

FLEXIBLE BENEFITS PLAN

BASIC PLAN DOCUMENT

This Basic Plan Document for the Flexible Benefits Plan contains only a general description of the features of the Plan. It must be used in conjunction with a separate Adoption Agreement to provide Employer specific information and choices. For Plans subject to ERISA, a separate Summary Plan Description must also be developed and distributed to Participants

These documents are provided by Kades-Margolis Corporation for the convenience of the Employer and its counsel, but are not intended as a substitute for the retention of legal counsel and is not substitute for specific legal advice on a specific factual situation.

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ARTICLE I

The Plan

1.1 **Establishment.** The Employer named in the separate Adoption Agreement for this Plan, by completing and executing the Adoption Agreement, thereby establishes, on the Effective Date or Restated Effective Date specified in the Adoption Agreement, this Flexible Benefits Plan, a plan of flexible benefits for eligible Employees of the Employer as described in Section 125 of the Internal Revenue Code. The complete plan document for the Plan consists of the Adoption Agreement and this Basic Plan Document. If this document restates an existing similar plan, the Restatement Effective Date for this document is January 1, 2009, unless otherwise specified in the Adoption Agreement.

1.2 **Purpose.** The purpose of this Plan is to provide its Participants with an opportunity to elect, from among the benefit options specified in the Adoption Agreement and current cash compensation, those benefits best suited to each Participant's needs. Some benefits available under the Plan will be treated as taxable compensation to the Employees. Other benefits are intended to qualify as statutory nontaxable fringe benefits.

1.3 **Legal Status.** The Employer intends that this Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be eligible for exclusion from such Employee's gross income to the extent provided by the Code. The Plan is intended to comply with the applicable provisions of the Code and, if applicable, the Employee Retirement Income Security Act of 1974 ("ERISA") as amended.

Although this Plan is a "Cafeteria Plan" and has been reduced to writing in order to comply with said Section 125, the Plan shall also serve as an amendment to certain welfare plans presently in effect for the Employer. Thus, to the extent necessary, this plan document will serve as an amendment to each of said welfare plans in order to permit the benefits of this Plan to be fully implemented for Participants.

ARTICLE II

Definitions

Whenever used in the Plan, the following words and phrases shall mean:

2.1 **"Benefits"** mean those benefits which the Employer specifically determines shall be available under this Plan for the Plan Year as specified in the Adoption Agreement and as may be further set forth in Exhibits A and B attached to this Basic Plan Document, in separate insurance contracts or in other plan documents, all of which are incorporated by reference. The term includes cash and statutory nontaxable benefits as defined by Section 125 of the Code and the regulations promulgated thereunder.

2.2 **"Benefit Dollars"** means the dollar credits available for each Employee under this Plan as determined in accordance with Article V.

2.3 **"Code"** means the Internal Revenue Code of 1986, as amended. Reference to a Code section shall be deemed to be that section as it now exists and to any successor provision.

2.4 **"Compensation"** means the remuneration paid to or on behalf of a Participant during the Plan Year to which reference is made. Except for any exclusions specified in the Adoption Agreement, "Compensation" shall include basic salary or wages, overtime payments, and the total of all other direct current compensation, but shall not include Employer contributions to Social Security, contributions to any retirement plan or program, or the value of any other fringe benefits provided at the expense of the Employer.

2.5 **"Dependent"** means an individual who qualifies as a dependent under the terms of Section 152 of the Code.

Effective March 30, 2010, the definition of "Dependent" under the Plan shall be amended to read as follows:

"Dependent" means: (a) for purposes of accident or health coverage (to the extent funded under the Premium Payment Component, and for purposes of the Health FSA Component), (1) a dependent as defined as in Code §152, Code §152, determined without regard to subsections (b)(1), (b)(1), (b)(2), (b)(2), and (d)(1)(B) (d)(1)(B) thereof, (2) any child (as defined in Code §152(f)(1)) §152(f)(1)) of the Participant who as of the end of the taxable year has not attained age 27, and (3) any child of the Participant to whom IRS Rev. Proc. 2008-48 Rev. Proc. 2008-48 applies (regarding certain children of divorced or separated parents who receive more than half of their support for the calendar year from one or both parents and are in the custody of one or both parents for more than half of the calendar year); and (b) for purposes of the DCAP Component, a Qualifying Individual. Notwithstanding the foregoing, the Health FSA Component will provide benefits in

accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "Dependent."

Notwithstanding any provision of the Plan to the contrary, a Participant may make a new election for Health FSA coverage under the Plan during the 30-day period beginning August 1, 2010, that is on account of and corresponds with his or her child (as defined in Code §152(f)(1)) Code §152(f)(1)) becoming newly eligible for coverage (or eligible for coverage beyond the date on which coverage would otherwise have been lost) as a result of the foregoing amendment to the definition of "Dependent" in Article II of the Plan. Requests for such election changes shall in all other respects be subject to the Plan's terms and conditions regarding election changes.

2.6 **"Dependent Care Expense"** shall mean the payment of, or provision of, those services which, if paid for by the Employee would be considered employment-related expenses under Internal Revenue Code Section 129 (relating to expenses for household and dependent care services necessary for gainful employment).

2.7 **"Effective Date"** means the date that the Plan originally became or becomes effective, as specified in the Adoption Agreement.

2.8 **"Employee"** means any person employed by the Employer and classified as an common law employee by the Employer; but does not include persons classified as an independent contractor, leased employee or in any other classification, even if that person receives remuneration from the Employer, and that person is ever determined to be, or to have been, a common law employee of the Employer.

2.9 **"Employer"** means the individual or organization named in the Adoption Agreement, including any affiliate that duly adopts the Plan, as indicated by action or resolution of the affiliate or execution of the Adoption Agreement by the affiliate.

