and Taben agree as follows:

**Section 1**  
**Effective Date and Term**

***Applies to All Component Benefit Services***

**1.1 Effective Date**

The effective date of this Agreement is January 1, 2018 (“Effective Date”).

**1.2 Term; Renewal**

The initial term of this Agreement shall be the 12 month period beginning on the Effective Date set forth above. This Agreement will renew automatically for successive 12 month periods unless one party provides written prior notice of its intent to terminate in accordance with the corresponding provisions of this Agreement.

## **Section 2 Scope of Undertaking**

### ***Applies to All Component Benefit Services.***

#### **2.1 Scope of Undertaking**

City of Lee's Summit has sole and final authority to control and manage the operation of the Program. Taben is and shall remain an independent contractor with respect to the services being performed under this Agreement and shall not for any purpose be deemed an employee of City of Lee's Summit. Taben and City of Lee's Summit shall not be deemed partners, engaged in a joint venture, or governed by any legal relationship other than that of independent contractor.

Taben does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission, or breach of duty by City of Lee's Summit. Taben shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. Taben provides only the administrative services set forth in this Agreement and does not assume any financial risk or legal obligation with respect to claims for benefits under the Program or for the Program itself.

Except as otherwise expressly set forth in this Agreement, nothing in this Agreement shall be deemed to constitute Taben as a party to the Program or to confer upon Taben any authority or control respecting management of the Program, authority or responsibility in connection with the administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon Taben any obligation to any employee of City of Lee's Summit or any Participant in the Program.

#### **2.2 Non-Discretionary Duties**

Except as otherwise expressly set forth in this Agreement, the services to be performed by Taben under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Component Benefits established and maintained by City of Lee's Summit.

#### **2.3 Limited Fiduciary Duties (Applies to Health FSA only)**

The provisions of this subsection shall only apply to ERISA plans and not non-ERISA plans.

Notwithstanding the foregoing, pursuant to Section 405(c)(1) of ERISA, City of Lee's Summit delegates to Taben certain functions which might be deemed to be of a fiduciary nature, including authority to determine initial claims for benefits as set forth in this Agreement, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of City of Lee's Summit for the payment of Program benefits claims pursuant to the corresponding requirements of this Agreement.

The parties agree that Taben is a fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. Taben shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

**Section 3**  
**City of Lee's Summit's Responsibilities**

***Applies to All Component Benefit Services.***

**3.1 Fiduciary Duties**

The provisions of this subsection shall only apply to ERISA plans and not non-ERISA plans.

Except as otherwise specifically delegated to Taben in this Agreement, City of Lee's Summit has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Program and making all determinations under the Program. City of Lee's Summit gives Taben the authority to act on behalf of City of Lee's Summit in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by City of Lee's Summit and Taben. City of Lee's Summit is the Plan Administrator and Named Fiduciary of the Program for purposes of ERISA, if applicable to the Program. City of Lee's Summit agrees that this responsibility is and shall remain that of City of Lee's Summit.

**3.2 Bank Account**

City of Lee's Summit shall promptly establish and maintain a bank account for the payment of Program benefits pursuant to the corresponding requirements of this Agreement.

**3.3 Information to Taben**

Upon request, City of Lee's Summit agrees to provide Taben with information necessary for Taben's performance of duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. Taben shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of City of Lee's Summit or its agents. Such information shall be provided to Taben in the time and in the manner agreed to by City of Lee's Summit and Taben. Taben shall have no responsibility with regard to benefits paid in error due to City of Lee's Summit's failure to accurately or timely communicate or update such information.

City of Lee's Summit shall be responsible for ensuring the accuracy of its Eligibility Reports, and bears the burden of proof in any dispute with Taben relating to the accuracy of any Eligibility Reports.

Taben incurs no liability to City of Lee's Summit or any Participant as a consequence of an inaccurate or untimely Eligibility Report. Additionally, Taben is under no obligation to credit City of Lee's Summit for any Program benefits paid to Participants or any administrative fees incurred by or paid to Taben as a consequence of an inaccurate or untimely Eligibility Report.

Taben shall assume that City of Lee's Summit's Eligibility Reports are complete and accurate and is under no duty to question the completeness or accuracy of such information. Eligibility Reports are deemed Protected Health Information (PHI) and, when transmitted by or maintained in

electronic media shall be deemed Electronic PHI, and subject to the Privacy and Security Rules under HIPAA, and the corresponding requirements of this Agreement.

### **3.4 Plan Documents**

City of Lee's Summit is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide Taben with all relevant Program documents, including but not limited to, the corresponding plan documents and any plan amendments. City of Lee's Summit will notify Taben of any changes to the Program as soon as administratively possible and at least 30 days before the effective date of such changes.

Taben may provide sample plan documents and forms for review by City of Lee's Summit and City of Lee's Summit's legal counsel, including plan document, summary plan description (only for ERISA plans), election forms, and similar documents, as applicable to the Program. Taben may customize such documentation, but only to the extent to incorporate the information supplied by City of Lee's Summit at Taben's request or at City of Lee's Summit's directive and as necessary to the performance of Taben's obligations under this Agreement. In addition, Taben may from time to time provide updated sample documents to reflect changes in the applicable laws. Although Taben has taken steps to ensure that its sample documents and forms are of high quality and generally comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to City of Lee's Summit or the Program.

