

**FLEXIBLE BENEFITS PLAN**

**FOR**

**THE STATE OF LOUISIANA**

**AN ERISA EXEMPT EMPLOYER**

Amended as of January 1, 2015

Established, 1993

Office of Group Benefits  
Division of Administration  
State of Louisiana

## **Article 1**

### **INTRODUCTION**

The Office of Group Benefits is administering this Internal Revenue Service qualified cafeteria plan, hereinafter referred to as the Flexible Benefits Plan (Flex Plan), in accordance with Louisiana Revised Statutes 42:802 B(9). This Flex Plan is effective as of July 1, 1993. This Flex Plan document is amended to comply with Internal Revenue Code regulations and is effective as of January 1, 2015.

The purpose of the Flex Plan is to allow Eligible Employees of the Employer to select among various Benefits offered by the Employer, or cash, so that the participating Employees can receive those Benefits which they have determined best meet their individual needs or the needs of their family.

It is the specific intent of the Employer that this Flex Plan be a qualified “cafeteria plan” as defined in Section 125 of the Internal Revenue Code of 1986, as amended, and that certain Benefits which an Employee may elect to receive under this Flex Plan qualify for exclusion from the Employee’s income for federal income tax purposes.

Furthermore, this Flex Plan is intended to be interpreted in a manner consistent with Sections 79, 105, 106, 125, 129 and 223 of the Internal Revenue Code of 1986, as amended; all IRS Regulations thereunder; and any applicable federal law or regulation hereinafter enacted affecting qualification of a valid Section 125 Cafeteria Plan.

The Employer establishes this Flex Plan as an “exempt governmental plan” as described in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.

## Article 2

### DEFINITIONS

The following words and phrases as used herein shall have the following meanings, unless a different meaning is clearly required by the context. Pronouns shall be interpreted so that the masculine pronoun shall include the feminine and the singular shall include the plural.

**Section 2.01 “Account”** means the Health Care Flexible Spending Arrangement Account(s), or the Dependent Care Flexible Spending Arrangement Account(s) described in each respective Plan Document under separate cover.

**Section 2.02 “Administrative Fee”** means the required participation fee set by the Administrator to cover the cost of administering the Health Care FSA and the Dependent Care FSA. This fee is separate and in addition to amounts identified for Benefits. Failure to pay the Administrative Fee will result in the denial of the privilege to participate in the respective Benefit.

**Section 2.03 “Administrator”** means the Office of Group Benefits, Division of Administration, State of Louisiana or other such person or entity that it appoints as its designee.

**Section 2.04 “Annual Enrollment Period”** means the period designated by the Administrator which precedes the commencement of each Plan Year during which Eligible Employees can elect or modify the amount contributed for Benefits.

**Section 2.05 “Appeals Panel”** means the panel of at least three (3) individuals appointed by the Administrator.

**Section 2.06 “Applicable Law”** means the Internal Revenue Code of 1986, and the same as may be amended from time-to-time, plus all regulations promulgated with respect thereto. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

**Section 2.07 “Automatic Enrollment”** means enrollment in the Premium Conversion Option upon enrollment in an OGB-offered health plan, term life on employee only, and in any other pre-tax Premium Conversion Option Qualified Benefit.

**Section 2.08 “Benefit”** does not include any long term disability benefit and means any of the following benefits available under the Flex Plan:

- (a) Cash compensation;
- (b) Conversion of eligible premiums (Accident and Health coverage, Group Term Life Insurance, Cancer Insurance, Hospital Income Insurance, Dental Insurance, Accidental Death and Dismemberment Insurance, and Vision Insurance);

- (c) Dependent Care FSA reimbursements;
- (d) Health Care FSA reimbursements; and
- (e) HSA Contributions.

**Section 2.09 “Benefit Package Option”** means a qualified benefit under Code Section 125(f) that is offered under the Flex Plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, a High Deductible Health Plan option, or a PPO option under an accident or health plan).

**Section 2.10 “Change in Status”** means, for purposes of this Flex Plan, and specifically excluding the Dependent Care FSA and the Health Care FSA the following events:

- (a) A change in a Participant’s legal marital status: marriage, death of a spouse, divorce, court-ordered legal separation or annulment, as it affects eligibility for coverage;
- (b) A change in a Participant’s number of tax Dependents: birth of a child, adoption or placement for adoption of a child, or death of a Dependent, as it affects eligibility for coverage;
- (c) Termination or commencement of employment by the Participant, the Participant’s spouse or the Participant’s Dependent. In addition, if the eligibility conditions of the cafeteria plan or other employee benefit plan of the Employer of the Participant, the Participant’s spouse, or the Participant’s Dependent depend on the employment status of that individual and there is a change in that individual’s employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment status;
- (d) A reduction or increase in hours of employment by the Participant, the Participant’s spouse or the Participant’s Dependent, including a switch between part-time and full-time status, a strike or lockout, or commencement or return from an unpaid leave of absence, as it affects eligibility for coverage;
- (e) A Dependent satisfying or ceasing to satisfy the Dependent eligibility requirements for a particular benefit, for example, due to attainment of limiting age;
- (f) A change in the place of residence, or place of work of the Participant, the Participant’s spouse or the Participant’s Dependent. (The change must affect the Participant’s eligibility for coverage – i.e., a Participant cannot drop health coverage merely because he moved, unless, as a result of the move, the Participant is no longer eligible for a particular health benefit); and
- (g) A "significant" cost or coverage change, as described more fully in Section 4.06(e).

**Section 2.11 “COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**Section 2.12 “Code”** means the Internal Revenue Code of 1986, as amended.

**Section 2.13 “Compensation”** means the wages or salary paid to an Employee by the Employer, determined prior to (1) any Salary Reduction election under the Flex Plan, (2) any salary reduction election under any other cafeteria plan, and (3) any compensation reduction under any Code §132(f)(4) plan but is determined after salary deferral elections under any Code §§401(k), 403(b), 408(k), or 457(b) plan or arrangement.

