



## FLEXCORP FSA SERVICES AGREEMENT

THIS AGREEMENT is made this 13 day of September, 2011, between the Board of County Commissioners of Sumter County, Florida (the "Board"), 7375 Powell Road, Wildwood, FL 34785 and FlexCorp ("TPA"), whose address is 146 Resource Center Parkway, Birmingham, AL 35242.

### RECITALS

**WHEREAS**, the Board has established certain employee benefit programs, including one or more of the following: a health flexible spending arrangement ("Health FSA") under Code § 105, a dependent care assistance program ("DCAP") under Code § 129. The Health FSA, and DCAP are each offered under Code § 125-cafeteria plan; and,

**WHEREAS**, the Board has requested **FLEXCORP** ("TPA") to act as its agent for the payment of certain benefits and to furnish certain administrative services for one or more of the Health FSA and DCAP as described in this Agreement (collectively, the "Program"). TPA shall provide such services as agent of Board and agent of the Program.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, together with the above Recitals, which are incorporated herein, in haec verba, Board and TPA hereby agree as follows.

### ARTICLE I. INTRODUCTION

#### **1.1 Effective Date and Term**

The effective date of this Agreement shall be 1/1/2012 ("Effective Date"). The initial term shall be the twelve (12) month period commencing on the Effective Date; thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions of Section 6.8.

#### **1.2 Scope of Undertaking**

Board has sole and final authority to control and manage the operation of the Program. TPA is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of the Board. Nor shall the TPA and Board be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor. TPA does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act of omission or breach of duty by Board. Nor is TPA in any way to be deemed insurer, underwriter or guarantor with respect to any benefits payable under the Program. TPA generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Board under the Program. Nothing herein shall be deemed to constitute TPA as a party to the Program or to confer upon TPA any authority or control respecting management of the Program, authority or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon TPA any obligation to any employee of Board or any person who is participating in the program ("Participant").

#### **1.3 Definitions**

**"Agreement"** means this TPA Services Agreement, including all Appendices hereto.

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

**"DCAP"** has the meaning given in the Recitals.

**"Eligibility Reports"** have the meaning described in Section 2.3.

**"Board"** has the meaning given in the Recitals.

**"Effective Date"** has the meaning given in Section 1.1.

**"Health FSA"** has the meaning given in the Recitals.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended.

**“Named Fiduciary”** means the **“Board”**, the person who is identified in the plan document as having responsibility for plan management. Anyone who exercises discretionary authority or discretionary control over management or administration of the plan, exercises any authority or control over management or disposition of plan assets.

**“Participant”** has the meaning given in Section 1.2.

**“Protected Health Information”** or **“PHI”** has the meaning assigned to such term under HIPAA.

**“Plan”** means the Health FSA or DCAP, as applicable.

**“Plan Administrator”** means the administrator as defined by (i) the Board in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

**“Program”** and **“TPA”** have the meanings given in the Recitals.

## **ARTICLE II. BOARD RESPONSIBILITIES**

### **2.1 Sole Responsibilities**

- (a) *General.* Board has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Program and making all determinations thereunder. Board gives TPA the authority to act on behalf of Board in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Board and TPA. All final determinations as to a Participant’s eligibility to the Program or entitlement to Program benefits are to be made by Board, including any determination upon appeal of a denied claim for Program benefits. Board is considered the Plan Administrator and Named Fiduciary of the Program benefits for the purposes of this Agreement.
- (b) *Examples.* Without limiting Board’s responsibilities described herein, it shall be Board’s sole responsibility (as Plan Administrator) and duty to: amend the Plans as necessary to ensure ongoing compliance with applicable law; file any required tax or government returns relating to the Plans; determine if and when a valid election change has occurred; handle Participant claim appeals; execute and retain required Plan and claims documentation; perform non-discrimination testing; and take all other steps necessary to maintain and operate the Plan in compliance with applicable provisions of the Plans, HIPAA, or any applicable federal and state laws.

### **2.2 Service Charges; Funding**

Board shall pay TPA the service charges set forth in the Appendices hereto, as described in Article V. Board shall promptly fund an account maintained for the payment of Program benefits as described in Article IV.