City of Lee's Summit acknowledges that Taben is not a law firm or accounting firm and does not provide tax or legal advice. City of Lee's Summit must ask its own legal counsel to review such documents for legal and tax compliance. City of Lee's Summit bears sole responsibility for determining the legal and tax status of the Program. As a result, Taben does not represent, guarantee or warranty the suitability of any such documents for City of Lee's Summit's particular situation.

### **3.5 Liability for Claims and Expenses**

City of Lee's Summit is solely responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. Taben does not insure or underwrite the liability of City of Lee's Summit under the Program. Except for expenses specifically assumed by Taben in this Agreement, City of Lee's Summit is responsible for all expenses incident to the Program.

### **3.6 Financial and Medical Records**

In order for City of Lee's Summit and Taben to perform their respective obligations under this Agreement, a Participant's personal financial records or medical records may be requested. If required by law or regulation, and in accordance with applicable state and federal law, City of Lee's Summit must either:

- Notify and provide each Participant an opportunity to opt out (if required); or
- Obtain a written authorization for release of any requested records from each Participant.

### **3.7 HIPAA Privacy & Security**

Where required or applicable, City of Lee's Summit shall provide Taben with the following documents or information:

- Notice of Privacy Practices & Restrictions, and any subsequent changes thereto;
- Certification that City of Lee's Summit amended the plan document as required by the Privacy Rule to permit disclosure of PHI to City of Lee's Summit for plan administrative purposes, and that City of Lee's Summit agrees to the conditions set forth in the Privacy Rule;
- Copies of any authorizations of Participants or beneficiaries to use or disclose PHI, and any later changes to or revocations of such authorizations;
- Notice of any restriction on the use or disclosure of PHI that City of Lee's Summit agrees to under the Privacy Rule;
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that City of Lee's Summit agrees to under the Privacy Rule; and
- Notice of any communication from the Health and Human Service's Office of Civil Rights (OCR) or a similar agency regarding City of Lee's Summit's compliance with HIPAA's Privacy and Security rules with respect to the Program, including immediate notification regarding a potential or actual OCR audit.

City of Lee's Summit shall not request Taben to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by City of Lee's Summit, except that Taben may use or disclose PHI for purposes of Data Aggregation and the management and administrative activities of Taben, as provided in this Agreement.

## **Section 4 Taben's Responsibilities**

***Sections 4.1 through 4.3 Apply to All Component Benefit Services.***

***Sections 4.4 to 4.13 Apply to All Component Benefit Services, except COBRA and HIPAA Portability Administration.***

### **4.1 Delegated Responsibilities**

Taben's responsibilities and obligations shall be limited to those expressly delegated to Taben in this Agreement (including the obligations listed in any Schedule to this Agreement) or any other written and signed agreement between City of Lee's Summit and Taben. Taben generally provides certain administrative services, as described in this Agreement. Taben agrees to administer City of Lee's Summit's Program in accordance with the governing plan documents, this Agreement, and current applicable state laws and regulations.

## **4.2 Service Delivery**

Taben agrees to provide customer service personnel by telephone during Taben's normal business hours. Taben also agrees to provide electronic administrative services 24 hours per day, 7 days per week, with reasonable allowance for downtime for maintenance and upgrading of electronic administrative systems.

Taben will not be deemed in default of this Agreement, nor held responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any applicable law, judgment, or decree.

## **4.3 Service Levels**

Taben agrees to provide specific service levels in the performance of the administration of Program benefits as set forth in Exhibit A.

## **4.4 Benefits Payment**

Taben agrees to, on behalf of City of Lee's Summit, operate under the express terms of this Agreement and the Program. Taben makes the initial determination if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits requested under the Program and shall pay Program benefits to Participants in its usual and customary manner as set forth in this Agreement.

City of Lee's Summit agrees that:

- Taben has no responsibility or obligation with respect to Prior Reimbursement Requests and Prior Administration;
- City of Lee's Summit is responsible for processing Prior Reimbursement Requests and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal requirements (e.g., IRS substantiation); and
- City of Lee's Summit will indemnify and hold Taben, its officers, directors, and employees, harmless from and against any and all losses, claims, damages, liabilities, or expenses relating to or arising from Prior Reimbursement Requests and Prior Administration.

## **4.5 Bonding**

The provisions of this subsection shall only apply to ERISA plans and not non-ERISA plans.

To the extent required by law, Taben will obtain a fidelity bond or ERISA bond for all persons involved in collecting money or making claim payments, and all officers of Taben.

#### **4.6 Reporting**

Taben agrees to make available to City of Lee's Summit each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month.

For those Program benefits subject to HIPAA, City of Lee's Summit must provide certification that the plan document requires City of Lee's Summit to comply with applicable Privacy and Security Rules under HIPAA before Taben will make available the reports provided for in this Section to City of Lee's Summit. Taben agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

For those Program benefits subject to HIPAA, City of Lee's Summit is responsible for ensuring that any beneficiary of the Participant who submits a claim agrees to the disclosure of PHI to the Participant, if required by the Privacy Rule.

