

## GROUP DYNAMIC, INC. ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

- A. **Town of Falmouth** (“Client”) has established certain employee benefit programs, including one or more of the following: a Flexible Benefit Plan under Code Section 125 (“Flexible Benefit Plan”), Medical Flexible Spending Account (“Medical FSA”) under Code Section 105; a Dependent Care Assistance Program (“DCAP”) under Code Section 129; a Transportation Fringe Benefit Plan (“Transportation Plan”) under Code Section 132(f)(4); a Health Reimbursement Arrangement (HRA) under Code Section 105; and/or a Group Health Plan as defined by IRC or the PHSA (collectively, the “Programs”)
- B. Client has requested Group Dynamic, Inc. (“GDI”) to furnish certain administrative services set forth in the applicable Service Appendices attached hereto for one or more of the Programs listed in paragraph “A” above to the extent set forth in the appendices attached hereto.
- C. Plan is sponsored by a governmental employer and is exempt from ERISA.

In consideration of the mutual promises contained in this Agreement, Client and GDI agree as follows.

### ARTICLE I. INTRODUCTION

#### 1.1 Effective Date and Term

The effective date of this Agreement is **1/1/2013** (“Effective Date”). The initial term shall be the initial twelve (12) month period commencing on the Effective Date; thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions of Section 6.8.

#### 1.2 Scope of Undertaking

Client has sole and final authority to control and manage the operation of the Programs. GDI is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Client. Nor shall GDI and Client be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor. GDI 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 Client. Nor is GDI in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Program. GDI generally provides administration services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Program. Nothing herein shall be deemed to constitute GDI as a party to the Program or to confer upon GDI any authority or control respecting management of the Program, authority in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon GDI any obligation to any employee of Client or any person who is participating in the Program (“Participant”).

#### 1.3 Definitions

“**Agreement**” means this Services Agreement, including all Appendices hereto.

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

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

“**Flexible Benefit Plan**” has the meaning given in the Recitals.

“**DCAP**” has the meaning given in the Recitals.

“**Client**” has the meaning given in the Recitals.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended. Please note this Plan is sponsored by a governmental employer and is exempt from ERISA

“**Effective Date**” means the date given in Section 1.1.

“**Group Health Plan**” has the same meaning given in the Recitals, except for HIPAA Privacy Appendix where it shall have the meaning given to such term under 45 C.F.R. § 160.103

“**Medical FSA**” has the meaning given in the Recitals.

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

“**Participant**” has the meaning given in Section 1.2.

“**Plan**” means the Health FSA, DCAP, Transportation Plan, HRA, or Group Health Plan, as applicable.

“**Plan Administrator**” means the Client.

“**Program**” shall have the meaning given in the Recitals.

“**Transportation Plan**” has the meaning given in the Recitals.

Certain definitions set forth above may not be applicable to the extent the Service to which the definition relates is not provided.

## ARTICLE II. CLIENT RESPONSIBILITIES

### 2.1 Sole Responsibilities

a. *General.* Client has the sole authority and responsibility for the Programs and its operation, including the authority and responsibility for administering, construing and interpreting the provisions of the Program and making all determinations thereunder. Client gives GDI the authority to act on behalf of Client in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Client and GDI. The Client will establish a claims appeal procedure for handling disputes regarding claims for benefits or the payment of benefits. All final determinations as to a Participant's entitlement to Program benefits are to be made by Client, including any determination upon appeal of a denied claim for Program benefits. Client is considered the Plan Administrator.

b. *Examples.* Without limiting Client's responsibilities described herein, it shall be Client's sole responsibility (as Plan Administrator) and duty to: ensure compliance with all applicable laws, including amending the Programs to comply with new legislation or regulations; perform required nondiscrimination testing; file any required tax or governmental returns (including Form 5500 returns) relating to the Programs; determine if and when a valid election change has occurred; handle Participant claim appeals; execute and retain required Program and claims documentation; and take all other steps necessary to maintain and operate the Program in compliance with applicable provisions of the Plans, HIPAA, the Code and other applicable federal and state laws. In addition, Client will be responsible for any other responsibilities set forth in the applicable Service Appendices.

### 2.2 Service Charges; Funding

Client shall pay GDI the service charges set forth in the Services Appendices hereto, as described in Article V. To the extent that GDI is responsible for reimbursement services, Client shall promptly provide the necessary funds to pay all claims in accordance with the terms of the applicable Services Appendix.

