

Smith Action Program, Inc. Flexible Benefit Plan

This Document is effective January 1, 2005.

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PREAMBLE

Effective as of the date set forth below, Smith Action Program, Inc. established the Smith Action Program, Inc. Flexible Benefit Plan (the "Plan" or "Flexible Benefit Plan") for its Employees for purposes of providing eligible Employees with the opportunity to choose from among the Benefit Package Options available under the Plan. The Plan is intended to qualify as a Flexible Benefit Plan under the provisions of Code Section 125.

SAMPLE

Smith Action Program, Inc. Flexible Benefit Plan

ARTICLE I DEFINITIONS

1.01 "Affiliated Employer" means any entity who is considered with the Employer to be a single employer in accordance with Code Section 414(b), (c), or (m).

1.02 "After-tax Contribution(s)" means amounts withheld from an Employee's Compensation pursuant to a Flexible Benefit Plan Enrollment form after all applicable state and federal taxes have been deducted. Such amounts are withheld for purposes of purchasing one or more of the Benefit Package Options available under the Plan.

1.03 "Anniversary Date" means the first day of any Plan Year.

1.04 "Benefit Package Option(s)" means those Qualified Benefits available to a Participant under this Plan as set forth in the Summary Plan Description, as amended and/or restated from time to time.

1.05 "Board of Directors" means the Board of Directors or other governing body of the Employer (the "Board"). The Board of Directors, upon adoption of this Plan, appoints the Plan Administrator to act on the Employer's behalf in all matters regarding the Plan.

1.06 "Change in Status" means any of the events described in the Summary Plan Description, as well as any other events included under subsequent changes to Code Section 125 or regulations issued under Code Section 125, that the Plan Administrator (in its sole discretion) decides to recognize on a uniform and consistent basis as a reason to change the election mid-year. Note: See the Summary Plan Description for requirements that must be met to permit certain mid-year election changes on account of a Change in Status.

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

1.08 "Compensation" means the cash wages or salary paid to an Employee by the Employer.

1.09 "Dependent" means any individual who is a tax dependent of the Participant as defined generally in Code Section 152; however, for health plan purposes, a Dependent is defined as set forth in Code Section 105(b) and for Dependent Care Flexible Spending Accounts purposes, a Dependent also means an individual described in Code Section 21(e)(5) (i.e., dependent of the parent with custody for the greatest portion of the year).

1.10 "Effective Date" of the Plan means March 1, 1992. This is the date the Plan was established. It will not necessarily coincide with the date of this document as set forth in the title page.

1.11 "Employee" means an individual who the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include any of the following: (a) any leased employee (including, but not limited to, those individuals defined in Code § 414(n)); (b) an individual classified by the Employer as a contract worker or independent contractor; (c) an individual classified by the Employer as a temporary employee or casual employee, whether or not any such persons are on the Employer's W-2 payroll; and (d) any individual who performs services for the Employer but

who is paid by a temporary or other employment agency or any employee covered under a collective bargaining agreement, except as otherwise provided for in the collective bargaining agreement.

1.12 "Employer" means the Smith Action Program, Inc. and any Affiliated Employer who adopts the Plan pursuant to authorization provided by the Employer. Notwithstanding the previous sentence when the Plan provides that the Employer has a certain power (e.g., the appointment of a third party administrator, entering into a contract with a third party insurer, or amendment or termination of the plan) the term "Employer" shall mean only Smith Action Program, Inc.. Affiliated Employers who adopt the Plan shall be bound by the Plan as adopted and subsequently amended unless they clearly withdraw from participation herein. Affiliated Employers who have adopted the Plan are set forth in the Summary Plan Description.

1.13 "ERISA", if applicable, shall mean the Employee Retirement Income Security Act of 1974, as amended.

1.14 "Highly Compensated Individual" means an individual defined under Code Section 125(e), as amended, as a "highly compensated individual" or a "highly compensated employee."

1.15 "Key Employee" means an individual who is a "key employee" as defined in Code Section 125(b)(2), as amended.

1.16 "Nonelective Contribution(s)" means any amount that the Employer, in its sole discretion, may contribute on behalf of each Participant to provide benefits for such Participant and his or her Dependents, if applicable, under one or more of the Benefit Package Option(s) offered under the Plan. The amount of employer contribution that is applied towards the cost of the Benefit Package Option(s) for each Participant and/or level of coverage shall be subject to the sole discretion of the Employer and may be adjusted upward or downward at any time in the contributing Employer's sole discretion. The amount shall be calculated for each Plan Year in a uniform and nondiscriminatory manner and may be based upon the Participant's dependent status, commencement or termination date of the Participant's employment during the Plan Year, and such other factors as the Employer shall prescribe. To the extent set forth in the Summary Plan Description or enrollment material, the Employer may make Nonelective Contributions available to Participants and allow Participants to allocate the Nonelective Contributions among the various Benefit Package Options offered under the Plan in a manner set forth in the Summary Plan Description or enrollment material. In no event will any Nonelective Contribution be disbursed to a Participant in the form of additional, taxable Compensation except as otherwise provided in the Summary Plan Description or enrollment material.

1.17 "Participant" means an Employee who becomes a Participant pursuant to Article II.

1.18 "Plan" means this Flexible Benefit Plan, as set forth herein.

1.19 "Plan Administrator" means the person(s) or Committee identified in the Summary Plan Description that is appointed by the Employer with authority, discretion, and responsibility to manage and direct the operation and administration of the Plan. If no such person is named, the Plan Administrator shall be the Employer.

