

CLEVELAND PUBLIC LIBRARY

Human Resources Committee

January 19, 2021

RESOLUTION APPOINTING NORTH COAST ADMINISTRATORS AS THIRD-PARTY ADMINISTRATOR OF THE CLEVELAND PUBLIC LIBRARY'S FLEXIBLE SPENDING ACCOUNT AND COMMUTER BENEFITS PLAN, RATIFYING CONTRACT, AND AMENDING FLEXIBLE SPENDING ACCOUNT PLAN

WHEREAS, In January 2012, the Board of Trustees of the Cleveland Public Library adopted a Restated Flexible Spending Account Plan for employees of the Cleveland Public Library in accordance with Internal Revenue Code Section 125 (Cafeteria Plan) permitting employees to make pre-tax contributions to health and dependent care Flexible Spending Accounts for qualified out-of-pocket expenses; and

WHEREAS, In January 2012, this Board also appointed NEO Administration Company as the third party administrator for the Library's Flexible Spending Account Plan and Commuter Benefits Plan effective January 1, 2012. NEO Administration Company has since undergone a change of ownership and has become BASIC Benefits; and

WHEREAS, In December 2020, the Library administration worked with its benefits consultant, Taylor Oswald, to locate a new vendor to provide administration services to replace BASIC Benefits, and the Library determined that North Coast Administrators, Inc. was the best suited provider of such services; and

WHEREAS, On December 23, 2020, the Library entered into a Flexible Spending Accounts and Commuter Accounts Service Agreement with North Coast Administrators, Inc., effective January 1, 2021 for an initial term of two years and that will automatically renew for one-year terms thereafter. The total cost of services under the agreement is not expected to exceed \$25,000 for the year 2021; and

WHEREAS, With the passage of the stimulus bill in December 2020, Congress has allowed for additional flexibility with regard to Health Care Flexible Spending Accounts and Dependent Care Account that permits extending the grace period during which participants may spend unused funds from 2020 and 2021 to 12 months instead of the usual two and one-half months in order to afford employees and their families greater flexibility during these times of economic distress; and

WHEREAS, Employers who desire to make these changes available to their employees must adopt plan amendments to their Cafeteria Plans no later than one year after the end of the plan year in which the amendment is effective; now therefore be it

RESOLVED, That North Coast Administrators, Inc. is hereby appointed the third-party administrator of the Flexible Spending Account Plan and Commuter Benefits Plan effective January 1, 2021; and be it further

RESOLVED, That the Flexible Spending Accounts and Commuter Accounts Service Agreement entered into by the Library on December 23, 2020 is hereby ratified and approved; be it further

RESOLVED, That the Board of Trustees of the Cleveland Public Library hereby adopts and approves the attached amendment to the Cleveland Public Library's health care and dependent care Flexible Spending Account Plan, to allow extending the grace period for plan years 2020 and 2021 from two and one-half months to 12 months in the manner and to the extent described in the amendments, which changes shall be effective retroactive to January 1, 2021, and authorizes the Executive Director, CEO or his designee to execute the Plan amendment and any other instruments, documents, and amendments to Plans and agreements as may be necessary or appropriate to effectuate the terms of this Resolution.

Cleveland Public Library
Flexible Spending Accounts and Commuter Accounts
Service Agreement

As arranged by Oswald Company

December 23, 2020



North Coast Administrators, Inc.
24700 Center Ridge Road, Suite 260
Westlake, OH 44145
Phone (440) 835-4900
Toll Free (800) 677-6690
Fax (440) 835-1188

FLEXIBLE SPENDING & COMMUTER ACCOUNTS SERVICE AGREEMENT

This agreement dated December 23, 2020, specifies the services to be provided to Cleveland Public Library, hereafter referred to as "Company", in the ongoing administration of the Company's Section 125 and Section 132 Reimbursement Account Type Plans, and the specified responsibilities of the Company to begin January 1, 2021.

ADMINISTRATOR

The Company shall be the Plan Administrator and North Coast Administrators, Inc., hereinafter referred to as "NCA", shall be engaged as a subcontractor in the performance of administrative services for the plan.

The Company is the plan administrator and the claims fiduciary as described under ERISA and the Internal Revenue Code. As such, only you have the power to waive, alter, breach or modify any of the terms and conditions of the Section 125 and Section 132 plans ("Plan"), and you exercise all discretion, control or authority with respect to the disposition of the available benefits.

The Company shall execute a Funding Agreement and provide all funding required to cover all payments (e.g., FSA claim reimbursements, payment requests and card transactions) made under the Plan in accordance with the Funding Agreement. NCA shall not be obligated to issue any payments in the absence of an executed Funding Agreement. You have the sole responsibility and obligation to provide us with all required funding.