**Section 2.14 “Contribution”** means an amount that has not been actually or constructively received (after application of Section 125) by the Participant and has been designated by a Participant to become Employer contributions for the purpose of paying for selected Benefits. Unless otherwise specifically provided in writing, under the provisions of this Flex Plan, Contributions are composed entirely of the sums generated pursuant to Salary Reduction Agreements executed by the Participants pursuant to which the Participants have elected to reduce their Compensation and have such amounts contributed as Employer contributions on their behalf.

**Section 2.15 “Dependent”** means (1) any individual who is a tax dependent of a Participant as defined in Code §152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof; (2) any child (as defined in Code §152(f)(1)(B)) 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 Revenue Procedure 2008-48 applies (regarding a child of divorced or separated parents, where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child’s support for the year). Notwithstanding the foregoing, the Health Care FSA will provide Benefits in accordance with the applicable requirements of any NMSN, even if the child does not meet the definition of “Dependent.”

**Section 2.16 “Dependent Care FSA”** means the Dependent Care Flexible Spending Arrangement as administered by the Office of Group Benefits and as from time-to-time amended, established pursuant to the provisions of Code §129 for reimbursement of eligible dependent care assistance expenses, as defined in Code §21(b). See the Dependent Care FSA Plan Document under separate cover.

**Section 2.17 “Earned Income”** means all income derived from wages, salaries, tips, self-employment, and other compensation (such as disability or wage continuation benefits), only if such amounts are includible in gross income for the taxable year, but does not include (a) any amounts received pursuant to any Dependent Care FSA under Code §129; or (b) any other amounts excluded from Earned Income under Code §32(c)(2), such as amounts received under a pension or annuity or pursuant to workers’ compensation.

**Section 2.18 “Effective Date”** means the date that this Flex Plan was originally effective, July 1, 1993; the Effective Date of this amendment and restatement shall be January 1, 2015.

**Section 2.19 “Eligible Employee”** means any active, full-time Employee of the State of Louisiana whose department or agency is participating in this Flex Plan as provided in Section 3.01 of this Plan Document. Notwithstanding the foregoing, solely for purposes of determining

eligibility to participate in the OGB Flex Plan "Eligible Employee" shall include a FTE and any other Employee who is eligible to participate in an OGB-sponsored health plan.

**Section 2.20 "Employee"** means an individual that the Employer classifies as active, full-time, and who is on the Employer's W-2 payroll, but does not include the following: (1) any leased employee (including, but not limited to those individuals defined as leased employees in Code §414(n) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee for the period during which such individual is so classified, whether or not any such individuals are on the Employer's W-2 payroll or are determined by the IRS or others to be common-law employees of the Employer; (2) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individuals are determined by the IRS or others to be common-law employees of the Employer; or (3) any employee covered under a collective bargaining agreement.

**Section 2.21 "Employer"** means the State of Louisiana through the respective Department or Agency employing the Eligible Employee and/or Participant(s).

**Section 2.22 "Enrollment Form"** means the form or forms provided to enroll in an OGB offered health plan; OGB offered term life on employee only; the Premium Conversion Option Enrollment form; or other Qualified Benefit.

**Section 2.23 "Enrollment Period"** means the first 30 days following each new Eligible Employee's hire date when Employees may select Benefits for the current Plan Year, and an enrollment period required by Code Section 4980H for a FTE.

**Section 2.24 "ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**Section 2.25 "Flexible Benefits Plan (Flex Plan)"** means this Internal Revenue Service qualified cafeteria plan administered by or on behalf of the Office of Group Benefits, Division of Administration, State of Louisiana in accordance with Louisiana Revised Statutes 42:802 B(9).

**Section 2.26 "FMLA"** means the Family and Medical Leave Act of 1993, as amended.

**Section 2.27 "FTE"** means an Employee who is determined to be a "full-time equivalent" employee for purposes of Code Section 4980H and the regulations promulgated thereunder, as established by the Patient Protection and Affordable Care Act of 2010, as amended.

**Section 2.28 "General-Purpose Health Care FSA (GPFSA)"** means the flexible spending arrangement option available under the Flex Plan that permits a Participant to contribute to an Account for pre-tax reimbursement of certain Qualifying Medical Care Expenses. A Participant who participates in the GPFSA is not an HSA-Eligible Individual. See the Health Care FSA Plan Document under separate cover.

**Section 2.29 “Grace Period”** means the 2 months plus 15 days immediately following the Plan Year when Participants in the Dependent Care FSA and the Health Care FSA may incur eligible expenses to be reimbursed from their respective unused benefits, remaining as of the immediately preceding Plan Year in accordance with IRS Notice 2005-42.

**Section 2.30 “Health Care FSA”** means the health care flexible spending arrangement, an available Benefit under this Flex Plan, which consists of two options: the General-Purpose Health Care Flexible Spending Arrangement (GPFSA) and the Limited-Purpose (dental/vision) Health Care Flexible Spending Arrangement (LPFSA). See the Health Care FSA Plan Document under separate cover.

**Section 2.31 “High Deductible Health Plan (HDHP)”** means the High Deductible Health Plan offered by the Employer and Office of Group Benefits that is intended to qualify as a high deductible health plan under Code Section 223(c)(2), as described in materials provided separately by the Office of Group Benefits.

**Section 2.32 “HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended.

**Section 2.33 “HSA”** means a health savings account established under Code Section 223. Such arrangements are individual trusts or custodial accounts, each separately established and maintained by the Participant with an Employer-specified HSA trustee/custodian and governed by the agreement between the Participant and the HSA trustee/custodian.