2.10 **"Flexible Benefit Account"** shall mean the entire interest of a Participant in the Plan. Unless otherwise specified, the value of the Participant's Flexible Benefit Account or accrued benefit shall be determined as of the date coincident with or next following the occurrence of the event to which reference is made.

2.11 **"Highly Compensated Participant"** shall mean any person defined in the appropriate Internal Revenue Code Sections as follows:

- (a) Section 125(e) for this Flexible Benefits Plan;
- (b) Section 105(h) for Medical Care Expense Reimbursement Plan; and
- (c) Section 414(q) for Dependent Care Expense Reimbursement Plan.

2.12 **"Key Employee"** shall mean any person who is a Key Employee as defined in Section 416 of the Internal Revenue Code.

2.13 "**Medical Care Expense**" shall mean any expense which meets the criteria as a deductible health care expense under Internal Revenue Code Section 213, specifically including dental, vision and hearing care expenses.

2.14 "**Participant**" means a person who is an Employee on or after the Effective Date and who satisfies the eligibility requirements of Article III and the Adoption Agreement, as well as the participation conditions of Article IV. A person who becomes a Participant shall remain a Participant until all benefits due him or her under the provisions of this Plan have been paid or otherwise satisfied.

2.15 "**Plan**" means the Flexible Benefits Plan for the Employer as set forth herein and in the Adoption Agreement, as amended or restated.

2.16 "**Plan Administrator**" shall mean the Employer.

2.17 "**Plan Year**" means the 12-month period Specified in the Adoption Agreement, except the first Plan Year may be a shorter period if so specified in the Adoption Agreement.

2.18 "**Restatement Effective Date**" means the date the prior Plan document was amended, restated and continued, either January 1, 2009, or such later date as is specified in the Adoption Agreement.

ARTICLE III

Eligibility

3.1 **Present Employees.** Each Employee of the Employer who has met the eligibility requirements specified in the Adoption Agreement (including benefits or benefit levels that vary by Employee classification if so specified) for the included plans listed in the Adoption Agreement shall become a Participant in the Plan on a voluntary basis as of the Effective Date (or, if applicable, the Restatement Effective Date). To the extent specified in the Adoption Agreement, such eligible Employees are also eligible to participate in the Medical Care Expense Reimbursement Plan (Exhibit A to this Basic Plan Document) and the Dependent Care Expense Reimbursement Plan (Exhibit B to this Basic Plan Document).

3.2 **Future Employees.** All future Employees of the Employer shall become a Participant in the Plan on a voluntary basis as of the date he or she meets the eligibility requirements specified in the Adoption Agreement (including benefits or benefit levels that vary by Employee classification if so specified) for the included plans listed in the Adoption Agreement. To the extent specified in the Adoption Agreement, such eligible Employees are also eligible to participate in the Medical Care Expense Reimbursement Plan (Exhibit A to this Basic Plan Document) and the Dependent Care Expense Reimbursement Plan (Exhibit B to this Basic Plan Document).

ARTICLE IV

Participation

4.1 **Election.** Each Employee who becomes eligible to participate in this Plan shall complete such benefit election forms and provide such data as are reasonably required by the Employer as a precondition to participation. By becoming a Participant, each Employee shall for all purposes be deemed conclusively to have assented to the provisions of this Plan and to all amendments thereto.

4.2 **Form.** The election must be provided in the form specified by the Employer.

4.3 **Commencement.** The election shall be made at such time as prescribed by the Employer, but in no event later than (a) the commencement of the Plan Year in which the election is to become effective, or (b) the first date upon which a new election is to become effective pursuant to Sections 3.2 on Future Employees and 4.5 on Irrevocability.

4.4 **Duration.** Except as provided in Section 4.6 of this Plan below, an election shall be effective only for the Plan Year to which it relates. A new election must be made for each subsequent Plan Year.

4.5 **Irrevocability of Election.** Except as described below in this Section 4.5, a Participant's election under this Plan is irrevocable for the duration of the Plan Year to which it relates. In other words, unless one of the exceptions applies, the Participant may not change any elections for the duration of the Plan Year regarding:

- participation in this Plan;
- salary reduction amounts; or
- election of particular component plan benefits.

The exceptions to the irrevocability requirement, which would permit a Participant to make a mid-year election change in benefits and/or salary reduction amounts are as follows:

(a) ***Change in Status*** is any of the events described below, as well as any other events included under subsequent changes to Code §125 or regulations issued under Code §125 that the Plan Administrator (in its sole discretion) decides to recognize on a uniform and consistent basis:

- ***Legal Marital Status:*** A change in a Participant's legal marital status, including marriage, death of a spouse, divorce, legal separation or annulment;
- ***Number of Dependents:*** Events that change a Participant's number of tax Dependents (as defined in Code Section 152), including birth, death, adoption, and placement for adoption;

- *Change in Employment Status:* Any change in employment status of the Participant, the Participant's Spouse or the Participant's Dependents that affects the benefit eligibility under a cafeteria plan or other employee benefit plan of the employer of the Participant, the spouse, or Dependents, such as: termination or commencement of employment, a strike or lockout, a commencement of or return from an unpaid leave of absence, a change in worksite, switching from salaried to hourly-paid or union to non-union or vice versa, incurring a reduction or increase in hours of employment (e.g., going from part-time to full-time), or any other similar change which makes the individual become (or cease to be) eligible for a particular employee benefit.
- *Dependent Eligibility Requirements:* An event that causes a Participant's Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular benefit, such as due to attaining a specified age, getting married, or ceasing to be a student;
- *Change in Residence:* A change in the place of residence of the Participant, the Participant's Spouse or the Participant's Dependent.

