

**IRC SECTION 125/CAFETERIA PLAN ADMINISTRATION**

The following is agreed to between David K. Young, TPA (DKY) and \_\_\_\_\_ (Employer) for the installation and/or continuing administration of a Section 125/Cafeteria Plan (the Plan) with Flexible Spending Accounts. The following conditions are agreeable to both parties.

**DKY GENERAL RESPONSIBILITIES:** DKY will consult with the Employer concerning plan design, implementation and maintenance of specified employee compensation and benefits maintained or implemented by the Employer and/or specified human resource (HR) matters.

DKY will charge:

- A. \_\_\_\_\_ per employee per month (minimum \$\_\_\_\_\_ per month) for FSAs with debit cards.
- B. \_\_\_\_\_ per employee per month (minimum \$\_\_\_\_\_ per month) for \_\_\_\_\_.
- C. \_\_\_\_\_ per employee per month (minimum \$\_\_\_\_\_ per month) for \_\_\_\_\_.
- D. \$350.00\_ project \$150.00 Set up fee \$200.00 annual plan oversight.
- E. \_\_\_\_\_ per participating employee per month in flexible spending/premium accounts.

**DKY ADMINISTRATION RESPONSIBILITIES:** DKY will assist Employer in the administration and maintenance of the Plan and provide assistance and support as needed. DKY will also provide claims forms and other necessary means of filing FSA claims; issue reimbursement checks at least twice monthly, and/or perform debit card account administration; issue employer end of month reports to include Deposit Transmittal Report, Bank Reconciliation Report, Detail Statement of Employee Balances for the flexible spending accounts, a Wire Transfer Report/Check register, and issue plan year quarterly reports of account balances for those employees participating in the FSAs with a "Use It or Lose It" warning notice for the last three months of the plan year; provide forms to Employer for communicating participant terminations and changes in family status; provide Employer a dependent/child care report at the end of each calendar year; prepare the IRS Form 5500, if required, for the Employer's signature; prepare the Plan's Plan Document, Summary Plan Description and Adoption Agreement.

**Maintenance of Information:** (a) DKY shall maintain at its principal administrative office adequate books and records of all transactions in which the administrator engages with insurers, plans, plan sponsors, insureds, and plan participants. (b) The books and records will be maintained for the term of the written agreement to which they relate and for the five-year period following the end of the written agreement's term. (c) DKY will maintain the books and records in accordance with prudent standards of insurance record keeping. (d) The Commissioner of the Texas Department of Insurance and his designated representative must be given access to those books and records for the purpose of examination, audit, and inspection. (e) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except the commissioner may use that information in proceeding instituted against the administrator. (f) An insurer, the Plan, Employer is entitled to continuing access to these books and records sufficient to permit the insurer, The Plan, Employer to fulfill contractual obligations to insureds and plan participants. The right provided by this subsection is subject to any restrictions included in the written agreement between the administrator and the insurer, the Plan, or Employer relating to proprietary rights of the parties to the books and records. (g) DKY may fulfill the requirements of this section on termination of the written agreement by delivering to the Employer or Employer's designated agent, the books and records and by giving written notice to the commissioner of the location of the books and records.

**EMPLOYER GENERAL RESPONSIBILITIES:** Employer will distribute FSA Checks if mailed to the Employer's offices and participant statements to participants; report to DKY, in a timely manner, participant changes, terminations and changes in family status; if Employer maintains the fiduciary account, then Employer will reconcile the bank statement with the DKY furnished end of month report and notify DKY of any discrepancies; cause to be recorded relevant amounts from the DKY provided end of year dependent/child care report on the employee W-2 in the appropriate block; secure, at Employer's expense and option, professional review of the Plan documents, summary plan description and legal and tax implications of the Plan.

**FSA FUNDS MANAGEMENT:**

- 1.) Depository Bank: \_\_\_\_\_
  - a.) DKY representative as authorized signatory (If yes, Employer specifically agrees to execute required documents.): Yes  No
  - b.) DKY representative will be provided with check stock, but without signatory authority: Yes  No
- 2.) DKY representative is assigned authority to request transfer of funds from the Employer: Yes  No

DKY AS SUBCONTRACTOR: When DKY is functioning as David K. Young, TPA, Employer shall be the Plan Administrator, unless otherwise stated in the Plan Document. DKY has no authority, discretionary or otherwise, as regards the control and final administrative decisions of the Plan(s). DKY is not an attorney or CPA, and thus all matters regarding legal and tax implications of the Plan(s) should be reviewed by Employer's counsel.

AGENT SELECTION: If the Employer desires to install products associated with this agreement, Employer designates \_\_\_\_\_ as agent(s) of record.

(\_\_\_\_\_ Employer Initials) Employer understands some or all products sold with any Plan associated with this agreement could be underwritten; therefore, some employees who apply for the coverages may be, at the discretion of the insurance carrier(s), declined coverage, rated at a higher premium than was originally illustrated, or not be covered for certain conditions. It is further understood that DKY may be compensated by the designated agent(s), via separate agreements solely between said Agent(s) and DKY.

May  May Not: DKY may or may not receive commissions derived directly from the sale of products associated with this agreement.

ARBITRATION: DKY, the Employer, the Plan Trustee and the Plan Administrator agree to meet and confer in good faith on all matters and disputes arising under this Agreement. If a dispute is not resolved under the foregoing, then any party may submit such dispute first, to mediation, and then as a final resort, to binding arbitration under the commercial rules of the American Arbitration Association ("AAA"). Such arbitration will be held as promptly as possible in Bexar County, Texas and will be conducted before a single arbitrator, notwithstanding any rule of the AAA to the contrary unless otherwise agreed to by the parties at the time of the arbitration. Furthermore, notwithstanding any rule of the AAA to the contrary, such single arbitrator shall not be chosen without a list of potential arbitrators. The AAA shall then have the discretion to select an arbitrator from those remaining. The decision of the arbitrator will be binding on the parties and may be submitted for enforcement to any court of competent jurisdiction. All costs and expense associated with the arbitration, including the attorneys fees of the prevailing party, shall be borne by the non-prevailing party to the arbitration.

However, notwithstanding the above requirements to submit claims to arbitration, any claim, the amount of which is below the maximum jurisdictional limits of a Justice Court or a Small Claims Court in Bexar County, Texas shall be submitted to such court for determination and shall not be required to be submitted to arbitration.

PERFORMANCE: This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of Employer and DKY are performable in Bexar County, Texas.

CANCELLATION: This Agreement shall initially be for 12 months, and thereafter can be canceled by either party with 60 days written notice.

PAYMENT TERMS: 1)  In full on commencement of contract; Amount due with contract \$350.00. 2)  Partial on commencement and balance in progress; Due with contract \_\_\_\_\_; Remaining balance due \_\_\_\_\_. 3)  In progress (30 days of invoice).

All invoices are payable at DKY's business office, 11107 Wurzbach Road, Suite 403, Bexar County, San Antonio, Texas 78230.

ACCEPTANCE: All the conditions described and outlined within this agreement, consisting of pages 1 through 2, are agreed to and accepted by both parties.

BY: \_\_\_\_\_  
Employer Representative

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
DKY Representative

DATE: \_\_\_\_\_