1.20 "Plan Year" shall be the period of coverage set forth in the Summary Plan Description.

1.21 "Pre-tax Contribution(s)" means amounts withheld from an Employee's Compensation pursuant to a Flexible Benefit Plan Enrollment Form before any applicable state and federal taxes have been deducted. The amounts are withheld for purposes of purchasing one or more of the Benefit Package Options available under the Plan. This amount shall not exceed the premiums or contributions attributable to the most costly Benefit Package Option afforded hereunder, and for purposes of Code Section 125, shall be treated as an Employer contribution (this amount may, however, be treated as an Employee contribution for purposes of state insurance laws).

1.22 "Qualified Benefit" means any benefit excluded from the Employee's taxable income under Chapter 1 of the Code other than Sections 106(b), 117, 124, 127, or 132 and any other benefit permitted by the Income Tax Regulations (i.e., any group-term life insurance coverage that is includable in gross income by virtue of exceeding the dollar limitation on nontaxable coverage under Code Sec. 79). Notwithstanding the previous sentence, long-term care insurance is not a "Qualified Benefit."

1.23 "Flexible Benefit Plan Enrollment Form" means the actual or deemed agreement pursuant to which an eligible Employee or Participant elects to contribute his share of the cost of chosen Benefit Package Options with Pre-tax or After-tax Contributions and/or Benefit Credits (if offered under the Plan) in accordance with Article III herein. If the Employer utilizes an interactive voice response (IVR) system or web-based program for enrollment, the Flexible Benefit Plan Enrollment Form may be maintained on an electronic database in accordance with all applicable federal and/or state laws.

1.24 "Spouse" means an individual who is legally married to a Participant (and who is treated as a spouse under the Code).

1.25 "Summary Plan Description" or "SPD" means the Flexible Benefits Plan SPD and all appendices incorporated into and made a part of the SPD that is adopted by the Employer and attached to this Plan Document as Attachment I, as amended from time to time. The SPD and appendices are incorporated hereto by reference.

1.26 "Student" means an individual who, during each of five (5) or more calendar months during the Plan Year, is a full time student at any college or university, the primary function of which is the conduct of formal instruction, and which routinely maintains a regular faculty and curriculum and normally has an enrolled student body in attendance at the location where its educational activities are regularly presented.

ARTICLE II ELIGIBILITY AND PARTICIPATION

2.01 Eligibility to Participate. Each Employee who satisfies the eligibility requirements set forth in the SPD shall be eligible to participate in this Plan as of the Eligibility Date set forth in the SPD. Eligibility to participate in this Plan means only that the Eligible Employee is entitled to contribute his share of the cost of applicable Benefit Package Options for which he is eligible with Pre-tax Contributions. The provisions of this Article are not intended to override any eligibility requirement(s) or waiting period(s) specified in the applicable Benefit Package Options and the terms of eligibility and participation for the Benefit Package Option(s) offered under the Plan shall be subject to the requirements specified in the governing documents of the Benefit Package Options.

2.02 Termination of Participation. Participation shall terminate on the earliest of the dates set forth in the SPD.

2.03 Qualifying Leave Under Family Leave Act. Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the Family and Medical Leave Act of 1993 (the "FMLA"), then to the extent required by the FMLA, the Participant will be entitled to continue the Participant's Benefit Package Options that provide health coverage on the same terms and conditions as if the Participant were still an active Employee. The requirements for continuing coverage, procedures for FMLA leave and payment option(s) provided by the Employer (as described above) will be set forth in the SPD and will be administered in accordance with the regulations issued under Code Section 125 and in accordance with the FMLA.

2.04 Non-FMLA Leave. If a Participant goes on an unpaid leave of absence that does not affect eligibility under this Plan or the Benefit Package Options chosen by the Participant, then the Participant will continue to participate and the contributions due for the Participant will be paid by one or more of the payment options described in the SPD and implemented by the Employer on a uniform and consistent basis in accordance with the Employer's internal policy and procedure. If a Participant goes on an unpaid leave that affects eligibility under this Plan or the Benefit Package Options chosen by the Participant, the election change rules in Section 3.04 will apply. If such policy requires coverage to continue during the leave but permits a Participant to discontinue contributions while on leave, the Participant will, upon returning from leave, be required to repay the contributions not paid by the Participant during the leave.

ARTICLE III PREMIUM ELECTIONS

3.01 Election of Contributions. A Participant may elect any combination of Pre-tax Contributions or After-tax Contributions (to the extent set forth in the enrollment material) to fund any Benefit Package Option available under the Plan, provided that only Qualified Benefits may be funded with Pre-tax Contributions. The Employer may, but is not required to, allocate Non-elective Contributions to one or more Benefit Package Options offered under the Plan and to the extent set forth in the SPD or enrollment material, may allow the Participants to allocate his allotted share of Nonelective Contributions among the various Benefit Package Options in a manner set forth in the SPD or enrollment material.

3.02 Initial Election Period.

- (a) **Currently Eligible Employees.** An Employee who is eligible to become a Participant in this Plan as of the Effective Date must complete, sign and file a Flexible Benefit Plan Enrollment Form with the Plan Administrator during the election period (as specified by the Plan Administrator) immediately preceding the Effective Date of the Plan in order to become a Participant on the Effective Date. The elections made by the Participant on this initial Flexible Benefit Plan Enrollment Form shall be effective, subject to Section 3.04, for the Plan Year beginning on the Effective Date.
- (b) **New Employees and Employees Who Have Not Yet Satisfied The Plan's Waiting Period.** An Employee who becomes eligible to become a Participant in this Plan after the Effective Date must complete, sign and file a Flexible Benefit Plan Enrollment Form with the Plan Administrator during the Initial Election Period set forth in the SPD or the enrollment material. Participation will commence under this Plan as set forth in the SPD. Coverage under the component Benefit Package Options will be effective in accordance with the governing provisions of such Benefit Package Options.

