

LIMITED ADMINISTRATIVE SERVICES AGREEMENT

Between

NORTHWEST GROUP SERVICES AGENCY, INC.

And

County of Cuyahoga

This Agreement for administrative services is made and entered into by and between **Northwest Group Services Agency, Inc.**, with principal offices in Maumee, Ohio ("NWGS"), and County of Cuyahoga with principal offices in Cleveland, Ohio ("CLIENT").

The **Effective Date** of this Agreement is January 1, 2014 through December 31, 2016.

In consideration of the mutual promises and covenants contained in this Agreement, together with all exhibits, the Client and NWGS agree as follows:

ARTICLE I Definitions

- 1.1 Flexible Spending Account ("FSA") means a health flexible spending arrangement or dependent care assistance flexible spending arrangement, as described in proposed Internal Revenue Services ("IRS") regulations under Internal Revenue Code ("Code") §125.
- 1.2 Plan means the cafeteria plan together with flexible spending arrangement (or arrangements) maintained by Client, or portions of that plan (or plans), with respect to which administrative services are to be provided under this Agreement by NWGS. The formal name of the Plan is: County of Cuyahoga - Flexible Benefit Plan.
- 1.3 Plan Administrator (or Administrator) means the person named in the documents describing the Plan as responsible for the operation and administration of the Plan. If no such person is identified, then the Client will be deemed to be the Plan Administrator.

ARTICLE II

Relationship Between the Parties

- 2.1 In performing its obligations under this Agreement, NWGS operates within a framework of Plan management policies and practices authorized or established by the Plan Administrator. Accordingly, NWGS acts upon the instruction of the Plan Administrator, and NWGS does not have final authority, discretion, or responsibility in the administration of the Plan. So, NWGS is not a Plan fiduciary; and its duties and authority are strictly limited as described in this Agreement.
- 2.2 The Plan Administrator is ultimately responsible for interpreting the provisions of the Plan and determining questions of eligibility for Plan participation.

ARTICLE III

Duties of NWGS

- 3.1 NWGS will provide FSA employee communication material which are appropriate and available from NWGS, including enrollment forms, if elected by Client.
- 3.2 NWGS will provide FSA claim forms and claim reimbursement schedule for Plan participants.
- 3.3 NWGS will provide an administrative procedures guide.
- 3.4 NWGS will provide FSA record management for the Client's accounts. NWGS will prepare and provide records required to assist Client regarding audits of the operation of the Plan, legal action or regulatory review.
- 3.5 NWGS will make FSA benefit payments and process claims in accordance with the terms of the Plan which are in effect and which have been communicated to NWGS by the Client at the time the services are provided:
 - (a) Claims will be processed using NWGS normal claims processing procedures which take into account a reasonable and good faith interpretation of Code §§125, 105, and 129 (as applicable), and taking into account interpretations of those sections by the IRS in proposed regulations.
 - (b) However, if the Plan Administrator makes a final decision to approve or deny a claim which is different than a determination made by NWGS and insists that NWGS follow the Plan Administrator's decision, NWGS will promptly issue an approval or denial of the claim accordingly, provided the Plan Administrator's decision does not violate applicable law and the Plan Administrator's instruction is first communicated to NWGS in writing.

- (c) Claim reimbursements will be processed on a semimonthly basis.
 - (d) Claims payments will be made by NWGS on NWGS check stock.
 - (e) Checks shall be mailed to the Client for forwarding to Plan participants unless in return for the payment of an additional fee, the Client instructs NWGS to mail the checks directly to the participants.
- 3.6 NWGS will provide Plan participants who have had a FSA claim wholly or partially denied with a written explanation of the reason for the denial, in accordance with the provisions of the plan.
- 3.7 NWGS will notify the Client on a timely basis as to amounts necessary to cover FSA benefit payments, in accordance with the banking arrangement described in Article VI. NWGS shall not be considered the insurer, or underwriter of the liability of the Client to provide benefits for the Plan participants.
- 3.8 NWGS will provide the following reports to the Client:
 - (a) At the beginning of the Plan year:
Participation Payroll Report.
 - (b) Reports during the Plan year:
Client Payment Register.*
FSA Statement of Account.*
*Provided upon clients request. (I.E. monthly, quarterly, after each reimbursement period.)
 - (c) At Plan year end or calendar year end the account accrual information will include:
Employee account forfeiture amounts.
Calendar year-end dependent care report to support the Client's W-2 preparation, if applicable.
- 3.9 NWGS will send timely notice of FSA account balance and reminder of forfeiture possibility to the Client for delivery to Plan participants as of the end of each quarter of the Plan year, unless the Client pays the fee for mailing directly to participants as provided in Section 3.5(d) of this Agreement.
- 3.10 NWGS will offer one performance of Code §125, §105, and §129 non-discrimination testing based on Company Plan and employee data supplied by the Client and report the results of the testing to the Client. Testing services provided by NWGS do not include analysis of the results.
- 3.11 NWGS will provide a Plan Document format to the Client to assist Client in preparing the formal documentation of the Plan. NWGS will furnish an updated Plan Document format or

