# 2020 CARES ACT AMENDMENT – CAFETERIA PLANS

We are providing you with this amendment so that you can amend your Cafeteria Plans to comply with the new CARES Act provisions concerning reimbursement of over-the-counter (OTC) drugs and menstrual products. HRA plans are also subject to the new rules and this amendment can be used for those plans as well.

**Are cafeteria plans required to be amended for this change?**

No, this is not a required amendment. However, if the plan wants to take advantage of these changes, it must be amended to do so.

**Does an employer need to modify or make any elections in the amendment?**

Yes. The employer will need to add an effective date and choose which expenses to reimburse.

**When do the amendments become effective?**

The amendment can take effect at any time; however, expenses must be incurred after December 31, 2019.

In addition to the amendment, we have provided a sample Adopting Resolution and a sample Summary of Material Modifications (SMM).

# AMENDMENT FOR CARES ACT

**ARTICLE 1**

**PREAMBLE; DEFINITIONS**

1.1 **Adoption of Amendment**. The Employer adopts this Amendment to implement provisions of the Act which affect the Plan.

1.2 **Superseding of inconsistent provisions**. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 **Construction.** Except as otherwise provided in this Amendment, any “Section” reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment and does not relate to the Plan article, section, or other numbering designations.

1.4 **Effect of restatement of Plan.** If the Employer restates the Plan then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).

1.5 **Definitions.** Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. The following definitions apply specifically to this Amendment:

1. The “**Act**” is the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. This Amendment shall be interpreted and applied to comply with the Act.

**ARTICLE 2**

**IDENTIFYING INFORMATION; EMPLOYER ELECTIONS**

2.1 **Identifying information.**

 A. Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 B. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.2 **Medical Expenses.** Will the Plan reimburse any or all of the following for Participants:

 **(a) [ ]** **Over the Counter Medications.**

 **(b) [ ] Menstrual products.**

2.2 **Effective Date.** This Amendment is effective as of March 27, 2020, or, if later, the following date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *(Optional. Enter a date not later than December 31, 2020.)* Expenses must be incurred after \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *(Enter a date not earlier than December 31, 2019.)*

**ARTICLE 3**

**MEDICAL EXPENSES REIMBURSED**

3.1 **Application.** The Plan’s definition of “Medical Expenses” under the Plan is amended by the addition of the following provisions as selected at Section 2.2.

3.2**Over the Counter Medications**. Notwithstanding anything in the Plan to the contrary, a Participant may be reimbursed for the cost of any medicine or drug for medical care, within the meaning of the term “medical care” as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, including those medicines or drugs that are not prescribed as also defined. Insulin remains a covered expense.

3.3 **Menstrual Products**. A Participant may be reimbursed for the purchase of menstrual care products as defined in Code Section 223(d)(2)(D) and as authorized in Code Section 106(f).

\* \* \* \* \* \*

This Amendment has been executed this day of , 20 .

Name of Plan:

Name of Employer:

By:

 EMPLOYER

**CERTIFICATE OF ADOPTING RESOLUTION**

The undersigned authorized representative of (the Employer) hereby certifies that the following resolution was duly adopted by Employer on , and that such resolution has not been modified or rescinded as of the date hereof;

RESOLVED, the Amendment to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Plan for the CARES Act (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Plan Administrator the Amendment and to take any and all actions as it may deem necessary to effectuate this resolution.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [print name/title]

**SUMMARY OF MATERIAL MODIFICATIONS**

**for the**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Plan)

**I**

**INTRODUCTION**

This is a Summary of Material Modifications regarding the (“Plan”). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description (“SPD”) previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

**II**

**SUMMARY OF CHANGES**

This amendment is effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for expenses incurred after December 31, 2019.

You may request reimbursement for the purchase of "over the counter" drugs without a prescription.

You may request reimbursement of the purchase of menstrual care products, including tampons, pads, and other products.