**Section 2.34 “HSA-Eligible Individual”** means an individual who:

- (a) has elected qualifying High Deductible Health Plan coverage offered by the Employer;
- (b) is not covered by any disqualifying non-High Deductible Health Plan coverage;
- (c) is eligible to contribute or have contributions made on his behalf to a HSA under Code Section 223; and,
- (d) has opened a HSA with the Employer-specified HSA trustee/custodian.

**Section 2.35 “Limited-Purpose (dental/vision) Health Care FSA (LPFSA)”** means the flexible spending arrangement option available under the Flex Plan that permits a Participant to contribute to an Account for pre-tax reimbursement of certain Qualifying Medical Care Expenses and to maintain his HSA-Eligible Individual status. See the Health Care FSA Plan Document under separate cover.

**Section 2.36 “National Medical Support Notice (NMSN)”** means the standardized form used by state child support enforcement agencies to obtain group health coverage for children, deemed to be a QMCSO when appropriately completed.

**Section 2.37 “OGB Plan”** means the plan or plans maintained by the Office of Group Benefits for Eligible Employees (and their spouses and eligible dependents), which plan provides accident and health benefits and which qualify as accident or health plans under Code 106 (other than a long-term care insurance plan). The Office of Group Benefits may substitute, add, subtract or revise at any time the menu of such plans and/or their benefits, terms and conditions. Any such substitution, addition, subtraction or revision will be reflected on the Enrollment Form or otherwise communicated to Participants, and will automatically be incorporated by reference under this Flex Plan.

**Section 2.38 “Participant”** means any Eligible Employee who has elected to participate in the Flex Plan.

**Section 2.39 “Period of Coverage”** means that portion of the Plan Year and the Grace Period for which one is a Participant. In no event shall the Period of Coverage commence prior to, nor terminate after, the commencement and ending dates of the Plan Year, except with regard to the Grace Period.

**Section 2.40 “Plan Year”** means the twelve-month period commencing on January 1st and ending on December 31st of each year, except in the case where the Plan Year is being changed, in which case the Plan Year shall be the entire Short Plan Year.

**Section 2.41 “QMCSO”** means a Qualified Medical Child Support Order, as defined in ERISA §609(a).

**Section 2.42 “Qualified Benefit”** means any of those Benefits offered under this Flex Plan by the Employer and the Office of Group Benefits which qualify as qualified benefits under Section 125(f) of the Code, except for disability insurance. Disability insurance is not a qualified benefit under this Flex Plan.

**Section 2.43 “Run-out Period”** means the 45 days immediately following the Grace Period when Participants in the Dependent Care FSA and the Health Care FSA may submit eligible expenses incurred during the preceding Plan Year and/or Grace Period for reimbursement from their respective unused benefits remaining at the end of the immediately preceding Plan Year.

**Section 2.44 “Salary Reduction”** means the amount by which the Participant’s Compensation is reduced and applied by the Employer under this Flex Plan to pay for selected Benefits and the Administrative Fee, before any applicable state and federal taxes have been deducted from the Participant’s Compensation.

**Section 2.45 “Short Plan Year”** means the Period of Coverage under the Flex Plan designated by the Administrator that is less than one year.



## **Article 3**

### **PARTICIPATION**

#### **Section 3.01 Eligibility to Participate.**

- (a) An Employee is eligible to participate in this Flex Plan if the Employee:
  - (1) is an active, full-time Employee as defined herein or is a FTE or is otherwise eligible for health insurance under an OGB-sponsored health plan or for whom OGB, in its sole discretion, determines should continue participation in this Flex Plan to properly administer the requirements of applicable federal and state law; and
  - (2) is employed by an Employer that utilizes the State of Louisiana Flex Plan.
- (b) An Employee is eligible to participate in the HSA benefit only if he is a HSA-Eligible Individual and satisfies any additional requirement(s) of the Employer-specified HSA trustee/custodian.
- (c) Retirees are not eligible to participate in this Flex Plan except for rehired retirees who otherwise meet the definition of an Eligible Employee. However, rehired retirees are not eligible to participate in the HSA.

**Section 3.02 Participation Agreement.** An election by an Eligible Employee to enroll in an OGB offered health plan; OGB offered term life on employee only; the Premium Conversion Option Enrollment form; or form to enroll in any other Qualified Benefit is an agreement to the following:

- (a) To pay any and all applicable Administrative Fee(s) (Failure to pay all applicable Administrative Fee(s) will result in the denial of the privilege to participate in the Flex Plan;
- (b) To be enrolled automatically in the Premium Conversion Option upon enrollment in an OGB offered health plan, or OGB offered term life on employee only;
- (c) To authorize his Employer to reduce his Compensation to pay his cost of all selected Qualified Benefits pursuant to his Premium Conversion Option Enrollment form;
- (d) If applicable, to certify that he is a HSA-Eligible Individual with regard to making HSA Contributions for any month; and,
- (e) To agree that his Employer and Administrator will incur no liability resulting from either his participation in this Flex Plan, Dependent Care FSA, Health Care FSA, HSA, or his failure to sign and/or accurately complete an Enrollment Form.