amendment to the Client as required by changes in applicable laws or regulation. NWGS will provide a master Summary Plan Description (SPD) for the Plan. The SPD will contain information as to the steps that may be taken if a participant wishes to submit his or her claim for review. The Client will be responsible for distribution of the SPD to all Plan Participants.

- 3.12 NWGS will provide the information in its custody to assist the Client with its responsibility for compliance with IRS Form 5500 Series filing requirements.
- 3.13 NWGS will provide periodic informational releases to assist the Client in keeping informed about relevant legislative or regulatory developments.
- 3.14 NWGS is entitled to rely and act based upon documents, letters, electronic communications, or telephone communications which are confirmed in writing and provided to it by the Client or Plan Administrator. Reliance will continue until the time the Client or the Plan Administrator notifies NWGS in writing of any change or amendment to those communications.
- 3.15 NWGS will not be responsible for any delay or lack of performance of services under this Agreement attributable to the Client's failure to provide any information, fee payments, or benefit payments as required under this Agreement.
- 3.16 NWGS is responsible for compliance with any applicable state law requiring NWGS to be licensed in order to provide assistance in the administration of cafeteria plans and flexible spending accounts. As of the date of the Agreement, NWGS is duly licensed, if required, to provide such assistance to the Client and will continue to maintain or acquire such licensing.
- 3.17 NWGS will perform its duties under this Agreement using the same degree of ordinary care, skill, prudence, and diligence that a reasonable provider of administrative services would use in similar circumstances. NWGS shall have no responsibility to investigate the truthfulness or accuracy of any information provided to it by the Client or Plan participants.
- 3.18 NWGS shall have the right to retain outside service providers to assist it in performing the duties delegated to it under this Agreement. All such outside service providers shall be provided at the expense of NWGS.

Performance Guarantee

	% of Guarantee of Performance	% of Risk
Claims Processing		

Claims Processing & Turnaround			
	Manual Claims	100% falls below 98%	15%
	Debit Card Claims	100% falls below 98%	15%
Claims Payment Accuracy (based on employees submissions)			
	Manual Claims		
	Debit Card Claims	100% falls below 98%	15%
Telephone Responsiveness			
	Calls Receiving Busy Signal	100% falls below 98%	15%
	Call Abandonment	100% falls below 98%	15%
	Returned Phone Calls	100% falls below 98%	15%
	Customer Service	100% falls below 98%	15%
Member Satisfaction		99.8% retention ratio	

ARTICLE IV Duties of the Client

- 4.1 The Client will provide adequate funds to honor FSA claims reimbursement payments under the Plan on a timely basis, in accordance with the banking arrangement described in Article VI.
- 4.2 The Client will provide to NWGS a current copy of the Plan Document(s) adopted by the Client in establishing the Plan, and other appropriate materials governing the administration of the Plan.
- 4.3 The Client will provide timely written notice to NWGS of rules, interpretations, and procedures concerning the Plan which may affect NWGS responsibilities under this Agreement.
- 4.4 The Client will provide accurate information to NWGS, using NWGS's prescribed format and methods, as to the number and names of persons covered by the Plan and any other information necessary to enable NWGS to provide the services required by this Agreement.
- 4.5 The Client is responsible for selecting legal or tax counsel to provide advice to the Client with respect to the law and the Plan. The Client acknowledges that NWGS cannot provide professional tax or legal services to the Client.

- 4.6 The Client and NWGS is solely responsible for compliance with all applicable provisions of law respecting the Client's Plan, including preparation and adoption requirements including preparation and filing of IRS Form 5500 Series. With respect to these duties, the Client agrees to assume sole responsibility for any action taken by NWGS at the Client's direction.
- 4.7 The Client will make full payment for services rendered under this Agreement when due. However if full payment is not made when due, payment in full must be made by the end of a grace period of thirty (30) days to enable services under this Agreement to continue without interruption. NWGS may provide written notice by regular U.S. mail to the Client requesting payment of the deficiency in full by the end of the thirty (30) day period.
- 4.8 In accordance with the applicable claims review provisions of the Plan, the Client will make ultimate decisions regarding any reimbursement presented under the Plan which is in dispute.