- (c) **Failure to Elect.** An eligible Employee who fails to complete, sign and file a Flexible Benefit Plan Enrollment Form in accordance with paragraph (a) or (b) above during an initial election period may become a Participant on a later date in accordance with Section 3.03 or 3.04.

3.03 Annual Election Period. Each Employee who is a Participant in this Plan or who is eligible to become a Participant in this Plan shall be notified, prior to each Anniversary Date of this Plan, of his right to become a Participant in this Plan, to continue participation in this Plan, or to modify or to cease participation in this Plan, and shall be given a reasonable period of time in which to exercise such right: such period of time shall be known as the Annual Election Period. The date on which the Annual Election Period commences and ends will be set forth in the SPD or the enrollment material. An election is made during the Annual Election Period in the manner set forth in the SPD. The consequences of failing to make an election during the Annual Election Period will be set forth in the SPD.

3.04 Change of Elections. A Participant shall not make any changes to the Pre-tax Contribution amount or, where applicable, to the Participant's elected allocation of Nonelective Contributions except under the circumstances set forth in the SPD and for changes made during the Annual Election Period, changes caused by termination of employment or cessation of eligibility, and changes pursuant to the Family and Medical Leave Act. Except as provided in the SPD for HIPAA special enrollment rights arising from the birth, adoption, or placement for adoption of a child, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the first pay period coinciding with or immediately following the date that the election change was filed) but, as determined by the Plan Administrator, election changes may become effective later to the extent the coverage in the applicable component plan commences later.

3.05 Impact of Termination of Employment on Election or Cessation of Eligibility. Termination of employment or cessation of eligibility shall automatically revoke any Flexible Benefit Plan Enrollment Form. Except as provided below, if revocation occurs under this Section 3.05, no new election with respect to Pre-Tax Contributions may be made by such Participant during the remainder of the Plan Year except as set forth in the SPD.

ARTICLE IV PREMIUM PAYMENTS AND CREDITS AND DEBITS TO ACCOUNTS

4.01 Source of Benefit Funding. The cost of coverage under the component Benefit Package Options shall be funded by Participant's Pre-tax and/or After-tax Contributions and/or any Nonelective Contributions provided by the Employer. The required contributions for each of the Benefit Package Options offered under the Plan shall be made known to employees in enrollment materials. Pre-tax or After-tax Contributions (as elected by the Employee on the Flexible Benefit Plan Enrollment Form and permitted by the Employer) shall equal the contributions required from the Participant less any available Nonelective Contributions allocated thereto by the Employer, or where applicable, the Participant for coverage of the Participant or the Participant's Spouse or Dependents under the Benefit Package Options elected by the Participant under this Plan. Amounts withheld from a Participant's Compensation as Pre-tax Contributions or After-tax Contributions shall be applied to fund benefits as soon as administratively feasible. The maximum amount of Pre-tax Contributions, plus any Nonelective Contributions made available by the Employer, shall not exceed the aggregate cost of the Benefit Package Options elected.

4.02 Reduction of Certain Elections to Prevent Discrimination. If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any requirement imposed by the Code or any limitation on Pre-tax Contributions allocable to Key Employees or to Highly Compensated Individuals, the Plan Administrator shall take such action(s) as (s)he deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation. Such action may include, without limitation, a modification or revocation of a Highly Compensated Individual's or Key Employee's election without the consent of such Employee.

ARTICLE V BENEFITS

5.01 Qualified Benefits. The maximum benefit a Participant may elect under this Plan shall not exceed the sum of the aggregate maximum premium and/or contribution for all Benefit Package Option(s) set forth in the SPD.

5.02 Cash Benefit. To the extent that a Participant does not elect to have the maximum amount of his Compensation contributed as a Pre-tax Contribution or After-tax Contribution hereunder, such amount not elected shall be paid to the Participant in the form of normal Compensation payments; provided, however, that any applicable Nonelective Contributions may not be received in the form of cash compensation, except as otherwise provided for in the SPD or the enrollment material.

ARTICLE VI PLAN ADMINISTRATION

6.01 Allocation of Authority. The Board of Directors or applicable governing body (or an authorized officer of the Employer) appoints a Plan Administrator that keeps the records for the Plan and shall control and manage the operation and administration of the Plan. The Plan Administrator shall have the exclusive right and absolute discretion to interpret the Plan and to decide all matters arising thereunder, including the right to make determinations of fact, and construe and interpret possible ambiguities, inconsistencies, or omissions in the Plan and the SPD issued in connection with the Plan. All determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following powers and duties:

- (a) To require any person to furnish such reasonable information as (s)he may request for the purpose of the proper administration of the Plan as a condition to receiving any benefits under the Plan;
- (b) To make and enforce such rules and regulations and prescribe the use of such forms as (s)he shall deem necessary for the efficient administration of the Plan;
- (c) To decide on questions concerning the Plan and the eligibility of any Employee to participate in the Plan and to make or revoke elections under the Plan, in accordance with the provisions of the Plan;
- (d) To designate other persons to carry out any duty or power which may or may not otherwise be a fiduciary responsibility of the Plan Administrator, under the terms of the Plan. Such entity will be referred to as a third party administrator and shall be identified in the SPD;

- (f) To keep records of all acts and determinations, and to keep all such records, books of account, data and other documents as may be necessary for the proper administration of the Plan;
- (g) To do all things necessary to operate and administer the Plan in accordance with its provisions.

