



**EMPLOYER ADOPTION AGREEMENT  
STATE OF MONTANA HEALTH  
REIMBURSEMENT ACCOUNT AND TRUST  
"MONTANA VEBA HRA"**

<b>Submit completed agreement to:</b> Montana VEBA HRA-Dept. of Admin/HCBD PO Box 200130 Helena, MT 59632-0130 or fax to: 406.444-0080
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Employer: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact for Payroll/Contribution Questions:

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

1. Formal Authorization of Employer. The Employer, by formal action of its governing body or other authorized action, has established an employee benefit plan or arrangement for its employees. The Employer desires to make contributions to the State of Montana Health Benefit Plan and Trust (the "Plan" and the "Trust"), and therefore, elects to participate in the Plan through this Employer Adoption Agreement, effective upon execution by the Department of Administration (the "Department").

2. Governing Documents. The Employer acknowledges and agrees that its participation is subject to the terms and conditions of the Plan and Trust including any amendments made thereto; that those provisions will be interpreted by a fiduciary of the Plan and Trust; and that the Department and Administrator will establish such rules,

policies, practices, and procedures as deemed appropriate to administer the Plan, all of which shall be binding on participating Employers and their covered Employees. Copies are available upon request from the Department.

The Plan and Trust, the Employer Adoption Agreement, the Enrollment Form, and other plan documents comprise a single, integrated employee benefit program. In the event of a conflict between these documents, the conflict shall be resolved first by reference to the Plan and Trust, except as more specifically addressed in the Plan Document, then the Plan Document, then the Employer Adoption Agreement, and finally the Enrollment Form.

3. Defined Terms. Capitalized terms in this Employer Adoption Agreement shall have the definition given them in the Plan and Trust.

4. Contributions. The Employer acknowledges and agrees that it shall make contribution(s) to the Trustee in accordance with policies or procedures established by the Employer (pursuant to bargaining or otherwise) and that neither the Trustee, Department, Administrator, their officers, employees or agents, or anyone acting on behalf of or with respect to the Plan and Trust has the right, duty, or power to determine or collect a contribution amount.

Employers subject to Title 2, Chapter 18, Part 6 of the Montana Code Annotated may convert excess leave balances to Employer contributions to the Plan. Upon separation from service, including retirement, an Employee's unused sick leave balance is converted to an Employer contribution for the Employee's Participant Account. Sick leave is converted to an Employer contribution at the rate of one-fourth of the pay based on the Employee's salary or wage at time of separation from service times the total number of accumulated sick leave hours to be converted. Once sick leave has been converted, it may not be credited back to the Employee as sick leave credits or made to the Employee as a lump-sum payment.

Other forms of Employer contributions, such as unused accrued annual leave, may be made as permitted by applicable law, subject to agreement between the Employer and Employee(s).

5. Discontinuance/Termination. The Employer acknowledges and agrees that although it can discontinue or terminate contributions to the Plan and Trust and can terminate its participation in the Plan and Trust with written notice to the Administrator, assets already contributed to the Trust cannot be withdrawn or transferred other than as:

- a) A direct in-kind transfer of assets to a substantially similar IRC Section 501(c)(9) trust;
- b) A series of installment payments over a set period of time to another IRC Section 501(c)(9) trust;
- c) An immediate cash payment to another IRC Section 501(c)(9) trust or another program providing qualified health care benefits for the Plan participants, subject to any contractual adjustments due upon such a cash-out; or

d) Any other method permitted by IRC Section 501(c)(9).

6. Allocation of Contributions. At the time any contribution is made to the Trustee, the Employer shall notify the Administrator of the Participant Account(s) to which contributions should be allocated and the amounts for each account.

7. Basis for Contributions. Upon request, the Employer will provide a copy of applicable provision(s) of the bargaining agreement, Employer policy or other document describing the basis upon which contributions will be made to the Trust.

The Employer represents those contributions do not discriminate in favor of any class of employees to the extent such discrimination would be prohibited under IRC § 501(c)(9). The Employer further represents that there has been no individual decision making by any Employee with respect to Plan coverage, establishment of a Participant account, or the contributions thereto.

8. Governmental Employer. The Employer acknowledges that the Plan is available only to employers whose benefit plan constitutes a “governmental plan” under ERISA. The Employer represents that it is a governmental employer and agrees that its initial and continuing participation is contingent upon it being a governmental employer.

9. Indemnification. The Employer agrees, to the fullest extent permitted by applicable law, to indemnify and hold harmless the Trustee, Department and Administrator against all costs, expenses, liabilities and damages resulting from any misrepresentation, negligent action or inaction, or breach of this Employer Adoption Agreement, the Plan and Trust or any rules, policies or procedures established by the Department or Administrator, by the Employer or its officers, employees or agents. Neither Department, Administrator, Trustee or subcontractors thereof shall have any liability, duty or other obligation for the Employer’s (or a Participant’s) incomplete or incorrect data.

10. No Guarantees. The Employer acknowledges and agrees that neither the Department, Administrator or Trustee can guarantee the Trust or any Participant Account a specific rate of return or that an account will retain its value. Nothing in the Plan and Trust shall constitute a guarantee by the Department, Administrator or Trustee that the assets of the Trust will be sufficient to pay any benefit to any Participant or make any other payment; payments to be made from the Trust are limited to the assets remaining in the Participant Account at the time payment is made.

11. Service Providers, Compensation and Expenses. The Employer acknowledges and agrees to the appointment and reasonable compensation of the Trustee, Department and Administrator and other service providers retained by the Department to administer the Plan and Trust and acknowledges and agrees to the payment of their fees and expenses from the Plan and Trust, to be allocated to Participant Accounts pro rata or as otherwise determined by the Department.

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IN WITNESS WHEREOF, the Employer has approved this Employer Adoption Agreement, as evidenced by the signature below of its authorized representative.

Employer: \_\_\_\_\_

By: \_\_\_\_\_  
authorized signature

Printed Name: \_\_\_\_\_

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

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

Accepted by State of Montana, Department of Administration-HCBD ("Department"):

By: \_\_\_\_\_  
authorized signature

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