

SECTION 125 PLAN

Administered by



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OEA CHOICE TRUST

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PREAMBLE

- A. **PURPOSE.** The purpose of this Plan is to provide Eligible Employees of the Employer a choice between receiving their compensation either in cash or as pre-tax coverage for health insurance, healthcare and dependent care expense benefits.
- B. **INTENDED TAX RESULTS.** This Plan is intended to qualify as a cafeteria plan under Code § 125. The contributions that a Participant elects to make to this Plan are intended to reduce the Participant's currently taxable compensation for federal income tax purposes. The benefits that a Participant elects to receive under this Plan are intended to be excludible from the Participant's income for federal income tax purposes.
- C. **EFFECTIVE DATE.** This Plan is effective for the Employer as of the coverage starting date stated in Item 2 of the Adoption Agreement.
- D. **NAMING CONVENTION.** This Plan document uses the following system for naming, numbering and lettering the major divisions in its text—

ARTICLE 1

1.1 SECTION.

(a) Subsection.

(1) Paragraph.

(A) Subparagraph.

(i) Clause.

ARTICLE 1 — DEFINITIONS

The words and phrases in this Plan which begin with initial capitalization are defined terms with the meanings given in this Article.

- 1.1 ADOPTION AGREEMENT** means the written agreement under which the Employer adopted this Plan and made its elections regarding the Plan's optional features.
- 1.2 BENEFIT PROGRAM** means the nontaxable benefits available under this Plan as set forth in the attached Rider(s) and which are selected by the Employer in Item 3 of its Adoption Agreement.
- 1.3 CHOICE ACCOUNT** means the bookkeeping account maintained by OEA Choice Trust under Article 5 to determine the funds available to pay benefits to a Participant.
- 1.4 CODE** means the Internal Revenue Code of 1986, as amended.
- 1.5 COVERED PLAN** means a group medical, dental, vision, accident or life insurance plan offered by the Employer.

- 1.6 **ELIGIBLE EMPLOYEE** means any individual employed by the Employer as a common law employee in the job classification(s) specified in Item 4 of the Adoption Agreement.
- 1.7 **EMPLOYER** means the employer named in Item 1 of the Adoption Agreement.
- 1.8 **ENROLLMENT FORM** means the administrative form provided by OEA Choice Trust on which Participants elect the amount of their salary reduction contributions and their benefit coverages.
- 1.9 **ENTRY DATE** means the date specified in Item 6 of the Adoption Agreement on which the Employer's Eligible Employees may become Participants.
- 1.10 **PARTICIPANT** means an Eligible Employee who has elected to participate under Article 2.
- 1.11 **PLAN** means the Section 125 plan established by the Employer, the terms and conditions of which are set forth in this Plan Document, the attached Rider(s) and the Adoption Agreement as signed by the Employer.
- 1.12 **PLAN YEAR** means the 12-consecutive month fiscal year designated by the Employer in Item 2 of the Adoption Agreement.
- 1.13 **SPOUSE** means:
- (a) Subject to subsection (b) below, the Participant's legally married spouse who is recognized as a spouse for federal income tax purposes.
 - (b) For purposes of the Dependent Care Expense Reimbursement Program only, the term "Spouse" is defined under subsection (a) above, but excludes any individual who is:
 - (1) Legally separated from the Participant; or
 - (2) Legally married to the Participant, but:
 - (A) Files a separate federal income tax return;
 - (B) Maintains a principal residence separate from the Participant during the last six months of the taxable year;
 - (C) Maintains a household which for more than one-half of the taxable year was the principal abode of the Dependent; and
 - (D) Furnished over half the cost of maintaining that household during the taxable year.

ARTICLE 2 — PARTICIPATION

- 2.1 EMPLOYEE NOTIFICATION.** The Employer will notify each of its newly hired Eligible Employees, using forms and procedures prescribed by OEA Choice Trust, of the benefits available under the Plan and the Plan's benefit election, payroll deduction and claims procedures.
- 2.2 ENTRY REQUIREMENTS.** Eligible Employees may become Participants after meeting the entry requirements stated in Item 5 of the Adoption Agreement.
- 2.3 ENROLLMENT.** Eligible Employees who have satisfied the entry requirements under Section 2.2 may participate on the Entry Date stated in Item 6 of the Adoption Agreement by completing an Enrollment Form and any other administrative forms required by OEA Choice Trust. However, participation will begin on the Entry Date only if the Enrollment and other forms are returned to OEA Choice Trust within the time required by OEA Choice Trust.
- 2.4 TERMINATION OF PARTICIPATION; COVERAGE AFTER TERMINATION.**
- (a) A Participant will cease to participate in the Plan on the earliest of:
 - (1) The date the Participant ceases to be an Eligible Employee;
 - (2) The date on which the Participant elects to terminate participation because of a change in family status under Section 3.4;
 - (3) The date coverage terminates for nonpayment of a required contribution under Section 3.2(a) or (b), 3.6(c) or, if applicable, nonpayment of a required contribution for COBRA coverage under the Healthcare Reimbursement Program; or
 - (4) The effective date on which the Employer terminates the Plan.
 - (b) Continuation of benefits under the Plan after termination of participation will be determined as follows:
 - (1) If participation terminates under subsection (a)(1) or (2) above:
 - (A) Subject to subparagraph (B) below, the Participant may continue to submit claims for covered expenses through the end of the claims runout period under Section 4.3 for the Plan Year in which the termination occurred, provided those expenses were incurred no later than the termination date.
 - (B) Coverage under the Healthcare Reimbursement Program may be continued if COBRA coverage is elected under Section 7 of the Healthcare Reimbursement Program Rider.
 - (2) If participation terminates under subsection (a)(3) above, coverage will terminate as provided under Section 3.6(c) or Section 7 of the Healthcare Reimbursement Program Rider, as applicable.