6.02 Provision for Third-Party Plan Service Providers. The Plan Administrator, subject to approval of the Employer, may employ the services of such persons, as it may deem necessary or desirable in connection with the operation of the Plan and may rely upon all tables, valuations, certificates, reports and opinions furnished thereby. Such entity will be identified in the SPD as a third party administrator. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

6.03 Fiduciary Liability. To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

6.04 Compensation of Plan Administrator. Unless otherwise determined by the Employer and permitted by law, any Plan Administrator who is also an employee of the Employer shall serve without compensation for services rendered in such capacity, but the Employer shall pay all reasonable expenses incurred in the performance of their duties.

6.05 Bonding. Unless otherwise determined by the Employer, or unless required by any federal or state law, the Plan Administrator shall not be required to give any bond or other security in any jurisdiction in connection with the administration of this Plan.

6.06 Payment of Administrative Expenses. The Employer currently pays all reasonable expenses incurred in administering the Plan.

6.07 Funding Policy. The Employer shall have the right to enter into a contract with one or more insurance companies for the purposes of providing any Benefit Package Options offered under the Plan and to replace any of such insurance companies or contracts. Any dividends, retroactive rate adjustments or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and shall be retained by the Employer. The Employer will not be liable for any loss or obligation relating to any insurance coverage except as is expressly provided by this plan. Such limitation shall include, but not be limited to, losses or obligations that pertain to the following:

- (a) Once insurance is applied for or obtained, the Employer will not be liable for any loss which may result from the failure to pay premiums to the extent premium notices are not received by the Employer;
- (b) To the extent premium notices are received by the Employer, the Employer's liability for the payment of such premiums will be limited to such premiums and will not include liability for any other loss which result from such failure;

- (c) The Employer will not be liable for the payment of any insurance premium or any loss that may result from the failure to pay an insurance premium if the benefits available under this plan are not enough to provide for such premium cost at the time it is due. In such circumstances, the Employee will be responsible for and see to the payment of such premiums. The Employer will undertake to notify a Participant if available benefits under this plan are not enough to provide for an insurance premium, but will not be liable for any failure to make such notification;
- (d) When employment ends, the Employer will have no liability to take any step to maintain any policy in force except as may be specifically required otherwise in this plan, and the Employer will not be liable for or responsible to see to the payment of any premium after employment ends.

ARTICLE VII CLAIMS PROCEDURES

The Plan has established procedures for reviewing claims denied under this Plan and those claims review procedures are set forth in the SPD. The Plan's claim review procedures set forth in the SPD shall only apply to issues germane to the pre-tax benefits available under this Plan (i.e., such as a determination of: a Change in Status; change in cost or coverage; or eligibility and participation matters under this Flexible Benefit Plan document), and to the extent offered under the Plan, claims for benefits under the Reimbursement Accounts.

ARTICLE VIII AMENDMENT OR TERMINATION OF PLAN

8.01 Permanency. While the Employer fully expects that this Plan will continue indefinitely, due to unforeseen, future business contingencies, permanency of the Plan will be subject to the Employer's right to amend or terminate the Plan, as provided in Sections 8.02 and 8.03, below. Nothing in this Plan is intended to be or shall be construed to entitle any Participant, retired or otherwise, to vested or non-terminable benefits.

8.02 Employer's Right to Amend. The Employer reserves the right to amend at any time any or all of the provisions of the Plan. All amendments shall be made in writing and shall be approved by the Employer in accordance with its normal procedures for transacting business (e.g., by approval by the Board of Directors through a meeting or unanimous consent of all Board members). Such amendments may apply retroactively or prospectively as set forth in the amendment. Each Benefit Package Option shall be amended in accordance with the terms specified therein, or, if no amendment procedure is prescribed, in accordance with this section. Any amendment made by the Employer shall be deemed to be approved and adopted by any Affiliated Employer.

8.03 Employer's Right to Terminate. The Employer reserves the right to discontinue or terminate the Plan without prejudice at any time and for any reason without prior notice. Such decision to terminate the Plan shall be made in writing and shall be approved by the Employer in accordance with its normal procedures for transacting business. Affiliated Employers may withdraw from participation in the Plan, but may not terminate the Plan.

8.04 Determination of Effective Date of Amendment or Termination. Any such amendment, discontinuance or termination shall be effective as of such date as the Employer shall determine.

ARTICLE IX GENERAL PROVISIONS

9.01 Not an Employment Contract. Neither this Plan nor any action taken with respect to it shall confer upon any person the right to continue employment with any Employer.

9.02 Applicable Laws. The provisions of the Plan shall be construed, administered and enforced according to applicable federal law and the laws of the State of incorporation of the Plan Sponsor to the extent not preempted.

9.03 Requirement for Proper Forms. All communications in connection with the Plan made by a Participant shall become effective only when duly executed on any forms as may be required and furnished by, and filed with, the Plan Administrator.