ARTICLE V

Records

- 5.1 NWGS will make all records and reimbursement files in its possession which pertain to the Plan available to the Client, upon reasonable request by the Client.
- 5.2 If requested by the Client and at the Client's expense, NWGS will deliver all such records and files to the Client or a representative of the Client within a reasonable period of time.
- 5.3 The Client and NWGS both must retain copies of all such files and records for a period of six (6) years or longer if required by an applicable state law.

ARTICLE VI

Banking

- 6.1 The rights and obligations of the Client and NWGS under this Article VI shall be regulated through a "Banking Agreement" substantially in the form presented in the Banking Arrangement.
- 6.2 The Client agrees that funds provided to honor all FSA claims reimbursements under the Plan will be United States money, which will be agreed upon in the Banking Arrangement, which is attached to this Agreement.

ARTICLE VII

Fees for Services

- 7.1 NWGS shall be entitled to a fee for services provided under this Agreement described in the Service Fee Schedule, which is attached to this Agreement.

- (a) The Client agrees to pay to NWGS the full balance of billed Ongoing Fees within thirty (30) days from the date of the bill. Ongoing Fees are billed the month following the date the services are rendered; bills are sent to Clients by U.S. first class mail.
- 7.2 If payments for administrative services provided under this Agreement are not made on a timely basis, a late charge of \$25 shall be assessed for Plans with fewer than 100 participants. Payments made after the grace period allowed in the invoice or billing arrangement are not "timely". NWGS will not be obligated to provide services under this Agreement in the event that full payment is not made when due, until such payment is made.
- 7.3 The Plan is not an insurance product. None of the service fee charges are, or can be considered to be, premium. Therefore, in the event that it is determined by a taxing authority that premium taxes or other taxes of a similar nature are due and payable with respect to any payment of such fees, if NWGS is required to pay any such taxes for the Plan, the Client agrees to reimburse NWGS for all amounts paid including, but not limited to, interest and penalties, notwithstanding the above. Such reimbursements are to be made by the Client not later than thirty-one (31) days following payment by NWGS. The Client's liability in this regard shall continue beyond the term of this Agreement as to any act or omission which occurred during the term of this Agreement.

ARTICLE VIII

Contract Period

- 8.1 This Agreement shall be in effect for a period of three (3) year from January 1, 2014 until December 31, 2016 unless terminated earlier as provided in Article I, below.

ARTICLE IX

Termination

- 9.1 Either party may terminate this Agreement at any time upon written notice to the other party ninety (90) days in advance of the date of termination, unless another date is agreed upon by both parties.
- 9.2 Also, this Agreement will terminate as of the date the first of the following events occurs in the event that written notice is provided by NWGS or the Client where written notice is discretionary:
 - (a) The service fee is not paid within thirty-one (31) days of the date it is due and NWGS desires that this Agreement terminate.
 - (b) The Client fails to provide adequate funds to honor reimbursement payments on a timely basis and NWGS desires that this Agreement terminate.
 - (c) NWGS ceases to be duly licensed, if licensing is required and the Client desires that this Agreement terminate.

- (d) Either party ceases to do business.
 - (e) The Client terminates the Plan.
 - (f) The bankruptcy, insolvency or liquidation of either party.
 - (g) The commission by either party of any material breach of this Agreement which is not cured, or any act of fraud, misconduct or bad faith in connection with the performance of its duties under this Agreement if the other party desires that this agreement terminate. However, a material breach of this Agreement may be cured within thirty (30) days after written notice from the other party.
- 9.3 All obligations, duties, and responsibilities of NWGS under this Agreement shall cease as of the date of terminations of this Agreement. However, NWGS shall complete processing of claims incurred prior to the termination date at no cost to the Client.
- 9.4 Upon termination of this Agreement, any monetary obligation of the Client to NWGS shall become immediately due and payable.

ARTICLE X

Confidentiality

- 10.1 The Client and NWGS acknowledge and agree that in the course of performing their respective duties under this Agreement, they may acquire or obtain access to or knowledge of health records, physician and provider notes and bills and claims and other written and oral information of a personal nature ("Confidential Information"). This information is at all times the property of the Client or the Plan and not NWGS, even if it is received by NWGS.
- 10.2 The Client and NWGS will safeguard the Confidential Information to ensure that the information is not improperly disclosed. NWGS will afford access to this information to other person only as reasonably directed in writing by the Client or the Plan Administrator, and NWGS shall have no further obligation with respect to this information.