### 2.3 Information to GDI

Client shall furnish the information requested by GDI as determined necessary to perform GDI's functions as set forth in the applicable Services Appendix. Such information shall be provided to GDI in the time and in the manner agreed to by Client and GDI. GDI shall have no responsibility for errors due to Client's failure to timely update such information. GDI shall have no liability to Client or any covered individual as a consequence of inaccurate information, and GDI shall not have any obligation to credit Client for any claims expenses or administrative fees incurred or paid to GDI as a consequence of Client

failing to provide accurate information. GDI shall assume that all such information provided to GDI is complete and accurate and is under no duty to question the completeness or accuracy of such information.

#### **2.4 Program Documents**

Client is responsible for the Program's compliance with all applicable federal and state laws and regulations and except to the extent not provided by GDI as provided herein, shall provide GDI with all relevant documents, including but not limited to, the Program documents, summary plan descriptions and any Program amendments. Client will notify GDI of any changes to the Program at least thirty (30) days before the effective date of such changes. Client acknowledges that GDI is not providing tax or legal advice and that Client shall be solely responsible for determining the legal and tax status of the Program.

#### **2.5 Liability for Claims**

Client is responsible for the benefits to be provided by the Programs. GDI does not insure or underwrite the liability of Client under the Program. Except for expenses specifically assumed by GDI in this Agreement, Client is responsible for all expenses incident to the Program.

#### **2.6 Indemnification**

Client agrees to indemnify and hold harmless GDI from and against all claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees) incident to the Plan that are caused by or a direct result of the actions of the Client, subject to the protection of the sovereign or governmental tort immunity statutes or other similar applicable law of the State of Maine. Client shall also have the indemnification obligation described in Section 3.3.

#### **2.7 Medical Records**

Client shall, if required by law or regulation, notify each Participant and provide each Participant with an opportunity to opt out (if required) or obtain from each Participant such written authorization for release of any personal financial records and medical records in accordance with applicable state and federal law (including the Gramm-Leach-Bliley Act and HIPAA) to permit Client and/or GDI to perform their obligations under this Agreement. Pursuant to the GDI Service Agreement, Medical Flexible Spending Account, Administrative Services Appendix attached hereto, GDI shall provide Client with sample COBRA and HIPAA forms/notices for the Client's Medical Flexible Spending Account which the Client can use to comply with Client's obligations under COBRA and HIPAA in connection with the Medical Flexible Spending Account.

### **ARTICLE III. GDI RESPONSIBILITIES**

#### **3.1 Sole Responsibilities**

GDI's sole responsibilities shall be as described in this Agreement and the Services Appendices attached hereto.

#### **3.2 Service Delivery**

GDI shall provide customer service personnel by telephone during normal business hours as determined by GDI. GDI shall 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, act of God, labor controversy, civil disturbance, disruption of the public markets, terrorism, 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 law, judgment or decree.

### **3.3 Benefits Payment**

To the extent that GDI provides reimbursement services as set forth in the Services Appendices attached hereto, GDI shall, as agent of Client, operate under the express terms of this Agreement and the Program. GDI shall initially determine if persons covered by the Program (as described in the material received from the Client) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Article III and Article IV. GDI shall have no duty or obligation with respect to claims incurred prior to the Effective Date (“Prior Reimbursement Requests”) and/or Program administration (or other) services arising prior to the Effective Date (“Prior Administration”), regardless of whether such services were/are to be performed prior to or after the Effective Date except as otherwise provided in the applicable Services Appendices. Client agrees that: (a) GDI has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration; (b) Client will be responsible for processing Prior Reimbursement Requests (including any run-off claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements; and (c) Client shall indemnify and hold GDI harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

### **3.4 Nondiscrimination Testing**

In the event that Non-discrimination testing services are provided as set forth in the Services Appendices attached hereto, GDI will provide data request forms within 60 days following the beginning of the Plan Year.

All tests will be conducted based on data provided by the Client and GDI makes no representation as to the accuracy of that data. Moreover, all the tests conducted by GDI will be conducted in accordance with GDI’s interpretation of the rules and regulations setting forth the manner in which the tests are required to be conducted.

1. The Client bears sole responsibility for nondiscrimination testing and the continued qualified status of any Plans offered under this Program, including its Flexible Benefit Plan, under all applicable provisions of the Internal Revenue Code.
2. The testing results provided by GDI are merely an indicator of compliance with the tests conducted by GDI in accordance with GDI’s interpretation of the applicable rules and regulations.
3. GDI is not in the business of providing legal or tax advice, and the Client will not construe the testing percentages provided by the GDI to be legal or tax advice.