9.04 Multiple Functions. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan.

9.05 Tax Effects. Neither the Employer, nor the Plan Administrator makes any warranty or other representation as to whether any Pre-tax Contributions made to or on behalf of any Participant hereunder will be treated as excludable from gross income for local, state, or federal income tax purposes. If for any reason it is determined that any amount paid for the benefit of a Participant or Beneficiary are includable in an Employee's gross income for local, federal, or state income tax purposes, then under no circumstances shall the recipient have any recourse against the Plan Administrator or the Employer with respect to any increased taxes or other losses or damages suffered by the Employees as a result thereof. The Plan is designed and is intended to be operated as a "Flexible Benefit Plan" under Section 125 of the Code.

9.06 Gender and Number. Masculine pronouns include the feminine as well as the neuter genders, and the singular shall include the plural, unless indicated otherwise by the context.

9.07 Headings. The Article and Section headings contained herein are for convenience of reference only, and shall not be construed as defining or limiting the matter contained thereunder.

9.08 Incorporation by Reference. The actual terms and conditions of the separate component Benefit Package Options offered under this Plan are contained in separate, written documents governing each respective benefit, and shall govern in the event of a conflict between the individual plan document, and this Plan as to substantive content. To that end, each such separate document, as amended or subsequently replaced, is hereby incorporated by reference as if fully recited herein. In addition, the SPD for this Plan contains many of the actual terms and conditions of this Plan. To that end, the SPD, as amended from time to time, is incorporated herein.

9.09 Severability. Should a court of competent jurisdiction subsequently invalidate any part of this Plan, the remainder thereof shall be given effect to the maximum extent possible.

9.10 Effect of Mistake. In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of distributions made or to be made to a Participant or other person, the Plan Administrator shall, to the extent it deems possible, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as will in its judgment accord to such Participant or other person the credits to the account or distributions to which he is properly entitled under the Plan. Such action by the Administrator may include withholding of any amounts due the Plan or the Employer from Compensation paid by the Employer.

IN WITNESS WHEREOF, the Employer has executed this Flexible Benefit Plan as of the date set forth below.

Smith Action Program, Inc.

By: _____

Title: _____

Date: _____

SAMPLE

**MEDICAL FLEXIBLE SPENDING ACCOUNT
Appendix A To The Smith Action Program, Inc.
Flexible Benefit Plan**

The Effective Date of this Document is January 1, 2005.

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SAMPLE

PREAMBLE

Effective as of the Effective Date set forth below, Smith Action Program, Inc. established this Medical Flexible Spending Account (the Medical FSA) to help provide full and complete medical care for those Employees who participate in the Employer's Flexible Benefit Plan ("Plan") and who, pursuant to the election procedures set forth in the Plan, choose to contribute to a Medical Care Reimbursement Account established pursuant to this Medical FSA Plan. This Medical FSA is intended to provide reimbursement of certain Eligible Medical Expenses incurred by the Participant and his/her eligible Dependents. The Employer intends that the Medical FSA qualify as a Code Section 105 self-insured medical reimbursement plan, and that the benefits provided under the Medical FSA be eligible for exclusion from the Participant's income for federal income tax purposes under Section 105(b) of the Code. This Medical FSA is a component of, and incorporated by reference into Smith Action Program, Inc. Flexible Benefit Plan and Articles VI, VII, VIII and IX of the Flexible Benefit Plan document apply also to this Medical FSA.

SAMPLE

ARTICLE IA DEFINITIONS

Unless otherwise specified, terms that are capitalized in this Appendix A have the same meaning as the defined terms in the Flexible Benefit Plan. The definitions of terms defined in this Appendix A, but not defined in the Flexible Benefit Plan, shall be applicable only with respect to this Appendix A. To the extent a term is defined both in the Flexible Benefit Plan and in this Appendix A, the term as defined in the Flexible Benefit Plan shall govern the interpretation of the Flexible Benefit Plan and the term as defined in this Appendix A shall govern the interpretation of this Medical FSA.

1.01A "Dependent" means any individual who is a tax dependent of the Participant as defined in Code Section 105(b).

1.02A "Effective Date" of this Medical FSA means **January 1, 2005**.

1.03A "Eligible Medical Expenses" means those expenses that are eligible for reimbursement under this Medical FSA as set forth in the SPD.

1.04A "Medical Care Reimbursement" shall have the meaning assigned to it by Section 4.01A of this Medical FSA.

1.05A "Highly Compensated Individual" means an individual defined under Code Section 105(h), as amended, as a "highly compensated individual" or a "highly compensated employee."

1.06A "Reimbursement Account" shall be the funding mechanism by which amounts are withheld from an Employee's Compensation and retained for future Medical Care Reimbursement (as defined in Section 1.04A herein). No money shall actually be allocated to any individual Participant Account(s); any such Account(s) shall be of a memorandum nature, maintained by the Administrator for accounting purposes, and shall not be representative of any identifiable trust assets. No interest will be credited to or paid on amounts credited to the Participant Account(s).

ARTICLE IIA ELIGIBILITY AND PARTICIPATION

2.01A Eligibility to Participate. Each Employee who satisfies the eligibility requirements set forth in the SPD shall be eligible to participate in this Medical FSA as of the Medical FSA Eligibility Date set forth in the SPD.

2.02A Termination of Participation. Participation shall terminate on the earliest of the dates set forth in the SPD.

2.03A Qualifying Leave Under Family Leave Act. Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the Family and Medical Leave Act of 1993 (the "FMLA"), then to the extent required by the FMLA, the Participant will be entitled to continue the Participant's coverage under this Medical FSA on the same terms and conditions as if the Participant were still an active Employee. The requirements for continuing coverage, procedures for FMLA leave and payment option(s) provided by the Employer (as described above) will be set forth in the SPD and

will be administered in accordance with the regulations issued under Code Section 125 and in accordance with the FMLA.

