

**Agreement to Participate in the Tax Advantage Benefits System (“TABS”) of the
Pennsylvania School Boards Association Insurance Trust**

This AGREEMENT is made by and between the Public School Entity named hereinafter and the Pennsylvania School Boards Association Insurance Trust (hereinafter referred to as “Trust”), a common law trust with an address of 400 Bent Creek Blvd., Mechanicsburg, Pennsylvania, 17050.

Recitals

WHEREAS, the _____ School District (hereinafter “Public School Entity”) has adopted or will be adopting a cafeteria plan in accordance with Section 125 of the Internal Revenue Code; and

WHEREAS, the Public School Entity desires the services of a service agent to perform certain ministerial functions necessary to assist in the administration of the plan; and

WHEREAS, the Trust desires to provide certain services to the Public School Entity as defined in this Agreement and in accordance with the Trust’s Tax Advantage Benefits System (hereinafter “TABS”) program;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and intending to be legally bound hereby, the Public School Entity and the Trust agree as follows:

I. Duties of Trust/Authorized Vendor.

1.1. **Services to be Provided by Trust/Authorized Vendor.** The Trust and/or its authorized vendor shall provide at its sole cost and expense suitable facilities, personnel, procedures, forms and instructions for the servicing of claims under the Public School Entity’s plan and to provide the following services to the Public School Entity:

- (a) Preparation of the Prototype Cafeteria Plan Document;
- (b) Conducting employee orientation meetings to explain how the program affects the employees’ pay checks and the purpose of establishing a flexible benefits plan;
- (c) Preparation of employees’ communication materials, payroll “stuffers” and announcement posters;
- (d) Conducting employee enrollment with an implementation team designated by the Trust;
- (e) Conducting discrimination testing to assure that both the “eligibility” and “benefits” are in compliance with the parameters set forth by law.
- (f) Preparing the employees’ Summary Plan Description document;

- (g) Monitoring employees' flexible spending account deductions and limits;
- (h) Providing weekly flexible spending account claim checks and explanation of benefit statements to the employees or the Public School Entity in batch;
- (i) Maintaining all data required for employees not participating but who will need notifications for open enrollment and other notices that may be required by law or are necessary from time to time;
- (j) Providing to the Public School Entity: (a) detailed reports of employees' deductions and records, including, Employee Statistic Reports, Current Insurance Premium Coverages Report, COBRA Participants Report, Employer Billing Summary Report, Employee Billing Adjustment Report, Current Year Medical Flexible Spending Account Report, Current Year Dependent Day Care Flexible Spending Account Report; and (b) Employee Open Enrollment Kit that includes (provided such coverage is maintained by an employee) reports of Employee Bulletin, Status Report, Standard Contributor Report and/or Flexible Spending Accounts Reports, and Flexible Spending Accounts Balance Report.
- (k) Providing to the Public School Entity detailed interim reports of records maintained;
- (l) Preparing notices for annual open enrollment;
- (m) Preparing and maintaining all plan documents in accordance with the existing law and future amendments;
- (n) Providing toll free customer service to access employee accounts to perform additions, updates, terminations and electronic mail with personnel of the service agent;
- (o) Providing customer service teams at the site of the Public School Entity;
- (p) Providing timely newsletters to update the Public School Entity on current topics and issues;
- (q) Providing the Public School Entity with an Administration Manual outlining the procedures to be followed by the Public School Entity; and
- (r) Reporting to the Public School Entity with respect to non-routine claims in process.

1.2. **Services Required by Government.** In addition to the services enumerated in paragraph 1.1 hereof, to the extent required by law, the Trust or its designated agent shall provide the following additional services at no additional cost to the Public School Entity:

- (a) Filing the Summary Plan Document with the United States Department of Labor;
- (b) Preparing the IRS 5500 form and related schedules.

