

# Dependent Care Flexible Spending Arrangement

for

The State of Louisiana  
An ERISA Exempt Employer

As Amended as of March 31, 2013

1993

Office of Group Benefits  
Division of Administration  
State of Louisiana

# Article 1

## INTRODUCTION

### **1.1 Establishment of Dependent Care FSA**

The Office of Group Benefits, Division of Administration, State of Louisiana established the Dependent Care Flexible Spending Arrangement (“Plan”), as part of the Flex Plan effective July 1, 1993. This Plan Document is amended to comply with Internal Revenue Code and the regulations thereunder and is amended effective as of March 31, 2013. The purpose of this Dependent Care FSA is to permit participating Employees to pay certain Qualifying Employment Related-Expenses on a pre-tax basis.

Capitalized terms used in this Plan Document that are not otherwise defined in this Plan Document shall have the meanings set forth in Article II.

### **1.2 Legal Status**

This Dependent Care FSA is intended to qualify as a “Dependent Care Assistance Program” under §129 of the Internal Revenue Code. Further, the reimbursements of Qualifying Employment-Related Expenses under this Dependent Care FSA are intended to be eligible for exclusion from Participants’ gross income under §129 and §125.

## Article 2 DEFINITIONS and CONSTRUCTION

### 2.1 Definitions

**“Account(s)”** means the Dependent Care Flexible Spending Arrangement Accounts described in Section 5.3.

**“Administrative Fee”** means the required participation fee set by the Administrator to cover the cost of administering the Dependent Care Flexible Spending Arrangement (DCFSA). This Fee is separate and in addition to the amounts identified for Benefits. Failure to pay the Administrative Fee will result in the denial of the privilege to participate in the DCFSA.

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

**“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.

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

**“Benefits”** means any amounts available for reimbursement to a Participant in the Dependent Care FSA for Qualifying Employment-Related Expenses incurred during a Plan Year and/or Grace Period by the Participant or his spouse.

**“Change in Status”** means the following events:

- (a) Marriage, annulment, legal separation, or divorce of the Employee;
- (b) Death of the Employee’s spouse or Dependent;
- (c) Birth, adoption or placement for adoption of a child of the Employee;
- (d) Change in dependent care provider (whether the new provider is a household employee or family member or a third party provider who is independent of the family);
- (e) Dependent satisfying or ceasing to satisfy eligibility requirements due to attainment of the limiting age or change in status as a Dependent, or any similar circumstance;
- (f) Switching from part-time to full-time employment status or from full-time to part-time status by the Employee or the Employee’s spouse;

- (g) Commencement of or return from an unpaid leave of absence by the Employee or the Employee's spouse;
- (h) Change in work place of the Employee or Employee's spouse; and,
- (i) Termination of employment (or the commencement of employment) of the Employee or Employee's spouse.

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

**"Compensation"** means the wages or salary paid to an Employee by the Employer, determined prior to (a) any Salary Reduction under the Flex Plan, (b) any salary reduction under any other cafeteria plan, and (c) any compensation reduction under any Code §132(f)(4) plan. (Wages or salary is determined after salary deferral elections under any 401(k), 403(b), or 408(k) arrangement.)

**"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 selected Benefits. Unless otherwise specifically provided in writing, under the provisions of the 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.

**"Dependent"** means any individual who is a tax dependent of a Participant as defined in Code §152, including any child to whom Code §152(e) applies (regarding a child of divorced parents, etc. 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) is treated as a Dependent of both parents.

**"Dependent Care FSA"** means the Dependent Care Flexible Spending Arrangement, as set forth herein and as amended from time to time.

**"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 §32(c)(2), such as amounts received under a pension or annuity or pursuant to workers' compensation.

**"Effective Date"** means the date that this Dependent Care FSA was effective, July 1, 1993.

**“Eligible Employee”** means any active, full-time Employee of the State of Louisiana whose department or agency is participating in this Dependent Care FSA as provided in Section 3.1 of this Plan Document.