### **Section 3.03 HSA Participation.**

- (a) *Participation.* An Eligible Employee can elect to participate in the HSA benefit by enrolling in the High Deductible Health Plan; opening a HSA with the Employer-specified HSA trustee/custodian; and electing to pay Contributions on a pre-tax basis to his HSA, pursuant to his Salary Reduction Agreement. Such election to pay Contributions can be increased, decreased, or revoked prospectively at any time during the Plan Year, effective no later than the first day of the second month following the date that the election change was filed with his Employer.
- (b) *General-Purpose Health Care FSA (GPFSA) Limitation.* The HSA benefit cannot be elected with the General-Purpose Health Care FSA option.
- (c) *Limited-Purpose (dental/vision) Health Care FSA (LPFSA).* The HSA benefit can be elected with the LPFSA option.
- (d) *Transition Rule.* Except for those Participants enrolling mid-year in a High Deductible Health Plan due to significant premium increases, as provided in Section 4.06(e)(2) (discussed below), a Participant who has an election for the General-Purpose Health Care FSA that is in effect on the day immediately preceding the first day of a Plan Year cannot make HSA Contributions for any of the first three calendar months of that same Plan Year, unless the balance in the Participant's General-Purpose Health Care FSA Account was \$0.00 on the day immediately preceding the first day of that same Plan Year. For this purpose, a Participant's General-Purpose Health Care FSA Account balance is determined on a cash basis – that is without regard to any claims that have been incurred but have not yet been reimbursed (whether or not such claims have been submitted). Those Participants who enroll mid-year in a High Deductible Health Plan, as provided in Section 4.06(e)(2), shall be eligible to participate in the HSA and shall be eligible to contribute the full maximum for the year of enrollment, provided the Participant remains covered under the High Deductible Health Plan for the entirety of the following Plan Year; if such Participant does not remain covered under a High Deductible Health Plan for the following Plan Year, then the Participant's HSA contribution for the partial year of enrollment will be limited to a pro rata amount for that portion of the year the Participant is covered by a High Deductible Health Plan. If a Participant fails to comply with these rules, the Participant may be subject to adverse tax consequence. Participants are advised to seek guidance from their tax advisors before cease participation in a High Deductible Health Plan in the year after a mid-year enrollment.

### **Section 3.04 Salary Reduction Contributions.**

- (a) *Salary Reductions per pay period.* Participants in this Flex Plan must pay for the cost of elected Benefits on a pre-tax basis pursuant to the Enrollment Form(s). For Participants paid monthly, the Salary Reduction for each pay period is an amount equal to the total of all Contributions plus all Administrative Fees expected to be paid during the Plan Year, divided by twelve (12). For Participants paid bi-weekly, the Salary Reduction for each pay period, except for a pay period associated with a third

check in a given month, is an amount equal to the total of all Contributions plus all Administrative Fees expected to be paid during the Plan Year, divided by twenty-four (24). For Participants paid weekly, the Salary Reduction for each pay period is an amount equal to the total of all Contributions plus all Administrative Fees expected to be paid during the Plan Year, divided by fifty-two (52).

- (b) *Employer Contributions.* Salary Reductions for the purpose of this Flex Plan and the Code are considered Employer contributions.

**Section 3.05 Termination of Participation.** An Eligible Employee will cease to be a Participant in this Flex Plan upon the earlier of:

- (a) The termination of the Flex Plan;
- (b) The date the Participant ceases to be an Eligible Employee; or,
- (c) The date the Participant revokes the election to participate on account of and consistent with an event permitting an exception to the irrevocability of elections in accordance with Section 4.06.

Termination of an Employee's participation in this Flex Plan shall cause the Participant's elections made under this Flex Plan to be automatically revoked. Reimbursements after termination of participation will be made pursuant to applicable insurance policies and/or Plan Documents.

**Section 3.06 COBRA Participation.** Notwithstanding any provision to the contrary in this Plan Document, to the extent required by COBRA, a Participant and Participant's Spouse and Participant's Dependents, whose coverage terminates under the Plan because of a COBRA qualifying event, shall be given the opportunity to continue coverage under the Plan on an after-tax basis for the periods prescribed by COBRA (subject to all conditions and limitations under COBRA). With respect to the Health Care FSA Plan, such individuals will be eligible for COBRA continuation coverage only in accordance with the Health Care FSA Plan document and only if the Participant has a positive Health Care FSA Account balance at the time of a COBRA qualifying event (taking into account all claims submitted before the date of the qualifying event). Such individuals will be notified if they are eligible for COBRA continuation coverage.

**Section 3.07 Closure of HSA.** An Eligible Employee will cease to be a HSA-Eligible Individual upon the closure of his HSA with the Employer-specified trustee/custodian. Said closure will cause the HSA Contributions to cease.

**Section 3.08 Reinstatement of Former Participants by Reason of Civil Service Appeal.** When employment of a Participant is terminated and reinstated within the same Plan Year by reason of a Civil Service appeal, elections shall be reinstated retroactive to the date that employment was terminated. In the event the terminated Participant is not reinstated prior to the end of the Plan Year in which he was terminated, he shall no longer be a Participant and he shall no longer be an Eligible Employee. However, when this former Participant's employment is

reinstated during a subsequent Plan Year, the reinstatement shall be a Change in Status and the former Participant will be permitted to enter the Flex Plan upon return from his absence.

**Section 3.09 Participation Following Rehire.** If a Participant terminates his or her employment with his Employer for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within thirteen weeks (26 weeks for educational institutions) after the date of a termination of employment, then the Eligible Employee may enroll in the Flex Plan. If a former Participant is rehired more than thirteen weeks (or 26 weeks for educational institutions) following termination of employment with the Employer and is otherwise eligible to participate in the Flex Plan, then the Eligible Employee may enroll for Qualified Benefits as a new hire as described in Section 3.01 and Section 3.02. Notwithstanding the above, an HSA benefit election will only be honored or reinstated if the Eligible Employee is an HSA-Eligible Individual.

**Section 3.10 Participation Following Transfer.** A Participant who transfers from one Employer to another Employer within the participating Flex Plan payroll systems will continue to participate in this Flex Plan at the same level of participation as prior to the transfer.

**Section 3.11 FMLA Leaves of Absence.** Notwithstanding any provision to the contrary in this Plan Document, if a Participant goes on a qualifying paid leave under the FMLA, he may elect to continue on the same basis as during active service or discontinue his coverage.