### **2.3 Information to TPA**

Board shall furnish the information requested by TPA as determined necessary to perform TPA’s functions hereunder, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. Such information shall be provided to TPA in the time and in the manner agreed to by Board and TPA. TPA shall have no responsibility with regard to benefits paid in error due to Board’s failure to timely update such information. From time to time thereafter, but no more frequently than monthly, TPA shall provide Board with update reports summarizing the eligibility data provided by Board (“Eligibility Reports”) by electronic medium unless otherwise agreed by the parties. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Program. Board shall be responsible for ensuring the accuracy of its Eligibility Reports, and shall bear the burden of proof in any dispute with TPA relating to the accuracy of any Eligibility Report. TPA shall have no liability to Board or any Participant as a consequence of an inaccurate Eligibility Report, and TPA shall not have any obligation to credit Board for any claims expenses or administrative fees incurred or paid to TPA as a consequence of Board failing to review Eligibility Reports for accuracy. TPA shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Such Eligibility Reports shall be considered PHI and subject to the privacy rules under HIPAA and Appendix B of this Agreement.

## **2.4 Plan Documents**

Board is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide TPA with all relevant documents, including but not limited to, the Program documents and any Program amendments. Board will notify TPA of any changes to the Program at least thirty (30) days before the effective date of such changes. Board acknowledges that TPA is not providing tax or legal advice and that Board shall be solely responsible for determining the legal and tax status of the Program.

## **2.5 Liability for Claims**

Board is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. TPA does not insure or underwrite the liability of Board under the Program. Except for the expenses specifically assumed by TPA in this Agreement, Board is responsible for all expenses incident to the Program.

## **2.6 Medical Records**

Board shall, if required by law or regulation, notify each Participant and provide each Participant with an opportunity to opt out (if required) or obtain from each Participant such written authorization for release of any personal financial records and medical records in accordance with applicable state and federal law (including the Gramm-Leach-Bliley Act) to permit Board and/or TPA to perform their obligations under this Agreement.

## **2.7 HIPAA Privacy**

Board shall provide TPA with notice of the privacy practices that Board produces in accordance with HIPAA, as well as any subsequent changes to such notices. Board shall provide TPA with any changes to, or revocation of, permission by a Participant to use or disclose PHI if such changes affect TPA's permitted or required uses or disclosures. Board shall notify TPA of any restriction to the use or disclosure of PHI that Board has agreed to in accordance with the privacy rules under HIPAA. Board shall not request TPA to use or disclose PHI in any manner that would not be permissible under the privacy rules under HIPAA if done by Board, except that TPA may use or disclose PHI for purposes of data aggregation and the management and administrative activities of TPA, as provided in Appendix B of this Agreement.

## **ARTICLE III. TPA RESPONSIBILITIES**

### **3.1 Sole Responsibilities**

TPA's sole responsibilities shall be defined as any responsibilities contained in this Agreement (including obligations listed in any Appendix to this Agreement). TPA generally provides certain reimbursement and record keeping services, as described further below. In addition, at the request of Board and upon receipt of necessary information from Board, TPA will perform the required non-discrimination testing and report the results to Board. It will be the sole responsibility of Board to direct TPA to take any corrective actions necessary as a result of the test results. Please refer to Appendix A for any applicable fees.

### **3.2 Service Delivery**

TPA shall provide Customer Service personnel during normal business hours as determined by TPA and shall provide online administrative services twenty-four (24) hours per day, seven (7) days per week. TPA shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

### **3.3 Benefits Payment**

TPA shall, as agent of Board, operate under the express terms of this Agreement and the Program. TPA shall initially determine if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in Article III and Article IV. TPA shall have no duty or obligation with respect to claims incurred prior to the Effective Date (“Prior Reimbursement Requests”), if any, and/or Program administration (or other) services arising prior to the Effective Date (“Prior Administration”), if any, regardless of whether such services were/are to be performed prior to or after the Effective Date. Board agrees that:

- (i) TPA has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration;
- (ii) Board will be responsible for processing Prior Reimbursement Requests (including any run-off claims submitted after the Effective Date) and maintaining legally required records of all Prior substantiation requirements; and
- (iii) Board shall indemnify and hold TPA harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

### **3.4 Reporting**

TPA shall make available to Board each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month. For purposes of Board’s Health FSA, Board must provide certification that the plan document requires the Board to comply with applicable privacy rules under HIPAA before TPA will make available the reports provided for in this Section to Board. TPA shall also make available to Participants each month, via electronic medium, a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month. For purposes of Boards’ Health FSA, Board is responsible for ensuring that any beneficiary of the Participant for whom a claim has been submitted to the Health FSA has agreed to the disclosure of his or her PHI to the Participant, if required by the privacy rules under HIPAA.