The Company shall comply with all applicable laws (e.g., HIPAA, COBRA and ERISA) with respect to your Plan and make any required filings with the appropriate governmental agencies, including the DOL and the IRS.

ADMINISTRATIVE SERVICES TO BE PROVIDED BY NCA

- Create a Plan Document, as requested, according to the specifications of the Company
- Create a Summary Plan Description (SPD), as requested, according to the specifications of the Company
- Provide annual Open Enrollment materials for the benefit, including educational materials. As requested, NCA will provide participant Online Open Enrollment portal to be used during the enrollment process OR use Company Election Form/HRIS system if applicable.
- Process initial enrollment to initiate the Administrative function and issue debit cards as applicable to employees, spouses and eligible dependents. NCA will issue limited access debit card to each eligible plan participant for the purposes of paying for claims under FSA and Commuter account plan guidelines.
- Prepare confirmation letters and/or emails to employees to verify election amounts.
- Provide each participant with information on how reimbursements work and how to file claims.
- Process submitted claims (submitted via portal, fax, mail).
- Provide reimbursement checks or direct deposit to employees based upon reimbursement schedule as agreed upon by Company and NCA for paper/manual claims.

- Provide payment register to Company to view the reimbursements issued for each reimbursement schedule.
- Post employee contributions to the Company's Plan according to per pay election(s) made by the participants. (Changes from Company will be reflected on participant accounts as provided by Company.)
- Provide Company access to the Employer Portal, with online access to a suite of reports, including Balance Reports, Year to Date Reports, Claim Amounts, Payments and Card Transactions.
- Provide each participant a Statement of Accounts at least bi-annually – *included on check*, and access to account information online.
- Provide Discrimination testing and reports at year-end (mid-year as requested) based on elections, contributions and disbursements or as often as applicable to ensure compliance.
- Provide forms to the Company for use by the Company in communicating Participant's termination and changes of family status.
- Continually monitor debit card transactions on an ongoing basis by receipt/EOB request and other measures not limited to direct contact with the transaction point of service to ensure compliance with proper card usage and immediately inform Company of any question or suspicion of unauthorized or inappropriate card activity.
- Deactivate or temporarily deactivate any debit card until such time as NCA is satisfied that plan guidelines have been adhered to.

COMMUNICATION SERVICES TO BE PROVIDED BY NCA

- Present informational seminar to the HR staff and employee group annually at corporate office and main area offices on an as needed basis. NCA offers virtual options.
- Design and supervise communication and enrollment process.
- Provide toll free number for direct access to Benefit Plan counselors.
- Design employee benefit communication piece for benefit plans based on benefits design currently offered.
- Provide online access to enable employees to evaluate information concerning the FSA and Commuter plan guidelines and review their account balance online. Free mobile app is also available with plan information and option to submit claims.
- Issue warning notices to plan participants with balances to claim before the end of the Plan Year and prior to the end of the claim runout period for submitting claims incurred for that Plan Year.

RESPONSIBILITIES OF THE COMPANY

- Secure legal review of the Reimbursement Account Plan Document and Summary Plan Description from Company's legal counsel.
- Notify NCA of new benefit eligibility and qualifying event or status change of an employee via file, form or email, to allow NCA to immediately change the applicable annual election amount of such plan participant's file and issue changes as appropriate to their card. Please note NCA cannot accept eligibility notices via voicemail.
- Notify NCA of termination of an employee via file, form, or email, to allow NCA to immediately deactivate such plan participant's card. Please note NCA cannot accept termination notices via voicemail.
- Notify any terminated participants eligible for COBRA as to their rights for continuation coverage for their health care reimbursement account. NCA will notify terminated participants as appropriate if the Company utilizes NCA for current COBRA administration services.
- Responsibility for all costs incurred for subsequent card transactions made by the terminated employee, such as a force post transaction after card has been deactivated.
- Maintain a written Section 125 and Section 132 plan document that is consistent with the terms and administrative procedures of the Plan. It is the Company's responsibility to review and verify the accuracy of the Plan Document and SPD for the Company's Plan, and to ensure that those documents are in accord with applicable laws.
- Company assures that amounts entered into the claims system will be available for payment of card transactions, via the daily settlement process.
- Company ensures to effectively communicate problems or service issues within the claims system within five business days of when they occur to enable NCA to appropriately review and respond to service issues promptly.
- Company agrees to reasonably ensure compliance with proper use of the card and take whatever action is necessary to investigate and resolve errors in card transactions asserted by Plan Participants within five (5) business days, and to immediately allow NCA to cancel access to the Plan Participant's Account when Cards are reported as being lost or stolen. Company further agrees to notify NCA upon suspicion or confirmation of inappropriate, unauthorized, or fraudulent card use.
- Company agrees to initiate any action required in the event plan(s) become discriminatory.
- Company will execute a Business Associate Agreement with NCA as required by HIPAA Privacy and Security regulations.
- Pay fees provided for in this Agreement.