ARTICLE XI

General Provisions

- 11.1 The participant shall hold NWGS harmless if the participant fails to timely transfer funds to pay all proper claims on a timely basis. Participant's liability shall be limited solely to the full extent of a proper claim and shall not be construed to cover damages, attorney fees, court costs, or any other matters. NWGS shall have no liability in the event that the participant's failure to transfer funds on a timely basis results in the participant's reinsurance or excess stop-loss carrier exempting any claim amounts from applying toward satisfaction of excess loss deductibles.

- 11.2 NWGS agrees to indemnify and hold the Client harmless against any and all loss, liability or damage (including the payment of reasonable attorney's fees) which the Client may incur by reason of failure of NWGS to abide by this Agreement or for NWGS's negligence, failure to act, fraud, embezzlement, or other misconduct. Clerical error is not negligence if NWGS makes a prompt attempt to correct the error once it is discovered.
- 11.3 The obligations under sections 11.1 and 11.2 of this Article XI shall continue beyond the term of this Agreement as to any act or omission which occurred during the term of this Agreement.
- 11.4 Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provisions of this Agreement at any time.
- 11.5 If any provisions of this Agreement are determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement.
- 11.6 This Agreement may be changed at any time by written amendment, provided such amendment is agreed to and signed by duly authorized representatives of both NWGS and the Client.
- 11.7 Notices:
- (a) All notices to the Client under this Agreement shall be personally delivered or sent by a method no less rapid than first class mail, with postage prepaid, or facsimile, to the Client at the following address:
County of Cuyahoga
Benefits Department
1255 Euclid Avenue – Suite 310
Cleveland, OH 44115
 - (a) All notices to NWGS under this Agreement shall be personally delivered or sent by a method no less rapid than first class mail, with postage prepaid, or facsimile, to NWGS at the following address:
Northwest Group Services Agency, Inc.
1910 Indianwood Circle
Maumee, Ohio 43537
Attn: Michelle Limes
Telephone Number: (419) 887-1215
FAX Number: (419) 887-1214

Addendum

Insurance Requirements

NWGS shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Agreement:

NWGS shall procure, maintain, and pay premiums for the following forms of insurance:

- a) Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- b) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- c) Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Requirements for All Insurance Coverage

1. The insurance policies of NWGS required for this Agreement, with the exception of the All Risk Equipment Insurance and Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:
 - i) Thirty (30) days prior notice of cancellation or material change;
 - ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
2. The insurance required for this Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
3. These insurance provisions shall not affect or limit the liability of NWGS stated elsewhere in this Agreement or as provided by law.
4. NWGS shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
5. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
6. If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.
7. NWGS shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Agreement.

Indemnification

NWGS hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions NWGS, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by NWGS under any terms or provisions of this Agreement.

NWGS acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. NWGS agrees that no provision of this Agreement or any other contract or agreement between NWGS and the County may be interpreted to obligate the County to indemnify or defend NWGS or any other party.

Governing Law/Jurisdiction

This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts. NWGS hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

Annual Appropriations

All of the County's obligations under this Agreement are contingent upon the County Council's appropriating the funds on an annual basis necessary for the continuation of this Agreement in any year. In the event the funds necessary for the continuation of this Agreement are not appropriated or approved, the County will notify NWGS of such occurrence in writing. This Agreement shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of this Agreement and shall not be considered to be a breach or default on the part of the County, and shall not result in the County having liability to NWGS or any third party for any penalty, liability or any other expense.

Electronic Signature

NWGS agrees on behalf of the its Officers, Employees, Subcontractors, Subgrantees, Agents or Assigns, that all documents requiring County signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. NWGS also agrees on to be bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

Service Fee Schedule

In accordance with all articles of this Agreement, NWGS is entitled to be paid by Client the following fees for services:

\$3.50 per employee served per month for an annual amount not to exceed \$42,360.00, and a 3-year (January 1, 2014-December 31, 2016) total not to exceed \$127,890.00

The signatures below bind both parties to the terms of this Agreement.

County of Cuyahoga, County Executive
Cleveland, Ohio

By: 

2014-01-13 09:04:54

Name: _____

Title: _____

Northwest Group Services Agency, Inc.
Maumee, Ohio

By:  12/9/13

Name: Jeff Smelcer

Title: President