### **3.5 Claims Appeals**

TPA shall refer to Board or its designee, for final determination, any claim for benefits or coverage that is appealed after initial rejection by TPA or any class of claims that Board may specify, including:

- (i) any question of eligibility or entitlement of the claimant for coverage under the Program,
- (ii) any question with respect to the amount due, or
- (iii) any other appeal.

### **3.6 Additional Documents**

If Board requests, and Board and TPA mutually agree upon payment of applicable fees, then TPA shall furnish Board:

- (i) sample documents to be reviewed by Board with its legal counsel, for creation of customized documentation for the Program to be approved and executed by Board, including board resolutions, summary plan descriptions (SPDs), plan documents and plan amendments (if any); and
- (ii) sample administrative forms needed for TPA to perform under this Agreement.

### **3.7 Record keeping**

TPA shall maintain, for the duration of the Agreement, the usual and customary books, records and documents, including electronic records, that relate to the Program and its Participants that TPA has prepared or that has otherwise come within its possession. These books, records and documents, including electronic records, are the property of Board, and Board has the right of continuing access to them during normal business hours at TPA’s offices with reasonable prior notice. If this Agreement terminates, TPA may deliver, or at Board’s request, will deliver all such books, records and documents to Board, subject to TPA’s right to retain copies of any records it

deems appropriate. Board shall be required to pay TPA reasonable charges for transportation or duplication of such records.

### **3.8 Notices to Participants**

TPA shall provide to Board all notices (including any required opt-out notice) reflecting its privacy policies and practices as required by state and/or federal law (including the Gramm-Leach-Bliley Act).

### **3.9 Standard of Care; Erroneous Payment**

TPA shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If TPA makes any payment under the Agreement to an ineligible person, or if more than the correct amount is paid, TPA shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, TPA will not be liable for such payment, unless TPA would otherwise be liable under another provision of this Agreement.

### **3.10 Compliance With Privacy Rules Under HIPAA**

TPA and Employer shall enter into the Business Associate Agreements attached hereto as Appendix B.

### **3.11 Non-Discretionary Duties; Additional Duties**

TPA and Board agree that the duties to be performed hereunder by TPA are non-discretionary duties. TPA and Board may agree to additional duties in writing as may be specified in the Appendices from time to time.

## **ARTICLE IV. BENEFIT PROGRAM PAYMENT: BOARD'S FUNDING RESPONSIBILITY**

### **4.1 Payment of Benefits**

Board authorizes TPA to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Board for the payment of Program benefits. Each week or at such other interval as mutually agreed upon, TPA will notify Board of the amount needed to pay approved benefit claims and Board shall pay or transfer into the bank account the amount needed for the payment of Program benefits. Board shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section 4.1. TPA shall have sole authority to provide whatever notifications, instructions or directions as may be necessary to accomplish the disbursement of such Program funds to or on behalf of Participants in payment of approved claims.

### **4.2 Funding of Benefits**

Funding for any payment on behalf of the Participants under the Program, including but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Board, and Board agrees to accept liability for, and provide sufficient funds to satisfy, all payment to Participants under the Program, including claims for reimbursement for covered expenses, where such expenses are incurred and the claim is presented for payment during the term of this Agreement.

## **ARTICLE V. TPA COMPENSATION**

### **5.1 Service Charges**

The amounts of monthly service charges of TPA are described in Appendix A. After the initial term, TPA may change the amount of such charges by providing at least thirty (30) days written notice to Board.

### **5.2 Billing of Charges**

All service charges of TPA, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims so that proper accounting can be made by Board of the respective amounts paid for claims and for administrative expenses.

### **5.3 Payment of Charges**

All charges under this Article V shall be determined by TPA and billed to Board monthly. Alternatively, if so agreed by the parties, TPA may deduct payment from monthly service charges from the bank account maintained by Board as described in Article IV. Board shall make payment to TPA within ten (10) business days of receipt of notice of the amount due, or such amount will automatically be deducted from the bank account maintained by Board as described in Article IV.