In the case when a Participant goes on a qualifying unpaid leave under the FMLA, he may elect to continue his coverage or discontinue his coverage. If he elects to continue, a Participant may pay his Salary Reduction in one of the following ways:

- (a) by pre-paying with pre-tax dollars all or a portion of the Salary Reduction(s) for the expected duration of the leave pursuant to a prior to commencement of FMLA leave agreement with his Employer. To pre-pay the Salary Reduction(s) the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (Pre-tax dollars may not be used to fund coverage during the next Plan Year.);
- (b) by paying with pre-tax dollars upon his return to work on a payroll reduction schedule pursuant to a prior to commencement of FMLA leave agreement with his Employer;  
or
- (c) by paying with after-tax dollars in the form of monthly payments to the Employer by the due date established by the Employer.

If a Participant's coverage ceases while on unpaid FMLA leave, the Participant will be permitted to re-enter this Flex Plan upon return from such leave on the same basis as when the Participant was participating in this Flex Plan prior to leave, or otherwise required by the FMLA.

**Section 3.12 Non-FMLA Leaves of Absence.** Notwithstanding any provision to the contrary in this Plan Document, if a Participant goes on unpaid leave that does not affect eligibility, he may elect to continue or discontinue his coverage.

If the Participant elects to continue his coverage, he may pay his Salary Reduction(s) in one of the following ways:

- (a) by pre-paying with pre-tax dollars all or a portion of the Salary Reduction(s) for the expected duration of the leave pursuant to a prior to commencement of unpaid leave agreement with his Employer. To pre-pay the Salary Reduction(s) the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (Pre-tax dollars may not be used to fund coverage during the next Plan Year);
- (b) by paying with pre-tax dollars upon his return to work on a payroll reduction schedule pursuant to a prior to commencement of unpaid leave agreement with his Employer;  
or
- (c) by paying with after-tax dollars in the form of monthly payments to the Employer by the due date established by the Employer.

If a Participant goes on an unpaid leave that affects eligibility, the election change rules in Section 4.06 will apply.

## **Article 4**

### **BENEFITS AND ELECTIONS**

**Section 4.01 Procedure.** Except as otherwise provided herein, a Participant may elect Qualified Benefits in this Flex Plan by the execution of a signed Enrollment Form, and by providing such data as may be reasonably required by the Administrator in accordance with Section 4.03 and Section 4.04.

**Section 4.02 Consent to Flex Plan.** By the execution of an Enrollment Form each Participant who elects Qualified Benefits shall be conclusively deemed, for all purposes, to have consented to the provisions of this Flex Plan and amendments thereto.

**Section 4.03 Election Effective Date.**

- (a) *Elections During Enrollment Period.* New Eligible Employees who want to enroll in the Flex Plan must submit the Enrollment Form and elect to pay any applicable Administrative Fee within the Enrollment Period. The applicant becomes a Participant effective the first of the month following the first full calendar month of eligibility.
- (b) *Elections During Annual Enrollment Period.* During each Annual Enrollment Period with respect to a Plan Year, the Administrator shall make available an Enrollment Form upon request. Eligible Employees who want to enroll in the Flex Plan must submit the Enrollment Form and elect to pay any applicable Administrative Fee on or before the last day of the Annual Enrollment Period. If an Eligible Employee elects to participate during an Annual Enrollment Period, he becomes a Participant on the first day of the applicable Plan Year.
- (c) *Eligible Employee Who Fails to File an Enrollment Form.* If an Eligible Employee fails to file (or fails to timely file) an Enrollment Form with respect to a Plan Year with his Employer during the Enrollment Period or the Annual Enrollment Period, he will not be considered a Participant in this Flex Plan with respect to that Plan Year, and he may not elect to participate in this Flex Plan until the next Annual Enrollment Period unless:
  - (1) he experiences a Change in Status and makes an election change on account of and consistent with the Change in Status pursuant to Section 4.06; or
  - (2) the Flex Plan adds a new Benefit Package Option, or significantly improves coverage under an existing Benefit Package Option during a Period of Coverage, and the Eligible Employee makes an election on a prospective basis for coverage under the new or improved Benefit Package Option.

#### **Section 4.04 HSA Elections.**

- a) *Maximum Limits.* The annual Contribution for a Participant's HSA is equal to the annual benefit amount elected by the Participant. In no event shall the amount elected exceed the statutory maximum amount for HSA Contributions for the calendar year in which the Contribution is made. The maximum annual Contribution shall be reduced by any matching or other Employer Contribution made on the Participant's behalf. The HSA Contribution will start after the opening of a HSA with the Employer-specified HSA trustee/custodian. Upon the closure of a HSA with the Employer-specified HSA trustee/custodian, the HSA Contribution will cease in accordance with Section 3.07.
- b) *Matching Contributions.* The Employer will contribute a defined dollar amount to the HSA-Eligible Individual's HSA when a Participant establishes a HSA with the Employer-specified HSA trustee/custodian. The Employer's defined contribution shall be communicated to Eligible Employees.
- c) *Catch-up Contributions.* An additional catch-up Contribution of \$1,000 may be made per Plan Year for Participants who are age 55 or older.

**Section 4.05 Irrevocability of Elections; Not Applicable for HSA.** Except as provided in Section 4.06, a Participant's election to participate in this Flex Plan is irrevocable for the duration of the Participant's Period of Coverage; therefore the Participant may not change:

- (a) his participation in the Flex Plan;
- (b) his elected annual benefit amount(s); or
- (c) his Salary Reduction amount(s).