- (3) If participation terminates under subsection (a)(4) above, coverage will terminate on the effective date of the Plan termination. That date will be treated as the end of the Plan Year for purposes of the claims runout period under Section 4.3.

2.5 COVERAGE DURING LEAVE.

- (a) Participants will automatically continue to be covered under this Plan during a period of paid leave as provided in Section 3.5.
- (b) Participants will continue to be covered under this Plan during a period of unpaid leave or layoff only if they make the appropriate payment arrangements under Section 3.6.

2.6 RETURN TO EMPLOYMENT.

- (a) **Return After Termination.** Participants who terminate employment and are rehired may participate in the Plan on the Entry Date that occurs on or after their re-employment date. However, if they are rehired in the same Plan Year in which they terminated, they may not make a new benefit election for the balance of that Plan Year unless a change is allowed under Section 3.4.
- (b) **Return After Leave or Layoff.** Former Participants who dropped coverage under this Plan during a leave of absence (whether paid or unpaid) or a layoff may elect to have their coverage reinstated under Section 3.6(e).

ARTICLE 3 — CONTRIBUTIONS

3.1 CONTRIBUTION SOURCES. This Plan is funded by:

- (a) Participants' pre-tax salary reduction contributions;
- (b) Participants' after-tax contributions in situations where coverage under the Plan is being continued, but payroll deduction is not feasible (e.g., the Participant has elected COBRA continuation coverage or is on layoff or unpaid leave); and
- (c) Employer contributions if the Employer has elected to make these contributions under Item 8 of the Adoption Agreement.

3.2 CONTRIBUTION AMOUNTS AND LIMITS.

- (a) Participants will be required to contribute the amount sufficient to pay for the coverage they elect on their Enrollment Forms.
- (b) If the Employer has elected to make employer contributions under Item 8 of the Adoption Agreement, those contributions will:
 - (1) Reduce the amount of its Participants' required contributions; or
 - (2) If the cash out option is elected by the Employer under Item 8 of the Adoption Agreement, be distributed in cash, less applicable withholding, at the election of a Participant.

- (c) Contributions made by or on behalf of a Participant will be limited by:
 - (1) The contribution limitations of the Benefit Program(s) in which the Participant has enrolled; and
 - (2) If the Employer has elected to offer the Healthcare Reimbursement Program, the minimum and maximum amounts specified in Item 7 of the Adoption Agreement.

3.3 **REMITTANCE OF CONTRIBUTIONS.**

- (a) Promptly after the close of each payroll period, the Employer shall transmit to OEA Choice Trust:
 - (1) Its Participants' salary reduction contributions;
 - (2) The after-tax contributions of Participants who are still on the Employer's payroll system; and
 - (3) If applicable, the Employer's contribution.
- (b) Participants who are not on the Employer's payroll system shall transmit their after-tax contributions directly to the Employer within the time required for contributions under subsection (a) above, except as otherwise required under the terms of this Plan.

3.4 **CHANGES IN PARTICIPANT'S ELECTION.** Participants may not change or revoke their coverage elections or the amount of their contributions during a Plan Year except under one of the circumstances described in subsections (a) through (h) below. Changes will be effective as provided in subsection (i) below.

- (a) **Changes in Status.** Changes will be allowed for the events described in paragraph (1) below, but only to the extent allowable under paragraph (2) below.
 - (1) **Allowable Events.** A change in status occurs when:
 - (A) *Marital Status Change.* The Participant marries, divorces or enters into a legal separation agreement or an annulment;
 - (B) *Death.* The Participant's Spouse or dependent dies;
 - (C) *New Child.* A child of the Participant is born, adopted or placed for adoption;
 - (D) *Job Change.* The Participant's Spouse or dependent begins or terminates employment;
 - (E) *Work Schedule Change.* The Participant or the Participant's Spouse changes between full-time and part-time employment;
 - (F) *Work Site Change.* The Employer transfers the Participant to a work site outside the coverage area for a particular benefit;

- (G) *Layoff/Leave.* The Participant or the Participant's Spouse goes on layoff or unpaid leave of absence or returns from layoff or unpaid leave;
- (H) *Dependent Status Change.* The Participant's dependent satisfies or ceases to satisfy the requirements for dependent coverage under a Benefit Program due to attaining maximum age, gaining or losing student status or any similar circumstance as provided in the Benefit Program or the underlying health plan that provides coverage to the Participant;
- (I) *Health Coverage Change.* There is a significant change in the Participant's or the Participant's Spouse's health coverage or cost of coverage under the Spouse's employer-provided health plan; or
- (J) *Other Permitted Circumstances.* Any other change occurs in the Participant's circumstances which OEA Choice Trust believes would allow a change in the Participant's election under Code § 125 and the applicable regulations.