#### **4.7 Claims Appeals**

Taben agrees to refer to City of Lee's Summit, its designee, Plan Administrator, or Named Fiduciary for the following:

- The second and final level of appeal of an adverse benefit determination; and
- Any class of claims City of Lee's Summit may specify in writing, including:
  - Questions of eligibility or entitlement of the claimant for coverage under the Program;
  - Questions with respect to benefits available or the amount due under the Program; or
  - Any other appeal.

#### **4.8 Forfeited Funds**

Taben shall tender any remaining forfeited funds (after payment of administrative expenses) to the applicable state's unclaimed property fund.

#### **4.9 Additional Documents and Communications**

If City of Lee's Summit requests, and City of Lee's Summit and Taben mutually agree upon payment of additional applicable service charges, then Taben shall furnish to City of Lee's Summit:

- Sample plan documents for review by City of Lee's Summit with its own legal counsel, for creation of customized documentation for the Program to be approved and executed by City of Lee's Summit, including board resolutions, summary plan description (if applicable), plan document and plan amendments, as applicable to the Program;

- Sample administrative forms needed for Taben to perform its duties under this Agreement; and
- Consulting services for and the development of certain communication information and materials, such collateral materials and other notices.

#### **4.10 Recordkeeping**

Taben agrees to maintain for the duration of this Agreement the usual and customary books, records, and documents Taben has prepared or received possession of in the performance of its duties under this Agreement. These books, records, and documents, including electronic versions, are the property of City of Lee's Summit, and City of Lee's Summit has the right to access them during normal business hours at Taben's offices with reasonable prior notice. If this Agreement terminates, Taben may deliver, or at City of Lee's Summit's request, will deliver all such books, records, and documents to City of Lee's Summit, subject to Taben's right to retain copies of any records it deems appropriate. City of Lee's Summit shall be required to pay Taben reasonable charges for duplication or transportation of such records.

#### **4.11 Standard of Care; Erroneous Payments**

Taben shall use reasonable care and due diligence in the performance of its duties under this Agreement. If Taben makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, Taben shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, Taben will not be liable for such payment, unless Taben would otherwise be liable under another provision of this Agreement.

Taben owes a duty of care only to City of Lee's Summit, which duty is one of reasonable care under the attendant circumstances. Taben is not liable for any mistake of judgment or for any action taken in good faith unless such mistake or action results in a breach of such duty of care.

#### **4.12 Notices to City of Lee's Summit**

Taben shall provide to City of Lee's Summit all notices (including any required opt-out notice) reflective of its privacy policies and practices as required applicable law (including the Gramm-Leach-Bliley Act).

### **Section 5**

#### **Compliance with HIPAA Privacy and Security Rules**

*Applies to All Component Benefit Services, except DCFSA.*

#### **5.1 Compliance with HIPAA Privacy and Security Rules**

Contemporaneously with this Agreement, City of Lee's Summit and Taben have entered into a Business Associate Agreement pursuant to HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).



**Section 6**  
**Compliance with the Affordable Care Act**

**6.1 Compliance with the Affordable Care Act**

Both parties agree to act in good faith to comply with the requirements of a recent federal law entitled the Affordable Care Act (ACA). However, the regulations and other guidance under the ACA are interim, or in some cases, not yet promulgated.

City of Lee's Summit reserves the right to amend the Program documents, retroactively if considered necessary, to comply with the ACA, regulations, and other guidance promulgated thereunder. Taben reserves the right to amend its provided services, if considered necessary, to comply with the ACA, regulations, and other guidance promulgated thereunder.

**Section 7**  
**Payment of Benefits and Funding Responsibility**

*Applies to Health FSA and DCFSA.*

**7.1 Payment of Benefits**

City of Lee's Summit authorizes Taben to pay Program benefits by draft payment or debit on a bank account established and maintained by City of Lee's Summit or will provide access to an account for the payment of Program benefits consistent with any banking agreements. Each day or at such other interval as mutually agreed upon, Taben will notify City of Lee's Summit of the amount needed to pay approved Program benefits and City of Lee's Summit shall pay or transfer into the bank account such amount. City of Lee's Summit shall enter into banking agreements and provide instructions to its bank as are necessary to implement this Section. Taben has sole authority to provide whatever notifications, instructions, or directions necessary to accomplish the payment of approved Program benefits under this Agreement.

**7.2 Funding of Benefits**

All Program benefits shall be paid exclusively from the general assets of City of Lee's Summit. Payment for such benefits, including, but not limited to, all Participant reimbursements under the Program, is the sole responsibility of City of Lee's Summit. City of Lee's Summit agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Program, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the terms of this Agreement.

City of Lee's Summit further represents and agrees that:

- Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits plans (or any entity performing services for City of Lee's Summit or such plans) nor any of its predecessors, successors, or assigns have represented, or will represent to any Program Participant or beneficiary, that a separate account, fund, or trust is being held on behalf of the Program to provide or secure Program benefits; and

- City of Lee's Summit shall advise the Program Participants that all Program benefits shall be paid exclusively from the general assets of City of Lee's Summit.