**“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: (a) 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; (b) 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 (c) any employee covered under a collective bargaining agreement.

**“Employer”** means the State of Louisiana through the respective Department or Agency employing the Participant(s).

**“Enrollment Form”** means the form provided by the Employer or Administrator for the purpose of allowing an Eligible Employee to participate in this Dependent Care FSA by electing Salary Reductions to pay for Benefits. It includes an agreement in which an Eligible Employee or Participant authorizes the Employer to make Salary Reductions.

**“Enrollment Period”** means the period designated by the Administrator which allows new employees to select Benefits for the current Plan Year and shall be the first 30 days following each new Eligible Employee’s hire date.

**“Flex Plan”** means the 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 42:802B(9).

**“FMLA”** means the Family and Medical Leave Act of 1993, as amended.

**“Grace Period”** means the 2 months plus 15 days immediately following the end of the Plan Year when Participants may incur Qualifying Employment-Related Expenses to be reimbursed from their respective unused Benefits remaining as of the immediately preceding Plan Year in accordance with IRS Notice 2005-42.

**“Participant”** means a person who is an Eligible Employee and who is participating in this Dependent Care FSA in accordance with the provisions of Article 3.

**“Plan Year”** means the period of coverage under the Dependent Care FSA from January 1 through December 31 of each year, except in the case of a Short Plan Year or where the

Plan Year is being changed, in which case the Plan Year shall be the entire Short Plan Year.

**“Qualifying Employment-Related Expenses”** means those expenses that would be considered employment-related expenses under Code § 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment) if paid by the Participant to obtain Qualifying Services and only to the extent that the Participant or other person incurring the expense is not reimbursed for the expense nor is the expense reimbursable through insurance or any other source.

**“Qualifying Individual”** means:

- (a) Dependent of the Participant who is under the age of thirteen (13);
- (b) A Dependent of a Participant who is mentally or physically incapable of self-care, who resides at least eight (8) hours per day in the Participant’s household; or
- (c) The Spouse of a Participant who is mentally or physically incapable of self-care, who resides at least eight (8) hours per day in the Participant’s household.

**“Qualifying Services”** means services relating to the care of a Qualifying Individual that enable the Participant or his Spouse to remain gainfully employed, which are performed:

- (a) in the Participant’s home; or
- (b) outside the Participant’s home. If the expenses are incurred for services provided by a dependent care center, the center must comply with all applicable state and local laws and regulations.

**“Relative”** means an individual who is related as described in Code §152 (a) (1) through (8), incorporating the rules of Code §152 (b) (1) and (2).

**“Run-out Period”** means the 45 days immediately following the Grace Period when Participants may submit Qualifying Employment-Related 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.

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

**"Short Plan Year"** means the period of coverage under the Dependent Care FSA designated by the Administrator that is less than one Year.

**“Student”** means an individual who, during each of five (5) or more calendar months during the Plan Year, is a full-time student at an educational organization which routinely

maintains a regular faculty and curriculum and normally has an enrolled student body in attendance at the location where its educational activities are regularly presented.

## **2.2 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.

## **2.3 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 Dependent Care FSA Plan Document or as indicating or controlling the meaning or construction of any provision.

## **Article 3**

### **PARTICIPATION**

#### **3.1 Eligibility to Participate**

An Employee is eligible to participate in this Dependent Care FSA if the Employee is:

- (a) an active, full-time Employee as defined by the Employer; and,
- (b) employed by an Employer that utilizes the State of Louisiana Flexible Benefits Plan.

#### **3.2 Election to Participate; Commencement of Participation**

- (a) *Elections During Enrollment Period.* New Eligible Employees who want to enroll in the Dependent Care FSA must submit the Enrollment Form and elect to pay the Administrative Fee within the Enrollment Period. The applicant becomes a Participant effective for the pay period in which the Enrollment Form is received by the Employer.
- (b) *Elections During Annual Enrollment Period.* During each Annual Enrollment Period with respect to a Plan Year, the Administrator shall make available the Enrollment Form upon request. The Enrollment Form shall be completed and returned to the Employer 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) the 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 Dependent Care FSA with respect to that Plan Year, and he may not elect to participate in this Dependent Care FSA until the next Annual Enrollment Period unless he experiences a Change in Status and makes an election change on account of and consistent with the Change in Status pursuant to Section 4.5.