### **3.5 Bonding**

GDI has, and will maintain, a fidelity bond for all persons involved in collecting money or making claim payments, and all officers of the company in accordance with applicable law. This bond covers the handling of Client's and Participants' money from dishonesty, theft, forgery or alteration, and unexplained disappearance.

### **3.6 Claims Appeals**

GDI shall refer to Client or its designee, for final determination, any claim for benefits under the Programs that is appealed after initial rejection by GDI, or any class of claims that Client may specify, including: (a) any question of eligibility or entitlement of the claimant for coverage under the Program; (b) any question with respect to the amount due; or (c) any other appeal.

### **3.7 Additional Documents**

If Client and GDI mutually agree upon payment of applicable fees, then GDI shall furnish Client: (a) sample documents to be reviewed by Client with its legal counsel to be approved and executed by the Client, including board resolutions, summary plan descriptions (SPDs), Program documents and Program amendments (if any) as set forth in the applicable Services Appendices; and (b) sample administrative forms needed for GDI to perform under this Agreement as set forth in the Services Appendices. Documents will only be provided to individuals and/or entities other than the Client and/or its employees with prior written authorization from the Client and any other documentation deemed necessary by GDI.

### **3.8 Recordkeeping**

GDI shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records. Client has the right of continuing access to these books, records and documents during normal business hours at GDI's offices with reasonable prior notice. GDI shall maintain records for 7 years, irrespective of the status of this Agreement, following the date the record was created, after such time the documents will be destroyed. GDI shall have the right to charge a reasonable fee for any transportation and/or duplication of such records.

### **3.9 Liability and Indemnity**

GDI shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If GDI makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, GDI shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. GDI shall indemnify and hold Employer harmless from all claims, losses, damages, judgments, liabilities, causes, expenses or obligations (including but not limited to reasonable attorneys' fees and expenses) arising out of or resulting from GDI's own negligence or other wrongful act or omission or that of any of its officers, shareholders, directors, agents, representatives, or employees acting within the scope of his or her employment or which may arise out of, be connected with or be made by reason of the failure of GDI to perform its contractual obligations under this Agreement including, but not limited to, any claim, demand, penalty, charge or suit brought or imposed by the United States Department of Health and Human Services ("HHS") or a Participant in connection with a claim by HHS or a Participant in the Plan that a Participant's rights under H.I.P.A.A. have been violated.

### **3.10 Notices to Participants**

GDI shall provide to participants all notices agreed to be provided by GDI as set forth in the applicable Services Appendices. All such notices shall be sent in accordance with the procedures and timeframes set forth herein and/or in the applicable Services Appendices. To the extent that GDI's responsibility is conditioned upon Client submitting information to GDI, Client will indemnify and hold harmless GDI for any damages arising from a failure to meet any state or federal deadlines to the extent that GDI satisfies its responsibilities as set forth in the applicable Services Appendices.

### **3.11 Non-Discretionary Duties; Additional Duties**

GDI and Client agree that the duties to be performed hereunder by GDI are non-discretionary duties. GDI and Client may agree to additional duties in writing as may be specified in the Appendices from time to time.

### **3.12 Insurance**

GDI agrees to maintain professional liability / errors and omissions insurance coverage in the amount of at least \$1 million per claim and \$1 million in the aggregate and to provide the Client proof of such coverage at the Client's request.

#### **ARTICLE IV. BENEFIT PROGRAM PAYMENT; CLIENT'S FUNDING RESPONSIBILITY**

##### **4.1 Payment of Benefits**

To the extent reimbursement services are provided as set forth in the Services Appendices, Client authorizes GDI to pay Program benefits as set forth in those Services Appendices. Client shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section 4.1 and the provisions of the applicable Services Appendices. GDI shall have sole authority to provide whatever notifications, instructions or directions as may be necessary to accomplish the disbursement of such Program funds to or on behalf of Participants in payment of approved claims.

##### **4.2 Funding of Benefits**

Funding for any payment on behalf of the Participants under the Program, including but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Client, and Client 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. Notwithstanding the above, this section does not apply to any applicable COBRA premiums or other premiums that are the responsibility of a qualified beneficiary or Participant.