**Section 4.06 Events Permitting Exception to the Irrevocability of Elections.** The exceptions to the irrevocability of elections are as follows:

- (a) *HIPAA Special Enrollment Rights.* If a Participant has a right to enroll in an employer's group health plan or to add coverage for a family member under HIPAA, the Participant can revoke an existing election and make a new election under the Flex Plan that conforms to the special enrollment right. Coverage with respect to a birth, adoption, marriage, or placement for adoption is effective retroactively to the date of the birth, adoption, marriage, or placement for adoption.
- (b) *Changes in Status.* Participants may revoke an election and make a new election with respect to accident and health coverage and group-term life insurance, if:
  - (1) a valid Change in Status occurs as defined in Section 2.09;
  - (2) the Participant provides documentation of the Qualifying Event for the valid Change in Status; and

- (3) both the revocation and the election change are “consistent” with the Change in Status. An election change is “consistent” if the Change in Status event affects eligibility for coverage and the change in election corresponds with the effect on eligibility. The Administrator (in his sole discretion and on a uniform and consistent basis) shall determine based upon prevailing IRS guidance whether a requested change is consistent with and attributable to a Change in Status. Election changes must be on a prospective basis. Elections may further be restricted by the terms of specific insurance policies; agreements between the Employer and the insurance carriers providing Benefits under the Flex Plan; the Dependent Care FSA Plan Document; the Health Care FSA Plan Document; and/or the agreement between the HSA Participant and the Employer-specified HSA trustee/custodian.
- (c) *Judgment, Decree or Order.* If a judgment, decree, or order resulting from a divorce, court-ordered legal separation, annulment, or change in legal custody (including NMSN) requires accident or health coverage for a Participant's Dependent (including a foster child who is a Dependent of the Participant), a Participant may:
- (1) change his enrollment in one or more Qualified Benefits to provide coverage for the Dependent (provided that the Notice requires the Participant to provide coverage); or
  - (2) change his enrollment in one or more Qualified Benefits to revoke coverage for the Dependent if the Notice requires that another individual (including the Participant's spouse or former spouse) provide coverage under the individual's plan and such coverage is actually-provided.
- (d) *Entitlement to Medicare or Medicaid.* If a Participant or his spouse or Dependent who is enrolled in a health or accident plan under the Flex 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 cancel or reduce his health coverage. Further, if a Participant or his spouse or Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may prospectively change his enrollment to commence or increase his health coverage.
- (e) *Cost or Coverage Changes.* The Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease in coverage cost is significant or insignificant based upon all surrounding facts and circumstances, including, but not limited to, the dollar amount or percentage of the cost change. Furthermore, the Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an addition of coverage, an improvement in a Benefit Package Option, or a curtailment in coverage is “significant” or “insignificant” in accordance with prevailing IRS guidance. This Section (e), in whole or in part, does not apply to an election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).



- (1) **Insignificant Cost Increases.** If the cost of a Benefit Package Option increases (or decreases) insignificantly during a Period of Coverage, the Flex Plan will automatically make a prospective increase (or decrease) in affected Participants' Contributions for the Flex Plan.
- (2) **Significant Cost Increases.** If the cost of a Benefit Package Option significantly increases during a Period of Coverage, Participants will be deemed to have made corresponding increases in their Salary Reductions for premiums, unless the Participants either enroll for coverage under another Benefit Package or elect to cease participation in the Benefit Package Option. Under this exception, a Participant may not make changes to contributions to the Health Care FSA. If due to a significant cost increase, a Participant enrolls for coverage under a high deductible health plan, any unused balance in the Participant's General Purpose Health Care FSA shall be credited to a Limited-Purpose Health Care FSA and the Participant shall continue under the Limited-Purpose Health Care FSA for the remainder of the Plan Year.
- (3) **Significant Addition or Improvement of Coverage.** If a new Benefit Package Option or other coverage option, or if coverage under an existing Benefit Package Option or other coverage option is significantly improved during a Period of Coverage, Eligible Employees may enroll for coverage on a prospective basis under the new or improved Benefit Package Option. This exception to the irrevocability of elections does not apply to an election change with respect to the Health Care FSA.
- (4) **Significant Curtailment of Coverage.** If the coverage under a Benefit Package Option is significantly curtailed or ceases during a Period of Coverage, Participants may enroll for coverage on a prospective basis under another Benefit Package Option providing similar coverage. If there is no Benefit Package Option that provides similar coverage, the Participant may cease participation in his Benefit Package Option.
- (5) **Change in Coverage of Spouse or Dependent Under Other Employer's Plan.** A Participant may make a prospective enrollment change that is on account of and corresponds with a change made under the plan of the spouse's, former spouse's, or Dependent's employer if:
  - (i) The other cafeteria plan or qualified benefits plan allows its participants to make an IRS-permitted election change; or
  - (ii) The Flex Plan requires Participants to enroll for a Period of Coverage that is different from the period of coverage under the other cafeteria plan.
- (f) **FMLA Leave.** A Participant may change enrollment in Qualified Benefits under the Flex Plan upon FMLA Leave in accordance with Section 3.11.

- (g) *Non-FMLA Leave.* A Participant may change enrollment in Qualified Benefits under the Flex Plan upon Non-FMLA Leave in accordance with Section 3.12.
- (h) *Exchange Enrollment.* A Participant may terminate enrollment in OGB health benefits if:
- (1) The Participant has been in an employment status under which the Participant was reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under OGB health benefits; and
  - (2) The revocation of the election of coverage under OGB health benefits corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is terminated.
- (i) *Loss of Group Health Coverage Sponsored by Governmental or Educational Institution.* A Participant may enroll or increase his or her election for OGB health benefits if the Participant or the Participant's spouse or Dependent loses other group health coverage sponsored by a governmental or educational institution including CHIP; a medical care program of an Indian Tribal government (as defined in section 7701(a)(40)), the Indian Health Service, or a tribal organization; a State health benefits risk pool; or a Foreign government group health plan.

**Section 4.07 Automatic Change in Election.** Any event that results in a Participant or eligible Dependents becoming ineligible for health coverage will result in an automatic corresponding change of enrollment for health coverage. A Participant's election is deemed to have changed automatically as of the date of the event that caused the loss of eligibility.