#### **3.3 Participation**

An election by an Eligible Employee to participate in this Dependent Care FSA is an agreement to the following:

- (a) To pay the Administrative Fee (Failure to pay the Administrative Fee will result in the denial of the privilege to participate in the Dependent Care FSA);
- (b) To authorize his Employer to reduce his Compensation by his Salary Reduction before federal and state income, and social security taxes are calculated;



- (c) To forfeit any amount remaining in his Dependent Care FSA Account after 45 days following the end of the Grace Period for the Plan Year;
- (d) To not request reimbursement for expenses covered by another FSA account;
- (e) To not deduct expenses, for which he is reimbursed by this Dependent Care FSA on his income tax return;
- (f) To request reimbursement only for Qualifying Employment-Related Expenses incurred during the same Plan Year and/or Grace Period as the Plan Year in which the funds were deposited into the Dependent Care FSA Account; and,
- (g) That his Employer and Administrator will incur no liability resulting from either his participation in the Dependent Care FSA or his failure to sign or accurately complete the Enrollment Form.

### **3.4 Termination of Participation**

An Eligible Employee will cease to be a Participant in this Dependent Care FSA upon the earlier of:

- (a) The expiration of the Plan Year for which he has elected to participate (unless during the Annual Enrollment Period for the next Plan Year he elects to continue participating);
- (b) The termination of this Dependent Care FSA;
- (c) The date on which the Participant ceases to be an Eligible Employee; or
- (d) The date the Participant revokes his election to participate on account of and consistent with an event permitting an exception to the irrevocability of elections in accordance with Section 4.5.

Termination of an Employee's participation in this Dependent Care FSA shall cause the Participant's elections made under this Dependent Care FSA to be automatically revoked. Reimbursements after termination of participation will be made pursuant to Section 5.6 and Section 5.7.

### **3.5 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 Dependent Care FSA upon return from his absence for the current Plan Year only.

### **3.6 Participation Following Rehire**

If a Participant terminates his employment with his Employer for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within thirty (30) days or less after the date of a termination of employment, then the Eligible Employee will be reinstated with the same elections that such Employee had before termination. If a former Participant is rehired more than thirty (30) days following termination of employment with the Employer and is otherwise eligible to participate in the Dependent Care FSA, then the Employee may make new elections as a new hire as described in Section 3.2.

### **3.7 Participation Following Transfer from Another Department or Agency**

A Participant who transfers from one Employer to another Employer within the participating Flex Plan payroll systems will continue to participate in the Dependent Care FSA at the same level of participation as prior to the transfer.

### **3.8 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 pre-paying with pre-tax dollars upon his return to work on a payroll reduction schedule pursuant to a prior to commencement 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 FMLA leave, the Participant will be permitted to re-enter the Dependent Care FSA upon return from such leave on the same basis as

when the Participant was participating in the Dependent Care FSA prior to leave, or otherwise required by FMLA.

### **3.9 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 in one of the following ways:

- (a) by pre-paying with pre-tax dollars all or a portion of the Salary Reduction 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 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 pre-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 4.5 will apply.

## **Article 4**

### **BENEFITS and ELECTIONS**

#### **4.1 Administrative Fee**

An election to participate in this Dependent Care FSA is an election to pay an Administrative Fee to receive Benefits in the form of reimbursements for Qualifying Employment-Related Expenses.

#### **4.2 Maximum and Minimum Benefits**

(a) *Plan Year.* The maximum annual benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Plan Year and/or Grace Period shall be \$5,000. The minimum annual benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Plan Year and/or Grace Period shall be \$600.