#### **ARTICLE V. GDI COMPENSATION**

##### **5.1 Service Charges**

The amounts of the monthly service charges of GDI are described in the Services Appendices. GDI may change the amount of such charges effective on each Agreement renewal date by providing Client at least thirty (30) days written or electronic notice to Client prior to the applicable renewal date. GDI may also change the monthly service charges if any change is made in the Program, or if any change in law or regulations imposes on GDI greater duties or obligations than contemplated by this Agreement in force at the time of such change, provided GDI gives Client at least thirty (30) days written or electronic notice to Client prior to the date the new monthly service charge will take effect.

##### **5.2 Billing of Charges**

All service charges of GDI, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims (where applicable) so that proper accounting can be made by Client of the respective amounts paid for claims and for administrative expenses.

##### **5.3 Payment of Charges**

All charges under this Article V shall be determined by GDI and billed to Client as set forth in the Applicable Services Appendices. Failure to pay such charges as set forth in the applicable Services Appendices may result in termination of this Agreement as set forth in Section 6.8. Notwithstanding any other provision of this Agreement, GDI reserves the right to withhold any amount due under this Agreement from forfeitures, if any; arising from the Client's flexible spending accounts.

## ARTICLE VI. GENERAL PROVISIONS

### 6.1 Severability; Headings

If a court declares any term of this Agreement invalid, the same 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.

### 6.2 Compliance; Non-Waiver

Failure by Client or GDI 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 Section 6.3.

### 6.3 Assignment; Amendment

Neither Client nor GDI 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 Client and GDI.

### 6.4 Audits

Each party shall be authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other party. Audits shall be performed during normal working hours. An agent of either party may perform audits provided such agent signs an acceptable confidentiality agreement. Each party agrees to provide reasonable assistance and information to the auditors. Client acknowledges and agrees that if it requests an audit, it shall reimburse GDI for GDI's reasonable expenses, including copying and labor costs, in assisting Client to perform the audit. Each party also agrees to provide such additional information and reports, as the other party shall reasonably request.

### 6.5 Non-Disclosure of Proprietary Information

- a. *General.* Client and GDI each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, information which is proprietary and/or confidential information of such party. Client and GDI agree that each party shall; (a) keep such proprietary and/or confidential information of the other party in strict confidence; (b) not disclose 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 (c) shall not use 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).
- b. *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; (a) 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 (b) 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 identified as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records and correspondence concerning the

parties' respective businesses or finances. The terms and conditions of this Section 6.5 shall survive the termination of this Agreement.

## **6.6 Arbitration**

Any controversy or claim arising out of or relating to this Agreement between Client and GDI, or the breach thereof, shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in Maine.

## **6.7 Notices and Communications**

(a) *Notices.* All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail, with tracing capability, or by 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 herein shall be deemed given or made when received.

(b) *Addresses.*

Client's address for notices as described above is:

**271 Falmouth Rd,  
Falmouth, ME 04105**

GDI's address for notices as described above is:

**411 U.S. Route One,  
Falmouth, ME 04105**

(c) *Communications.* Client agrees that GDI may communicate confidential, protected, privileged or otherwise sensitive information to Client through a named contact(s) designated by Client ("Named Contact(s)") or other person(s) as specifically requested by the Client and specifically agrees to indemnify GDI and hold it harmless if all reasonable industry-standard information security practices are followed:

(i) for any such communications directed to Client through the Named Contact(s) or designated person attempted via mail or telephone, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and

(ii) from any claim for the improper use or disclosure of any health information by GDI where such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

## **6.8 Termination of Agreement**

(a) *Automatic.* This Agreement shall automatically terminate as of the earliest of the following: (i) the effective date of any legislation which makes the Program and/or this Agreement illegal; (ii) the termination date of the Program, subject to any agreement between Client and GDI regarding payment of benefits after the Program is terminated or as otherwise provided in 6.8(c) herein.

(b) *Optional.* This Agreement may be terminated as of the earliest of the following: (i) by GDI upon the failure of Client to pay any charges within fifteen (15) business days after they are due and payable as provided in Article V); (ii) by GDI upon the failure of Client to perform its obligations in accordance with this Agreement, (iii) by Client upon the failure of GDI to perform its obligations in accordance with this Agreement; or (iv) by either Client or GDI, by giving the other party thirty (30) days advance written notice.