A Participant may change or terminate his or her election under the Plan upon the occurrence of a Change in Status, but only if such change or termination is made on account of and corresponds with a Change in Status that affects coverage eligibility of a Participant, a Participant's Spouse, or a Participant's Dependent (referred to as the general consistency requirement.) The Plan Administrator (in its sole discretion) shall determine, based on prevailing IRS guidance, whether a requested change is on account of and corresponds with a Change in Status. Assuming that the general consistency requirement is satisfied, a requested change must also satisfy the following specific consistency requirements in order for a Participant to be able to alter his or her election based on that change.

- (1) *Loss of Dependent Eligibility.* For a Change in Status involving a Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or a Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverages, a Participant may only elect to cancel accident or health insurance coverage for the Spouse involved in the divorce, annulment, or legal separation, the deceased Spouse or Dependent, or the Dependent that ceased to satisfy the eligibility requirements. Canceling coverage for any other individual under these circumstances would fail to correspond with that Change in Status. Notwithstanding the foregoing, if the Participant's Spouse (not ex-spouse) or the Participant's Dependent becomes eligible for COBRA (or similar health plan continuation coverage under state law) under the Employer's Plan, the Participant may increase his election to pay for such coverage.

- (2) *Gain of Coverage Eligibility Under Another Employer's Plan.* For a Change in Status in which a Participant, a Participant's Spouse, or a Participant's Dependent gains eligibility for coverage under another employer's cafeteria plan (or another employer's qualified benefit plan) as a result of a change in marital status or a change in employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the other employer's plan. In the absence of evidence to the contrary, the Plan Administrator may rely on the Participant's certification that other coverage is increased or becomes effective.
- (3) *Dependent Care Expense Reimbursement Benefits.* With respect to the Dependent Care Expense Reimbursement benefit plans, a Participant may change or terminate his or her election only if (i) such change or termination is made on account of and corresponds with a Change in Status that affects eligibility for coverage under an employer's plan; or (ii) the election change is on account of and corresponds with a Change in Status that affects eligibility of dependent care expenses for the tax exclusion available under Code §129.
- (4) *Group Term Life Insurance, AD&D, and Disability Income Coverage.* For a Change in Status involving a Participant's legal marital status, number of dependents, or the employment status of a Participant's Spouse or Dependent (disregarding the requirement that the event cause a loss or gain of eligibility), a Participant may elect either to increase or to decrease group term life insurance, accidental death and dismemberment (AD&D), or disability income coverage offered under the Plan.

(b) ***HIPAA Special Enrollment Rights:*** If a Participant, a Participant's Spouse or a Participant's Dependent is entitled to special enrollment rights under a group health plan, as required by Code §9801(f), and medical coverage was declined under the group health plan because of outside medical coverage and eligibility for such coverage is subsequently lost due to legal separation, divorce, death, termination of employment, reduction in hours, or exhaustion of the maximum COBRA period, or if a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption, then a Participant may revoke a prior election for health or accident coverage and make a new election (including salary reduction election), provided that the election corresponds with such special enrollment right. For purposes of this provision, (1) an election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right; and (2) a HIPAA special enrollment election attributable to the birth or adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days), and may be funded through a change in salary reduction contributions even though retroactively effective.

(c) ***Certain Judgments, Decrees and Orders.*** If a judgment, decree, or order resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order) requires accident or health coverage for a Participant's Dependent child (including a foster child who is a Dependent of the Participant), a Participant may: (1) change his or her election to provide coverage for the Dependent child (provided that the order requires the Participant to provide coverage); or (2) change his or her election to revoke coverage for the Dependent child if the order requires that another individual (including the Participant's Spouse or former Spouse) provide coverage under that individual's plan.

(d) ***Medicare and Medicaid.*** If a Participant, a Participant's Spouse, or a Participant's Dependent who is enrolled in a health or accident benefit under this Plan becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may prospectively reduce or cancel the health or accident coverage of the person becoming entitled to Medicare or Medicaid. Further, if a Participant, a Participant's Spouse, or a Participant's Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then the Participant may prospectively elect to commence or increase the health or accident coverage.

(e) ***Change in Cost.***

- (1) ***Automatic Increase or Decrease for Insignificant Cost Changes.*** If the cost of a Benefit Plan or Policy increases or decreases during a Plan Year by an insignificant amount, then the Pretax Contributions or After-tax Contributions (as applicable) under each affected Participant's election shall be prospectively increased or decreased to reflect such change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this prospective increase or decrease in affected employees' elective contributions in accordance with such cost changes. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, whether increases or decreases in costs are "insignificant" based upon all the surrounding facts and circumstances (including, but not limited to, the dollar amount or percentage of the cost change).
- (2) ***Significant Cost Increases or Decreases.*** If the Plan Administrator determines that the cost of a Participant's Benefit Plan(s) or Policy(ies) significantly increases or decreases during a Plan Year (whether due to a change in the total cost of the benefit or a change in the Employee's share of the cost), the Participant may either make a corresponding prospective increase or decrease in his or her contributions, or revoke his or her election, and in lieu thereof, receive coverage under another Plan option which provides similar coverage. For a significant cost decrease for a benefit option, the Plan Administrator may permit all Employees, even those who have not previously participated in the Plan, or who have elected an alternate option, to elect the option with the

significant cost decrease. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, whether a cost increase or decrease is significant and what constitutes “similar coverage” based upon all the surrounding facts and circumstances.

- (3) *Limitation on Change in Cost Provisions for Dependent Care Expense Reimbursement.* The above “Change in Cost” provisions apply to Dependent Care Expense Reimbursement *only* if the cost change is imposed by a dependent care provider who is not a “relative” of the employee by blood or marriage (as that term is defined in Proposed Treas. Reg. §1.125-4(f)(2)(iii) or other IRS guidance).