LIABILITY AND RELEASE OF CLAIMS

NCA agrees to hold the Company harmless and expressly releases all claims against the Company relative to any claim or cause of action, directly or indirectly, which results from their failure to comply with Flexible Spending Account Plan guidelines under IRS Code Section 125, and Commuter Benefit Plan guidelines under IRS Code Section 132, or provisions of this Agreement. The Company

and the NCA accept responsibility and are not released from any claim or cause of action for their failure to comply with the terms of this Agreement.

FEES AND TERMS OF PAYMENT

Each month, NCA will submit an invoice statement showing the amount of fees due. The Company will pay NCA the amount within **30 days of receipt of the statement**. The fee schedule is attached as Exhibit A. NCA has the right to change the fee schedule by giving at least 60 days' notice to the Company. However, fees will remain at the same rate for the period of two years.

AUDIT RIGHTS, REPORTS AND DATA

The Company may inspect any FSA or Commuter plan transactions, procedures, records, and participation files maintained by the Company relating to their employees/retirees or covered dependents, subject to 10 days written notice to North Coast Administrators, Inc.

All reports and data remain the property of the Company. NCA will provide the Company data, upon request, in the electronic format used by NCA in its administration procedures. The Company will be issued a password to enable them to access the Alegeus WCA reporting system and print reports on an as needed basis.

OWNERSHIP RIGHTS

The Company and NCA acknowledge that they shall have no title or ownership rights to any of the products or material relating to the benefits delivered to the Company in conjunction with this Agreement. They mutually agree that they shall not license, market, copy, modify, sell or transfer any of such materials, in whole or part. It is expressly understood and agreed that such materials are proprietary to each. The Company and NCA acknowledge and recognize that any breach of this paragraph may result in irreparable harm to each other, and, accordingly, agrees that in addition to and not in lieu of all other remedies available to the both by reason of such breach they shall be entitled to equitable relief (including, without limitation, specific performance and injunctive relief) to enjoin the occurrence and continuation of such breach.

TERM OF AGREEMENT

The term of this agreement shall be two (2) years, beginning January 1, 2021 through December 31, 2022, and shall be automatically renewed from year to year thereafter. This agreement may be amended at any time by mutual agreement as reflected in writing signed by both parties hereto. Either party may cancel this agreement by giving ninety (90) days written notice to the other party. In the event of cancellation of this agreement, NCA agrees to the continuation of the Plan's administration for claims incurred prior to the cancellation date, for a period of thirty (30) days following the effective date of cancellation. The administration fee shall be the fee in force as of the date of cancellation.

ARBITRATION

Any dispute under this Agreement may, upon mutual agreement by the parties, be settled in Cuyahoga County, Ohio by arbitration before a panel of three arbitrators, one selected by the Company, one selected by NCA, and the third be appointed by the two so chosen. The initiating party notifying the other party of its demand for arbitration, identifying the arbitrator, whom it selected, providing a brief description of the dispute, and demanding that the other party select its arbitrator, shall commence the arbitration. If the third arbitrator is not selected within 14 days after the demand is serviced the third arbitrator shall be selected in accordance with the rules and regulations of the Commercial Arbitration Rules of the American Arbitration Association. Except as otherwise provided herein, arbitrations under this section shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration

Association or its successor. Each party shall pay for the arbitrator of its selection and the parties shall share equally the expenses of the third arbitrator and other arbitration expenses. Attorney fees and other expenses incurred by a party in preparing for the arbitration are not "arbitration expenses" and shall be paid by the party incurring them. In the discretion of the arbitrators, the prevailing party in the arbitration proceeding may be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings. Notwithstanding the foregoing, nothing in this section is intended to limit either party from the rights and remedies available to them at law and equity.

MISCELLANEOUS

This agreement shall be governed by, and construed in accordance with the laws of the State of Ohio and in the courts situated in that State. The rights, duties, obligations and/or benefits of NCA under this agreement shall not be assigned without written consent of the Company.

NCA agrees to keep confidential all information concerning the Company, its affiliates and employees, covered employees and beneficiaries that it acquires in connection with the performance of its services hereunder.

The Parties intend that NCA shall be an independent contractor and that nothing in this Agreement shall be deemed or construed as creating a principal, agent, partnership, joint venture, or exclusive dealing relationship between the Parties. NCA will be fully and solely responsible for the supervision, control, performance, compensation, benefits, withholdings, and workers compensation coverage of any of its employees and agents. NCA affirms that its employees are not "public employees" for purposes of membership in the Ohio Public Employees Retirement System.

This Agreement may be executed in counterparts, each of which taken together shall constitute one single agreement between the parties. Faxed signatures or signatures in PDF copies transmitted via e-mail will be deemed original signatures for all purposes.