1.3. **Reports and Documents Required by Law.** The Trust or its authorized vendor shall prepare and send to the Public School Entity for distribution to its Employees and their eligible Dependents and/or for filing with the appropriate governmental agency, such documents, reports and returns which are currently required or which may hereafter be required during the term of this Agreement or any extension hereof to be distributed to employees and their eligible Dependents and/or to be filed with governmental agencies under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and/or the Internal Revenue Code of 1986, as amended (“CODE”) and/or any other applicable federal or state law, regulation or ruling.

1.4. **Claims Administration Procedures.** The Trust or its authorized vendor shall follow the claims administration procedures and practices desired by the Public School Entity, to the extent that they are in accordance with law, and consult with the Public School Entity with respect to any changes.

1.5. **Employee Eligibility.** The Trust or its authorized vendor shall assist the Public School Entity, if necessary, to determine the eligibility of employees to receive payments under the plan.

1.6. **Payment of Claims.** The Trust or its authorized vendor shall make payment with funds of the Public School Entity as provided for in this Agreement of amounts due with respect to claims for reimbursement of medical case and/or dependent care assistance expenses determined by the Public School Entity to qualify under the plan. If the Public School Entity has elected in its Adoption Agreement to provide medical reimbursement and/or dependent care assistance flexible spending accounts to its employees and their dependents, the Trust or its authorized vendor shall submit to the Public School Entity, promptly on a quarterly basis, a statement detailing: (a) the aggregate monthly claims for reimbursement of medical expenses under the medical reimbursement account and/or reimbursement of dependent care expenses under the dependent care assistance account submitted to it by the Public School Entity with respect to each month; and (b) the outstanding balance of any fees payable to Trust pursuant to paragraph 2.2 of this Agreement.

1.7. **Advice on Disputed Claims.** The Trust or its designated shall assist and provide advice on disputed claims.

1.8. **Annual Recommendations.** The Trust or its designated shall annually report to the Public School Entity concerning matters of general interest with respect to the plan, including, problems of a recurring nature, local situations and suspected misuses of benefits and may make recommendations if requested.

1.9. **Maintaining Confidentiality.** The Trust or its designated shall not reveal any confidential information or any individually identifiable medical information without first receiving the proper authorization from the individual involved.

II. Public School Entity's Duties

2.1. The Public School Entity shall be responsible for timely:

(a) **Distribution of Documents.** Distribution to its employees and their eligible dependents of Summary Plan Descriptions and all other documents prepared by the Trust or its authorized vendor for distribution to employees and their eligible dependents;

(b) **Governmental Filings.** Filing with the appropriate governmental agencies all returns, reports and other documents prepared by the Trust or its designated agent which are required to be filed by the Public School Entity;

(c) **Employee Notices.** Furnishing employees and their eligible dependents with notices and elections of continuation coverage and conversion privileges required by applicable law and advising the Trust or its designated agent of the names and addresses of those employees and their eligible dependents electing continuation coverage and/or conversion policies;

(d) **Payments of Payroll Deductions/Claims.** The Public School Entity will submit to the Trust's Authorized Vendor on a per pay basis all account payroll deductions withheld from participating employees for applicable flexible spending accounts under the TABS program. Such deposits shall be made in accordance with the mutual agreement of the Public School Entity and the Trust's Authorized Vendor. If the Public School Entity has elected to provide its employees with medical reimbursement and/or dependent care assistance flexible spending accounts, the employees of the Public School Entity shall submit properly payable medical and/or dependent care assistance bills to the Trust or its authorized vendor during each month in which this Agreement continues in effect. As soon as the funds deposited by the Public School Entity are available to the Trust's Authorized Vendor, the Trust's Authorized Vendor shall utilize such funds to reimburse participating employees for appropriate expenditures consistent with the elections made by the Public School Entity in its Adoption Agreement and/or claims for medical and/or dependent care assistance expenses if applicable;

(e) **Enrollment.** Enroll all employees in the Plan pursuant to the Plan Adoption Agreement executed by the Public School Entity and the Trust; and

(f) **Cooperation.** Cooperation with the Trust or its authorized vendor in providing information, forms and records the Trust or its authorized vendor deems necessary or appropriate in undertaking its duties under this Agreement.