(2) **Consistency Rule.**

- (A) A change in a Participant's contribution or coverage election because of a change in status will be allowed only if the election change is on account of, and corresponds with, a qualifying change in status (as defined in subparagraph (B) below).
- (B) For purposes of this paragraph, a "qualifying change in status" is one that affects:
 - (i) Eligibility for coverage under the Plan (including, in the case of health plan coverage or group-term life insurance coverage, a change that results in an increase or decrease in the number of a Participant's family members or dependents who may benefit from coverage under that plan); or
 - (ii) Dependent care expenses allowable under Code § 129.

(b) **Health Plan Special Enrollment Rights.**

- (1) Participants may change their elections to correspond to a mid-year enrollment in the Employer's health plan under the special enrollment rights provided in Code § 9801(f), regardless of whether a change is otherwise permitted under subsection (a) above.
- (2) If the special enrollment in the health plan is made on a retroactive basis, the Participant must increase his or her payroll deduction contributions to account for the additional cost of retroactively covering the new individual. As agreed by the Participant and the Employer, the Participant shall pay the cost of retroactive coverage by either:
 - (A) Spreading the cost equally over the remaining payroll periods in that Plan Year; or

- (B) Paying the entire cost in the pay period in which the special enrollment is made.
- (c) **Judgment, Decree or Order.** If a judgment, decree or order resulting from a divorce, legal separation, annulment or change in legal custody (including a National Medical Support Notice under 45 CFR Part 303) requires health coverage for a Participant's child, the Participant may change his or her election in order to—
 - (1) Provide coverage for the child if the order requires coverage under the Participant's employer's health plan; or
 - (2) Cancel coverage for the child if the order requires the Participant's former Spouse to provide coverage.
- (d) **Entitlement to Medicare/Medicaid.** If the Participant or the Participant's Spouse or dependent becomes enrolled under Part A or Part B of Medicare or Medicaid (other than coverage solely under the federal pediatric vaccine program), the Participant may change his or her election to reflect the cancellation of the coverage of the Participant, Spouse or dependent under the Employer's health plan.
- (e) **Significant Contribution Increase.**
 - (1) Except as provided in paragraph (2) below, the Employer will automatically adjust Participants' salary reduction contributions to cover an increase in the premium of an insured plan covered by the Premium Payment Program.
 - (2) If OEA Choice Trust determines the increase is significant, the Employer will automatically increase a Participant's salary reduction contributions under the Premium Payment Program as necessary to pay the increased premium, unless the Participant:
 - (A) Revokes his or her election to participate in the Premium Payment Program; or
 - (B) On a prospective basis, elects another insured plan which offers similar coverage. In which case, the Employer will automatically adjust the Participant's salary reduction contributions under the Premium Payment Program as necessary to pay the premiums for the replacement plan.
- (f) **Significant Coverage Changes.** If the coverage under an insured plan covered by the Premium Payment Program ceases or OEA Choice Trust determines it has been significantly reduced, Participants may, on a prospective basis, elect another insured plan which offers similar coverage. In which case, the Employer will automatically adjust their salary reduction contributions under the Premium Payment Program as necessary to pay the premiums for the replacement plan.

- (g) **Reduction in Compensation.** If, because of a reduction in a Participant's compensation, the Participant's salary reduction contributions are insufficient to pay the entire contribution for the coverage elected under a Benefit Program, the Employer will adjust the Participant's contribution payments as follows:
- (1) If the Participant is still actively at work, the Participant's salary reduction contributions to that Benefit Program will be suspended. The suspension will be effective as of the last day of the pay period that begins on or after the date the compensation reduction is effective. The Participant may be eligible to elect COBRA coverage, if it is applicable. If the Participant elects COBRA coverage, the Participant must continue to pay the required contributions on an after-tax basis. The after-tax contributions will be due at the same time that the salary reduction contributions would have been required under the Plan.
 - (2) If the reduction in compensation is due to layoff or unpaid leave (including unpaid family and medical leave), contributions will be payable under Section 3.6.
 - (3) If the reduction is due to an absence under the workers' compensation laws, the Participant's salary reduction contributions shall be suspended. The Participant may elect to continue coverage during the period he or she is absent under one of the contribution payment options described in Section 3.6(a)(2) or (3).
 - (4) When a Participant's compensation returns to a level sufficient to pay the entire contribution, the Participant's salary reduction contributions will automatically resume.
- (h) **Other Reasons.** Participants may change or revoke their coverage elections or the amount of their salary reduction contributions during a Plan Year upon the occurrence of any other event which OEA Choice Trust determines will permit a change to be made under Code § 125 and the applicable regulations.
- (i) **Effective Date of Change.**
- (1) Changes will normally be made on a prospective basis only at the next payroll period beginning after the Participant or the Employer notifies OEA Choice Trust of the change, or as soon afterwards as is administratively feasible.
 - (2) Retroactive changes of up to six months may be allowed upon OEA Choice Trust's approval for extenuating circumstances.

3.5 COVERAGE DURING PAID LEAVE. If Participants go on paid leave (including paid family and medical leave), their coverage as in effect on the day before the leave begins will continue in effect for the remainder of the Plan Year in which the leave begins, except for any changes allowable under Section 3.4. Their coverage in subsequent Plan Years will depend upon the choices they elect for those Plan Years. The required salary reduction contributions for the continued coverage during the paid leave period will continue to be made through payroll deduction.

