



Administration Agreement

PARTIES TO THIS AGREEMENT

The Employer, Town of Los Gatos, has established certain employee benefit programs appropriately offered under IRS Code Section 105 Health Reimbursement Arrangements, Section 125 Cafeteria Plans and/or IRS Code Section 132 Qualified Transportation Plans. The employer has requested The Advantage Group (TAG), a Third Party Administrator (TPA), to act as its agent for the payment of certain benefits and to furnish certain administrative services for Flexible Spending Account (FSA), Commuter Plans and/or Health Reimbursement Arrangement (HRA), collectively referred to as the "Program"). TPA shall provide such services as agent of the employer and agent of the program.

SECTION ONE

SCOPE OF UNDERTAKING

Employer has sole and final authority to control and manage the operation of the program. TPA is an independent contractor with respect to the services being performed hereunder. TPA 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 employer. TPA generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by employer under the program.

THIRD PARTY ADMINISTRATOR (TPA) RESPONSIBILITIES:

1. Benefits Payment – TPA shall, as agent of employer, operate under the express terms of this agreement and the program. TPA shall initially determine if persons covered by the program are entitled to benefits under the program and shall pay program benefits in its usual and customary manner to participants. TPA shall have no duty or obligation with respect to claims incurred prior to the effective date and/or program administration services arising prior to the effective date. Employer agrees that TPA has no responsibility or obligation with respect to prior reimbursement requests or prior administration.
2. Claims Adjudication & Appeal – TPA shall process all claims in an appropriate manner and adjudicate all claims. TPA shall refer to employer for final determination in the event of an appealed claim after rejection by TPA.
3. Record keeping – TPA shall maintain, for the duration of this agreement, the usual and customary books, records, and documents that relate to the program and its participants. These books, records, and documents, including electronic records, are the property of employer, and employer has the right of continuing access to them during normal business hours at TPA's offices with reasonable prior notice. If this agreement terminates, TPA may deliver, or at employer's request, will deliver all such books, records, and documents to employer subject to TPA's right to retain copies of any records it deems appropriate. Employer shall be required to pay TPA reasonable charges for transportation or duplication of such records.
4. Reporting – TPA shall make available to employer a master report showing the payment history and status of participant claims and the amounts and transactions of participant accounts. Upon request, TPA shall also make such information available to participants showing their individual account history.
5. Plan Documents – If employer requests, TPA shall furnish to employer plan documents to be reviewed by employer for creation of customized documentation for the program, including board resolutions, summary plan descriptions (SPDs), plan documents, and plan amendments (if any).
6. Employee Enrollment Assistance – TPA will provide employee brochures and enrollment forms for all eligible employees. Enrollment packets including claim forms and instructions for filing are provided for all enrolled participants in a reimbursement plan.
7. Participant Assistance - Participants have daytime access to customer service support through a toll-free telephone number. Employee account balance information is included on claim reimbursement check stubs and provided 60 days prior to plan year-end or at request of Participant.

8. Annual Plan Compliance - TPA will perform appropriate discrimination testing at the beginning of a plan year and two additional times during the year at employer's request. A completed IRS Form 5500 will be provided, as needed, along with information for W-2 Wage and Tax Statements that are based on information provided by employer and from account-specific data relating to the employer's plan. However, TPA shall not be responsible for the accuracy of any information provided by the employer in preparation of the annual Form 5500 nor shall TPA be responsible for determining the level of compliance required by the employer's plan.

9. Unpaid Benefit Funds - In compliance with employer's plan document and any applicable state or federal law requirements, any unclaimed fund amounts remaining unpaid more than 160 days after the close of the plan year and any applicable grace and appeal periods in which the claim is incurred, are forfeited and returned to the employer, minus any necessary fees and expenses that are owing to TPA, pursuant to this Agreement

10. Compliance with Privacy Rules Under HIPAA – TPA recognizes that it is considered a “Business Associate” with regard to employer's Health FSA for purposes of the privacy rules under HIPAA. TPA may use and disclose any PHI on behalf of employer for the proper management and administration of TPA. Notwithstanding the foregoing, such use and disclosure of PHI may not violate the privacy rules of HIPAA. At termination of this Agreement, TPA agrees to return or destroy all PHI received by TPA under this Agreement, or, to the extent that it is not feasible, to continue to limit the further uses and disclosures of that information as provided by this section.

EMPLOYER RESPONSIBILITIES:

1. General Compliance - Employer has the sole authority and responsibility for the program and its operation. Employer gives TPA the authority to act on behalf of employer in connection with the program. All final determinations as to a participant's entitlement to program benefits are to be made by employer. Employer is considered the plan administrator and named fiduciary of the program benefits for purposes of ERISA. The employer remains responsible for all plan activities, including general compliance with ERISA, HIPAA, the Internal Revenue Code, COBRA, and other applicable laws or regulations.