## **ARTICLE VI. GENERAL PROVISIONS**

### **6.1 Severability; Headings**

If a court declares any term of this Agreement invalid, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of Sections and subsections contained in the Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

### **6.2 Compliance; Non-Waiver**

Failure by Board or TPA to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 6.3.

### **6.3 Assignment; Amendment**

TPA can assign this Agreement without the Board's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Board and TPA.

### **6.4 Audits**

Each party shall be authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. An agent of either party may perform audits provided such agent signs an acceptable confidentiality agreement. Each party agrees to provide reasonable assistance and information to the auditors. Board acknowledges and agrees that if it requests an audit, it shall reimburse TPA for TPA's reasonable expenses, including copying and labor costs, in assisting Board to perform the audit. Each party also agrees to provide such additional information and reports, as the other party shall reasonable request.

### **6.5 Non-Disclosure of Proprietary Information**

- (a) *General.* Board and TPA each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, information which is proprietary and/or confidential information of such party. Board and TPA agree that each party shall;
  - (i) keep such proprietary and/or confidential information of the other party in strict confidence to the extent allowed under Florida's public records laws;

- (ii) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information to the extent allowed under Florida's public records laws; and
      - (iii) shall not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- (b) *Confidential Information Defined.* Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof;
  - (i) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or
  - (ii) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records and correspondence concerning the parties' respective businesses or finances.

## 6.6 Arbitration

Unless litigation arising out of the same facts is pending in a court proceeding instituted by a person or entity that is not a party to this Agreement, any controversy or claim arising out of or relating to this Agreement between Board and TPA, or the breach thereof, shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties agree that arbitration shall take place in Sumter County, Florida.

## 6.7 Notices and Communications

- (a) *Notices.* All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail, with tracing capability, or by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.

- (b) *Addresses.*

Board's address for notices as described above is: 7375 Powell Road | Wildwood, FL 34785.

TPA's address for notices as described above is: 146 Resource Center Parkway, Birmingham, AL 35242.

*Communications.* Board agrees that TPA may communicate confidential, protected, privileged or otherwise sensitive information to Board through a named contact designated by Board ("Named Contact") and specifically agrees to indemnify TPA and hold it harmless;

- (i) for any such communications directed to Employer through the Named Contact attempted via fax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and
- (ii) from any claim for the improper use or disclosure of any health information by TPA where such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

## 6.8 Termination of Agreement

- (a) *Automatic.* This Agreement shall automatically terminate as of the earliest of the following:
  - (i) the effective date of any legislation which makes the Program and/or this Agreement illegal;
  - (ii) the date Board becomes insolvent, bankrupt, subject to bank seizure, subject to liquidation or receivership, or
  - (iii) the termination date of the Program, subject to any agreement between Board and TPA regarding payment of benefits after the Program is terminated.

- (b) *Optional.* This Agreement may be terminated as of the earliest of the following:
  - (i) by TPA upon the failure of Board to pay any charges within ten (10) business days after they are due and payable as provided in Article V
  - (ii) by TPA upon the failure of Board to perform its obligations in accordance with this Agreement
  - (iii) by Board upon the failure of TPA to perform its obligations in accordance with this Agreement, including the provisions of Appendix B
  - (iv) by either Board or TPA, by giving the other party at least thirty (30) days written notice.
- (c) *Limited Continuation After Termination.* If the Program is terminated, Board and TPA may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Program benefit, expense or claims incurred prior to the date of Program termination. In addition, if this Agreement is terminated while the Program continues in effect, Board and TPA may mutually agree in writing that this Agreement shall continue for the purposes of payment of any claims for which request for reimbursements have been received by TPA before the date of such termination. If this Agreement is continued in accordance with this subsection (c), Board shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge.
- (d) *Survival of Certain Provisions.* Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity, confidentiality and privacy provisions of the Agreement shall survive its termination.

**6.9 Complete Agreement; Governing Law**

This Agreement (including the Appendices) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties. This Agreement shall be construed, enforced and governed by the laws of the State of Florida.

IN WITNESS WHEREOF, Board and TPA have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

Dated on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

FLEXCORP, as TPA

Sumter County Government, as Board

By:

By:

\_\_\_\_\_  \_\_\_\_\_

\_\_\_\_\_

Title: President

Title: \_\_\_\_\_

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**FlexCorp FSA Services Agreement**  
**Appendix A – Health and Dependent Care FSA Guidelines**

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Capitalized terms used in this Appendix and not defined have the meanings given in the Agreement.