**7.3 Custodial Account (City of Lee's Summit initial if elected: \_\_\_\_\_)**

**7.4 Debit Card (City of Lee's Summit initial if elected: \_\_\_\_\_)**

This option is contingent upon City of Lee's Summit entering into such agreements with [Debit Card Provider] and taking any other necessary steps to implement this Section.

Taben agrees to:

- Process debit card swipes reported to Taben on behalf of City of Lee's Summit;
- Request receipt notification on all swipes not eligible for electronic adjudication under the current IRS guidelines;
- Report to the debit card provider any account reimbursements that are a result of activities mentioned above; and
- Request data from debit card providers each business day to ensure Participants are properly reimbursed for their expenses.

Any interchange shared between the debit card provider and Taben will be retained wholly by Taben. Any fees charged to Taben by the debit card provider shall be the responsibility of Taben, unless noted in the attached Schedules of this Agreement. Taben currently contracts with [Debit Card Provider] as the debit card provider for the Debit Card. Under this Agreement, Taben reserves the right to change card providers during the year, given at least 90 days' notice to City of Lee's Summit.

**Section 8  
Indemnification**

***Applies to All Component Benefit Services.***

**8.1 Indemnification by City of Lee's Summit**

Upon Taben's adherence to the standard of care set forth in this Agreement, City of Lee's Summit shall indemnify and hold harmless Taben, its officers, directors, and employees from and against any and all loss, liability, damage, claim, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act, or omission of City of Lee's Summit in connection with the performance of its duties as provided for under the terms of this Agreement. In addition, City of Lee's Summit shall indemnify and hold harmless Taben, its officers, directors, and employees from and against any and all liability, expense, demand, or other obligation, resulting from, or out of any premium charge, tax or similar assessment (federal or state), for which the Program or City of Lee's Summit is or may become liable.

City of Lee's Summit agrees to reimburse Taben for all attorney's fees and costs incurred by Taben as a result of any collection action taken by Taben to recover overdue service charges and/or

unfunded Program benefits required to be paid in accordance with this Agreement or any Schedule hereto.

## **8.2 Indemnification by Taben**

Upon City of Lee's Summit's adherence to the standard of care set forth in this Agreement, Taben shall indemnify and hold it harmless City of Lee's Summit from and against any and all loss, liability, claim, damage, expense, attorneys' fees, or other obligations resulting from, or arising out of, any act, or omission of Taben in connection with the performance of its duties as provided for under the terms of this Agreement.

## **Section 9 Service Charges**

***Applies to All Component Benefit Services.***

### **9.1 Service Fees**

The amounts of the monthly services charges of Taben are described in the applicable Schedules. Taben may change the amount of such service charges by providing at least 60 days' written or electronic notice to City of Lee's Summit. Taben may also change the monthly service charges including the Administration Service Fee as of the date any corresponding change is made in the Program.

### **9.2 Liability for Taxes/Fees**

Any taxes or fees imposed by state or federal authorities on City of Lee's Summit's Program shall be the sole responsibility and liability of City of Lee's Summit. Unless otherwise agreed upon, payment of any such taxes or fees shall remain the sole responsibility of City of Lee's Summit. If mutually agreed to by the parties in writing and if permitted by applicable law, Taben will pay any such applicable tax or fee and shall be reimbursed by City of Lee's Summit.

### **9.3 Billing and Payment of Service Fee**

Taben will determine all service charges under this Agreement and bill City of Lee's Summit monthly. Alternatively, if the parties agree pursuant to the terms of the TabenFlex Authorization Agreement, Taben may deduct payment for monthly service charges from the bank account established and maintained by City of Lee's Summit for purposes of this Agreement. City of Lee's Summit shall make payment to Taben within 10 business days of receipt of notice of the amount due, or such amount will automatically be deducted from the bank account established and maintained by City of Lee's Summit for purposes of this Agreement.

All services charges of Taben under this Agreement shall be billed separately from statements for payment of Program benefits so that separate accounting can be made by City of Lee's Summit of the respective amounts paid for Program benefits and for administrative expenses.

#### **9.4 Set-up and Renewal Fees**

Taben has agreed to waive the one-time set up fee and annual renewal fee.

### **Section 10 General Provisions**

#### ***Applies to All Component Benefit Services.***

#### **10.1 Severability; Headings**

If any term of this Agreement is declared invalid by a court, the invalid term will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

#### **10.2 Compliance; Non-Waiver**

Failure by City of Lee's Summit or Taben to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of this Agreement.

#### **10.3 Assignment; Amendment**

Neither City of Lee's Summit nor Taben can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of City of Lee's Summit and Taben.

#### **10.4 Audits**

Each party is authorized to perform audits of the records of payment to all Participants and other data specifically related to the performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an agent of either party provided such agent signs an acceptable confidentiality agreement and business associate agreement as required by HIPAA and the HITECH Act. Each party agrees to provide reasonable assistance and information to the auditors. Each party also agrees to provide such additional information and reports as the other party shall reasonably request.