3.6 **COVERAGE DURING UNPAID LEAVE OR LAYOFF.** Participants who go on unpaid leave of absence or layoff, including unpaid family and medical leave (collectively referred to as an “absence period”) will have their contributions and their coverage suspended for the duration of the absence period, unless they elect to continue coverage during the absence period as provided in this section.

(a) **Contributions Required.** Except as provided in paragraph (4) below, to continue coverage during an absence period, Participants must elect to continue making contributions under one or more of the following payment options:

(1) ***Pre-Payment Option.*** This option allows Participants to pre-pay, before the absence period begins, the salary reduction contributions that will become due during that absence period, subject to the following:

(A) Participants cannot pre-pay on a pre-tax basis the contributions that will become due in Plan Years subsequent to the Plan Year in which the absence period begins. They must use the pay-as-you-go or the catch-up option (described in paragraphs (2) and (3) below), or a combination of both, to pay the contributions due in Plan Years that begin after the absence period begins.

(B) Contributions under this option may be made on a pre-tax basis from any taxable compensation that is payable on or before the date the absence period begins (including increasing the Participant’s salary reduction contributions during the pay periods preceding the absence period or, if permitted under the Employer’s employment policies and procedures, cashing out unused sick leave or vacation days).

(2) ***Pay-As-You-Go Option.*** This option allows Participants to pay the contributions that become due during the absence period as those payments become due.

(A) Contribution payments under this option will be due on the same dates as the Participant’s salary reduction contributions would be made if the Participant were actively at work.

(B) Contribution payments under this option will generally be made on an after-tax basis. However, payments may be made on a pre-tax basis to the extent Participants receive taxable compensation (including cashing out unused sick leave or vacation days, salary continuation payments, stipends or severance pay) during their absence period.

(3) ***Catch-Up Option.*** This option allows Participants to pay the salary reduction contributions that were due during the absence period upon their return to active work.

(A) This option is available only if the Participant and the Employer agree, according to procedures acceptable to OEA Choice Trust, before the absence period begins that:

(i) The Employer will advance the payment of the salary reduction contributions due during the absence period; and

- (ii) The Participant will repay the amounts advanced upon returning from the absence period.
 - (B) In determining whether it will agree to a catch-up payment arrangement, the Employer may, in its sole discretion (subject to the terms of any applicable collective bargaining agreement), take into account factors such as:
 - (i) The length of the leave;
 - (ii) The Participant's financial ability to pay the contributions during the leave; and
 - (iii) Any other extenuating circumstances or hardship conditions.
 - (C) Contribution payments under this option may be made on a pre-tax salary reduction basis from any taxable compensation payable to the Participant when the Participant returns from the absence period (including cashing out unused sick leave or vacation days, if permitted under the Employer's employment policies and procedures and any applicable collective bargaining agreement).
 - (D) If the Participant does not return from the absence period, the Participant must repay the Employer, on an after-tax basis, the contribution payments that were advanced. In addition, the Employer may recover the contribution payments it advanced from any amounts owed to the Participant (e.g., unpaid wages or vacation pay) or through legal action. OEA Choice Trust shall not be responsible for recovering unreimbursed advanced contributions from Participants. However, the Employer's recovery rights do not apply if the Participant does not return to work because of a recurrence or onset of a serious medical condition or circumstances beyond the Participant's control or if the recovery would violate any federal or state wage or leave law. The Employer may require the Participant to provide medical certification or other acceptable documentation substantiating a serious medical condition or other reason for the Participant's failure to return to work.
- (4) ***Employer Contributions.*** If the Employer has elected to make contributions under Item 8 of the Adoption Agreement, contributions by the Participant will not be required during an absence period to the extent the Employer's contributions are available to pay the costs of coverage during that period.
- (b) **Healthcare Reimbursement Coverage During Absence Period.** If a Participant elects to continue coverage under the Healthcare Reimbursement Program during the absence period, then regardless of the payment option selected under subsection (a) above, the full amount of the elected coverage, less any prior reimbursements and any chargeable administrative expenses, will be available to the Participant at all times during the balance of the Plan Year in which the absence period commences.

- (c) **Termination of Coverage During Absence Period.** If a Participant elects the pay-as-you-go option under subsection (a)(2) above, but fails to make a payment when due and the payment is more than 30 days overdue, coverage shall be cancelled at the end of the 30-day grace period.
- (d) **Claims Payment Following Coverage Termination.** If a Participant's coverage terminated upon or during an absence period (either because the Participant did not elect coverage during the absence period or failed to make contribution payments when due), the Participant will not receive reimbursement for any covered expenses incurred following the date coverage is terminated.
- (e) **Reinstatement of Coverage.** If a Participant's coverage terminates upon or during an absence period, the former Participant may elect to be reinstated immediately upon return from the absence period, subject to the following conditions:
 - (1) If the former Participant is returning in a Plan Year that begins after the Plan Year in which he or she dropped coverage, the former Participant may elect any level of coverage allowed under the Plan's normal enrollment procedures for the Plan Year in which the former Participant is being reinstated.
 - (2) If the former Participant is returning in the same Plan Year in which he or she dropped coverage, the following conditions apply:
 - (A) For the remainder of the Plan Year, except as provided in subparagraph (B) below, the former Participant will be reinstated to the same level of coverage he or she had elected before the leave or layoff began, unless a change is allowed under Section 3.4.
 - (B) If the Employer has elected to provide the Healthcare Reimbursement Program, then with respect to coverage under that program:
 - (i) **FMLA Leave.** If the Participant is returning from family or medical leave, the Participant may elect to be reinstated to the Healthcare Reimbursement Program under either subclause (I) or (II) below, subject to any changes allowed under clause (iii) below:
 - (I) **Full Coverage.** Resume coverage at the level in effect before the leave and make up the unpaid contribution payments in substantially equal payments over the remainder of the Plan Year payable at the same times as the regular contributions; or
 - (II) **Prorated Coverage.** Resume coverage at a level that is reduced on a pro rata basis for the period during the leave for which no contributions were paid and pay contributions for the remainder of the Plan Year in the same amount as before the leave.

