

**WEB-TPA EMPLOYER SERVICES, LLC  
FLEXIBLE SPENDING ADMINISTRATION AGREEMENT**

**THIS AGREEMENT** is effective this 1<sup>st</sup> day of **October 2005**, by and between **LAKE COUNTY BOARD OF COUNTY COMMISSIONERS**, with an address of 315 West Main Street, Tavares, Florida 32778-7800 hereinafter referred to as the "Plan Sponsor" and **WEB-TPA EMPLOYER SERVICES, LLC – "WEB-TPA"**, a Texas Limited Liability Company, hereinafter referred to as the "Contract Administrator".

**WHEREAS**, The Plan Sponsor has established an Employee Flexible Spending Account Plan, hereinafter called the "Plan", which provides for reimbursement of certain dependent care, health and welfare benefits on a pre-tax basis to and for certain eligible individuals as defined by the Plan's Master Plan Document, such individuals being hereinafter referred to as "Plan Members". This plan is offered as a benefit under the Plan Sponsor's "Cafeteria Plan" in accordance with Section 125 of the Internal Revenue code;

**WHEREAS**, The Plan Sponsor desires to engage the services of the Contract Administrator to provide administration services for the Plan;

**NOW THEREFORE**, in consideration of the mutual covenants and conditions as contained herein the parties hereto agree as follows:

**SECTION I - DUTIES AND RESPONSIBILITIES OF THE CONTRACT ADMINISTRATOR**

- 1.01 The Contract Administrator agrees to perform the following administrative services for the Plan Sponsor:
- (a) assist in the preparation and printing of employee hand outs and enrollment forms, the vendor expense for which shall be billed to the Plan Sponsor on an incurred basis and other material necessary to the operation of the Plan;
  - (b) Enrollment/eligibility and elections keyed or imported into system;
  - (c) process all flex claims presented for payment on a bi-weekly basis and prepare and distribute, EOB(s), benefit checks or drafts to employees and/or service providers;
  - (d) answer inquiries from the Plan Sponsor, Plan Members and service providers concerning requirements, procedures or benefits of the Plan;
  - (e) online entering and inquiry of deposits and payments;
  - (f) maintain all account information and claim files for the Plan;

- (g) prepare and provide to the Plan Sponsor monthly reports for reimbursement detail; reimbursement summary and reimbursement check payment detail for all deposits and disbursements made to or on behalf of Plan Members;
- (h) forward "Employee Unused Funds Notice" to all plan members 2 months prior to year end and 2 months after for notification of available unused funds and deadlines and;
- (i) assist the Plan Sponsor in preparing reports and returns required by any local, state or federal government pertaining to the operation of the Plan.

## **SECTION II - DUTIES AND RESPONSIBILITIES OF THE PLAN SPONSOR**

- 2.01 The Plan Sponsor shall have final authority in determining benefit provisions and Plan language describing such benefit provisions as outlined in the Plan's Master Plan Document.
- 2.02 The Plan Sponsor shall have final authority in determining the eligibility of claims to be paid by the Plan in accordance with rules governing the administration of Section 125 of the IRS code.
- 2.03 The Plan Sponsor shall be responsible for collecting all appropriate contributions to pay Plan benefits from all Plan Members in the Plan. Failure to collect any such contributions shall not relieve the Plan Sponsor from its obligation to fund the Plan as required to pay all benefits under the Plan and fees incurred by the Plan.
- 2.04 The Plan Sponsor shall be responsible for taking the following actions:
  - (a) provide the Contract Administrator with a complete and accurate list of all individuals eligible for benefits under the Plan and who are enrolled in the Plan;
  - (b) notify the Contract Administrator on a timely basis of any changes in eligibility and participation;
  - (c) distribute (and return to Contract Administrator when necessary) to all eligible Plan Members all appropriate and necessary materials and documents, including but not limited to, summary plan descriptions, Plan language amendments, enrollment forms, applications and notice forms as may be necessary for the operation of the Plan or to satisfy the requirements of state or federal laws or regulations;
  - (d) satisfy any and all reporting, notice, disclosure, and return requirements imposed by state and federal statutes and regulations upon the Plan;
  - (e) utilize and maintain the Contract Administrator as the single, sole and exclusive contract administrator to assist the Plan Sponsor in administering the Plan; and
  - (f) provide the Contract Administrator with any additional information incidental to the Plan as may be requested by the Contract Administrator from time to time.

**SECTION III - FUNDING**

- 3.01 The Contract Administrator shall deposit all monies forwarded by the Plan Sponsor into the Plan Sponsor's account(s).