#### **10.5 Non-Disclosure of Proprietary Information**

- **General.** City of Lee's Summit and Taben each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created by this Agreement), each party has revealed and disclosed, and shall continue to reveal and

disclose to the other, proprietary and confidential information of such party. City of Lee's Summit and Taben agree that each party shall:

- o Keep such proprietary and confidential information of the other party in strict confidence;
  - o Not disclose proprietary and confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and
  - o Not use proprietary and confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- **Confidential Information Defined.** Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof:
    - o If, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or
    - o If the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.

For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and noted as confidential, proprietary, or words of similar significance) and information disclosed orally in connection with this Agreement and identified as confidential, proprietary, or words of similar significance; and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section shall survive the termination of this Agreement.

## **10.6 Dispute Resolution; Arbitration**

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the parties' Chief Executive Officers (or their designees) meet in person within 60 days of written notice of dispute issued by either party. In the event the dispute is not resolved after reasonable efforts by the Chief Executive Officers within such 60 day period, either party may then proceed to arbitration under this Section. All disputes, controversies, or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall be jointly selected

by City of Lee's Summit and Taben. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction. Arbitration shall take place in Kansas or at a location mutually agreed upon by the parties. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render his or her determination in a manner consistent with the terms of this Agreement, and the arbitrator shall not be entitled to award punitive or exemplary damages.

## 10.7 Notices and Communications

- **Notices.** All notices provided for in this Agreement shall be sent by either:
  - o Confirmed facsimile;
  - o Guaranteed overnight mail, with tracing capability;
  - o Certified mail; or
  - o First class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes.

All notices provided for in this Agreement shall be deemed given or made when received.

- **Addresses.**
  - o City of Lee's Summit's address for notices as described above is:

220 SE Green Street Lee's Summit, MO 64063
  - o Taben's address for notices as described above is:

10875 Benson  
Corporate Woods  
Building 11, Suite #130  
Overland Park, KS 66210  
  
Attn: Flex Department
- **Communications.** Except as otherwise required by HIPAA and the corresponding provisions of this Agreement, City of Lee's Summit agrees that Taben may communicate confidential, protected, privileged, or otherwise sensitive information to City of Lee's Summit through a named contact designated by City of Lee's Summit (Named Contact) and specifically agrees to indemnify and hold Taben, its officers, directors, and employees harmless:
  - o For any such communications directed to City of Lee's Summit through the Named Contact attempted via facsimile, mail, telephone, e-mail, or any other

media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and

- o From any claim for the improper use or disclosure of any PHI by Taben if such information is used or disclosed in a manner consistent with its duties and responsibilities under this Agreement.

### **10.8 Complete Agreement; Governing Law**

This Agreement (including the attached Schedules) is the full Agreement of the parties with respect to the subject matter in this Agreement and supersedes all prior agreements and representations between the parties. This Agreement is executed in multiple counterparts, each of which shall constitute an original, but all of which together comprise a single document. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular may include plural, and vice versa as the context may require. This Agreement shall be construed, enforced, and governed by the laws of the State of MO.

## **Section 11 Termination of Agreement**

*Applies to All Component Benefit Services.*

### **11.1 Termination of Agreement**

- **Automatic.** This Agreement automatically terminates on the earliest of the following:
  - o The effective date of any legislation which makes the Program or this Agreement illegal;
  - o The date City of Lee's Summit or Taben becomes insolvent, bankrupt, or subject to liquidation, receivership, or conservatorship; or
  - o The termination date of the Program. This termination is subject to any agreement between City of Lee's Summit and Taben regarding payment of benefits after the Program is terminated.
- **Optional.** This Agreement may be terminated as of the earliest of the following:
  - o By Taben upon the failure of City of Lee's Summit to pay any service fees within 60 business days after they are due and payable pursuant to this Agreement;
  - o By Taben upon the failure of City of Lee's Summit to perform its obligations, including its obligations as Plan Administrator or Named Fiduciary where applicable, as such terms are defined in ERISA, and in accordance with this Agreement only for ERISA plans. Except as otherwise required by applicable law, prior to terminating the Agreement pursuant to this provision for ERISA

plans, Taben shall provide City of Lee's Summit with notice of City of Lee's Summit's failure and an opportunity to cure such failure within 30 days;

- o By City of Lee's Summit upon the failure of Taben to perform its obligations in accordance with this Agreement. Except as otherwise required by applicable law, prior to terminating the Agreement pursuant to this provision, City of Lee's Summit shall provide Taben with notice of Taben's failure and an opportunity to cure such failure within 60 days;
- o By either City of Lee's Summit or Taben, as of the end of the term of this Agreement, by giving the other party 60 days prior written notice; or
- o By either City of Lee's Summit or Taben upon:
  - (a) A material breach of the other party's duties under this Agreement;
  - (b) Non-material breaches of a recurrent nature, after 60 days prior written notice in the event of a material breach; or
  - (c) 60 days prior written notice in the event of a non-material breach of a recurrent nature, and the right to cure such breach by the breaching party.
- **Limited Continuation After Termination.** If the Program is terminated, City of Lee's Summit and Taben may mutually agree in writing that this Agreement shall continue for the purpose of payment of Program benefits, expenses, or claims incurred prior to the date of Program termination. In addition, City of Lee's Summit and Taben may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by Taben before the date of such termination.

