

**SAMPLE FLEXIBLE BENEFITS PLAN AMENDMENT
AND SUMMARY OF MATERIAL MODIFICATIONS
FOR 2013 PLAN YEARS**

CAUTION: The attached sample amendment(s) and Summary of Material Modifications provides sample language to make changes permitted and required by the Patient Protection and Affordable Care Act of 2010 (the “Act”) for the following:

1. The amendment to Section 125(f) of the Internal Revenue Code that provides qualified health plans purchased through an individual Exchange are not considered “qualified benefits;”
2. The transition rule provided for by the Internal Revenue Service that allows participants in a non-calendar year cafeteria plan that begins in 2013 a one-time option to prospectively revoke, modify, or commence election changes for medical coverage; and
3. The \$2,500 salary reduction limitation for Health Care Spending Accounts.

These changes are mandated by the Act.

The amendment package is provided solely for illustrative purposes and may not apply to your particular factual situation. It should not be used “as is.” Consult with your legal advisor to adapt this approach to your specific plan and factual situation.

CAUTION: Certain aspects of the Act are currently unclear and subject to interpretation.

**ACTIONS TAKEN AND RESOLUTIONS ADOPTED BY CONSENT
OF THE BOARD OF DIRECTORS OF
[Employer's Name]**

The undersigned, being all of the members of the Board of Directors of [Employer's Name] (the "Employer"), hereby adopt the following Resolution by unanimous consent and direct that this Consent Resolution be entered in the minute books of the Employer.

WHEREAS, the Employer previously adopted a Code Section 125 Cafeteria Plan and a Code Section 105 Health Care Spending Account ("HCSA"), collectively referred to as the Flexible Benefits Plan (the "Plan");

WHEREAS, Article 9.02 of the Plan allows the Employer to amend the Plan;

WHEREAS, effective January 1, 2014, Section 1515 of the Patient Protection and Affordable Care Act of 2010 (the "Affordable Care Act") amended Section 125(f) of the Internal Revenue Code to provide that qualified health plans purchased through an individual Exchange are not considered "qualified benefits";

WHEREAS, the Internal Revenue Service has provided a transition rule that is effective for non-calendar plan years that begin in 2013 that enables participants to prospectively revoke, modify, or commence election changes for medical coverage once during that plan year, regardless of whether a change in status event has occurred;

WHEREAS, effective January 1, 2013, the Affordable Care Act amended Internal Revenue Code Section 125(i) to limit salary reductions for HCSAs to \$2,500;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors has hereby reviewed the attached amendments and Summary of Material Modifications and does hereby approve the adoption of the amendment as set forth therein;

BE IT FURTHER RESOLVED, that the officers of the Employer are authorized and directed to take any and all action as may be necessary to effectuate this Resolution.

By _____ Date _____

By _____ Date _____

By _____ Date _____

**AMENDMENT TO THE
FLEXIBLE BENEFITS PLAN**

This Amendment to the Plan is adopted by the Employer, effective as of the date set forth herein.

NOW, THEREFORE, effective as of January 1, 2014, the Plan is amended as follows:

Article 1.27 is deleted in its entirety and replaced with the following:

1.27 "Qualified Benefit" means any benefit excluded from the Employee's taxable income under Chapter 1 of the Code other than Sections 106(b), 117, 124, 127, or 132 and any other benefit permitted by the Income Tax Regulations (i.e., any life insurance coverage that is includable in gross income by virtue of exceeding the dollar limitation on nontaxable coverage under Code Sec. 79). Notwithstanding the previous sentence, benefits prohibited under Section 125(f) (e.g., qualified health plans (as defined in Section 1301 of the Affordable Care Act) that are purchased in the individual market through a public Exchange and long-term care insurance) are not "Qualified Benefits."

NOW, THEREFORE, effective as of the adoption of this amendment, the Plan is amended as follows:

Article 3.04 is deleted in its entirety and replaced with the following:

3.04 Change of Elections. A Participant shall not make any changes to the Pre-tax Contribution amount or, where applicable, to the Participant's elected allocation of Nonelective Contributions except for election changes permitted under this Section 3.04, and for changes made during the Annual Election Period (Section 3.03), changes caused by termination of employment (Section 3.05) and changes pursuant to the Family and Medical Leave Act (Section 2.04).