ARTICLE IIIA ELECTION TO PARTICIPATE

3.01A Initial Election Period.

- (a) **Currently Eligible Employees.** An Employee who is eligible to become a Participant in this Plan as of the Effective Date must complete, sign and file a Flexible Benefit Plan Enrollment Form with the Plan Administrator during the election period (as specified by the Plan Administrator) immediately preceding the Effective Date of the Plan in order to become a Participant on the Effective Date. The elections made by the Participant on this initial Flexible Benefit Plan Enrollment Form shall be effective, subject to Section 3.02A, for the Plan Year beginning on the Effective Date.
- (b) **New Employees and Employees Who Have Not Yet Satisfied The Plan's Waiting Period.** An Employee who becomes eligible to become a Participant in this Plan after the Effective Date must complete, sign and file a Flexible Benefit Plan Enrollment Form with the Plan Administrator during the Initial Election Period set forth in the SPD or the enrollment material. Participation will commence under this Plan as set forth in the SPD (but in no event prior to the election).
- (c) **Failure to Elect.** An eligible Employee who fails to complete, sign and file a Flexible Benefit Plan Enrollment Form in accordance with paragraph (a) or (b) above during an initial election period may become a Participant on a later date in accordance with Section 3.02A or 3.03A.

3.02A. Annual Election Period. Each Employee who is a Participant in this Plan or who is eligible to become a Participant in this Plan shall be notified, prior to each Anniversary Date of this Plan, of his right to become a Participant in this Plan, to continue participation in this Plan, or to modify or to cease participation in this Plan, and shall be given a reasonable period of time in which to exercise such right: such period of time shall be known as the Annual Election Period. The date on which the Annual Election Period commences and ends will be set forth in the SPD or the enrollment material. An election is made during the Annual Election Period in the manner set forth in the SPD. The consequences of failing to make an election during the Annual Election Period will be set forth in the SPD.

3.03A Change of Elections. A participant shall not make any changes to his or her election except for election changes permitted under the SPD, and for changes made during the Annual Election Period, changes caused by termination of employment or cessation of eligibility and changes pursuant to the Family and Medical Leave Act. Except as provided in the SPD for HIPAA special enrollment rights arising from the birth, adoption, or placement for adoption of a child, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the first pay period coinciding with or immediately following the date that the election change was filed) but, as determined by the Plan Administrator, election changes may become effective later to the extent the coverage in the applicable component plan commences later.

3.04A Impact of Termination of Employment on Election or Cessation of Eligibility. Termination of employment or cessation of eligibility shall automatically revoke any Flexible Benefit Plan Enrollment

Form. Except as provided below, if revocation occurs under this Section 3.04A, no new election with respect to the Plan may be made during the remainder of the Plan Year except as set forth in the SPD.

3.05A Reduction of Certain Elections to Prevent Discrimination. If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any requirement imposed by the Code or any limitation on Highly Compensated Individuals, the Plan Administrator shall take such action(s) as (s)he deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation.

ARTICLE IVA REIMBURSEMENTS

4.01A Medical Care Reimbursement. Each Participant's Medical Reimbursement Account will be credited with amounts withheld from the Participant's Compensation and any Nonelective Contributions allocated thereto by the Employer or where applicable, the Participant. The Account will be debited for Medical Care Reimbursements disbursed to the Participant in accordance with this Article IVA. The entire amount elected by the Participant on the Flexible Benefit Plan Enrollment Form as an annual amount for the Plan Year for Medical Care Reimbursement less any Medical Care Reimbursements already disbursed to the participant for Expenses incurred during the plan year shall be available to the Participant at any time during the Plan Year without regard to the balance in the Medical Care Account (provided that the periodic contributions have been made). Thus, the maximum amount of Medical Care Reimbursement at any particular time during the Plan Year will not relate to the amount that a Participant has had credited to his Medical FSA. In no event will the amount of Medical Care Reimbursements in any Plan Year exceed the annual amount specified for the Plan Year in the Flexible Benefit Plan Enrollment Form for Medical Care Reimbursement. Any amount credited to the Medical Care Account shall be forfeited by the Participant and restored to the Employer if it has not been applied to provide Medical Care Reimbursement within the run out period set forth in the SPD. Amounts so forfeited shall be used in a manner that is permitted within the applicable Department of Labor or Internal Revenue Service regulations. The maximum annual reimbursement under the Medical FSA shall be set forth in the SPD. The Employer may establish a minimum annual reimbursement amount as set forth in the SPD.

4.02A Receiving Medical Care Reimbursement. Payment shall be made to the Participant in cash as reimbursement for Eligible Medical Expenses incurred by the Participant or his Dependents while he is a Participant during the Plan Year for which the Participant's election is effective provided that the substantiation requirements of Section 4.03A herein are satisfied. However, if the employer so chooses the participant may choose to make payment for eligible medical expense with an electronic payment card arrangement. The terms of the electronic payment card arrangement, if applicable, will be set forth in the SPD.

4.03A Substantiation of Expenses. Each Participant must submit an expense for reimbursement in accordance with the terms of the SPD and provide the required substantiation set forth in the SPD or as otherwise requested by the Plan Administrator (or its designee).