(f) ***Change in Coverage.***

- (1) *Significant Curtailment or Improvement.* If the Plan Administrator determines that a Participant Benefit Plan or Policy coverage under this Plan is significantly curtailed or ceases during a Plan Year, the Participant may revoke his or her election under the Plan. In that case, each affected Participant may prospectively elect coverage under another Benefit Plan or Policy option which provides similar coverage, or drop the coverage (including a change from family to single) altogether if there is no similar coverage option being offered under the plan and there is a loss of coverage. Coverage under an accident or health plan is deemed “significantly curtailed” only if there is an overall reduction in coverage provided to Participants under the Plan so as to constitute reduced coverage to Participants in general. Similarly, the Plan Administrator may permit the election of an option which significantly improves during the Plan Year. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, whether a curtailment or improvement is “significant,” and whether a substitute Benefit Plan or Policy constitutes “similar coverage,” or whether a curtailment constitutes a “loss” of coverage based upon all the surrounding facts and circumstances.
- (2) *Addition or Elimination of Benefit Package Option Providing Similar Coverage.* If during a Plan Year the Plan adds or eliminates a Benefit Plan or Policy, an affected Participant may elect a newly-added option or elect another Benefit Plan or Policy (where a Plan option has been eliminated), and may do so prospectively on a pretax basis by making corresponding election changes with respect to coverage under another Benefit Plan or Policy option that provides similar coverage. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, whether a substitute Benefit Plan or Policy constitutes “similar coverage” based upon all the surrounding facts and circumstances.

- (3) *Change in Coverage of Spouse or Dependent Under Their Employer's Plan.* A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan or the Spouse's, former Spouse's, or Dependent's employer (including the Employer, if the Spouse or Dependent is also an Employee), so long as (a) the cafeteria plan or qualified benefits plan of the Spouse's, former Spouse's, or Dependent's employer permits its participants to make an election change that would be permitted under the proposed or final IRS regulations; or (b) the Plan permits Participants to make an election for a Plan Year period of coverage which is different from the plan year period of coverage under the cafeteria plan or qualified benefits plan of the Spouse's, former Spouse's or Dependent's employer. A Participant may similarly elect group health coverage under this Plan if the Employee's Spouse or Dependent loses coverage under a group health plan sponsored by a governmental or educational institution. The Plan Administrator shall determine, based on prevailing IRS guidance, whether a requested change in on account of and corresponds with a change made under the plan of the Spouse's, former Spouse's, or Dependent's employer.

A Participant entitled to make a new election under this Section must do so within 30 days of the event. An Employee who is eligible to elect benefits declined to do so during the initial election period pursuant to Section 3.02(a) or (b), or during a subsequent open enrollment period, may file a pretax contribution election within thirty days of the occurrence of an event described in this section, but only if the election under the new salary reduction agreement is made on account of and corresponds with the event. Subject to the provisions of the underlying group health plan, elections made to add medical coverage for a newborn or newly adopted Dependent child pursuant to a HIPAA special enrollment right may be retroactive for up to 30 days. All other new elections shall be effective prospectively immediately following the date the Participant files his new salary reduction agreement with the Plan Administrator. Elections made pursuant to this Section shall be effective for the balance of the Plan Year in which the election is made unless a subsequent event (described above) allows a further election change.

4.6 Failure to Elect. An Employee failing to return a completed election form to the Plan Administrator on or before the specific due date for any subsequent Plan Year shall be deemed to have made the same election as was in effect just prior to the end of the preceding Plan Year for insurance premiums/self-funded benefits as described in the Adoption Agreement. A Participant shall be deemed to have agreed to a reduction in compensation for the subsequent Plan Year equal to the Participant's share of the cost from time to time during such Plan Year of each optional benefit Participant is deemed to have elected for such Plan Year.

An Employee failing to return a completed election form to the Plan Administrator on or before the specified due date for any subsequent Plan Year shall be deemed to have waived participation in these Plans only for the new Plan Year for Medical Care Expense

and Dependent Care Expense Reimbursement Plans as described in Exhibits A and B, if applicable to this Plan.

4.7 Termination of Participation. In the event that an Employee's employment with the Employer is terminated for any reason, or a Participant becomes ineligible to participate in the Plan by changing from an eligible class of Employee to an ineligible class of Employee, all benefits provided hereunder for such Employee shall cease as of the end of the month following such event, subject to Section 6.7 on Benefit on Termination. A former Participant who is later rehired by the Employer or changes again to an eligible status within 30 days or less of the date of termination of employment or the change to an ineligible status will be reinstated with the same election(s) that such individual had before termination. If a former Participant is rehired or changes to an eligible status more than 30 days following termination of employment or status change, and is otherwise eligible to participate in the Plan, the individual may make a new election. An Employee who has never been employed in a class eligible for benefits under the Plan, and later changes to an eligible status, shall be deemed to be a new Employee for all purposes under this Plan.