**Initial Setup Fee:**

**\$500.00** , payable upon execution of the Agreement.

**Annual Renewal Fee:**

**\$Waived** , payable the month preceding the new plan year's effective date.

**Monthly Service Charges:**

The monthly fees charged for each Participant as of the first day of each month for the term of the Agreement shall be

**\$4.50** per FSA Participant, per month (\$75.00 minimum monthly fee). With a 36 month rate guarantee.

**Annual Non-discrimination Testing:**

**\$0.00**, payable upon engagement of TPA to perform.

Upon request of Board and delivery of all necessary information to TPA during the first 120 days of the Plan Year, TPA shall assist Board in preparing non-discrimination tests for the FSA for that Plan Year. Board shall be responsible for reviewing the test results provided by TPA, and Board shall be responsible for directing TPA to take any corrective action as a result of testing failure. Unless otherwise agreed by the parties in writing, Board remains responsible for the annual testing.

**Services Included:** Board is responsible for all legal requirements and administrative obligations with regard to the FSA, except for the following administrative duties (to be performed by TPA):

1. TPA shall make available (by electronic medium and paper copy) enrollment and reimbursement forms and instructions for filing Participant claims. Upon payment of additional fees, TPA shall make available other FSA documents.
2. Upon receiving instructions from Board with regard to a Participant's change in status or other event that permits an election change under IRS regulations, TPA shall make the requested change in the Participant's election as soon as practicable.
3. TPA shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due within five (5) business days of the day on which TPA received the claim. Benefit payments shall be made by check payable to the Participant.
4. TPA shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim. TPA shall follow the guidelines set forth in this Agreement with regard to denial of claims.

**Services Not Included:** TPA is not responsible for any of the following:

1. Board's compliance with HIPAA with regard to certificates of creditable coverage.
2. Determining whether Board's FSA documents are in compliance with the Code or any other applicable state, federal or local statutes or regulations.
3. Determining if when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the FSA.

## FlexCorp FSA Services Agreement

### Appendix B – HIPAA Business Associate Addendum

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This **HIPAA Business Associate Addendum** (the “**Addendum**”) is entered into on 1/1/2012 by and between **Sumter County Government**, (“**Board**”), in its individual capacity and on behalf of its group health plan(s) (“**Plan**”) administered pursuant to this Agreement and **FLEXCORP** (“**TPA**”) in its capacity as both the Plan’s and Board’s service provider. This Addendum is incorporated into and made a part of the Services Agreement between TPA and Board (“**Agreement**”). This Agreement is intended to comply with the privacy and administrative simplification requirements set forth in 45 CFR Parts 160, 162, and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”).

Both Board and TPA acknowledge that the Plan and Board are separate and distinct entities and that TPA may perform services both on behalf of the Plan and also on behalf of Board in its capacity as Plan sponsor. TPA is considered a “Business Associate” with respect to services it performs on behalf of the Plan, if any, and an “Agent of Board” with respect to services it performs on behalf of Board, if any. This Addendum sets forth the responsibilities of TPA in its capacity as a Business Associate, as required by 45 CFR § 164.504(e)(1) and in its capacity as Agent of Board, as required by 45 CFR § 164.504(f)(2)(ii)(B).

TPA recognizes that in the course of performing some of the services, it will have access to, create, and/or receive from the Plan Protected Health Information (“**PHI**”). For purposes herein, PHI shall be limited to the information created or received from the Plan or on the Plan’s behalf by TPA. Whenever used in this Addendum, other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Addendum, but not defined herein, shall have the same meaning, as those terms are defined in HIPAA.

If there is a conflict between the Agreement and this Addendum with regard to the subject matter herein, this Addendum controls.

#### B.1 Definitions

For purposes of this Agreement:

“**Designated Record Set**” will have the same meaning given to the term “designated record set” in 45 CFR §164.501.

“**Electronic Data Interchange Rule**” shall mean the rules regarding standard transactions and code sets set forth in 45 C.F.R. Parts 160, 162 and 164, as may thereafter be amended.

“**Group Health Plan**” will have the same meaning as the term “group health plan” in 45 CFR § 160.103.