If this Agreement is continued in accordance with this subsection, City of Lee's Summit shall pay a fee equal to one and a half times the monthly premium.

- **Survival of Certain Provisions.** Termination of this Agreement does not terminate the rights or obligations of either party arising out of the period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

All parties listed below acknowledge that they have read this Agreement in its entirety and have, to the extent they consider necessary, consulted with their own legal counsel before executing this Agreement. No representations or warranties have been provided to any party to this Agreement. This Agreement is binding upon and shall inure to the benefit of heirs, executors, successors, and assigns of the parties listed below.

To evidence the parties' agreement to this Agreement, City of Lee's Summit and Taben have executed and delivered this Agreement on the date set forth in the preamble.



**City of Lee's Summit, MO**

**The Taben Group**

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### Exhibit A – Service Levels

The purpose of this Exhibit A is to provide City of Lee's Summit with the service level standards for Taben. These services levels are not performance guarantees and do not carry with them any duty on the part of Taben, or its business partners to report or make payment to City of Lee's Summit for any service targets not met.

#### Service Levels

Service	Definition	Service Level Target
<b>Clean Claims Processing Turnaround Time (TAT)</b>	TAT is measured from the date a claim is received by Taben (either via paper or electronic data interchanges) to the date it is processed for payment, denied, or pended for external information. Clean Claim means all required documentation and/or substantiation has been received by Taben.	<ul style="list-style-type: none"> <li>• Ninety-five (95) percent within five (5) business days as measured annually.</li> </ul>
<b>Claims Processing Accuracy</b>	A claim will be determined to be correct based on internal claims processing criteria, as determined by Taben, as well as federal and state determined procedures. A statistically valid internal audit sampling will be utilized.	<ul style="list-style-type: none"> <li>• Financial Accuracy: ninety-nine (99) percent as measured annually.               <ul style="list-style-type: none"> <li>- Formula shall be: Total value of claims paid less the absolute value of the sum of overpayments and underpayments divided by the total value of claims paid. (Taben will not include auto paid benefits from the use of debit cards)</li> </ul> </li> <li>• Claims Processing (Total) Accuracy: Ninety-seven (97) percent as measured annually.               <ul style="list-style-type: none"> <li>- Formula shall be: Total number of audited claims minus the number of claims processed with error, divided by the total number of audited claims (definition of 'error' includes; coding, procedural, system, and payment)</li> </ul> </li> </ul>

Service	Definition	Service Level Target
<b>Average Speed to Answer (ASA)</b>	The amount of time that elapses between the time a call is received into a customer service queue to the time the phone is answered by a Customer Service Representative (CSR).	<ul style="list-style-type: none"> <li>• Ninety (90) percent within thirty (30) seconds during normal business hours.</li> </ul>
<b>Call Abandonment Rate</b>	Percentage of calls that are not answered by Taben.	<ul style="list-style-type: none"> <li>• Less than five (5) percent. <ul style="list-style-type: none"> <li>- Calculated as the number of calls that are not answered during normal business hours, divided by the number of calls presented.</li> </ul> </li> </ul>
<b>E-mail Response Time</b>	Based on number of e-mails received and handled during standard business hours of operation.	<ul style="list-style-type: none"> <li>• Ninety-nine percent (99) percent handled within forty-eight (48) hours (business days time frame).</li> </ul>
<b>Complaint and Appeals Processing Time (limited to initial appeal)</b>	Based on DOL requirements.	<ul style="list-style-type: none"> <li>• Ninety-nine (99) percent handled within DOL required timeframes.</li> </ul>
<b>Billings Statements</b>	Based on the date mailed	<ul style="list-style-type: none"> <li>• Ninety-nine (99) percent mailed by the 15<sup>th</sup> of the month.</li> </ul>
<b>Eligibility and Payroll File Processing</b>	Based on the time between the date Taben receives an accurate file until the date the system reflects the data.  <b>*Includes business days only.</b>	<ul style="list-style-type: none"> <li>• Ninety-nine (99) percent within two (2) business days.</li> </ul>
<b>Web Availability</b>	Website will be available to consumers and employers twenty-four (24) hours per day, three hundred sixty-five (365) days per year, excluding time during the Routine Maintenance Window.  Routine Maintenance Window for hardware and software maintenance between 8:00 PM and 6:00 AM Central Time on Monday through Sunday and all day on Holidays.	<ul style="list-style-type: none"> <li>• Ninety-nine (99) percent of the time excluding time during the Routine Maintenance Window.</li> </ul>

### Glossary

For the purposes of this Agreement, including the attached Schedules, the following words and phrases have the meanings set forth below. Wherever appropriate, the singular shall include the plural and the plural shall include the singular.

**Administration Service Charge** means the collective minimum monthly service charge for the Program's Component Benefits as a whole.