(b) *Short Plan Year.* The maximum annual benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Short Plan Year and/or Grace Period shall be \$2,500. The minimum annual benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Short Plan Year and/or Grace Period shall be \$600.

#### **4.3 Salary Reduction Contributions**

Participants in this Dependent Care FSA must pay for the cost of Benefits on a pre-tax Salary Reduction basis by completing the Enrollment Form. For Participants paid monthly, the Salary Reduction for each pay period is an amount equal to the total of all Contributions plus all the Administrative Fees expected to be paid during the Plan Year, divided by 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 annual Contributions plus all the Administrative Fees expected to be paid during the Plan Year, divided by 24. For Participants paid weekly, the Salary Reduction for each pay period is an amount equal to the total of all Contributions plus all the Administrative Fees expected to be paid during the Plan Year, divided by 52.

#### **4.4 Irrevocability of Elections**

Except as provided in Section 4.5 a Participant's election to participate in this Dependent Care FSA is irrevocable for the duration of the Plan Year; therefore the Participant may not change:

- (a) his participation in the Dependent Care FSA;
- (b) his elected annual benefit amount; or
- (c) his Salary Reduction amount.

#### **4.5 Events Permitting Exception to the Irrevocability of Elections**

The exceptions to the irrevocability of elections under Section 4.4 are as follows:

- (a) *Change in Status.* A Participant may change or terminate his election under this Dependent Care FSA upon the occurrence of a Change in Status (see Section 2.1), and only if such election change or termination is because of and 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 the election corresponds with the effect on eligibility. The Administrator (in its 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.
- (b) *Significant Change in Cost or Coverage.* A Participant may revoke a prior election with respect to Pre-tax Contributions, if any independent, third-party provider of Qualifying Services previously elected by the Participant, either significantly increases the cost for such services or significantly curtails the services available during the Plan Year. A dependent care provider who is not a Relative of the Employee only can impose the cost change.
- (c) *FMLA.* A Participant may change an election under the Dependent Care FSA upon FMLA leave in accordance with Section 3.8.
- (d) *Non-FMLA.* A Participant may change an election under the Dependent Care FSA upon Non-FMLA leave in accordance with Section 3.9.

*Effective Date of New Election.* Elections made pursuant to this Section shall be effective for the balance of the Plan Year unless a subsequent event allows for another election change. All election changes shall be made on a prospective basis effective for the pay period in which the documents are received by the Employer.

#### **4.6 Election Modifications Required by Administrator**

The Administrator may, at any time, require any Participant or class of Participants to amend the amount of his Salary Reduction 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 Dependent Care FSA or the 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 Dependent Care FSA.

In the event Contributions need to be reduced for a class of Participants, the Administrator will reduce the Salary Reduction for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction, continuing with the Participant in the class who had elected the next highest Salary Reduction, and so forth, until the defect is corrected.

## Article 5

### **REIMBURSEMENT PROCEDURE**

#### **5.1 Reimbursable Expenses**

A Participant may receive reimbursement for Qualifying Employment-Related Expenses incurred during the Plan Year and/or Grace Period for which an election is in force. A Qualifying Employment-Related Expense is incurred at the time the Qualifying Services giving rise to the expense is furnished, and not when the Participant is formally billed for, is charged for, or pays for the Qualifying Services (e.g. services rendered for the month of June are not fully incurred until June 30 and cannot be reimbursed in full until then).

#### **5.2 Maximum Reimbursement Available**

(a) *Maximum Reimbursement Available.* Reimbursement for Qualifying Employment-Related Expenses shall not exceed the year-to-date amount credited to the Dependent Care FSA Account, less any prior reimbursements. The amount available for reimbursement is based on the amount credited to the Dependent Care FSA Account at a particular point in time. Thus, a Participant's Dependent Care FSA Account may not have a negative balance during the Plan Year or Short Plan Year. Payment shall be made to the Participant in cash as reimbursement for Qualifying Employment-Related Expenses incurred during the Short Plan Year or Plan Year and/or Grace Period for which the Participant's elections are effective, provided that the Participant has complied with all other requirements of this Article 5.