- (c) *Limited Continuation After Termination.* If the Program is terminated, Client and GDI 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, Client and GDI 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 GDI before the date of such termination. If this Agreement is continued in accordance with this subsection (c), Client 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.
- (d) *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.
- (e) *Fees Due at Termination.* Client shall remit all fees due to the date of termination within fifteen (15) days after the termination date. No fee payable or remitted shall be prorated or refunded upon termination of this Agreement by Client. In the event monthly administration fees were paid in advance, GDI will refund the Client fees for such period of service after the term of Agreement. If the Client requests GDI to extend the Agreement after termination for purposes of administering flexible spending account claims during the Client's "run-off" period, GDI will charge and expect payment for the monthly administration fees as provided in the attached Service Appendices.

**6.9 Complete Agreement; Governing Law**

This Agreement (including the Appendices) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties. This Agreement shall be construed, enforced and governed by the laws of the State of Maine.

IN WITNESS WHEREOF, Client and GDI have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

**Town of Falmouth**

**Group Dynamic, Inc. as GDI**

By: \_\_\_\_\_

Lynne C. McKeone



Title: \_\_\_\_\_

Chief Compliance Officer

PLEASE SIGN AND RETURN TO  
GROUP DYNAMIC INC.

**GDI Service Agreement**  
**MEDICAL FLEXIBLE SPENDING ACCOUNT**  
**Administrative Services Appendix**

Group Dynamic, Inc. (“GDI”) will provide all of the labor, materials and facilities necessary to perform the Standard Services set forth below for the Client for the following standard fee:

Annual Subscription Fee:	\$875.00	
Monthly Claims Administration Fee:	\$5.55	per month per open account (Example: Employee A has both a Medical FSA and a Dependent Care FSA. Monthly invoice would indicate 2 accounts at \$5.55 each)
Debit Card Fee:	\$18.00	

**I. Standard Services**

**A. Enrollment.**

1. Based on information provided by the Client, GDI will provide a model enrollment form, reimbursement request form, and generic educational materials.
2. Upon receipt of initial enrollment data, GDI will mail a Flexible Spending Account “Welcome Packet” to each FSA participant provided the Client has purchased both Medical FSA and Dependent Care FSA administration services.
3. GDI will provide, through its third party vendor, a debit card stored-value MasterCard for each Medical FSA participant.

**B. Compliance.**

1. GDI will provide model plan documents and a Summary Plan Description for the Plan which the Client can have reviewed by its legal counsel prior to adoption.
2. GDI will notify Client of regulatory changes affecting the administration of the Plan.
3. GDI will provide sample COBRA and HIPAA forms/notices for the Client’s Medical Flexible Spending Account Plan.
4. GDI will perform non-discrimination testing as required by law upon receipt of a completed Highly Compensated/Key Employee Non Discrimination Testing worksheet from Client.
5. GDI will provide ongoing administrative and compliance support throughout the Client’s plan year.

**C. Claims Administration**

1. GDI will adjudicate non-debit card Medical FSA claims on behalf of the Client according to current IRS regulations and issue payments to employees who submit valid claims.
2. Debit card claims will be adjudicated according to published IRS Debit Card guidance.
3. GDI will provide an annual account summary report and other management reports upon request.
4. GDI will maintain a custodial account to hold and reimburse FSA monies.

**II. Client Responsibilities with Respect to Standard Services.**

- A. Client will be responsible for filing all required reports with the Internal Revenue Service or other appropriate federal agency.

- B. Client will notify GDI of a participant's change in election or termination of participation as soon as possible after the occurrence of the event. GDI is not responsible for any overpayments that may arise as a result of the Client's untimely notice of a participant's reduction of or termination of an election.
- C. Client will be responsible for providing GDI with sufficient funds to reimburse participants' non-Debit Card Medical FSA claims. If at any time the funds on hand are insufficient to pay participants' claims (due to claims exceeding deposits to date (i.e., the "Uniform Coverage Rule")), Client agrees to forward the requisite funds to GDI immediately upon notification of the shortfall.
- D. Client will be responsible for providing GDI with six percent (6%) of its total annual Medical FSA elections in order to prefund the GDI Debit Card transaction settlement account. This pre-fund amount must be on deposit at all times, including 120 days after the termination of GDI services.
- E. If Client requests FSA reimbursements on a "Claims Only" basis, the Client agrees to allow GDI to transfer sufficient funds (via ACH) from an account designated by the Client. GDI will provide the Client with detailed information each time a funds transfer has occurred.
- F. Client agrees to remit documentation to GDI following each pay period that supports the amount withheld from each participant's pay for his/her Medical FSA.
- G. If Client requests an extension to the Plan's 'run-off' period, such request must be submitted to GDI in writing prior to the end of the 'run-off' period established at the start of the existing Plan year.