4.8 Qualifying Leave Under Family Leave Act. Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 (FMLA), to the extent required by the FMLA, the Employer will continue to maintain the Participant's group health plan benefits, as defined under the FMLA, on the same terms and conditions as though he or she were still an active Employee (i.e., the Employer will continue to pay its share of the premium to the extent the Employee opts to continue his or her coverage). If the Employee opts to continue his or her coverage, the Employee may pay his or her share of the premium with aftertax dollars while on leave (or pretax dollars to the extent that he or she receives compensation during the leave), or the Employee may be given the option to pre-pay all or a portion of his or her share of the premium for the expected duration of the leave on pretax salary reduction basis out of his or her pre-leave Compensation by making a special election to that effect prior to the date such Compensation would normally be made available to the Employee (provided, however, that pretax dollars may not be utilized to fund coverage during the next plan year), or via other arrangements agreed upon between the Employee and the Plan Administrator (e.g., the Plan Administrator may fund coverage during he leave and withhold amounts upon the Employee's return). Upon return from such leave, the Employee will be permitted to reenter the Plan on the same basis the Employee was participating in the plan prior to his or her leave, or as otherwise required by the FMLA. Participants who have elected Health Care Expense Reimbursement benefits under the Plan funded with Pretax Contributions will be given an opportunity to continue those benefits with similar payment options as above, and with such Participants bearing the entire cost.

4.9 Reduction of Certain Elections to Prevent Discrimination. If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any requirement imposed by the Code or any limitation on Pretax Contributions allocable to Key Employees or to Highly Compensated Individuals, the Plan Administrator shall take such action(s) as he or she deems appropriate, under

rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation. Such action may include, without limitation, a modification or revocation of a Highly Compensated Individual's or Key Employee's election without the consent of such Employee.

ARTICLE V

Contributions

5.1 Employer Contribution. Unless specified in the Adoption Agreement or an addendum thereto, the Employer shall not make contributions under this Plan in excess of the salary reduction contribution under Section 5.2 on Voluntary Salary Reduction.

The maximum amount of Employer contributions under the Plan for any Participant shall be the sum of a) the maximum amounts which the Participant may receive under the Medical Care Expense Reimbursement Plan and the Dependent Care Expense Reimbursement Plan, if applicable, as set forth in such Plans (Exhibits A and B) and b) the costs from time to time of the most expensive benefits available to the Participant, as specified in the insurance/self-funded benefits section of the Adoption Agreement.

5.2 Voluntary Salary Reduction. Each Participant will be permitted at Participant's sole discretion to reduce his or her salary each Plan Year by converting a portion thereof into Benefit Dollars for deposit into Participant's Flexible Benefit Account. Such salary reduction will be made by an authorization given by the Participant prior to the start of each Plan Year or upon entry into the Plan, as the case may be. Salary reduction contributions shall be deemed to be Employer contributions and, if unused, cannot be carried forward to a subsequent Plan Year.

5.3 Interest Credited. There will be no interest credited to a Participant's Flexible Benefit Account.

5.4 Plan Financing. Benefit Dollars shall be paid out of the Employer's general assets pursuant to the Plan and according to the instruction and direction of the Plan Administrator. To the extent required in the future by the Code or, if applicable, by ERISA, the Employer may adopt a trust or custodial account to receive contributions and pay benefits.

5.5 Non-Discrimination. Contributions and benefits under this Plan shall not discriminate in favor of Highly Compensated Participants or Key Employees.

ARTICLE VI

Benefits

6.1 **Available Benefits.** Each Participant shall be entitled to elect to have his or her Benefit Dollars applied to purchase benefits under any one or more of the benefit option specified in the Adoption Agreement or Exhibits A and B attached hereto, as amended from time to time.

6.2 **Use of Benefit Dollars.** Benefit Dollars can be used to pay for specified insurance premiums, the cost of specified self-funded benefits, and, if specified in the Adoption Agreement, Medical Care Expenses and Dependent Care Expenses, as follows:

a. **Insurance Premiums/Self-Funded Benefits.** To the extent a Participant so elects, a portion of the Participant's Benefit Dollars shall be used to pay the Participant's share of the cost of coverage under any existing Employer-sponsored health, medical, dental, hospitalization, disability or life insurance or other similar insurance or self-funded plans for Employees. Said insurance and/or self-funded plan benefits are described in the Adoption Agreement which is made a part hereof by this reference.

b. **Medical Care Expenses.** If specified in the Adoption Agreement, the Employer has established a Medical Care Expense Reimbursement Plan under which a Participant may elect to use Benefit Dollars for reimbursement of non-covered health-related expenses, excluding health care premiums which are incurred by the Participant personally or for Participant's dependents. Said Plan is attached hereto as Exhibit A and made a part hereof by this reference.

c. **Dependent Care Expense.** If specified in the Adoption Agreement, the Employer has established a Dependent Care Reimbursement Plan under which a Participant may elect to use Benefit Dollars for reimbursement of employment related Dependent Care Expenses incurred by the Participant. Said Plan is attached hereto as Exhibit B and made a part hereof by this reference.

6.3 **Insurance/Self-Funded Benefits.** While the election to receive one or more of the benefits described in the Adoption Agreement may be made under this Plan, the benefits will be provided not by this Plan but by the underlying insurance/self-funded plans. The types and amounts of benefits available under each option, the requirements for participating in such Plans, and the other terms and conditions of coverage and benefits under such Plans are as set forth from time to time in the group insurance contracts, self-funded plan documents and prepaid health plan contracts that constitute (or are incorporated by reference in) such Plans.

6.4 **Key Employees.** No more than 25% of the total paid benefits pursuant to this Article VI during any Plan Year may be paid to Key Employees. If the Employer

believes that this 25% limit may be exceeded, it may, arbitrarily and in its absolute discretion, limit (a) the amount of the Key Employees' salary reduction that may be used pursuant to Section 6.2 on Use of Benefit Dollars and/or (b) the amount of benefits that may be paid to such Key Employees so that the limit will not be exceeded; provided, that any such limitation imposed by the Employer shall apply on a uniform basis pursuant to rules applicable equally to all Key Employees.