(b) *Maximum and Minimum Annual Benefit Amounts.*

(1) *Short Plan Year.* The maximum benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Short Plan Year and/or Grace Period shall be \$2,500 for a married Participant or \$1,250 for married filing separate or single Participant, subject to Section 5.3(c), below. The minimum benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Short Plan Year and/or Grace Period shall be \$600. Reimbursements due for Qualifying Employment-Related Expenses incurred by the Participant shall be charged against the Participant's Dependent Care FSA Account.

(2) *Plan Year.* The maximum benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Plan Year and/or Grace Period shall be \$5,000 for a married Participant or \$2,500 for married filing separate or single Participant, subject to Section 5.3(c), below. The minimum benefit amount that a Participant may elect to receive under this Dependent Care FSA in the form of reimbursements for Qualifying Employment-Related Expenses incurred in any Plan Year and/or Grace Period shall be \$600. Reimbursements due for Qualifying

Employment-Related Expenses incurred by the Participant shall be charged against the Participant's Dependent Care FSA Account.

- (c) *Changes; No Proration.* For subsequent Plan Years, the maximum and minimum annual benefit amount may be changed by the Administrator and shall be communicated to Employees through the Enrollment Form or another document. If a Participant wishes to increase an election mid-year as permitted under Section 4.5, the Participant may elect coverage up to the maximum annual benefit amount or may increase coverage to the maximum annual benefit amount, as applicable.
- (d) *Effect on Maximum Benefits if Election Change Permitted.* Any change in an election under Section 4.5 to the Participant's Dependent Care FSA Account affecting his maximum annual benefit amount for a Plan Year also will change the maximum reimbursement of Benefits for the balance of the Plan Year and/or Grace Period commencing with the election change. Such maximum reimbursement of Benefits for the balance of the Plan Year and/or Grace Period shall be calculated by adding the Contributions made by the Participant (if any) as of the end of the portion of the Plan Year immediately preceding the change in election to the total Contributions scheduled to be made by the Participant during the remainder of such Plan Year to the Dependent Care FSA Account, reduced by all reimbursements made during the entire Plan Year.
- (e) *Maximum Benefits Permitted After Termination.* A Participant may be reimbursed up to the total of his remaining Dependent Care FSA Account balance as permitted under Section 5.6.

### **5.3 Establishment of Account**

The Administrator will establish and maintain on its books a Dependent Care FSA Account with respect to each Participant who has elected to participate in the Dependent Care FSA, but it will not create a separate fund or otherwise segregate assets for this purpose. The Account so established will be merely a record-keeping account for the purpose of keeping track of Contributions and determining forfeitures under Section 5.7.

- (a) *Crediting of Accounts.* A Participant's Dependent Care FSA Account will be credited periodically during each Plan Year with an amount equal to the Participant's maximum benefit amount elected to be allocated to such Account. The Administrative Fee is not credited to the Account.
- (b) *Debiting of Accounts.* A Participant's Dependent Care FSA Account will be debited during each Plan Year and/or Grace Period for any reimbursement of Qualifying Employment-Related Expenses incurred during the Plan Year and/or Grace Period.
- (c) *Available Amount Based on Credited Amount.* The amount available for reimbursement of Qualifying Employment-Related Expenses may not exceed the year-to-date amount credited to the Dependent Care FSA Account, less any prior reimbursements. It is based on the amount credited to the Dependent Care FSA at a particular point in time. Thus, a Participant's Dependent Care FSA Account may not have a negative balance during the Plan Year.



#### **5.4 Procedure for Claiming Reimbursement**

A Participant who has elected to receive Benefits for a Plan Year may apply for reimbursement by submitting an application in writing to the Administrator in such form as the Administrator may prescribe no later than 45 days following the close of the Grace Period for the Plan Year in which the Qualifying Employment-Related Expenses were incurred, setting forth:

- (a) the person or persons on whose behalf Qualifying Employment-Related Expenses have been incurred;
- (b) the nature of the expenses so incurred;
- (c) the amount of the requested reimbursement;
- (d) a statement that such expenses have not been requested to be paid by any other source; and
- (e) the name of the person, organization, or entity with whom the expense was incurred, and tax payer identification number.