In either case, the coverage level will be reduced by the amount of any prior reimbursements and allocated administrative expenses.

- (ii) Non-FMLA Leave. If the Participant is returning from layoff or any leave other than family or medical leave, the Participant will be reinstated only to prorated coverage under clause (i)(II) above.
- (iii) Coverage Changes. Participants electing reinstatement of coverage may change their previous elections to the extent allowable under Section 3.4. These new elections will be effective for the remainder of the Plan Year.

ARTICLE 4 — CLAIMS

4.1 CLAIMS PROCEDURES. Participants must make claims for reimbursement under this Plan in writing using OEA Choice Trust's claims forms and procedures.

4.2 EMPLOYER'S RESPONSIBILITIES. The Employer will maintain a supply of claim forms (provided by OEA Choice Trust) for use by its employees.

4.3 CLAIMS SUBMISSION. Claims may be submitted for expenses incurred up to the end of the Plan Year until the earlier of:

- (a) The exhaustion of the Participant's applicable Choice Account; or
- (b) 90 days after the end of the Plan Year.

4.4 CLAIMS PAYMENT. OEA Choice Trust will reimburse Participants as soon as is administratively feasible after their claims are submitted. Reimbursements to a Participant will be made from the funds provided by the Employer to the extent the Participant's applicable Choice Account has, or is deemed to have, the funds available. After a Participant's applicable Choice Account has been exhausted, claims remaining unpaid at the end of the Plan Year will be canceled. These unpaid claims may not be resubmitted the next Plan Year. Neither the Employer nor OEA Choice Trust will be liable for the payment of these unpaid claims.

4.5 PROOF OF PAYMENT. Benefit payments are conditioned on a Participant providing:

- (a) At the time a claim for reimbursement is submitted, receipts, bills or other evidence of payment acceptable to OEA Choice Trust; and
- (b) Such other information, data or evidence within the time reasonably requested by OEA Choice Trust.

4.6 CLAIMS REVIEW AND APPEALS. Claims for payment shall be reviewed under OEA Choice Trust's usual claims review and appeals procedures. OEA Choice Trust's decision on a claims appeal will be the final determination under the Plan.

ARTICLE 5 — CHOICE ACCOUNTS

5.1 SUBACCOUNTS.

- (a) A Participant's Choice Account will be divided into subaccounts for each Benefit Program elected by the Participant.
- (b) OEA Choice Trust will credit the appropriate subaccount with the Participant's contributions and, if applicable, the Participant's allocable share of the Employer's contributions.
- (c) OEA Choice Trust will debit the appropriate subaccount for any benefit payments or other items chargeable against that subaccount.
- (d) Participants may not transfer funds between subaccounts.
- (e) Participants may not apply the unused portion of a subaccount to any other Benefit Program offered under this Plan.
- (f) No interest or earnings will be credited to Participants' Choice Accounts.

5.2 REDUCTION OF CONTRIBUTIONS AND BENEFITS. OEA Choice Trust may reject any election and reduce the amount of contributions allocated to a Participant's Choice Account or the benefits payable from that Account to the extent OEA Choice Trust deems it necessary to comply with the nondiscrimination requirements under Code § 125 or any other applicable law. The rejection of elections or any reduction in contributions or benefits will be made by OEA Choice Trust on a reasonable and nondiscriminatory basis. Any Participant contributions which may not be paid out because of any reductions required under this section will be forfeited under Section 5.4.

5.3 REPAYMENT OF REIMBURSEMENTS. If a Participant receives a benefit payment under this Plan and receives reimbursement for the same expense from any other source, the Participant will be required to refund to the Plan the amount of the benefit payment. The amount refunded shall be credited to the Participant's applicable Choice Account.

5.4 FORFEITURES.

- (a) Any funds remaining in a Participant's Choice Account after all claims have been processed for that Plan Year will be forfeited. The Participant will have no claim to these forfeited amounts.
- (b) The final accounting of Participants' Choice Accounts will occur within 120 days after the end of the Plan Year.
- (c) As soon as administratively feasible after the final accounting under subsection (b) above and except as provided otherwise in an applicable collective bargaining agreement, OEA Choice Trust shall disburse the forfeited amounts, net of any administrative fees then owing to OEA Choice Trust, to the Employer for the Employer to use to defray Plan administrative expenses.