**SECTION IV - CONTRACT ADMINISTRATOR'S FEES**

- 4.01 The Contract Administrator shall receive consideration in accordance with **Schedule A** herein incorporated by reference. All monthly fees shall be paid by the 10th day of each month.
- 4.02 If the Plan Sponsor, for any reason whatsoever, fails to make a required fee payment or necessary contribution for claim payment as requested by the Contract Administrator on a timely basis, the Contract Administrator may suspend the performance of its services to the Plan until such time as Plan Sponsor makes the proper remittance. The Contract Administrator may charge interest to the Plan Sponsor on all past fees due to Contract Administrator at the rate of one and one-half percent (1-1/2%) per month or the maximum rate allowed by law, whichever is less.
- 4.03 In the event this contract terminates, the Contract Administrator and Plan Sponsor may agree in writing to have the Contract Administrator process the incurred but unpaid claims at such rate as agreed upon.

## **SECTION V - LIMITS OF THE CONTRACT ADMINISTRATOR'S RESPONSIBILITY**

- 5.01 The Contract Administrator shall have no responsibility, risk, liability or obligation for the funding of Plan benefits. The responsibility and obligation for funding Plan benefits shall be solely and totally the responsibility of the Plan Sponsor.
- 5.02 Contract Administrator shall be liable for the recovery of claim processing errors arising from the Contract Administrator's performance pursuant to the terms of this Agreement, excepting liability for any such error that is reasonable, made in good faith, and within acceptable industry standards. Contract Administrator shall use diligent efforts toward the recovery of any loss therefrom. Contract Administrator's liability, if any, shall be limited to that amount in excess of the claim amount(s) payable under the terms of the Plan.
- 5.03 It is understood and agreed that the Contract Administrator is and shall remain an independent contractor with respect to the services being performed by the Contract Administrator pursuant to this Agreement and shall not for any purpose be deemed an employee of the Plan Sponsor, nor shall the relationship of the parties be deemed that of partners or joint ventures. Contract Administrator does not assume any responsibility, risk, liability or obligation for the general policy direction of the plan, the adequacy of the funding thereof, or any act or omission or breach of duty by parties other than Contract Administrator. Contract Administrator shall not be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the plan. Excepting all instances of gross negligence, willful misconduct and fraud, Plan Sponsor agrees to hold Contract Administrator free and harmless from any claim, demand, liability or cause of action, (including reasonable legal and accounting fees) arising in any manner out of the Plan or its administration or the performance by Contract Administrator pursuant to the terms of this Agreement. In all instances of gross negligence, willful misconduct and fraud, Plan Sponsor agrees to indemnify Contract Administrator for any claim, demand, liability or cause of action, (including reasonable legal and accounting fees) arising in any manner out of Plan Sponsor's performance pursuant to the terms of this Agreement.
- 5.04 It is understood and agreed that the Contract Administrator is not a fiduciary to the Plan. Notwithstanding anything in the Agreement to the contrary any delegation of authority or duties pursuant to this Agreement construed by a court of law or governmental agency to make the Contract Administrator a fiduciary shall be null and void, and such duties are hereby retained by the Plan Sponsor.

## **SECTION VI - RECORDS**

- 6.01 During the term of this agreement, Contract Administrator shall maintain all records and files in conjunction with the administrative services to be performed hereunder. All records and files generated are, and will remain, the property of the Plan Sponsor. The term "records and files" shall mean the claim files, unissued and canceled checks, bank statements, enrollment cards, copies of the account ledger sheets of any Plan account(s), and copies of any computer records.

- 6.02 The Plan Sponsor shall not have access to any records containing personal information, unless appropriate releases and authorizations are presented to the Contract Administrator. Personal information includes, but is not limited to, medical record information as well as any other individually identifiable information gathered in connection with a benefit transaction.
- 6.03 The Contract Administrator shall within thirty (30) days written notice from the Plan Sponsor, allow the Plan Sponsor or an authorized agent to inspect or audit all records and files, except as described in Section 6.02 above, maintained by the Contract Administrator at the administrative office of the Contract Administrator during normal business hours. The Plan Sponsor shall be liable for any and all fees to be charged by the auditor. Any such agent or auditor that has access to the records and files maintained by the Contract Administrator shall agree not to disclose any proprietary and confidential information used in the business of the Contract Administrator.

#### **SECTION VII - DISCLOSURE**

- 7.01 It is recognized and understood by the Plan Sponsor that the Contract Administrator is not an insurance company.
- 7.02 It is recognized and understood by the Plan Sponsor that the Contract Administrator is subject to all laws and regulations applicable to contract administrators.

#### **SECTION VIII - TERM OF AGREEMENT**

- 8.01 This Agreement shall become effective at 12:01 a.m. on the 1<sup>st</sup> day of **October 2005**, and shall remain in effect until terminated pursuant to Section XII of this Agreement. The aforementioned effective date, and each annual effective date anniversary, shall also be known as the Plan's "Anniversary Date".