4.04A Repayment of Excess Reimbursements. If, as of the end of any Plan Year, it is determined that a Participant has received payments under this Plan that exceed the amount of Eligible Medical Expenses that have been substantiated by such Participant during the Plan Year as required by Section 4.03A herein, the Plan Administrator shall give the Participant prompt written notice of any such excess amount, and the Participant shall repay the amount of such excess to the Employer within sixty (60) days of receipt of such notification.

4.05A Reimbursement Following Cessation of Participation. Participants in the Medical FSA may submit claims for reimbursement for Eligible Medical Expense incurred during the Plan Year and before the date of participation in the Plan ceases so long as the claim is submitted prior to the end of the run out period set forth in the SPD. Unless a COBRA election is made as set forth in the SPD, Participants shall not be entitled to receive reimbursement for Eligible Medical Expenses incurred after employment ceases under this Section. Any unused reimbursement benefits at the expiration of the Plan Year (as set forth in the SPD) shall be treated in accordance with Section 4.01A.

4.06A Coordination of Benefits Under the Medical FSA. The Medical FSA is intended to pay benefits solely for otherwise unreimbursed medical expenses. Accordingly, it shall not be considered a group health plan for coordination of benefits purposes, and its benefits shall not be taken into account when determining benefits payable under any other plan.

4.07A Disbursement Reports. The Plan Administrator shall issue directions to the Employer concerning all benefits that are to be paid from the Employer's general assets pursuant to the provisions of the Plan.

4.08A Timing of Reimbursements. Reimbursements shall be made as soon as administratively feasible after the Plan Administrator or its designee has received the required forms.

4.09A Statements. The Plan Administrator or its designated third party administrator may periodically furnish each Participant with a statement, showing the amounts paid or expenses incurred by the Employer in providing Medical Care Reimbursement under the Medical FSA.

4.10A Post-Mortem Payments. Any benefit payable under the Plan after the death of a Participant shall be paid to his surviving Spouse, or if no spouse, to his estate. If there is doubt as to the right of any beneficiary to receive any amount, the Plan Administrator may retain such amount until the rights thereto are determined, without liability for any interest thereon.

4.11A Non-Alienation of Benefits. Except as expressly provided by the Administrator, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.

4.12A Mental or Physical Incompetence. Every person receiving or claiming benefits under the Plan shall be presumed to be mentally and physically competent and of age until the Plan Administrator receives a written notice, in a form and manner acceptable to it, that such person is mentally or physically incompetent or a minor, and that a guardian, conservator or other person legally vested with the care of his estate has been appointed.

4.13A Inability to Locate Payee. If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because he cannot ascertain the identity or whereabouts of such Participants or other person after reasonable efforts have been made to identify or locate such person, such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited after a reasonable time after the date any such payment first became due.

4.14A Tax Effects of Reimbursements. Neither the Employer, nor the Plan Administrator makes any warranty or other representation as to whether any reimbursements made under the Plan will be treated as excludable from gross income for local, state, or federal income tax purposes. If for any reason it is determined that any amount paid for the benefit of a Participant or Beneficiary are includable in an Employee's gross income for local, federal, or state income tax purposes, then under no circumstances shall the recipient have any recourse against the Plan Administrator or the Employer with respect to any increased taxes or other losses or damages suffered by the Employees as a result thereof. The Plan is designed and is intended to be operated as a self-insured medical reimbursement plan under Section 105 of the Code.

4.15A Forfeiture of Unclaimed Reimbursement Account Benefits. Any Medical FSA Reimbursement Account benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Plan Year in which the Eligible Medical Expense was incurred shall be forfeited.

ARTICLE VA FUNDING AGENT

The Plan shall be funded with amounts withheld from Compensation pursuant to Flexible Benefit Plan Enrollment Forms, and/or Nonelective Contributions provided by the Employer, if any. The Employer will apply all such amounts, without regard to their source, to pay for the welfare benefits provided herein as soon as administratively feasible and to the extent applicable, shall comply with all applicable regulations promulgated by the Department of Labor ("D.O.L.") taking into consideration any enforcement procedures adopted by the D.O.L.

ARTICLE VIA CLAIMS PROCEDURES

The Plan has established procedures for reviewing claims denied under this Plan and those claims review procedures are set forth in the SPD.

ARTICLE VIIA CONTINUATION COVERAGE UNDER COBRA

The SPD includes COBRA continuation of coverage provisions that shall be applicable to the Medical FSA, to the extent the plan sponsor is subject to COBRA (as it amended ERISA, the Code, and the Public Health Service Act).

ARTICLE VIII HIPAA PRIVACY AND SECURITY

8.01A Scope and Purpose. The Medical FSA (the "Plan") will use protected health information ("PHI") to the extent of and in accordance with the uses and disclosures permitted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care and health care operations as set forth below.

8.02A Effective Date. This Article VIII is effective on April 14, 2003 or such later effective date of the Privacy Rules with respect to the client).

8.03A Use and Disclosure of PHI.

- (a) General. The Plan will use PHI to the extent of and in accordance with the uses and disclosures permitted by HIPAA, including but not limited to health care treatment, payment for health care, health care operations and as required by law. The Privacy Notice will list the specific uses and disclosure of PHI that will be made by the Plan.
- (b) Disclosure to the Employer. The Plan will disclose PHI to the Employer, or where applicable, an Affiliate only upon receipt of written certification from the Employer that:
 - (i) The Plan document has been amended to incorporate the provisions in this Article VIII; and
 - (ii) The Employer agrees to implement the provisions in Section 8.04A herein.