5.5 ANTI-ALIENATION RULES.

- (a) Except as provided in subsection (b) below:
 - (1) Participants shall not have any right to alienate, anticipate, pledge, encumber or assign any of the assets credited to their Choice Accounts; and
 - (2) Participants' Choice Accounts shall not be subject to any claim of any creditor or subject to attachment, garnishment or other legal process by any creditor.
- (b) The anti-alienation rules of subsection (a) above will not apply in the following situations:
 - (1) Payments required under a National Medical Support Notice (under 45 CFR Part 303); or
 - (2) Payments required under a federal tax levy or judgment order.

ARTICLE 6 — PLAN ADMINISTRATION

6.1 OEA CHOICE TRUST'S RESPONSIBILITIES.

- (a) OEA Choice Trust shall:
 - (1) Orient new Participants during the Plan's annual open enrollment period and at such other times as agreed with the Employer, and advise Participants of their rights and options under the Plan.
 - (2) Provide the Employer with the administrative forms it needs to provide to its Participants.
 - (3) Apply the Plan's rules for determining eligibility for participation and benefits based solely upon the employee census information as provided by the Employer. OEA Choice Trust is not required to audit or otherwise verify the employee census information provided by the Employer.
 - (4) Receive the Participant contributions and, if applicable, the Employer's contributions as remitted by the Employer and any after-tax contributions remitted directly by Participants.
 - (5) Credit contributions received to the Participants' appropriate Choice Accounts and apply them as provided in the Plan.
 - (6) Process claims in accordance with the Plan's claims review and appeals procedures.
 - (7) Notify any Participant or other claimant whose request for Plan benefits is denied of the reasons for the denial and of the claimant's right to appeal the denial.

- (8) Pay approved benefit claims from the funds made available by the Employer under the payment arrangement established under Section 6.4.
 - (9) Provide the Employer with standard periodic reports on contributions received, administrative expenses paid and benefit payments made.
 - (10) Assist the Employer in resolving administrative and employee communication problems and provide guidance and advice to the Employers regarding its obligations under the Plan.
 - (11) Perform such other administrative or ministerial acts as may be agreed in writing with the Employer.
 - (12) Maintain records of its transactions with the Employer and its Participants for a period of seven (7) years after the close of an applicable Plan Year.
 - (13) Assist the Employer in preparing any reports or returns required by the Internal Revenue Service or any other governmental regulatory body with respect to the Plan or, if agreed with the Employer, prepare any such reports or returns on behalf of the Plan.
 - (14) Indemnify and hold the Employer harmless from and against all losses, damages or lawsuits, including attorneys' fees, resulting from or arising out of the gross negligence or the dishonest, fraudulent or criminal acts of OEA Choice Trust or its employees or agents.
- (b) OEA Choice Trust may, in its discretion:
- (1) Adopt any rules or procedures it deems necessary or desirable to administer the Plan;
 - (2) Construe and interpret the Plan; and
 - (3) Correct defects, supply omissions and reconcile inconsistencies to the extent necessary or desirable to administer the Plan.

6.2 OEA CHOICE TRUST'S ADMINISTRATIVE AUTHORITY.

- (a) Any administrative functions not specifically delegated under Section 6.3 to the Employer are reserved to OEA Choice Trust.
- (b) This Plan confers full discretionary authority on OEA Choice Trust with regard to the administration of this Plan, including the discretion to make findings of fact and determine the sufficiency of the evidence presented regarding a claim, interpret and construe the provisions of the Plan and related Plan administrative documents (including words and phrases that are not defined in the Plan or those documents) and correct any defect, supply any omission or reconcile any ambiguity or inconsistency.
- (c) A court of law or arbitrator reviewing any decision of OEA Choice Trust, including those relating to Plan interpretation and benefit claims, shall be required to use the arbitrary and capricious standard of review. That is, OEA Choice Trust's determination may be

reversed only if it was made in bad faith, is not supported by substantial evidence or is erroneous as to a question of law.

- (d) In conducting its review of a decision of OEA Choice Trust, a court or arbitrator shall be limited to the record of documents, testimony and facts presented to or actually known to OEA Choice Trust at the time the decision was made.

6.3 EMPLOYERS' RESPONSIBILITIES. The Employer shall:

- (a) Designate one employee who will coordinate with OEA Choice Trust to assure the effective and efficient administration of the Plan;
- (b) Notify Eligible Employees of the terms and conditions of this Plan as required under Section 2.1 above;
- (c) Assist OEA Choice Trust when necessary in determining the eligibility of employees to participate in the Plan and Participants' entitlement to benefits;
- (d) Remit contributions to OEA Choice Trust within the time required under Section 3.3;
- (e) Provide any additional funds necessary to cover the checks issued by OEA Choice Trust for benefit payments under Section 6.4;
- (f) Pay the cost of any special investigation or medical examination procedures that are recommended by OEA Choice Trust in connection with the adjudication of a disputed claim and which are agreed to by the Employer;
- (g) Pay any administrative service charges as agreed between the Employer and OEA Choice Trust;
- (h) Furnish OEA Choice Trust with the information it requires to perform its functions under the Plan, including, if necessary, the nondiscrimination testing required under Code § 125;
- (i) With respect to Participants who have elected Healthcare Reimbursement Program coverage, the Employer shall notify OEA Choice Trust, as required under the Healthcare Reimbursement Program Rider, of a Participant's reduction in hours of employment or termination of employment;
- (j) Prepare and file any reports or returns required by the Internal Revenue Service or any other governmental regulatory body with respect to the Plan; and
- (k) Indemnify OEA Choice Trust and hold it harmless from and against any claims for premium taxes and any and all losses, damages or lawsuits, including attorneys' fees, resulting from or arising out of any action or inaction taken by OEA Choice Trust in reliance on directions or information furnished by the Employer unless the loss results from OEA Choice Trust's willful misconduct or gross negligence.