**Section 4.08 Election Modifications Required by Administrator.** The Administrator may, at any time, require any Participant or class of Participants to amend his/their enrollment in Qualified Benefits for a Plan Year if the Administrator determines such action is necessary or advisable in order to:

- (a) satisfy any of the Code's nondiscrimination requirements applicable to this Flex Plan;
- (b) prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of Benefits hereunder than would otherwise be recognized; or
- (c) maintain the qualified status of Benefits received under this Flex Plan.

In the event participation in Qualified Benefits need to be reduced for a class of Participants, the Administrator will reduce the participation in Qualified Benefits for each affected Participant, beginning with the Participant in the class who elected the greatest participation in Qualified Benefits, continuing with the Participant in the class who elected the next greatest participation in Qualified Benefits, and so forth, until the defect is corrected.

**Section 4.09 Change in Applicable Law.** In the event that changes in Applicable Law result in a Qualified Benefit offered under the Flex Plan becoming a non-qualified benefit, any Participant electing such Benefit may, if permissible under Applicable Law, be allowed to enroll in another Qualified Benefit in lieu of the non-qualified benefit. Such enrollment may be made at times not provided for under the Flex Plan but in accordance with the rules adopted by the Administrator.

## **Article 5**

### **OPTIONAL BENEFITS**

**Section 5.01 Benefits.** Participants shall be permitted to choose among available Benefits. The terms and conditions of each covered Benefit are set forth in the appropriate insurance policies and Plan Documents providing the selected Benefits. Cash or Benefits treated as cash are intended to be the only taxable Flex Plan Benefits.

**Section 5.02 Selection of Benefits.** As provided in Section 4.03, each Eligible Employee must first enroll in his desired Benefits. By the enrollment in selected Benefits, the Eligible Employee has elected to receive Compensation as Cash and Benefits pursuant to his Enrollment Form(s).

**Section 5.03 Flexible Spending Arrangements.** The Employer has, by separate Plan Document(s), established a Dependent Care FSA and a Health Care FSA.

**Section 5.04 HSA.** As established under Code Section 223, an HSA is an individual trust or custodial account, separately established and maintained by the Participant with a HSA trustee/custodian. The HSA benefit under this Flex Plan consists solely of the ability to make Contributions on a pre-tax Salary Reduction basis to the Participant's HSA that is established and maintained outside this Flex Plan by the Employer-specified HSA trustee/custodian. The Employer and the Office of Group Benefits will forward Contributions to the Employer-specified HSA trustee/custodian pursuant to the Participant's HSA payroll deduction form. This funding feature constitutes the entirety of the HSA benefit offered under this Flex Plan. Distributions from a Participant's HSA and all other matters related to the Participant's HSA are outside this Flex Plan and are to be handled by the Participant and the Employer-specified HSA trustee/custodian in accordance with the contract between the Participant and the HSA trustee/custodian. The Flex Plan and its service providers, other than the Employer-specified HSA trustee/custodian, are not considered custodians or trustees and shall not be held responsible for any use of the Participants' funds. The Employer and Office of Group Benefits have no authority over the funds deposited in a HSA.

## **Article 6**

### **APPEALS PROCEDURES**

**Section 6.01 Review of Administrative Decisions.** Any Participant may request a review of any administrative decision or action of the Administrator in accordance with the provisions of this Flex Plan. The purpose of the review procedure as set forth herein is to provide a procedure by which a denial under this Flex Plan may receive a full and fair review by the Appeals Panel.

**Section 6.02 Eligibility and Premium Conversion Appeals.** OGB retains the authority to make all determinations regarding Premium Conversion and eligibility in relation to this Flex Plan. To obtain review of a Flex Plan eligibility or Premium Conversion determination, one shall request a review by filing a written application for review by the Appeals Panel with the State of Louisiana Office of Group Benefits, P.O. Box 44036, Baton Rouge, Louisiana 70804, within sixty (60) days after receipt by the applicant of written notice of the denial. In connection with this request for review, the applicant may review pertinent Plan Documents and submit issues and/or comments in writing to the Administrator.

**Section 6.03 Appeal of Denial of Claim for Reimbursement.** To obtain a review of a denial of a claim for reimbursement of expenses, and for any appeals not covered under Section 6.02, one shall request a review by filing a written application for review by the Appeals Panel with Discovery Benefits, Inc., ATTN: APPEALS, 4321 20<sup>th</sup> Avenue S, Fargo, ND 58103, within sixty (60) days after receipt by the applicant of written notice of the denial. In connection with this request for review, the applicant may review pertinent Plan Documents and submit issues and/or comments in writing to the address in this Section.

**Section 6.04 Decision on Review.** Decisions on review shall be made in the following manner:

- (a) The decision on review shall be made by the Appeals Panel. The Appeals Panel shall make its decision promptly, and not later than sixty (60) days after the Appeals Panel receives the request for review, unless special circumstances require an extension of time for processing. In such case, a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time for review is required, written notice of the extension shall be furnished to the Participant prior to the commencement of the extension.
- (b) The decision on review shall be in writing and shall set forth the following in the event of a denial:
  - (1) Information to identify the Participant's request;
  - (2) Specific reason(s) for the decision; and,
  - (3) Specific reference to pertinent Plan provisions on which the denial is based.

In the event that the decision on review is not furnished within the time period set forth in this Section 6.04, the claim shall be deemed denied on review.

## **Article 7**

### **ADMINISTRATION**

**Section 7.01 Administrator.** The administration of the Flex Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to see that the terms of this Flex Plan are carried out, in accordance with the terms of this Plan Document for the exclusive benefit of persons entitled to participate in this Flex Plan without discrimination among them.