2.2. **Service Fees.** The Public School Entity shall pay to the Trust during the term of this Agreement the service fee(s) described in Exhibit "A" that is attached hereto and incorporated herein by reference. The service fee(s) shall be subject to change effective

prospectively upon any renewal of this Agreement provided written notice of such change is provided to the Public School Entity at least sixty (60) days prior to the expiration of the term of this Agreement or renewal hereof.

2.3. **Non-distribution of the Trust Material.** Neither the Public School Entity nor its agents or representatives shall distribute any material provided by the Trust to anyone other than its employees, agents, attorneys and representatives without the prior written authorization by Trust.

2.4. **Negative Fund Balance Provision.** Notwithstanding the provisions in paragraph 2.1(d) hereof, if the Public School Entity elects to provide its employees with medical reimbursement flexible spending accounts and during any calendar month the Trust's Authorized Vendor realizes a negative fund balance in the financial account maintained for that purpose, the Public School Entity shall immediately forward sufficient funds to the Trust's Authorized Vendor to eliminate said negative fund balance. For purposes of this paragraph, a negative fund balance will exist in the aforementioned financial account if on the last day of any calendar month the amount paid to participating employees as reimbursement for medical bills during said calendar month exceeds the balance of the financial account for payroll deductions withheld from participating employees for medical reimbursement flexible spending accounts currently deposited.

III. Miscellaneous

3.1. **Administrative Services Only by the Trust.** The parties to this Agreement agree that the Public School Entity is the Plan Administrator of the Plan and that the Trust is being retained solely to perform certain ministerial functions required by the Public School Entity to assist it in the administration of the Plan. Each claim submitted by the Public School Entity on behalf of its employees and/or their eligible dependents under a medical reimbursement and/or a dependent care assistance flexible spending account shall constitute a certification by the Public School Entity that it has determined such claim to be properly payable under the terms of the Plan, and Trust or its authorized vendor shall be under no obligation to make any inquiry, conduct any investigation or review any determination with respect to the validity of such claim.

3.2. **No Insurance.** The Trust does not insure nor underwrite the liability of the Public School Entity under the Plan. In addition, the Trust does not guarantee that benefit payments under the Plan will be excludable from the gross income of employees and/or dependents for federal income tax purposes. The Public School Entity retains the ultimate responsibility for claims made under the Plan and all expenses incident to the Plan, except those expenses incurred by the Trust in the performance of its duties under this Agreement or as otherwise agreed to by the parties in writing. The Public School Entity also retains ultimate responsibility for operation of the Plan in accordance with ERISA and Section 125 of the Code, as may be applicable, and in compliance with the conditions for exclusion from gross income of employees and/or their eligible dependents for federal income tax purposes permitted under other sections of the Code which apply or could apply to any benefit provided under the Plan, included, but not limited to, the timely filing of any returns and/or reports with the appropriate

governmental agencies and the distribution of Summary Plan Descriptions and other reports required by applicable law. The Trust has no obligation to ensure that any recommendations made or corrective measures suggested to the Public School Entity to maintain the Plan's compliance with the Code and/or ERISA are actually implemented by the Public School Entity.

3.3. **Indemnification.** Each party agrees to indemnify the other against all loss, costs and expenses (including reasonable attorney's fees) which the other may incur by reason of a breach of any term, provision, covenant, or warranty of representation contained herein and/or in conjunction with the enforcement of this contract or any provision hereof; provided, however, that neither party shall be liable to the other for any indirect, special, incidental or consequential damages.

3.4. **Termination of Agreement.**

(a) Notwithstanding anything stated herein to the contrary, it is mutually agreed that either party hereto may terminate this Agreement at the end of two (2) years from the date hereof or any renewal term by giving the other party written notice of at least thirty (30) days prior thereto; but in default of such notice, this Agreement shall continue upon the same terms and conditions in force prior to the expiration of the term hereof or renewal for a further term of one (1) year and so on from year-to-year.