**Agreement** means this Taben Administrative Services Agreement, including all Schedules to this Agreement, amendments, or other attachments incorporated in this Agreement and any future amendments.

**Client** means City of Lee's Summit, MO.

**COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

**Component Benefit** means a qualified benefit under Code §125(f) that is offered under the City of Lee's Summit, MO Cafeteria Plan, or an option for coverage under an underlying accident or health and welfare plan.

**Data Aggregation** means, regarding PHI created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such PHI by the business associate with the PHI received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

**Dependent Care Flexible Spending Account (DCFSA)** means the Component Benefit in which a Participant can use pre-tax dollars to pay for the care of the Participant's eligible dependents while the Participant is at work.

**Effective Date** means January 1, 2018.

**Electronic PHI** has the meaning assigned to such term under HIPAA.

**Eligibility Reports** has the meaning described in Section 3.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**Health Flexible Spending Account (Health FSA)** means the Component Benefit in which a Participant can use pre-tax dollars to pay for certain health expenses not reimbursed under other Programs.

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996, as amended.

**Named Fiduciary** means the named fiduciary as defined in ERISA §402(a)(1) and only applies to ERISA plans.

**Participant** means an eligible employee of City of Lee's Summit who is participating in a Component Benefit of the Program described in this Agreement.

**Plan Administrator** means the administrator as defined in ERISA §3(16)(A).

**Premium Only Plan (POP)** means the Component Benefit in which an employee can elect to participate and have their share of certain benefit plan coverage paid on a pre-tax basis.

**Prior Administration** means services arising prior to the Effective Date.

**Prior Reimbursement Requests** means claims submitted prior to the Effective Date.

**Program** means the Component Benefits elected by Client.

**Protected Health Information (PHI)** has the meaning assigned to such term under HIPAA.

**Schedule A  
Premium Only Plan (POP)**

Capitalized terms used in this Schedule, but not defined have the meanings given in the attached Agreement.

City of Lee's Summit has established a Code § 125 Cafeteria Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions. City of Lee's Summit has delegated certain administrative responsibilities with respect to the POP to Taben.

The applicable monthly service charges under the Agreement and this Schedule are as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PPPM Service Charge	\$ Included in FSA

<b>Additional Service Charges</b>	<b>Cost</b>
Sample Documents and Forms	\$ Included in FSA
Online Enrollment	\$ Included in FSA
Open Enrollment Meetings	\$ Included in FSA
Open Enrollment Packets (each)	\$ Included in FSA

The Administration Service Charge is \$ \_\_\_ N/A \_\_\_.

Any courier or similar charges incurred will be passed through at cost to City of Lee's Summit.

**Services Included**

City of Lee's Summit is responsible for all legal requirements and administrative obligations with regard to the POP, except for the following administrative duties specifically delegated to Taben:

- Taben shall make available (by electronic medium and paper copy) enrollment forms along with instructions.

**City of Lee's Summit, MO**

**The Taben Group**

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**Schedule B**  
**Health Flexible Spending Account (Health FSA)**

Capitalized terms used in this Schedule but not defined have the meanings given in the attached Agreement.

City of Lee's Summit has established a Code § 125 Cafeteria Plan under which a Code § 105 Health FSA is offered. City of Lee's Summit has delegated certain administrative responsibilities with respect to the Health FSA to Taben.

The applicable monthly service charges under the Agreement and this Schedule are as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PPPM Service Charge	\$ 4.00

<b>Additional Service Charges</b>	<b>Cost</b>
Run-in Claims Administration	\$ 1.5 x Monthly Premium
Set-Up Fee	\$ Waived
Renewal Fee	\$ Waived
Printed Enrollment Packets	\$ 1.00 per packet
Onsite Enrollment Meetings/Support	\$ Travel Cost
Replacement Debit Cards	\$ No Charge
Discrimination Testing – Basic Testing	\$ No Charge
Form 5500 Preparation	\$ No Charge
Run-out Claims Administration	\$ 1.5 x Monthly Premium

The minimum monthly administration fee is \$ 100.00. The Administration Service Charge is a set fee that is the same amount regardless of how many or which Component Benefits are enrolled in by City of Lee's Summit. A Service Charge of \$4.00 Per Participant Per Month is guaranteed through December 31, 2022.

Any courier or similar charges incurred will be passed through at cost to City of Lee's Summit.

**Services Included**

City of Lee's Summit is responsible for all legal requirements and administrative obligations with regard to the Health FSA, except for the following administrative duties specifically delegated to Taben:

- Taben shall make available (by electronic medium and paper copy) enrollment and reimbursement forms along with instructions for filing Participant claims. Upon payment of additional fees, Taben shall make available other Health FSA documents.
- Upon receiving instructions from City of Lee's Summit with regard to a Participant's change in status or other event that permits an election change under IRS regulations, Taben shall make the requested change in the Participant's election as soon as possible.