**Section 7.02 Powers of the Administrator.** The Administrator shall have such duties and powers, as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Administrator shall have the following discretionary authority:

- (a) to construe and interpret the provisions of the Flex Plan including all possible ambiguities, inconsistencies, and omissions in this Plan Document and related documents, to decide all questions of fact, questions relating to eligibility and participation, and questions of Benefits (provided that, notwithstanding the first paragraph in this Section 7.02, the Appeals Panel shall exercise such exclusive power with respect to an appeal of an administrative decision or action under Article 6);
- (b) to prescribe procedures to be followed and the forms to be used by Eligible Employees and Participants to enroll in Qualified Benefits under this Flex Plan;
- (c) to prepare and distribute information explaining this Flex Plan and the Benefits under this Flex Plan in such manner as the Administrator determines to be appropriate;
- (d) to request and receive from all Employer(s), Employees and Participants such information as the Administrator shall determine to be necessary for the proper administration of this Flex Plan;
- (e) to furnish each Participant with such reports with respect to the administration of this Flex Plan as the Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide Benefits under this Flex Plan;
- (f) to receive, review and keep on file such reports and information concerning the Benefits covered by this Flex Plan as the Administrator determines from time to time to be necessary and proper;
- (g) to appoint and employ such individuals or entities to assist in the administration of this Flex Plan as it determines to be necessary or advisable;

- (h) to sign documents for the purpose of administering this Flex Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Flex Plan;
- (i) to file or cause to be filed all such annual reports, returns, schedules, descriptions, financial statements and other statements as may be required by Applicable Law, agency, or authority within the time prescribed by Applicable Law for filing such documents;
- (j) to determine the amount, manner, and time of payment of Benefits hereunder, subject to the provisions and limitations of the policies providing the Benefits selected;
- (k) to forward the Eligible Employees' HSA Contributions on a pre-tax Salary Reduction basis to each employee's HSA established and maintained outside the Flex Plan by the Employer-specified trustee/custodian;
- (l) to communicate to any insurer or other contract supplier of Benefits under this Flex Plan, in writing, all information required to carry out the provisions of the Flex Plan;
- (m) to notify the Participants of the Flex Plan, in writing, of any amendment or termination of the Flex Plan; and
- (n) to do such other acts as it deems reasonably required to manage the Flex Plan in accordance with its provisions or as may be provided for by Applicable Law.

**Section 7.03 Reliance on Participant, Tables, etc.** The Administrator may rely upon the direction, information or enrollment by a Participant as being proper under the Flex Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions, and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

**Section 7.04 Fiduciary Liability.** To the extent permitted by law, the Administrator shall incur no liability for any acts or failure to act except for his own willful misconduct or willful breach of this Flex Plan.

**Section 7.05 Effect of Mistake.** In the event of a mistake as to the eligibility or participation of an Employee, the allocations made to the Account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Administrator shall, to the extent it deems possible and permissible under Code §125 or the regulations issued thereunder, cause to be allocated or cause to be withheld or accelerated, or otherwise made adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the Account or distributions to which he is properly entitled under this Flex Plan. Such action by the Administrator may include withholding of any amounts due this Flex Plan or the Employer from Compensation paid by the Employer.

## **Article 8**

### **GENERAL PROVISIONS**

**Section 8.01 Expenses.** All reasonable expenses incurred in administering the Flex Plan are currently paid by Office of Group Benefits, FSA Administrative Fees and by forfeitures in the FSA Accounts.

**Section 8.02 No Contract of Employment.** Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

**Section 8.03 Amendment and Termination.** This Flex Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Administrator may amend or terminate this Flex Plan at any time by direction of the Office of Group Benefits, or by any person or persons authorized by the Office of Group Benefits to take such action, and any such amendment or termination will automatically apply to the related Employers which are participating in this Flex Plan.

**Section 8.04 Governing Law.** This Flex Plan shall be construed, administered, and enforced according to the laws of the State of Louisiana, to the extent not superseded by the Code, or other federal law.

**Section 8.05 Code Compliance.** It is intended that this Flex Plan meets all applicable requirements of the Code, and all of the regulations issued thereunder. This Flex Plan shall be construed, operated, and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan Document and the Code, the provisions of the Code shall be deemed controlling, and any conflicting part, clause, or provision of this Plan Document shall be deemed superseded to the extent of the conflict.

**Section 8.06 No Guarantee of Tax Consequences.** Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Flex Plan will be excludable from the Participant's gross income for federal, state, or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Flex Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Administrator if the Participant has any reason to believe that such payment is not so excludable.

**Section 8.07 Indemnification of Employer.** If a Participant receives one or more payments or reimbursements under this Flex Plan on a tax-free basis and if such payments do not qualify for such treatment under the Code, then such Participant shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

**Section 8.08 Non-Assignability of Rights.** The right of any Participant to receive any reimbursement under this Flex Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.



**Section 8.09 Limitation of Rights.** Neither the establishment of the Flex Plan nor any amendment thereof will be construed as giving to any Participant or other person any legal or equitable right against the Administrator nor the Employer, except as expressly provided herein. Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account, or asset of the Employer from which any payment under the Flex Plan may be made.

**Section 8.10 Plan Document Provisions Controlling.** In the event the terms or provisions of any summary or description of this Flex Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan Document as herein set forth, the provisions of this Plan Document shall be controlling.

**Section 8.11 Severability.** In the event any provision of this Plan Document shall be held illegal or invalid for any reason, this illegality or invalidity shall not affect the remaining provisions of this Plan Document, and such remaining provisions shall be fully severable and this Plan Document shall, to the extent practicable, be construed and enforced as if the illegal or invalid provision had never been inserted therein.

**Section 8.12 Gender and Number.** Except when otherwise indicated by the context, any masculine terminology used herein shall also include the feminine and the definition of any term herein in the singular shall also include the plural.

**Section 8.13 Headings.** The headings of the various Articles and subsections are inserted for convenience of reference and are not to be regarded as part of the Flex Plan document or as indicating or controlling the meaning or construction of any provision.