6.4 BENEFIT PAYMENT ARRANGEMENT. The Employer authorizes OEA Choice Trust to pay Plan benefits by drafts drawn on an agency account maintained by OEA Choice Trust for this purpose. OEA Choice Trust will deposit directly to this account any Participant or Employer contributions it receives. To the extent the funds on deposit in this account are ever insufficient to pay the amount of benefit payments approved by OEA Choice Trust, OEA Choice Trust will advise the Employer of the amount of the shortfall. The Employer shall promptly forward to OEA Choice Trust sufficient funds to cover the shortfall.

6.5 STANDARD OF CARE; LIMITATION OF LIABILITY; OVERPAYMENTS.

- (a) OEA Choice Trust shall use reasonable care in performing its duties under this Plan.
- (b) OEA Choice Trust will not be liable for any mistake of judgment or other actions taken in good faith or in reliance upon information or instructions provided by the Employer.

6.6 OVERPAYMENTS.

- (a) If OEA Choice Trust makes an incorrect payment under this Plan because of its failure to exercise reasonable care (e.g., a clerical error in issuing a check), OEA Choice Trust will be liable for its mistake. However, if the incorrect payment is the result of incorrect information provided to OEA Choice Trust by the Employer, OEA Choice Trust will not be liable for the incorrect payment.
- (b) OEA Choice Trust will make a diligent effort to recover any incorrect excess payment made but shall not be required to institute any legal proceedings.
- (c) If OEA Choice Trust is held responsible for an overpayment, it will be subrogated to any rights the Employer has to recover the overpayment from the recipient. The Employer will provide any documentation reasonably required by OEA Choice Trust to perfect its subrogations rights.

6.7 FACILITY OF PAYMENT.

- (a) Payment to a Participant of the amount OEA Choice Trust has determined is the full amount allowable under the terms of the Plan with respect to a reimbursable expense, shall be in full satisfaction of all claims under this Plan regarding that expense.
- (b) Deposit to the credit of a Participant in any bank or trust company shall be deemed a payment to that Participant.
- (c) If applicable, payment may be made to a Participant's legal representative or appointed guardian or custodian.
- (d) OEA Choice Trust may pay a Participant's benefit to the individual or institution maintaining or having custody of that person if OEA Choice Trust receives satisfactory evidence that—
 - (1) The Participant is, at the time the benefit is payable, physically, mentally or legally incompetent to receive payment and give a valid receipt for it;
 - (2) An individual or institution is maintaining or has custody of that person; and

- (3) No guardian, custodian or other representative of the estate of that person has been appointed.
- (e) If a payment is made under subsection (c) or (d) above, the receipt of the recipient or the canceled payment check shall be a sufficient voucher for the payment. OEA Choice Trust is not required to obtain from the recipient an accounting for the payment.
- (f) If a dispute arises over whether the Participant or a third party is entitled to a payment, OEA Choice Trust may:
 - (1) Withhold payment until the dispute is determined by a court of competent jurisdiction or settled, to the satisfaction of OEA Choice Trust, by the parties concerned; or
 - (2) Require a hold harmless agreement on behalf of the Plan and OEA Choice Trust and, if appropriate, the Employer before making the payment.

6.8 **LOST PAYEES; UNCLAIMED PAYMENTS.** If a payment cannot be made because the payee cannot be located after reasonable efforts by OEA Choice Trust, or a payment check is not cashed within one year of its date of issuance, the payment will be forfeited and disbursed as a forfeiture under Section 5.4.

6.9 **PARTICIPANTS' OBLIGATION TO FURNISH INFORMATION.** Each Participant must furnish OEA Choice Trust any evidence, data or information that OEA Choice Trust considers necessary or desirable for the purpose of administering the Plan.

6.10 **ADDRESS FOR NOTIFICATION.** Participants must keep OEA Choice Trust advised of their current address and other contact information. Any communication, statement or notice addressed to a Participant at the last address filed with OEA Choice Trust is adequate notice to the Participant for all purposes of this Plan.

6.11 **AVAILABILITY OF INFORMATION.**

- (a) Subject to subsection (b) below, a Participant or a Participant's authorized representative has the right to examine:
 - (1) A copy of this Plan document;
 - (2) A copy of the Employer's Adoption Agreement; and
 - (3) Any Plan records which pertain solely to that Participant.
- (b) The documents listed in subsection (a) above will be available at OEA Choice Trust's office, or at such other place as it may designate from time to time, during its normal business hours and upon reasonable advance notice.
- (c) Upon the written request of a Participant, OEA Choice Trust will furnish a Participant with one copy of the documents listed in subsection (a) above. OEA Choice Trust may charge a copying fee for the documents in subsection (a)(1) and (2) above. The documents in subsection (a)(3) above will be furnished without charge.