- Taben shall prepare the information necessary to enable City of Lee's Summit to satisfy its Form 5500 filing obligation with regard to the Health FSA. City of Lee's Summit shall be responsible for reviewing the information provided by Taben to ensure its accuracy, and, unless otherwise agreed by the parties in writing, City of Lee's Summit shall prepare and submit any Form 5500.
- Taben shall assist City of Lee's Summit in preparing the following basic nondiscrimination test for the Health FSA:

***Health FSA – Code 125***

➤ Eligibility Test

- Taben does not automatically perform nondiscrimination testing. Upon written request submitted to Taben, the test identified above will be run. Taben relies solely on information provided by City of Lee's Summit in administering this test. Services will be performed only in accordance with the terms and conditions (including applicable fees) of this Agreement. City of Lee's Summit shall be responsible for any and all other nondiscrimination tests not specifically agreed upon in writing by both Taben and City of Lee's Summit.
  - If City of Lee's Summit requires more extensive nondiscrimination testing, Taben can make that available. The cost will be determined by the level of testing requested.
- Taben shall make initial decisions as set forth in this Agreement with regard to Participant claims and disburse any benefit payments that it determines to be due within 30 business days of the day on which Taben receives the claim. Benefit payments shall be made by ACH or check payable to the Participant or provider. Claims of less than \$ 25 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$ 25, except that any remaining amount shall be paid after the end of the calendar quarter or Plan Year without regard to the \$ 25 threshold.
- For ERISA plans only, Taben shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim. Taben shall follow the requirements of ERISA with regard to denial of claims.

**Services Not Included**

- City of Lee's Summit's compliance with COBRA or HIPAA.
- Determining whether City of Lee's Summit's Health FSA documents are in compliance with the Code, ERISA, or any other applicable state, federal, or local statutes and regulations.
- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the Health FSA.



- City of Lee's Summit's responsibility for the determination on the second and any final level of appeal.

**City of Lee's Summit, MO**

**The Taben Group**

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**Schedule C**  
**Dependent Care Flexible Spending Account (DCFSA)**

Capitalized terms used in this Schedule, but not defined have the meanings given in the attached Agreement.

City of Lee's Summit has established a Code § 125 Cafeteria Plan under which a Code § 129 Dependent Care Flexible Spending Account is offered. City of Lee's Summit has delegated certain administrative responsibilities with respect to the DCFSA to Taben.

The applicable monthly services charges under the Agreement and this Schedule are as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PPPM Service Charge	\$ 4.00

<b>Additional Service Charges</b>	<b>Cost</b>
Run-in Claims Administration	\$ 1.5 x Monthly Premium
Set Up Fee	\$ Waived
Renewal Fee	\$ Waived
Printed Enrollment Packets	\$ 1.00 per packet
Onsite Enrollment Meetings/Support	\$ Travel Cost
Replacement Debit Cards	\$ No Charge
Discrimination Testing – Basic Testing	\$ No Charge
Form 5500 Preparation	\$ No Charge
Run-out Claims Administration	\$ 1.5 x Monthly Premium

The minimum monthly administration fee is \$100.00. The Administration Service Charge is a set fee that is the same amount regardless of how many or which Component Benefits are enrolled in by City of Lee's Summit. A Service Charge of \$4.00 Per Participant Per Month is guaranteed through December 31, 2022.

The maximum PPPM Service Charge for Participants enrolled in both the Health FSA and Dependent Care FSA is the PPPM Service Charge listed above for the applicable plan year.

Any courier or similar charges incurred will be passed through at cost to City of Lee's Summit.

**Services Included**

City of Lee's Summit is responsible for all legal requirements and administrative obligations with regard to the DCFSA, except for the following administrative duties specifically delegated to Taben:

- Taben shall make available (be electronic medium and paper copy) enrollment and reimbursement forms along with instructions for filing Participant claims. Upon payment of additional fees, Taben shall make available other DCFSA documents.

- Upon receiving instructions from City of Lee's Summit with regard to a Participant's change in status or other event that permits an election change under IRS regulations, Taben shall make the requested change in the Participant's election as soon as possible.
- Taben shall assist City of Lee's Summit in preparing the following basic nondiscrimination tests for the DCFSA:

***Dependent Care FSA – Code 129***

- Dependent Care Average Benefits Test
- Dependent Care Owners Test
- Taben does not automatically perform nondiscrimination testing. Upon written request submitted to Taben, the tests identified above will be run. Taben relies solely on information provided by City of Lee's Summit in administering this testing. Services will be performed only in accordance with the terms and conditions (including applicable fees) of this Agreement. City of Lee's Summit shall be responsible for any and all other nondiscrimination tests not specifically agreed upon in writing by both Taben and City of Lee's Summit.
  - If City of Lee's Summit requires more extensive nondiscrimination testing, Taben can make that available. The cost will be determined by the level of testing requested.
- Taben shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due within 30 business days of the day on which Taben receives the claim. Benefit payments shall be made by ACH or check payable to the Participant. Claims of less than \$ 25 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$ 25, except that any remaining amount shall be paid after the end of the calendar quarter or Plan Year without regard to the \$ 25 threshold.
- Taben shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim.

**Services Not Included**

- Determining whether City of Lee's Summit's DCFSA documents are in compliance with the Code or any other applicable state, federal, or local statutes and regulations.
- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the DCFSA.

**City of Lee's Summit, MO**

**The Taben Group**

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