Such application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Qualifying Employment-Related Expenses have been incurred and the amounts of such expenses, together with any additional documentation, that the Administrator may request. Except for the final reimbursement claim for a Plan Year and/or Grace Period, no claim for reimbursement may be made unless and until the claim for reimbursement is at least \$25.

#### **5.5 Timing of Reimbursement**

As soon as practicable after the Participant submits a reimbursement claim to the Administrator, the Administrator will reimburse the Participant for his Qualifying Employment-Related Expenses, or will notify the Participant that his claim has been denied within a reasonable period of time not to exceed sixty (60) days after receipt of a claim in accordance with Section 6.1.

#### **5.6 Reimbursement of Expenses Incurred Before and After Termination**

When a Participant ceases to be a Participant under Section 3.4, the Participant's agreement for Salary Reduction will terminate, as will the Participant's annual election amount for reimbursements. However, such Participant (for the Participant's estate) may claim reimbursement from the remaining balance in his Dependent Care FSA Account for Qualifying Employment-Related Expenses incurred during the Plan Year, both before and after termination. The claim for reimbursement of Qualifying Employment-Related Expenses must be filed no later than 45 days following the close of the Grace Period of the Plan Year in which the expense(s) arose.

## **5.7 Use or Lose Rule; Forfeiture of Accounts**

If a Participant has a positive (greater than zero) balance in his Dependent Care FSA Account for a Plan Year after all reimbursements have been made for the Plan Year and/or Grace Period, such balance shall not be carried over to reimburse the Participant for Qualifying Employment-Related Expenses incurred during a subsequent Plan Year.

All forfeitures under this Dependent Care FSA shall be used as follows: first, to reduce the cost of administering this Dependent Care FSA during the Plan Year (all such administrative costs shall be documented by the Administrator); and second, to be returned to the Participants in the form of cash on a per Participant uniform basis. In no case will the forfeitures be allocated among Participants based directly or indirectly on their individual claims experience.

## **Article 6**

### **APPEALS PROCEDURE**

#### **6.1 Denial of Participation or Reimbursement**

- (a) *Denial of Participation.* If participation in this Dependent Care FSA is denied, notice of the decision shall be furnished to the applicant within a reasonable period of time, not to exceed sixty (60) days after receipt of the Enrollment Form by the Administrator unless special circumstances require an extension of time for processing the Enrollment Form. If such an extension is required, written notice of the extension shall be furnished to the applicant prior to the termination of the initial sixty (60) days after receipt of the Enrollment Form. The extension shall indicate the special circumstances requiring the extension of time.
- (b) *Denial of Reimbursement.* If a claim for reimbursement under this Dependent Care FSA is wholly or partially denied, notice of the decision shall be furnished to the Participant within a reasonable period of time, not to exceed sixty (60) days after receipt of the claim by the Administrator unless special circumstances require an extension of time for processing the claim. If such an extension of time is required, written notice of the extension shall be furnished to the Participant prior to the termination of the initial sixty (60) days after receipt of the claim. The extension notice shall indicate the special circumstances requiring an extension of time.
- (c) *Notice of Denial.* The written notice of denial shall set forth the following:
- (1) Information to identify the Participant's request;
  - (2) Specific reason(s) for the denial;
  - (3) Specific reference to pertinent plan provisions on which the denial is based;
  - (4) Description of any additional material or information necessary for the Participant to correct the claim with an explanation of why such material or information is necessary; and,
  - (5) Appeals procedure for this Dependent Care FSA, as set forth in this Article 6.