(b) This Agreement is subject to further termination upon thirty (30) days written notice for cause. Cause shall be defined as default of a term or condition of this Agreement. The written notice of termination shall describe the causal Basis for termination. In the event that the specified default is cured in the thirty (30) day period, the notice of termination shall be considered void and the agreement shall continue in full force and effect. A party's exercise of its right to terminate the Agreement under this provision shall not defeat any other rights it has under law or pursuant to the terms of this Agreement.

3.5. **Independent Contractors.** The Trust and the Public School Entity are independent contractors with respect to each other and with respect to the performance of each under this Agreement. Nothing in this Agreement shall be construed to constitute either party as the partner or the agent of the other party, and neither party shall represent to any third party that it has any right or authority to act as the partner or agent for or otherwise to represent the other party. Further, nothing in this Agreement shall be construed to create a partnership or joint venture between the Trust and the Public School Entity. The Trust represents that it has workers' compensation insurance as required by law and will provide proof of insurance as requested by the Public School Entity each year that this Agreement or any extensions hereof are in force.

3.6. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

3.7. **Assignment.** This Agreement shall bind, benefit and be enforceable by and against each party hereto and its successors and assigns; provided, however, that neither party shall in any manner assign any of its rights or obligations under this Agreement without the

express prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the prohibitions stated herein, nothing shall prohibit the Trust from entering into an agreement with an authorized vendor to provide administrative, financial, technical and/or required to implement the TABS program.

3.8. **No Third-party Beneficiaries.** This Agreement is not intended to benefit any person, party or entity not a party hereto and shall not inure to the benefit of any third person, party or entity.

3.9. **Severability.** If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provision hereof shall not be affected thereby and shall be enforceable without regard thereto.

3.10. **Notices.** Any communication, advice, request, consent, document, notice or direction given, made or sent pursuant to this Agreement shall be in writing and shall be deemed to have been duly given to and received by the party or other person to which it is addressed when it shall be delivered by hand to such party or person, or if not delivered by hand, when it is sent by certified mail, postage prepaid, return receipt requested, or by telegram, telex or cable, or by facsimile transmission, or by a reputable overnight delivery courier addressed to the address of such party as shown on the signature page of this Agreement.

3.11. **Lawful Performance.** Each party agrees that it will perform its obligations hereunder in accordance with all applicable Federal, State or local laws, rules, and regulations now or hereafter in effect.

3.12. **No Waivers.** No failure to exercise, delay in exercising, or single or partial exercise of any right or remedy by either party, and no course of dealing between the parties, shall constitute a waiver of, or shall preclude any other or further exercise of, the same or any other right, power or remedy.

3.13. **Counterparts.** This Agreement may be executed in two or more counterparts, and each such counterpart shall be deemed to be an original hereof.

3.14. **Entire Agreement.** This Agreement, together with the Exhibits hereto, states the entire understanding among the parties with respect to the subject matter hereof, and supersedes all prior oral written communications and agreements, if any, with respect to the subject matter hereof. Except as otherwise provided herein, no amendment or modification of this Agreement shall be effective unless in writing and signed by the party against whom enforcement is sought.

3.15. **Section Headings.** Article and section headings in this Agreement are for convenience or reference only, do not constitute a part of this Agreement, and shall not affect its interpretation.

3.16. **Force Majeure.** The Trust shall not be liable for any failure to perform under this Agreement if such failure is due to causes beyond its reasonable control, including, but not

limited to, acts of God or the public enemy, fire, floods, labor disputes, or the judgment or order of any court or government agency.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set forth below by their authorized officers.

(Name of Public School Entity)

By: _____
President

By: _____
Secretary

Address:

Pennsylvania School Boards Association Insurance Trust

By: _____

Title: _____

PO Box 2042
Mechanicsburg, PA 17055

Date of Agreement: _____