6.5 Expense Reimbursement. A Participant must apply to the Employer for reimbursement of eligible medical care and dependent care expenses by submitting a application in such form as the Employer prescribes. The application must include a statement from an independent third party stating that the expense has been incurred and the amount. Expenses are treated as having been incurred when the Participant is provided with the medical or dependent care expenses, and not when the Participant is formally billed or charged for, or pays for the medical or dependent care. In addition, the Participant must provide a statement or verify that the medical expense has not been reimbursed or is not reimbursable under any other health plan coverage. The expense must be incurred for services rendered after the effective date of the election and during the Plan Year. Reimbursement will be made from Participant's Flexible Benefit Account based on Benefit Dollars allocated by Participant for a specific elected benefit. Medical bills submitted for reimbursement which exceed the total Benefit Dollars available in the Participant's Flexible Benefit Account for Medical Care Expense will be paid up to the total Benefit Dollars allocated by the Participant for that elected benefit for that Plan Year reduced by reimbursements already paid. Once a Participant's Flexible Benefit Account for Dependent Care Expenses is reduced to zero, there will be no other payments made until the next claim processing date of the Plan Year. In the event a bill submitted for Dependent Care Expense reimbursement remains fully or partially unpaid, said claim may be carried forward for reimbursement out of Benefit Dollars to be contributed to Participant's Flexible Benefit Account for Dependent Care Expenses during subsequent months of the Plan Year.

6.6 Benefit on Family Status Change or Ineligibility. If a Participant ceases to be a Participant due to a change in family status or becomes ineligible to participate in the Plan, such Participant shall be entitled to reimbursement for the remainder of the Plan Year pursuant to Sections 6.2b and 6.2c on Use of Benefit Dollars for Medical Care Expense and Dependent Care Expense to the extent of the amount of Benefit Dollars for that Plan Year remaining in the Participant's Flexible Benefit Account at the time of such family status change or ineligibility to participate.

6.7 Benefit on Termination. If a Participant ceases to be an Employee of the Employer, such Participant shall be entitled to reimbursement for the remainder of the Plan Year pursuant to Section 6.2b on Use of Benefit Dollars for Medical Care Expense only to the extent the expenses are incurred during a month in which a contribution is made, and Section 6.2c on Dependent Care Expense to the extent of the amount of Benefit Dollars for that Plan Year remaining in the Participant's Flexible Benefit Account at the time of such termination of employment.

6.8 **Benefit on Death.** In the event of the death of a Participant, the beneficiaries of such deceased Participant shall be entitled to continue receiving Participant's elected benefits pursuant to Sections 6.2b and 6.2c on Use of Benefit Dollars to the extent the expenses are incurred during a month in which a contribution was made.

6.9 **Death Beneficiaries.** The Participant's surviving spouse, if any, shall be the primary Beneficiary of any benefits due under the Plan for the Participant, but unpaid at the time of the Participant's death. If the Participant does not have a surviving spouse, the Participant's children shall equally share as Beneficiaries. If neither a spouse nor children survive the Participant, the Participant's estate shall be the Beneficiary.

6.10 **Forfeiture.** Once an election is made regarding specific types and amounts of benefits under this Plan, Benefit Dollars may be used only to purchase or provide those benefits. **If any balance remains in the Participant's Flexible Benefit Account for a Plan Year after all reimbursements have been made for the Plan Year, such balance shall not be carried over to reimburse the Participant for expenses incurred during a subsequent Plan Year. The Participant shall forfeit all rights with respect to such balance.** All forfeitures under this Plan shall be used to offset any losses experienced by the Employer during the Plan Year as a result of making reimbursements (i.e., providing benefits) with respect to any Participant in excess of the premiums paid by such Participant via salary reductions, and then to reduce the Employer's cost of administering this Plan during the Plan Year. Any unused forfeitures shall be used to reduce the Employer's costs or to provide additional benefits in the following Plan Year.

ARTICLE VII

Administration

7.1 Administration. The Plan shall be administered by a Plan Administrator, which shall be the Employer unless otherwise specified in the Adoption Agreement. Except for forfeitures applied to administrative costs as provided in Section 6.10, the Employer shall bear all administrative costs of the Plan.

7.2 Powers of Plan Administrator. The Plan Administrator shall have all powers necessary to administer the Plan, including, without limitations, powers:

a. To maintain complete and accurate records of all Plan transactions, contributions, and distributions. Incident to this responsibility, the Plan Administrator shall cause the books and records of the Plan to reflect the Flexible Benefit Account of each Participant at all times throughout the Plan Year. The Plan Administrator shall maintain the books of accounts, records, and other data in the manner necessary for proper administration of the Plan and to meet any applicable disclosure and reporting requirements of the Employee Retirement Income Security Act of 1974 (ERISA);

b. To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan, provided such rules and regulations are not inconsistent with the terms of the Plan as set out herein. All rules and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances;

c. To enforce the terms of the Plan and the rules and regulations it adopts;

d. To review claims and render decisions on claims for benefits under the Plan;

e. To furnish the Participants, upon request, with information which Participants may require for tax or other purposes;

f. To employ agents, attorneys, accountants or other persons (who also may be employed by or represent the Employer), for such purposes as the Plan Administrator considers necessary or desirable in connection with its duties hereunder, including specifically a third party Plan recordkeeper to perform the ministerial act of maintaining plan records, processing claims and paying benefits due under the Plan and any guidelines specified or accepted by the Plan Administrator;

g. To apply for and take all steps as may be necessary to secure insurance contracts with one or more insurers as and when required by the Employer, and to

pay or coordinate payment between the insurance company or companies and the Employer any and all premiums as and when such premiums become due;

h. To be the policyholder and owner of any contracts of insurance purchased under the Plan, and shall have the power to exercise any and all rights and perform any and all obligations as policyholder and owner thereunder;

i. To perform any and all other acts necessary or appropriate for the proper management and administration of the Plan.