**GDI Service Agreement**  
**DEPENDENT CARE (DCAP) FLEXIBLE SPENDING ACCOUNT**  
**Administrative Services Appendix**

Group Dynamic, Inc. (“GDI”) will provide all of the labor, materials and facilities necessary to perform the Standard Services set forth below for the Client for the following standard fee:

Annual Subscription Fee:	\$875.00 (waived if Client has paid \$875.00 Annual Subscription Fee on behalf of GDI’s Medical FSA administration service)
Monthly Claims Administration Fee:	\$5.55 per month per open account (Example: Employee A has both a Medical FSA and a Dependent Care FSA. Monthly invoice would indicate 2 accounts at \$5.55 each)

**I. Standard Services**

**A. Enrollment.**

1. Based on information provided by the Client, GDI will provide a model enrollment form and generic educational materials.
2. Upon receipt of initial enrollment data, GDI will mail a Flexible Spending Account “Welcome Packet” to each FSA participant provided the Client has purchased both Medical FSA and Dependent Care FSA administration services.

**B. Compliance.**

1. GDI will provide model plan documents and a Summary Plan Description for the Plan which the Client can have reviewed by its legal counsel prior to adoption.
2. GDI will notify Client of regulatory changes affecting the administration of the Plan.
3. GDI will perform non-discrimination testing as required by law upon receipt of a completed Highly Compensated/Key Employee Non Discrimination Testing worksheet from Client.
4. GDI will provide ongoing administrative and compliance support throughout the Client’s plan year.

**C. Claims Administration.**

1. GDI will adjudicate DCAP claims on behalf of the Client according to current IRS regulations and issue payments to employees who submit valid claims.
2. GDI will provide an annual account summary report and other management reports upon request.
3. GDI will maintain a custodial account to hold and reimburse FSA monies.

**II. Client Responsibilities with Respect to Standard Services.**

- A. The Client will be responsible for filing all required reports with the Internal Revenue Service or other appropriate federal agency.
- B. Client will notify GDI of a participant’s change in election or termination of participation as soon as possible after the occurrence of the event. GDI is not responsible for any overpayments that may arise as a result of the Client’s untimely notice of a participant’s reduction of or termination of an election.

- C. Client is responsible for providing GDI with sufficient funds to reimburse participants' DCAP claims. If at any time the funds on hand are insufficient to pay participants' claims, Client agrees to forward the requisite funds to GDI immediately upon notification of the shortfall.
- D. If Client requests FSA reimbursements on a "Claims Only" basis, the Client agrees to allow GDI to transfer sufficient funds (via ACH) from an account designated by the Client. GDI will provide the Client with detailed information each time a funds transfer has occurred.
- E. Client agrees to remit documentation to GDI following each pay period that supports the amount withheld from each participant's pay for his/her Dependent Care FSA.
- F. If Client requests an extension to the Plan's 'run-off' period, such request must be submitted to GDI in writing prior to the end of the 'run-off' period established at the start of the existing Plan year.

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA BUSINESS ASSOCIATE ADDENDUM (the “Addendum”) is entered into on **January 1, 2013** by and between Town of Falmouth , (“**Employer**”), in its individual capacity and on behalf of its group health plan(s) (“**Plan**”), and **Group Dynamic, Inc, (“GDI”)** in its capacity as both the Plan’s and Employer’s service provider. This Addendum is incorporated into and made a part of the Services Agreement between GDI and Employer (“**Agreement**”). This Agreement is intended to comply with the privacy and administrative simplification requirements set forth in 45 CFR Parts 160, 162, and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”).

Both Employer and GDI acknowledge that the Plan and Employer are separate and distinct entities and that GDI may perform services both on behalf of the Plan and also on behalf of Employer in its capacity as Plan sponsor. GDI is considered a “Business Associate” with respect to services it performs on behalf of the Plan, if any, and an “Agent of Employer” with respect to services it performs on behalf of Employer, if any. This Addendum sets forth the responsibilities of GDI in its capacity as a Business Associate, as required by 45 CFR § 164.504(e)(1) and in its capacity as Agent of Employer, as required by 45 CFR § 164.504(f)(2)(ii)(B).