“**Individual**” will have the same meaning as the term “individual” in 45 CFR §160.103 and will include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

“**Privacy Breach**” will have the same meaning as “Breach” set forth in 45 CFR §164.402

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by the TPA from or on behalf of the Plan.

“**Required by Law**” will have the same meaning as the term “required by law” in 45 CFR § 164.103.

“**Secretary**” will mean the Secretary of the Department of Health and Human Services or his designee.

“**Security Incident**” will have the same meaning as the term “security incident” in 45 CFR § 164.304.

“**Security Rule**” will mean the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR § 164.302 et seq.

“**Unsecured Protected Health Information**” or “**Unsecured PHI**” will have the same mean as the term “Unsecured Protected Health Information” in 45 C.F.R. 164.402.

## **B.2 Confidentiality**

At all times, both during and after the termination of its relationship with the Board for any reason, TPA will not use or disclose PHI in any manner whatsoever, except as otherwise permitted by this Addendum.

## **B.3 Permitted Uses and Disclosures of Business Associate**

- (a) Except as otherwise limited in this Addendum, TPA may use or disclose PHI, provided that such use or disclosure of PHI would not violate the Privacy Rule, as follows:
  - (i) as permitted or required in this Addendum and in the Agreement
  - (ii) as otherwise permitted by the Privacy Rule
  - (iii) as Required by Law
  - (iv) for the proper management and administration of TPA
  - (v) to fulfill any present or future legal responsibilities of TPA
  - (vi) for Data Aggregation services to the Plan (as defined in 45 CFR § 164.501)
  - (vii) any use and disclosure of PHI that has been de-identified in accordance with 45 CFR § 164.514.
- (b) TPA agrees to document any disclosures of PHI and the information related to such disclosures to respond to an accounting of disclosures of PHI if requested by the Plan in accordance with 45 CFR §164.528, and to provide such documentation to the Plan as it may request from time to time.
- (c) In the event that TPA maintains PHI in a Designated Record Set, TPA agrees to provide access to such PHI that it maintains in a Designated Record Set to the Individual to whom the PHI relates in accordance with 45 CFR § 164.524. Furthermore, at the reasonable request of the Plan, TPA agrees to make amendments to PHI that it maintains in a Designated Record Set as directed by the Plan and to reasonably incorporate any amendments to PHI in accordance with 45 CFR § 164.526.
- (d) TPA may disclose PHI to its agents or subcontractors with a bona fide need to know such PHI, but only if, prior to such disclosure, such agents or subcontractors provide reasonable assurances that they will agree to substantially the same restrictions and conditions that apply to TPA with respect to such PHI, including electronic PHI.
- (e) TPA may disclose the PHI revealed to it by the Plan if and to the extent that such disclosure is required by law or court order or as otherwise permitted by law. Further, TPA agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by TPA on behalf of the Plan available to the Secretary, as requested by the Plan or designated by the Secretary, for purposes of the Secretary determining the Plan's compliance with the Privacy Rule.
- (f) In accordance with 45 CFR §164.520, and to the extent that such a limitation may affect the Business Associate's use or disclosure of PHI, Board, acting on behalf of the Plan, agrees to notify TPA of any limitation(s) in the notice of privacy practices required by the Privacy Rules, including, without limitation, any changes in or revocation of permission by an Individual to use or disclose PHI. Board, acting on behalf of the Plan, also agrees to notify TPA of any restriction to the use or disclosure of PHI that Board has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect TPA's use or disclosure of PHI. Board acknowledges and agrees that TPA is not bound by any such restrictions that impact TPA's use or disclosure of PHI to the extent such restrictions are not otherwise required by the HIPAA Privacy Rules and TPA has not consented to such restrictions in advance. TPA agrees not to unreasonably withhold consent.
- (g) TPA agrees to take steps to implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI maintained by TPA on behalf of the Plan. TPA will report to the Plan's designated representative any use or disclosure of PHI otherwise than as provided by this Agreement, including any Security Incident, as soon as reasonably possible of becoming aware of such use or disclosure. As of the Compliance Date of 42 U.S.C. § 17931 and the regulations issued thereunder, TPA agrees to comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316. In addition, TPA hereby agrees that it shall report to the Plan's designated representative, without unreasonable delay, but not longer than 60 days following its discovery of any incident that, in TPA's reasonable determination, constitutes a Privacy Breach of Unsecured PHI. TPA shall provide such notice to the Plan's designated representative in accordance with 45 CFR 164.410 of the Breach Notification Rules, subject to the law enforcement delay set forth in 45 CFR 164.412. In addition, TPA may, in its sole discretion, provide any of the following notices of any incident that constitutes a Privacy Breach for which TPA is required to provide notice to the Plan's designated representative as set forth herein:

- (i) notice to affected individuals, including any substitute notice as necessary in accordance with 45 CFR 164.404
  - (ii) if required (and to the extent permitted under applicable law), immediate notice to the Secretary of the Department of Health and Human Services (“HHS”), including maintaining a log or other documentation of Privacy Breaches to be provided to the Secretary on an annual basis in accordance with 45 CFR 164.408
  - (iii) if required, notice to a media outlet in accordance with 45 CFR 164.406
- (h) Notice to Plan and Board.
- (i) Immediately following execution of this Addendum, Board will provide TPA with written notice identifying the Plan’s and the Board’s designated representative for purposes of receiving notices required by TPA under this Addendum.
  - (ii) Board agrees to provide prompt written notice to TPA of any changes to the names or positions of employees identified by Board as a designated representative of the Board and/or the Plan. TPA shall have no duty to inquire whether the list of Designated Persons is accurate.
  - (iii) Board shall indemnify and hold TPA, its employees, agents and Affiliates harmless for any and all liability TPA may incur as a result of any improper use or disclosure of PHI by Employer or a designated representative. TPA shall indemnify and hold Board and any employee of the Board harmless for any and all liability Board or its employees may incur as a result of any improper use or disclosure of PHI by TPA, its employees, agents, or Affiliates.
- (i) To the extent applicable, TPA, the Board and the Plan agree to comply with the provisions of the Electronic Data Interchange Rule with respect to PHI disclosed by the parties. .

**B.4 TPA acting as Agent of the Board**

The following services are performed by TPA as an agent of the Board and not on behalf of the Plan:

- (i) Services that facilitate and report the enrollment and disenrollment of employees and their eligible dependents in the Plan.
- (ii) Services that facilitate the payment of premiums under the Group Health Plan.

The Parties acknowledge that information created or received by TPA in its capacity as agent of the Board is not PHI and is not subject to the HIPAA Privacy Rule, Electronic Data Interchange Rule, and Security Rule. Any such information received by TPA as agent of the Board shall be deemed confidential information subject to the terms and conditions of confidentiality set forth in the Agreement.

**B.5 Term/Termination**

- (a) Term. This Addendum shall continue until the Agreement is terminated or as set forth herein.
- (b) Termination for Cause. Upon a Party’s knowledge of a material breach of this Addendum by the other Party, the non-breaching Party shall either:
  - (i) Provide an opportunity for the breaching Party to cure the breach within 30 days or, if longer, such other reasonable period time, or end the violation and terminate this Addendum and, where necessary, the Agreement between the parties with respect to the services if the breaching Party does not cure the breach as set forth herein; or
  - (ii) Immediately terminate this Addendum and, where necessary, the Agreement if the breaching Party has breached a material term of this Agreement and cure is not possible; or
  - (iii) If neither termination nor cure is feasible, the non-breaching Party shall report the violation to the Secretary.
- (c) Effect of Termination. Upon termination of this Addendum, for any reason, TPA shall return or destroy all PHI received from Board and/or the Plan, or created or received by TPA on behalf of the Plan, except to the extent determined infeasible as set forth herein. This provision shall also apply to PHI that is in the possession of subcontractors or agents of TPA. In the event that TPA reasonably determines that returning or destroying the PHI is infeasible, TPA shall provide of the conditions that make return or destruction infeasible. In the event that TPA determines that return or destruction of the PHI is infeasible, TPA will continue to extend the