7.3 Actions of the Plan Administrator. All determinations, interpretations, rules and decisions of the Plan Administrator shall be conclusive and binding upon all persons having or claiming to have any interest or right under the Plan.

7.4 Delegation. The Plan Administrator shall have the power to delegate specific duties and responsibilities to officers or employees of the Employer or other individuals or entities. Any delegation by the Plan Administrator may allow further delegations by the individual or entity to whom the delegation is made. Any delegation may be rescinded by the Plan Administrator at any time. Each person or entity to whom a duty or responsibility has been delegated shall be responsible for the exercise of such duty or responsibility and shall not be responsible for any act or failure to act of any other person or entity.

7.5 Reports and Records. The Plan Administrator and those to whom the Plan Administrator has delegated duties under the Plan shall keep records of all their proceedings and actions and shall maintain books of account, records, and other data as shall be necessary for the proper administration of the Plan for compliance with applicable law.

7.6 Indemnification. To the maximum extent permitted by the law, the Employer shall indemnify all officers and Employees of the Employer assigned fiduciary responsibility to the extent that such officers or Participants incur loss or damage which may result from such officers' or Participants' duties, exercise of discretion under the Plan, or any other act or omission hereunder.

ARTICLE VIII

Amendments and Termination

8.1 **Amendments.** The Employer may amend the Plan, in full or in part, at any time and from time to time. Any such amendment shall be filed with the Plan documents.

a. No amendment shall deprive any Participant or beneficiary of a deceased Participant of any of the benefits to which he or she is entitled under this Plan with respect to contributions previously made;

b. No amendment shall provide for the use of funds or assets held to provide benefits under this Plan other than for the benefit of Participants and their beneficiaries, except as may be specifically authorized by statute or regulation.

Each amendment shall be approved by resolution of the Board of Directors (or other governing body) of the Employer, or if the Board duly delegates this authority by resolution, by the action of the person delegated such authority.

8.2 **Changes in Third Party Benefits.** In the case of any benefit provided pursuant to an insurance policy or other contract with a third party, the Employer may amend the Plan by changing insurers, policies, or contracts without changing the language of this Plan document, provided that copies of the contracts or policies are filed with the Plan documents and the Participants are informed as to the effects of any such changes.

8.3 **Termination of Plan.** The Employer expects this Plan to be permanent but necessarily must, and hereby does, reserve the right to terminate the Plan at any time. In the event of a Plan termination, Employer contributions and salary reductions will cease. Thereafter, neither the Employer nor any of its Employees shall have any further financial obligations hereunder except such that have accrued up to the date of termination and have not been satisfied.

ARTICLE IX

Miscellaneous

9.1 No Guaranty of Employment. The adoption and maintenance of the Plan shall not be deemed to be a contract of employment between the Employer and any Employee. Nothing contained herein shall give any Employee the right to be retained in the employ of the Employer or to interfere with the right of the Employer to discharge any Employee at any time, nor shall it give the Employer the right to require any Employee to remain in its employ or to interfere with the Employee's right to terminate his or her employment at any time.

9.2 Limitation on Liability. The Employer does not guarantee benefits payable under any insurance policy or other similar contract described or referred to herein, and any benefits thereunder shall be the exclusive responsibility of the insurer or other entity that is required to provide such benefits under such policy or contract.

9.3 Third Party Agreements. In the case of any benefit provided through a third party, such as an insurance company or employee trust, pursuant to a contract or policy with such third party, if there is any conflict or inconsistency between the description of benefits contained in this Plan and those contained in such contract or policy, the terms of such contract or policy shall control.

9.4 Non-Alienation. No benefit payable at any time under this Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind.

9.5 Facility of Payment. Whenever, in the Plan Administrator's opinion, a person entitled to receive any payment of a benefit or installment thereof under this Plan, is under a legal disability or is incapacitated in any way so as to be unable to manage that person's financial affairs, the Plan Administrator may provide payments to such person or to the person's legal representative or to a relative or friend of such person for such person's benefit, or the Plan Administrator may apply the benefit for the benefit of such person in such manner as the Plan Administrator considers advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

9.6 Rights to Employer's Assets. No Employee or beneficiary shall have any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or beneficiary. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Employer.

9.7 Severability of Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

9.8 Binding Effect. This Plan shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties, including each Participant and beneficiary, present and future.

9.9 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

9.10 Gender and Number. Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa.

EXHIBIT A

MEDICAL CARE EXPENSE REIMBURSEMENT PLAN

The Plan and Plan Sponsor

This Plan is known as a "medical care assistance" plan and qualifies under Section 105(h) of the Internal Revenue Code. If elected as a benefit for the Plan in the Adoption Agreement, it is established and maintained by the Employer named in the Adoption Agreement.

Plan Year

A twelve-month or shorter period specified in the Adoption Agreement.

Participation

If elected as a benefit for the Plan in the Adoption Agreement, any Employee specified as eligible to participate and receive this benefit in the Adoption Agreement is eligible to participate hereunder.

Enrollment and benefit elections under this Plan must be made in the form specified by the Employer and a new election must be made prior to the start of each Plan Year.

Any benefit election under this Plan is irrevocable and cannot be changed except in the case of change in family status.

Medical Care Expense Account

Employer shall establish for each eligible and electing Participant a Medical Care Reimbursement Account ("Account") for each Plan Year with an initial balance equal to the total Benefit Dollars allocated by the Participant for that elected benefit for that Plan Year. An annual statement of Account will be provided to each Participant.

The Account shall be reduced by the amount of any benefits paid to or on behalf of a Participant under this Plan.