In witness whereof, the parties have caused this agreement to be executed by their duly authorized officers of the day and year first written.

North Coast Administrators, Inc.

By: Nicolette Rios

Date: December 23, 2020

Name: Nicolette Rios

Title: President & CEO

Cleveland Public Library

By: Felton Thomas, Jr.

Date: December 30, 2020

Name: Felton Thomas, Jr.

Title: Executive Director, CEO

**ADMINISTRATIVE FEES SCHEDULE
Cleveland Public Library
Exhibit A:**

INITIAL SET UP: \$150.00

- Plan design
- Data configuration and import
- Open Enrollment services and materials
- Virtual or onsite meetings, and/or recorded enrollment webinar
- Plan Documents and SPDs
- Enrollment confirmation to participants

MONTHLY ADMINISTRATION FEE:

Per participant per month (Medical/Dependent Care or Commuter) \$4.25

Per participant per month (Medical/Dependent Care and Commuter) \$5.50

Minimum monthly fee (Applies only if the monthly administrative fee times the number of participants is less than this amount) \$150.00

Bundled annual renewal fees for FSA & COBRA (*beginning 2022*) \$200.00

Rates will be guaranteed for a two year period.

**CLEVELAND PUBLIC LIBRARY FLEXIBLE BENEFITS PLAN
AMENDMENT**

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to CLEVELAND PUBLIC LIBRARY Flexible Benefits Plan (the "Plan"). The sponsor intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the date the Employer elects in Section 2.1 below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section, or other numbering designations.

**ARTICLE II
ELECTIONS**

- 2.1 **Effective Date.** The provisions of this Amendment, unless otherwise indicated are effective as of January 1, 2020 (the "Effective date").
- 2.2 **Extension of the Grace Period.** Effective as of January 1, 2020, the Employer amends their plan to allow for the extension of the Grace Period for the twelve month period immediately following the plan year. Additionally, a twelve month grace period will be allowed immediately following the plan year ending in 2021.

On December 27, 2020, legislation was passed impacting section 125 cafeteria plans. This law was designed to provide temporary flexibility for employers and employees and assist with the National response to the 2019 Novel Coronavirus outbreak (COVID-19). A health and/or dependent care FSA ending in 2020 or 2021 with a grace period may extend its grace period to last up to 12 months rather than the usual 2.5 months.

Specifically, for the plan year or grace period ending in 2020, the employer hereby amends the plan to allow employees to use dollars remaining in that plan as of the last day in the plan year for claims. Additionally, a twelve month grace period will be allowed immediately following the plan year ending in 2021. Health FSA amounts must still be used for medical expenses and dependent care FSA amounts must still be used for dependent care expenses.

The extension of the period for incurring claims under this guidance is an extension of coverage that is not HSA compatible, consequently any employee with unused amounts remaining at the end of a plan year or grace period ending in 2020 will not be eligible to contribute to an HSA during the extend period (unless the FSA is a limited FSA).

This amendment has been executed this _____ day of _____, _____.

Name of Employer:
Cleveland Public Library

By: _____
EMPLOYER

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of CLEVELAND PUBLIC LIBRARY hereby certifies that the following resolutions were duly adopted on _____ (date) and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the Plan (the Amendment) is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: _____

Signed: _____

[print name/title]

**SUMMARY OF MATERIAL MODIFICATIONS
for the**

CLEVELAND PUBLIC LIBRARY
Flexible Benefits Plan

**I
INTRODUCTION**

This is a Summary of Material Modifications regarding the Employer Name Flexible Benefits Plan (the “Plan”). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description (“SPD”) previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

**II
SUMMARY OF CHANGES**

Extension of the Grace Period.

Effective as of the effective date, the Employer amends their plan to allow for the extension of the Grace Period for twelve months immediately following the plan year.

On December 27, 2020, legislation was passed impacting section 125 cafeteria plans. This law is designed to provide temporary flexibility for employers and employees and assist with the National response to the 2019 Novel Coronavirus outbreak (COVID-19). A health and/or dependent care FSA ending in 2020 and 2021 with a grace period may extend its grace period to last up to 12 months rather than the usual 2.5 months.

Specifically, for the plan year or grace period ending in 2020 and 2021, the employer hereby amends the plan to allow employees to use dollars remaining in those plans as of the last day in the plan year for claims. Health FSA amounts must still be used for medical expenses and dependent care FSA amounts must still be used for dependent care expenses.

The extension of the period for incurring claims under this guidance is an extension of coverage that is not HSA compatible, consequently any employee with unused amounts remaining at the end of a plan year or grace period ending in 2020 or 2021 will not be eligible to contribute to an HSA during the extend period (unless the FSA is a limited FSA).