GDI recognizes that in the course of performing some of the services, it will have access to, create, and/or receive from the Plan Protected Health Information (“**PHI**”). For purposes herein, PHI shall be limited to the information created or received from the Plan or on the Plan’s behalf by GDI. Whenever used in this Addendum, other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Addendum, but not defined herein, shall have the same meaning, as those terms are defined in HIPAA.

If there is a conflict between the Agreement and this Addendum with regard to the subject matter herein, this Addendum controls.

### **I. Definitions**

For purposes of this Agreement:

“**Designated Record Set**” will have the same meaning given to the term “designated record set” in 45 CFR §164.501.

“**Electronic Data Interchange Rule**” shall mean the rules regarding standard transactions and code sets set forth in 45 C.F.R. Parts 160, 162 and 164, as may thereafter be amended.

“**Group Health Plan**” will have the same meaning as the term “group health plan” in 45 CFR § 160.103.

“**Individual**” will have the same meaning as the term “individual” in 45 CFR §160.103 and will include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

“**Privacy Breach**” will have the same meaning as “Breach” set forth in 45 CFR §164.402

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by GDI from or on behalf of the Plan.

**“Required by Law”** will have the same meaning as the term “required by law” in 45 CFR § 164.103.

**“Secretary”** will mean the Secretary of the Department of Health and Human Services or his or her designee.

**“Security Incident”** will have the same meaning as the term “security incident” in 45 CFR § 164.304.

**“Security Rule”** will mean the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR § 164.302 et seq.

**“Unsecured Protected Health Information” or “Unsecured PHI”** will have the same mean as the term “Unsecured Protected Health Information” in 45 C.F.R. 164.402.

## **II. Confidentiality**

At all times, both during and after the termination of its relationship with the Employer for any reason, GDI will not use or disclose PHI in any manner whatsoever, except as otherwise permitted by this Addendum.

## **III. Permitted Uses and Disclosures of Business Associate**

(a) Except as otherwise limited in this Addendum, GDI may use or disclose PHI, provided that such use or disclosure of PHI would not violate the Privacy Rule, as follows: (a) as permitted or required in this Addendum and in the Agreement; (b) as otherwise permitted by the Privacy Rule; (c) as Required by Law; (d) for the proper management and administration of GDI; (e) to fulfill any present or future legal responsibilities of GDI; (f) for Data Aggregation services to the Plan (as defined in 45 CFR § 164.501); or (g) any use and disclosure of PHI that has been de-identified in accordance with 45 CFR § 164.514.

(b) GDI agrees to document any disclosures of PHI and the information related to such disclosures to respond to an accounting of disclosures of PHI if requested by the Plan in accordance with 45 CFR §164.528, and to provide such documentation to the Plan as it may request from time to time.

(c) In the event that GDI maintains PHI in a Designated Record Set, GDI agrees to provide access to such PHI that it maintains in a Designated Record Set to the Individual to whom the PHI relates in accordance with 45 CFR § 164.524. Furthermore, at the reasonable request of the Plan, GDI agrees to make amendments to PHI that it maintains in a Designated Record Set as directed by the Plan and to reasonably incorporate any amendments to PHI in accordance with 45 CFR § 164.526.

(d) GDI may disclose PHI to its agents or subcontractors with a bona fide need to know such PHI, but only if, prior to such disclosure, such agents or subcontractors provide reasonable assurances that they will agree to substantially the same restrictions and conditions that apply to GDI with respect to such PHI, including electronic PHI.

(e) GDI may disclose the PHI revealed to it by the Plan if and to the extent that such disclosure is required by law or court order or as otherwise permitted by law. Further, GDI agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by GDI on behalf of the Plan available to the Secretary, as requested by the Plan or designated by the Secretary, for purposes of the Secretary determining the Plan’s compliance with the Privacy Rule.

(f) In accordance with 45 CFR §164.520, and to the extent that such a limitation may affect the Business Associate’s use or disclosure of PHI, Employer, acting on behalf of the Plan, agrees to notify

GDI of any limitation(s) in the notice of privacy practices required by the Privacy Rules, including, without limitation, any changes in or revocation of permission by an Individual to use or disclose PHI. Employer, acting on behalf of the Plan, also agrees to notify GDI of any restriction to the use or disclosure of PHI that Employer has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect GDI's use or disclosure of PHI. Employer acknowledges and agrees that GDI is not bound by any such restrictions that impact GDI's use or disclosure of PHI to the extent such restrictions are not otherwise required by the HIPAA Privacy Rules and GDI has not consented to such restrictions in advance. GDI agrees not to unreasonably withhold consent.