Contributions

A Participant's Account shall be increased by voluntary salary reduction contributions to be made by Participant in an amount not less than \$120 and not to exceed the per Plan Year limits established by the Employer as noted in the Adoption Agreement. Participant must specifically elect to apply these funds toward reimbursement of medical care expenses.

Forfeiture

Any balance remaining in Participant's Account at the end of a Plan Year will be forfeited to Employer.

Benefits

A Participant may receive reimbursement from Employer for any expense which meets the criteria as a medical care expense under the Internal Revenue Code, Sections 213 and 105(b), to the extent allocated by the Participant for the Account. However, no reimbursement shall be paid under this Plan to the extent that:

- (a) an expense has been submitted for reimbursement as a dependent care expense under the Dependent Care Expense Reimbursement Plan; or,
- (b) such reimbursement or payment is covered under any insurance policy or policies, whether paid for by the Employer or the Participant, or under any other health and accident plan by whomever maintained. In the event that there is such a policy or plan in effect providing for such reimbursement or payment, in whole or in part, then to the extent of the coverage under such policy or plan, the Employer shall be relieved of any liability hereunder; or,
- (c) an expense is for individual health insurance premiums or spouse's group health insurance premiums.

The expenses must be incurred for services rendered after the effective date of the election and during the Plan Year.

If a Participant ceases to be an Employee of Employer or dies prior to the end of a Plan Year, Participant or Participant's beneficiary shall be entitled to continue receiving benefits hereunder for the balance of the Plan Year to the extent the expenses are incurred during a month in which a contribution is made.

Claims

The Plan Administrator or its agent will make all determinations as to the right of any person to a benefit under this Plan.

Administration

The Plan shall be administered by the Plan Administrator specified in the Adoption Agreement, who shall have all the powers necessary to administer the Plan.

Amend/Terminate

Employer may amend the Plan in full or in part at any time. Employer also reserves the right to terminate the Plan at any time.

Continuation Coverage

Participant will be entitled to applicable continuation coverage pursuant to the continuation of coverage requirements of Title I of ERISA and Internal Revenue Code Section 4980B.

Miscellaneous

For purposes of the Internal Revenue Code, this document shall constitute a separate written Plan providing for the reimbursement of medical care expenses. To the extent necessary, other provisions of the Flexible Benefits Plan as adopted by the Employer are incorporated herein by this reference.

EXHIBIT B

DEPENDENT CARE EXPENSE REIMBURSEMENT PLAN

The Plan and Plan Sponsor

This Plan is known as a "dependent care assistance" plan and qualifies under Section 129 of the Internal Revenue Code. If elected as a benefit for the Plan in the Adoption Agreement, it is established and maintained by the Employer named in the Adoption Agreement.

Plan Year

A twelve-month or shorter period specified in the Adoption Agreement.

Participation

If elected as a benefit for the Plan in the Adoption Agreement, any Employee specified as eligible to participate and receive this benefit in the Adoption Agreement is eligible to participate hereunder.

Enrollment and benefit elections under this Plan must be made in the form specified by the Employer and a new election must be made prior to the start of Plan Year.

Any benefit election under this Plan is irrevocable and cannot be changed except in the case of change in family status.

Dependent Care Expense Account

Employer shall establish for each eligible and electing Participant a Dependent Care Reimbursement Account ("Account") for each Plan Year with an initial balance of zero. An annual statement of Account will be provided to each Participant.

The Account shall be reduced by the amount of any benefits paid to or on behalf of a Participant under this Plan.

Contributions

A Participant's Account shall be increased by voluntary salary reduction contributions to be made by Participant and/or Employer contributions in an amount not to exceed the lesser of the Participant's earned income (exclusive of salary reductions for any benefits); the spouse's earned income; \$5,000 annually or \$2,500 annually for a Participant who is married and files a separate tax return. Participant must specifically elect to apply these funds toward dependent care expenses.

Forfeiture

Any balance remaining in Participant's Account at the end of a Plan Year will be forfeited to Employer.

Benefits

A Participant may receive reimbursement from Employer for any expense which meets the criteria as an employment related dependent care expense under the Internal Revenue Code, Section 129, to the extent that there are allocated funds in the Account for such use by the Participant. However, no reimbursement shall be paid under this Plan to the extent that an expense has been submitted for reimbursement as a medical care expense under the Medical Care Expense Reimbursement Plan.

The expenses must be incurred for services rendered after the effective date of the election and during the Plan Year.

If a Participant ceases to be an Employee of Employer or dies prior to the end of a Plan Year, Participant or Participant's beneficiary shall be entitled to continue receiving benefits hereunder for the balance of the Plan Year to the extent of the amount remaining in Participant's account on the date of termination or death.

Limitations

No more than 25% of the total paid Benefit pursuant to this Plan may be provided to the group of individuals who own 5% or more of the stock of the Employer. In addition, the average benefits provided under this Plan to non-highly compensated Employees must be at least 55% of the average benefits provided to highly compensated Employees. For purposes of the test for the preceding sentence, any Employee whose compensation is less than \$25,000 may be disregarded.

Claims

The Plan Administrator or its agent will make all determinations as to the right of any person to a benefit under this Plan.

Administration

The Plan shall be administered by the Plan Administrator specified in the Adoption Agreement, who shall have all the powers necessary to administer the Plan.

Amend/Terminate

Employer may amend the Plan in full or in part at any time. Employer also reserves the right to terminate the Plan at any time.

Miscellaneous

For purposes of the Internal Revenue Code, this document shall constitute a separate written Plan providing for the reimbursement of dependent care expenses. To the extent necessary, other provisions of the Flexible Benefits Plan as adopted by the Employer are incorporated herein by this reference.