Except as provided in the SPD for HIPAA special enrollment rights arising from the birth, adoption, or placement for adoption of a child, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the first pay period coinciding with or immediately following the date that the election change was filed) but, as determined by the Plan Administrator, election changes may become effective later to the extent the coverage in the applicable component plan commences later. The circumstances under which a Participant may change his election under this Plan are set forth in the SPD.

Effective for the first non-calendar Plan Year commencing in 2013 only, Participants may prospectively revoke, commence, or modify elections for medical coverage once during the Plan Year, regardless of whether a Change in Status event has otherwise occurred to the extent allowable under regulations issued under Section 4980H of the Internal Revenue Code.

NOW, THEREFORE, effective as of the first Plan Year commencing on or after January 1, 2013, the Plan is amended as follows:

Article 4.03 is deleted in its entirety and replaced with the following:

To the extent offered under the Plan, each Participant's URM will be credited for Health Care Reimbursement with amounts withheld from the Participant's Compensation and any Nonelective Contributions allocated thereto by the Employer or where applicable, the Participant. The Account will be debited for Health Care Reimbursements disbursed to the Participant in accordance with Article V of this document. The entire amount elected by the Participant on the SRA as an annual amount for the Plan Year for Health Care Reimbursement less any Health Care Reimbursements already disbursed to the Participant for Expenses incurred during the Plan Year (plus any grace period as set forth in the SPD) shall be available to the Participant at any time during the Plan Year without regard to the balance in the Health Care Account (provided that the periodic contributions have been made). Thus, the maximum amount of Health Care Reimbursement at any particular time during the Plan Year will not relate to the amount that a Participant has had credited to his URM. In no event will the amount of Health Care Reimbursements in any Plan Year (plus any grace period as set forth in the SPD) exceed the annual amount specified for the Plan Year in the SRA for Health Care Reimbursement. **Effective the first Plan Year commencing on or after January 1, 2013, Participants may not allocate pursuant to the SRA an amount that exceeds \$2,500 per Plan Year into their Health Care Accounts (as adjusted for inflation in the future). In the event of a short Plan Year for all Participants, the \$2,500 amount (as indexed) will be pro-rated.** Any amount credited to the Health Care Account shall be forfeited by the Participant and restored to the Employer if it has not been applied to provide Health Care Reimbursement within the Run-Off period set forth in the SPD. Amounts so forfeited shall be used in a manner that is permitted within the applicable Department of Labor ("DOL") or Internal Revenue Service ("IRS") regulations. The maximum annual reimbursement under the URM shall be set forth in the SPD. The Employer may establish a minimum annual reimbursement amount as set forth in the SPD.

[Employer's Name]

By: _____

Title: _____

**SUMMARY OF MATERIAL MODIFICATIONS TO THE FLEXIBLE SPENDING
ACCOUNT PLAN (the “Plan”)**

This document summarizes important changes to your [Flexible Benefits Plan] (the “Plan”). If you have any questions regarding the changes summarized in this Summary of Material Modifications (“SMM”), you should contact [insert appropriate contact]. You should keep a copy of this SMM with your Summary Plan Description for future reference.

Effective the first Plan Year on or after January 1, 2013, the maximum salary reduction contribution that can be made to a Participant’s Health Care Spending Account for any Plan Year shall be \$2,500 (as indexed for inflation for future years) or such lesser amount as is communicated in enrollment materials.

Effective January 1, 2014, qualified health plans purchased through an individual market public Exchange will not be considered “qualified benefits” under the Plan.

Effective for the first non-calendar Plan Year commencing after January 2, 2013, Participants may prospectively revoke, commence, or modify elections for medical coverage once during the 2013 Plan Year, regardless of whether a Change in Status event has otherwise occurred, to the extent allowable under regulations issued under Section 4980H of the Internal Revenue Code.

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