2. Funding of Benefits – Funding for any payment on behalf of the participants under the program is the sole responsibility of employer, and employer 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, where such expenses are incurred and the claim is presented for payment during the term of this agreement.

3. Information to TPA - Employer shall furnish the information requested by TPA as determined necessary to perform TPA's functions.

4. Eligibility Changes - Employer shall notify TPA of changes in employee eligibility (e.g., addition, termination, change in family status, etc.) in the prescribed manner via fax or email. Late notification of plan eligibility may result in an erroneous payment to an employee. In this event, the risk of loss will be the burden of the employer.

4. Discriminatory Plans – Employer shall initiate any corrective action required in the event the plan(s) becomes discriminatory.

5. Ownership of Account Assets - All amounts deposited by the employer for the plan remain the employer's assets and shall remain available for the employer's general use or removal. TPA, or its representatives, shall only be responsible for administering the employer's funds in accordance with the terms of this agreement. Amounts deposited by employer shall only be disbursed by TPA, if it is an allowable expense as determined by the employer or as otherwise required by a court of appropriate jurisdiction.

6. Employee Fraud - In the event of employee fraud against the plan, it is the employer's responsibility to make the plan whole and pursue appropriate remedies from the employee.

7. HIPAA Compliance – Employer is required to provide to TPA notice of its privacy practices and authorizations of a participant to use or disclose Protected Health Information (PHI). TPA is considered a “Business Associate” under HIPAA with regard to employer's Health FSA and is agreeing to numerous technical requirements for “Business Associates” under HIPAA. Employer shall notify TPA of any restriction to the use or disclosure of PHI that employer has agreed to in accordance with the privacy rules under HIPAA.

SECTION TWO

EFFECTIVE DATE AND TERM

The effective date of this Agreement is February 1, 2021. The initial term shall be a twelve (12) month period commencing on the effective date. Thereafter, this agreement will renew automatically for successive periods of twelve (12) months unless services are terminated in accordance with the provisions set forth in this agreement.

TERM OF CONTRACT

1. Automatic - This Agreement shall automatically terminate as of the earliest of the following events: (a) the effective date of any legislation which makes the program and/or this agreement illegal; (b) the date employer becomes insolvent, bankrupt, or subject to liquidation, receivership, or conservatorship; (c) the termination date of the program, subject to any agreement between employer and TPA regarding payment of benefits after the program is terminated.
2. Optional – This agreement may be terminated as of the earliest of the following: (a) by TPA upon the failure of employer to pay any charges within 15 business days after they are due and payable; (b) by TPA upon failure of employer to perform its obligations in accordance with this Agreement; (c) by employer upon the failure of TPA to perform its obligations in accordance with this Agreement; (d) by either employer or TPA, as of the end of the term of this agreement, by giving the other party thirty (30) days written notice; (e) Any other date that is mutually agreed upon in writing between TPA and employer provided at least thirty (30) days notice of intent to terminate and otherwise not renew this agreement is given by either party.
3. Limited Continuation After Termination – If the program is terminated, employer and TPA may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Program benefit, expense, or claims incurred prior to the date of program termination. In addition, if this agreement is terminated while the program continues in effect, employer and TPA may mutually agree in writing that this agreement shall continue for the purpose of payment of any claims for which request for reimbursements have been received by TPA before the date of such termination. If this agreement is continued in accordance with this subsection (3), employer shall pay the monthly service charges incurred during the period that this agreement is so continued and a final termination fee equal to the final month's service charge and any applicable fees incurred for services rendered by TPA to satisfy plan closure.
4. Survival of Certain Provisions – Termination of this agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity, confidentiality, and privacy provisions of this agreement shall survive its termination.

CONTRACT AS INCLUDING ENTIRE AGREEMENT

This Agreement, and its attachments, constitutes the entire agreement between TAG and employer and supersedes all prior agreements and representations between the parties. No modification or amendment shall be valid unless agreed to in writing by both parties. This agreement shall be construed, enforced, and governed by the laws of the State of California to the extent they are not inconsistent with or preempted by ERISA, the Internal Revenue Code, or any other applicable federal law.