(g) GDI agrees to take steps to implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI maintained by GDI on behalf of the Plan. GDI will report to the Plan's designated representative any use or disclosure of PHI otherwise than as provided by this Agreement, including any Security Incident, as soon as reasonably possible of becoming aware of such use or disclosure. In addition, GDI hereby agrees that it shall report to the Plan's designated representative, without unreasonable delay, but not longer than 60 days following its discovery of any incident that, in GDI's reasonable determination, constitutes a Privacy Breach of Unsecured PHI. GDI shall provide such notice to the Plan's designated representative in accordance with 45 CFR 164.410 of the Breach Notification Rules, subject to the law enforcement delay set forth in 45 CFR 164.412. In addition, GDI may, in its sole discretion, provide any of the following notices of any incident that constitutes a Privacy Breach for which GDI is required to provide notice to the Plan's designated representative as set forth herein: (i) notice to affected individuals, including any substitute notice as necessary in accordance with 45 CFR 164.404 (ii) if required, immediate notice to the Secretary of the Department of Health and Human Services ("HHS"), including maintaining a log or other documentation of Privacy Breaches to be provided to the Secretary on an annual basis in accordance with 45 CFR 164.408 and (iii) if required, notice to a media outlet in accordance with 45 CFR 164.406

(h) Notice to Plan and Employer.

- (i) Immediately following execution of this Addendum, Employer will provide GDI with written notice identifying the Plan's and the Employer's designated representative(s) for purposes of receiving notices required by GDI under this Addendum.
- (ii) Employer agrees to provide prompt written notice to GDI of any changes to the names or positions of employees identified by Employer as a designated representative of the Employer and/or the Plan. GDI shall have no duty to inquire whether the list of Designated Persons is accurate.
- (iii) Employer shall indemnify and hold GDI, its employees, agents and Affiliates harmless for any and all liability GDI may incur as a result of any improper use or disclosure of PHI by Employer or a designated representative.

(i) To the extent applicable, GDI, the Employer and the Plan agree to comply with the provisions of the Electronic Data Interchange Rule with respect to PHI disclosed by the parties.

#### **IV. GDI acting as Agent of the Employer**

The following services are performed by GDI as an agent of the Employer and not on behalf of the Plan:

- Services that facilitate and report the enrollment and disenrollment of employees and their eligible dependents in the Plan.
- Services that facilitate the payment of premiums under the Group Health Plan (COBRA Administration clients only).

The Parties acknowledge that information created or received by GDI in its capacity as agent of the employer is not PHI and is not subject to the HIPAA Privacy Rule, Electronic Data Interchange Rule, and Security Rule. Any such information received by GDI as agent of the employer shall be deemed confidential information subject to the terms and conditions of confidentiality set forth in the Agreement.



**V. Term/Termination**

(a) Term. This Addendum shall continue until the Agreement is terminated or as set forth herein.

(b) Termination for Cause. Upon Employer’s knowledge of a material breach of this Addendum by GDI, Employer shall either:

- (i) Provide an opportunity for GDI to cure the breach within 30 days or, if longer, such other reasonable period of time, or end the violation and terminate this Addendum and, where necessary, the Agreement between the parties with respect to the services if GDI does not cure the breach as set forth herein; or
- (ii) Immediately terminate this Addendum and, where necessary, the Agreement if GDI has breached a material term of this Agreement and cure is not possible; or
- (ii) If neither termination nor cure is feasible, Employer shall report the violation to the Secretary.

(c) Effect of Termination.

Upon termination of this Addendum, for any reason, GDI shall return or destroy all PHI received from Employer and/or the Plan, or created or received by GDI on behalf of the Plan, except to the extent determined infeasible as set forth herein. This provision shall also apply to PHI that is in the possession of subcontractors or agents of GDI.

In the event that GDI reasonably determines that returning or destroying the PHI is infeasible, GDI shall provide of the conditions that make return or destruction infeasible. In the event that GDI determines that return or destruction of the PHI is infeasible, GDI will continue to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the GDI maintains such PHI.

**IN WITNESS WHEREOF**, Employer, acting on behalf of itself and the Plan(s), and Group Dynamic, Inc. have caused this Addendum to be executed in their names by their undersigned officers, the same being duly authorized to do so (sign and date only if effective date is different from Effective Date of Agreement).

**Group Dynamic, Inc.**

By



Lynne C. McKeone

Chief Compliance Officer

**Town of Falmouth**

By

\_\_\_\_\_

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date