#### **6.2 Appeals**

The purpose of the review procedure as set forth herein is to provide a procedure by which a denial under this Dependent Care FSA may receive a full and fair review by the Appeals Panel. To obtain this review, the Participant shall request a review by filing a written application for review by the Appeals Panel with the Administrator within sixty (60) days of the date of the written notice of the denial. In connection with this request for review, the Participant may review pertinent Plan Documents and submit issues and/or comments in writing to the Administrator.

### **6.3 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 6.3, the claim shall be deemed denied on review.

## **Article 7**

### **ADMINISTRATION**

#### **7.1 Administrator**

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

#### **7.2 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 Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following discretionary authority:

- (a) To construe and interpret this Plan Document, including all possible ambiguities, inconsistencies and omissions in the Plan Document and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of Benefits under this Dependent Care FSA (provided that, notwithstanding the first paragraph in this Section 7.2, the Appeals Panel shall exercise such exclusive power with respect to an appeal of a claim under Article 6);
- (b) To prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Dependent Care FSA;
- (c) To prepare and distribute information explaining this Dependent Care FSA and the Benefits under this Dependent Care FSA in such manner as the Administrator determines to be appropriate;
- (d) To request and receive from all Employees and Participants such information as the Administrator shall determine from time to time to be necessary for the proper administration of this Dependent Care FSA;
- (e) To furnish each Participant with such reports with respect to the administration of this Dependent Care FSA 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 Dependent Care FSA;

- (f) To receive, review and keep on file such reports and information concerning the Benefits covered by this Dependent Care FSA 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 Dependent Care FSA as it determines to be necessary or advisable;
- (h) To sign documents for the purpose of administering this Dependent Care FSA or to designate an individual or individuals to sign documents for the purpose of administering this Dependent Care FSA; and
- (i) To maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Dependent Care FSA and to meet any applicable disclosure and reporting requirements.

The Administrator shall have no power to alter the terms of this Plan Document or to waive or fail to apply any requirements governing eligibility or participation.

### **7.3 Reliance on Participant, Tables, etc.**

The Administrator may rely upon the direction, information or election of a Participant as being proper under this Dependent Care FSA and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Plan 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 Plan Administrator.

### **7.4 Fiduciary Liability**

To the extent permitted by law, the Administrator shall not incur any liability for any acts or failure to act except for his own willful misconduct or willful breach of this Dependent Care FSA.

### **7.5 Inability to Locate Payee**

If the Administrator is unable to make payment to any Participant or other person to whom a payment is due under this Dependent Care FSA because it cannot ascertain the identity or whereabouts of such Participant or other person, subsequent payments otherwise due to such Participant or other person shall be forfeited sixty (60) days after the end of the Plan Year in accordance with Section 5.7.

### **7.6 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 make 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 Dependent Care FSA. Such action by the Administrator may include withholding of any amounts due this Dependent Care FSA or the Employer from Compensation paid by the Employer.

## **Article 8**

### **GENERAL PROVISIONS**

#### **8.1 Expenses**

All reasonable expenses incurred in administering the Dependent Care FSA are currently paid by Administrative Fees and by forfeitures to the extent provided in Section 5.7.

#### **8.2 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.

#### **8.3 Amendment and Termination**

This Dependent Care FSA has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Administrator may amend or terminate this Dependent Care FSA 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 Dependent Care FSA.

#### **8.4 Governing Law**

This Dependent Care FSA 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.

#### **8.5 Code Compliance**

It is intended that this Dependent Care FSA meet all applicable requirements of the Code and of all regulations issued thereunder. This Dependent Care FSA 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.

#### **8.6 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 Dependent Care FSA will be excludable from the Participant's gross income for federal or state income tax purposes. It shall be the obligation of each Participant to determine whether each



payment under this Dependent Care FSA 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.

#### **8.7 Indemnification of Employer**

If a Participant receives one or more payments or reimbursements under this 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.

#### **8.8 Non-Assignability of Rights**

The right of any Participant to receive any reimbursement under this Dependent Care FSA 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.

#### **8.9 Plan Document Provisions Controlling**

In the event the terms or provisions of any summary or description of this Dependent Care FSA, 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.

#### **8.10 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.