#### **SECTION IX - TERMINATION**

- 9.01 It is understood and agreed that either party shall have the right to terminate this agreement on any Anniversary Date by:
- (a) the Plan Sponsor giving the Contract Administrator not less than sixty (60) days advance written notice of termination.
  - (b) the Contract Administrator giving the Plan Sponsor not less than sixty (60) days advance written notice of termination.

- 9.02 Contract Administrator may, at its sole discretion, terminate this agreement in the event that the Plan Sponsor fails to properly fund the Plan within fifteen (15) days of receiving a written request to do so from the Contract Administrator.
- 9.03 Upon termination by either party, the Contract Administrator shall, within ninety (90) days of the termination of services under this agreement, deliver to the Plan Sponsor a complete and final accounting of the financial status of the Plan. Contract Administrator shall, upon the request and at the expense of the Plan Sponsor, provide computer runs detailing various aspects of Plan Sponsor's Plan. Upon termination, the Plan Sponsor understands and agrees that, except where there is evidence of gross negligence or willful misconduct or fraud, the Contract Administrator is released from all liability, loss, or damage arising in any manner out of the Plan or its administration or the performance by Contract Administrator pursuant to the terms of this Agreement.
- 9.04 It is understood that at termination of this Agreement, the Contract Administrator shall process incurred-but-not-reported and not previously processed claims of "run-out" at a fee mutually agreed upon by Plan Sponsor and Contract Administrator.
- 9.05 All notices or other communications required by this section shall be effective upon deposit with the United States Postal Service for delivery by certified mail, return receipt requested.

#### **SECTION X - BONDING**

- 10.01 The Contract Administrator shall, within thirty (30) days of the receipt of a written demand, present evidence to the Plan Sponsor that its employees are fully bonded as required by state and federal statutes and regulations.

#### **SECTION XI - MISCELLANEOUS PROVISIONS**

- 11.01 If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provision had not been included.
- 11.02 This Agreement may be amended by Plan Sponsor and Contract Administrator at any time by mutual written consent of both parties. No amendment, under any circumstances, may reduce any benefit which might be paid for any cause prior to the amendment or prejudice a claim.
- 11.03 Plan Sponsor is hereby designated as agent for service of legal process on behalf of the plan at its principal office.
- 11.04 It is understood that Contract Administrator will from time to time take advantage of processing efficiencies through system developments of communication and/or interface

with other systems or via the Internet. It is further understood that these improved system capabilities of data base interrogation, file maintenance or claims processing will be offered to the Plan Sponsor at a negotiated fee.

- 11.05 It is understood and agreed that Plan Sponsor is the named Plan Administrator within the meaning of Section 414(g) of the Internal Revenue Code of 1986, as amended, and is the named Administrator within the meaning of Section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.
- 11.06 This Agreement is the entire agreement of the parties and supersedes all prior contracts, representations, understandings, memoranda and other communications between the parties.

**SECTION XII- ATTACHMENTS TO THE ADMINISTRATION CONTRACT**

- 12.01 The following list of Schedules attach to and become part of the body of this contract and are herein incorporated by reference when selected by the Plan Sponsor as part of the administrative services to be performed by the Contract Administrator.

TITLE OF AGREEMENT

PLAN SPONSOR'S ASSENT

**FEE SCHEDULE A**

Yes  No

**SCHEDULE A - FEE SCHEDULE**

- A. Pursuant to the Administration Agreement, Plan Sponsor shall provide to Contract Administrator the following administrative fees and other costs.

<u>FEE(S)</u>	<u>PER PARTICIPANT ACCOUNT PER MONTH</u>
<b>Flexible Spending Account Administration (Includes Debit Card)</b>	<b>\$5.50</b>

If additional services are requested by Plan Sponsor, and Contract Administrator agrees to deliver additional services, then the fee for these additional services will be computed based upon the time and materials needed to deliver those additional services. Prior to furnishing these additional services, Contract Administrator will obtain the approval from the Plan Sponsor. Print costs for group specific enrollment forms, employee handouts and similar items will be a pass through cost at the expense of the Plan Sponsor and are not included in the fees above.

*IN WITNESS THEREOF*, the Parties hereto sign their names as duly authorized officers and have executed this Agreement.

PLAN SPONSOR

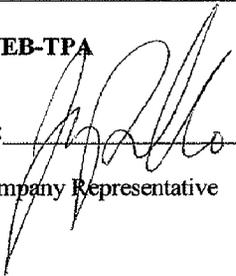
**Lake County Board of County Commissioners**

By: \_\_\_\_\_

Welton Cadwell, Chairman

CONTRACT ADMINISTRATOR

**WEB-TPA**

By:  \_\_\_\_\_

Company Representative

**ATTEST:**

\_\_\_\_\_  
James C. Watkins, Clerk of the Board of County  
Commissioners of Lake County, Florida

**Approved as to form and legality:**

\_\_\_\_\_  
Sanford A. Minkoff, Lake County Attorney

This \_\_\_\_\_ day of \_\_\_\_\_, 2005.