- (d) OEA Choice Trust may disclose protected health information (as defined under The Health Insurance Portability and Accountability Act of 1996) with respect to the Healthcare Reimbursement Program only under the terms and conditions stated in Section 8 of that Program's Rider.

6.12 RELIANCE; NO AUDIT OBLIGATION.

- (a) OEA Choice Trust may rely conclusively on any information furnished to it by the Employer, including a Participant's compensation and dates of hire, termination and leaves of absence, and will not be liable for any action taken in reliance upon information provided by the Employer.
- (b) OEA Choice Trust is under no obligation to:
 - (1) Audit the Employer's payroll records in order to determine whether the Employer is providing coverage and contributions in accordance with its Adoption Agreement elections and this Plan; or
 - (2) Otherwise audit or independently verify any information provided by the Employer.

6.13 TERMINATION OF OEA CHOICE TRUST'S ADMINISTRATIVE SERVICES.

- (a) OEA Choice Trust's administrative services under this Article may be terminated at any time by either the Employer or OEA Choice Trust provided the terminating party gives the other party at least 60 days' advance written notice.
- (b) OEA Choice Trust's administrative services under this Article will terminate automatically and immediately as of the date:
 - (1) The Employer fails to pay any of the administrative charges as agreed with OEA Choice Trust within thirty (30) days after they are due and payable;
 - (2) The Employer fails to provide OEA Choice Trust with sufficient funds to pay benefit payments after OEA Choice Trust has notified Employer there is a shortfall under Section 6.4;
 - (3) The Employer amends the Plan in a manner which materially changes the OEA Choice Trust's obligations and duties without the OEA Choice Trust's consent;
 - (4) The Employer terminates the Plan; or
 - (5) The Employer becomes bankrupt or insolvent.
- (c) If OEA Choice Trust's administrative services are terminated:
 - (1) OEA Choice Trust shall have no further obligation to receive contributions, claim forms and payroll data or process claims or appeals.

- (2) All unprocessed claims and appeals, together with the unexpended balances of Participants' Choice Accounts, less the amount of any unpaid charges owed to OEA Choice Trust, will be returned to the Employer as soon as is administratively feasible after the termination date. However, the Employer and OEA Choice Trust may mutually agree that the provisions of this Article will continue in effect solely for the purpose of processing claims that were incurred by Participants before the effective date of the termination.
- (3) Unless mutually agreed otherwise, the termination will not affect either party's rights or obligations which arose before the termination, including the indemnification, limitation of liability, privacy and records retention provisions of the Plan.
- (4) The termination of OEA Choice Trust's administrative services will not terminate the Plan itself. The Employer reserves the sole right to terminate the Plan under Section 7.2(b) below.

ARTICLE 7 — AMENDMENT AND TERMINATION

7.1 AMENDMENT.

- (a) OEA Choice Trust has the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of this Plan for compliance with legal requirements or to facilitate Plan administration. Such amendments shall be in writing signed by the Executive Director.
- (b) The Employer may amend the Plan through action of its governing body as follows:
 - (1) The Employer may amend the Adoption Agreement to make a change or changes in the provisions it previously elected. Such amendments may be made by either:
 - (A) Completing an amended Adoption Agreement containing the change or changes; or
 - (B) Adopting an amendment in the form provided by OEA Choice Trust with replacement pages to be inserted into the Adoption Agreement which contain the change or changes.
 - (2) The Employer may make other amendments to the Plan without triggering OEA Choice Trust's right under Section 6.13 to terminate its administrative services only if the Employer obtains the prior written consent of OEA Choice Trust's Executive Director.
- (c) Amendments may have an immediate, prospective or, to the extent permitted by law, retroactive effective date.
- (d) Amendments do not require the consent of any Participant.
- (e) Amendments may be made without prior notice to Participants except to the extent required by law.

- (f) OEA Choice Trust shall provide Participants with notice of amendments as required by law.

7.2 TERMINATION.

- (a) OEA Choice Trust may terminate its maintenance of the Plan document as of the end of any Plan Year upon 60 days' advance written notice to the Employer. In that event, the Employer will be solely responsible for maintaining the Plan documents in compliance with applicable legal requirements.
- (b) The Employer reserves the sole right to terminate the Plan, subject to any applicable collective bargaining agreement. The Employer may do so as of the end of any Plan Year upon 60 days' advance written notice to OEA Choice Trust (if OEA Choice Trust has not terminated its administrative services under Section 6.13) and to the Participants.
- (c) Unless mutually agreed otherwise:
 - (1) The Plan termination will not affect either party's rights or obligations which arose before the termination.
 - (2) The indemnification, limitation of liability, privacy and records retention provisions of the Plan will survive its termination.

ARTICLE 8 — GENERAL PROVISIONS

- 8.1 NOTICE.** Any notice or administrative form required to be filed with OEA Choice Trust by or on behalf of a Participant or the Employer must be actually received by OEA Choice Trust, not simply mailed by the sender, to be effective. That is, this Plan does not follow the common law "mailbox rule" with respect to these types of communications.
- 8.2 BINDING EFFECT.** This Plan shall be binding upon OEA Choice Trust, the Employer, the Participants and other distributees and their respective successors, heirs, assigns and legal representatives, as applicable.
- 8.3 GOVERNING LAW.** This Plan shall be governed by Oregon law (except its laws regarding choice of law or conflict of laws).