2012 FSA Administration Fees Marketing Analysis

PLAN HIGHLIGHTS	Professional Benefit Administration		AMERIFLEX	BENEFIT CONCEPTS	CHARD SNYDER	DISCOVERY BENEFITS	FLEXCORP	WAGWORKS
	Current	Renewal	Proposed	Proposed	Proposed	Proposed	Proposed	Proposed
Set Up Fee	N/A	None	Waived if including 100+ insureds at time of application	\$1,000	Included	Included	\$500	\$500
Administration Fees - PEPM	\$4.24	\$4.24	\$4.95	\$5.50	\$5.25	\$4.90	\$4.50	\$5.00
Debit Card Fee	\$2.12	\$2.12	Included in admin fee	Included in admin fee	Included in admin fee	Included in admin fee	Included in admin fee	Included in admin fee
Renewal Fees	N/A	None	\$175	None	None	None	Waived	None
<b>Cost Analysis:</b>	<b>\$8,777</b>	<b>\$8,777</b>	<b>\$6,831</b>	<b>\$8,590</b>	<b>\$7,245</b>	<b>\$6,762</b>	<b>\$6,710</b>	<b>\$8,000</b>
Assumptions:	115 FSA; 0 DCA	115 FSA; 0 DCA	115 FSA; 0 DCA	115 FSA; 0 DCA	115 FSA; 0 DCA	115 FSA; 0 DCA	115 FSA; 0 DCA	115 FSA; 0 DCA
Implementation	N/A	Included	Included	Included	Included	Included	Included in admin fee	Included in admin fee
Employer Manual	Not Included	Q&A Guides and other educational material available via website at no additional charge	Not Included	Not Included	Included	Included	Included	Included in admin fee
Enrollment Kits	Included in above admin fee	Includes PDF via e-mail	\$2.25 PE to produce and mail new member packet	Standard enrollment materials and online enrollment included	Included for standard mailings, unassembled. If requested, assembled kits can be provided at cost of \$1.25 per kit to assemble w/o envelope, \$1.50 per kit to assemble w/envelope.	Included on-line or paper	Included in admin fee	
Record Keeping	Included in above admin fee	Included in admin fee	Included in admin fee	Included in admin fee	Included	Included in admin fee	Included in admin fee	
Reports	Included in above admin fee	Monthly ER reports included	Included in admin fee; however some ad hoc reports are available at additional cost	On-line reports included	Included	Standard reports included	Included in admin fee	
Debit Card	\$0.75 two initial cards \$10.00 per additional card	Included in admin fee	2 initial cards included \$10 per additional/stolen/lost card	Two initial cards included \$10.00 per set of two additional cards	Included. Add'l cards for spouse/dependents over age 18 included. \$10 per lost/stolen card	Included in admin fee	Included in admin fee	
Direct Deposit		Included in admin fee	Included in admin fee	Included in admin fee	Included	Included in admin fee	Included in admin fee	
Direct Mail		Will provide reimbursement checks for manual claims processing and mail direct to the participant at no additional charge.	Included in admin fee	Included in admin fee	Included	Included in admin fee	Not Indicated	
Employee Statements	Included in above admin fee; issued quarterly	Available via website	Included in admin fee; issues semi-annually	Included in above admin fee; emailed quarterly and mailed at year end	Included with each reimbursement check and email quarterly.	Included electronically	Available Online and year end	
Discrimination testing	Included in above admin fee	Included upon request	\$500	Included as required	Included	Included upon request	Included in admin fee	
5500 preparation	Included in above admin fee	Will provide information to assist with IRS Form 5500 Schedule C when requested by the employer.	\$650	Included as required	Included	Included upon request	Included in admin fee	
SPD/Plan Document	Included in above admin fee	Included	\$750	Included in above admin fee	Included	Included	Included in admin fee	
Amendments	Included in above admin fee	\$150 - SPD/Plan Documents amendments	\$200 to \$300	Included unless midyear changes are requested or mandated by the IRS, then \$250 per plan update	Included	Included	Included in admin fee	
Minimum Monthly Admin Fee	None	\$75	None	\$100	\$41.66 monthly (\$500 annually)	\$150	Not Indicated	
Fee Guarantee Period	Through 12/31/2012	3 Year	3 year with 3 year contract	2 Year	5 Year	3 Year	1 Year	
Notes:	3% annual fee increase effective 1/1/2013	No annual fee increase for the first three years	N/A	0% annual fee increase	N/A	N/A	\$50 per month compliance fee included in above total. Fee quote good through 12/31/12	

Actual rates will be based on final enrollment  
 THIS BENEFIT SUMMARY IS FOR ILLUSTRATION PURPOSES ONLY.  
 This proposal is not to be construed as an exact or complete analysis of the policies nor as legal evidence of insurance.  
 The provisions of the actual policy will prevail.  
 THIS INFORMATION IS PROPRIETARY AND SHOULD NOT BE DISTRIBUTED.