FEE SCHEDULE

Employer agrees to pay TAG for administration services pursuant to this agreement according to the fee schedule specified herein; a plan administration fee of \$50.00 per month, which includes the preparation of required plan documents, summary plan descriptions (SPD) and plan compliance services; Renewal fee of \$100.00 per year. Additional testing requests made by plan sponsor may incur additional fees; participant account processing fees are \$6.00 per month, per active account; participant SmartCard debit cards are \$0.00 per participant, per month, and are subject to the terms and conditions of the members card services agreement; the TAG Benefit Center mobile app and online account services are included; applicable carryover and/or grace period administration is \$6.00 per participant, per year; runout period administration is included. EDI connection services from approved providers are \$0.00 per feed. Fees are subject to periodic adjustments; a notice of any applicable fee adjustments will be provided no less than thirty (30) days prior to effective date. Additional administration functions or account services performed by TAG outside of the ordinary scope of services outlined in this agreement may incur additional fees; a fee schedule for such services will be provided in advance of services being performed.

THIRD PARTY ARRANGEMENTS

Plan sponsor may designate a third party agency to assume payment of monthly administration fees on behalf of the plan sponsor. All payment terms made between plan sponsor and designated third party are made exclusive to this agreement. In the event of non-payment by plan sponsor's designated third party, any current and past due administration fees are the responsibility of the plan sponsor.

This Agreement, including the Attachments, is accepted and agreed to by the parties as of this date. This contract made between The Advantage Group (TAG) and Town of Los Gatos, whose business address is herein referred to as "Employer":

Employer:

Name: Laurel Prevetti

Title: Town Manager

Company: Town of Los Gatos

Signature: _____

Date: _____

The Advantage Group:

Name: Chase Skousen

Title: Controller

Company: The Advantage Group

Signature:  _____

Date: November 18, 2021

APPROVED AS TO FORM:

Robert Schultz
Town Attorney

ATTEST:

Shelley Neis, MMC, CPMC
Town Clerk

**ADMINISTRATIVE SERVICES AGREEMENT
ATTACHMENT B**

Compliance With Privacy Rules Under HIPAA

Capitalized terms used in this section shall have the same meaning as defined in 45 C.F.R. §§ 160.103 and 164.501. Upon HIPAA's applicability date with regard to employer's plan, the following provision will apply:

General Responsibilities as a "Business Associate":

1. TPA agrees not to use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
2. TPA agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
3. TPA agrees to mitigate, to the extent practicable, any harmful effect that is known to TPA of a use or disclosure of PHI by TPA in violation of the terms of this Agreement.
4. TPA agrees to report to Employer any use or disclosure of PHI not provided for by this Agreement.
5. TPA agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by TPA on behalf of Employer agrees to the same restrictions and conditions that apply throughout this Agreement to TPA with respect to such information.
6. TPA agrees to provide access, at the request of Employer, and in the time and manner designated by Employer, to PHI in a Designated Record Set, to Employer or, as directed by Employer, to an Individual in order to meet the requirements of 45 C.F.R. §164.524.
7. TPA agrees to make any amendment(s) to PHI in a Designated Record Set that Employer directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Employer or an Individual, and in the time and manner designated by Employer.
8. TPA agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by TPA on behalf of Employer available to Employer, or at the request of Employer, to the Secretary, in the time and manner designated by Employer or the Secretary, for purposes of the Secretary determining Employer's compliance with the privacy rules under HIPAA.
9. TPA agrees to document such disclosures of PHI and information related to such disclosures as would be required for Employer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
10. TPA agrees to provide to Employer or an Individual, in the time and manner designated by Employer, information collected in accordance with Section 3.11 (a)(9) to permit Employer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
11. In the event that TPA conducts Standard Transactions with or on behalf of the Health FSA/ HRA, TPA will comply with the requirements in 45 C.F.R. Part 162 by October 2003. TPA will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162.
12. TPA will comply with any applicable provisions of the HIPAA Security Standard Requirements (as set forth in 45 C.F.R. Parts 160, 162, and 164) as of the applicable regulatory compliance date and will ensure that any agents or subcontractors that assist TPA agree in writing to comply with the HIPAA Security Standard Requirements. If the Security Standard Requirements require the Health FSA/ HRA to include additional specific contractual provisions in this Agreement, the TPA agrees to renegotiate this provision in good faith prior to such compliance date.

Permitted Uses and Disclosure by TPA. TPA may use and disclose any PHI on behalf of, or to provide services to Employer, as specified in this agreement; for the proper management and administration of TPA; to carry out the legal responsibilities of TPA; and to provide data aggregation services to Employer. Notwithstanding the foregoing, such use and disclosure of PHI may not violate the privacy rules of HIPAA.

Amendment to Comply with Privacy Rules. TPA agrees to amend this Section as is necessary from time to time to comply with the requirements of the privacy rules under HIPAA.

Termination of Agreement. TPA agrees to termination of the Agreement by Employer if the terms of this Section are violated. In addition, at termination of this Agreement, TPA agrees to return or destroy all PHI received by TPA under this Agreement or, to the extent that it is not feasible, to continue to limit the further uses and disclosures of that information as provided by this Section.