8.04A Conditions Imposed on Employer. Notwithstanding any provision of the Plan to the contrary, the Employer agrees:

- (a) Not to use or disclose PHI other than as permitted or required by this Article VIII or as required by law;
- (b) To ensure that any agents, including a subcontractor, to whom the Employer provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to PHI received or created on behalf of the Plan;
- (c) Not use or disclose an individual's PHI for employment-related purposes (including hiring, firing, promotion, assignment or scheduling) unless authorized by the Individual;
- (d) Not to use or disclose an Individual's PHI in connection with any other non-health benefit program or employee benefit plan of the Employer unless authorized by the Individual;
- (e) To report to the Plan any use or disclosure of PHI that is inconsistent with this Article VIII, if it becomes aware of an inconsistent use or disclosure;
- (f) To provide Individuals with access to PHI in accordance with 45 C.F.R. § 164.524;
- (g) To make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526;
- (h) To make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528;
- (i) To make internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining the Plan's compliance with HIPAA;

- (j) If feasible, to return or destroy all PHI received from the Plan that the Employer maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made. If return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible; and
- (k) To ensure adequate separation between the Plan and Employer as required by 45 C.F.R. § 164.504(f)(2)(iii) and described in this Article VIII.

8.05A Designated Employees Who May Receive PHI. In accordance with the Privacy Rules, only certain Employees who perform Plan administrative functions may be given access to PHI. Those Employees who have access to PHI from the Plan are listed in the Privacy Notice, either by name or individual position.

8.06A Restrictions on Employees with Access to PHI. The Employees who have access to PHI listed in the Privacy Notice may only use and disclose PHI for Plan Administration functions that the Employer performs for the Plan, as set forth in the Privacy Notice, including but not limited to, quality assurance, claims processing, auditing, and monitoring.

8.07A Policies and Procedures. The Employer will implement Policies and Procedures setting forth operating rules to implement the provisions hereof.

8.08A Organized Health Care Arrangement. The Plan Administrator intends the Plan to form part of an Organized Health Care Arrangement along with any other Benefit under a covered health plan (under 45 C.F.R. § 160.103) provided by the Employer.

8.09A Privacy Official. The Plan shall designate a Privacy Official, who will be responsible for the Plan's compliance with HIPAA. The Privacy Official may contract with or otherwise utilize the services of attorneys, accountants, brokers, consultants, or other third party experts as the Privacy Official deems necessary or advisable. In addition, and notwithstanding any provision of this Plan to the contrary, the Privacy Official shall have the authority to and be responsible for:

- (a) Accepting and verifying the accuracy and completeness of any certification provided by the Employer under this Article VIII
- (b) Transmitting the certification to any third parties as may be necessary to permit them to disclose PHI to Employer;
- (c) Establishing and implementing policies and procedures with respect to PHI that are designed to ensure compliance by the Plan with the requirements of HIPAA;
- (d) Establishing and overseeing proper training of the Plan, or Employer personnel who will have access to Protected Health Information;
- (e) Any other duty or responsibility that the Privacy Official, in his or her sole capacity, deems necessary or appropriate to comply with the provisions of HIPAA and the purposes of this Article VII.

8.10A Noncompliance. The Employer shall provide a mechanism for resolving issues of noncompliance, including disciplinary sanctions for personnel who do not comply with the provisions of this Article VIII.

8.11A Definitions. As used in this Article VIII, each of the following capitalized terms shall have the respective meaning given below:

“Individual” means the person who is the subject of the health information created, received or maintained by the Plan or Employer.

“Organized Health Care Arrangement” means the relationship of separate legal entities as defined in 45 C.F.R. §160.103.

“Privacy Notice” means the notice of the Plan’s privacy practices distributed to Plan participants in accordance with 45 C.F.R. § 164.520, as amended from time to time.

“Privacy Rules” means the privacy provisions of HIPAA and the regulations in 45 C.F.R. Parts 160 and 164.

“Protected Health Information or PHI” means individually identifiable health information as defined in 45 C.F.R. § 160.103.

8.12A Interpretation and Limited Applicability. This Article VIII serves the sole purpose of complying with the requirements of HIPAA and shall be interpreted and construed in a manner to effectuate this purpose. Neither this Article VIII nor the duties, powers, responsibilities, and obligations listed herein shall be taken into account in determining the amount or nature of the Benefits provided to any person covered under this Plan, nor shall they inure to the benefit of any third parties. To the extent that any of the provisions of this Article VIII are no longer required by HIPAA, they shall be deemed deleted and shall have no further force or effect.

8.13A Services Performed for the Employer. Notwithstanding any other provision of this Plan to the contrary, all services performed by a business associate for the Plan in accordance with the applicable service agreement shall be deemed to be performed on behalf of the Plan and subject to the administrative simplification provisions of HIPAA contained in 45 C.F.R. parts 160 through 164, except services that relate to eligibility and enrollment in the Plan. If a business associate of the Plan performs any services that relate to eligibility and enrollment to the Plan, these services shall be deemed to be performed on behalf of the Employer in its capacity as Plan Sponsor and not on behalf of the Plan.

IN WITNESS WHEREOF, the Employer has executed this Medical FSA as of the date set forth below.

Smith Action Program, Inc.

By: _____

Title: _____

Date: _____

DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT
Appendix B To The Smith Action Program, Inc.
Flexible Benefit Plan

The Effective Date of this Document is January 1, 2005.

SAMPLE

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SAMPLE

PREAMBLE

Effective as of the date set forth below, Smith Action Program, Inc. established this Dependent Care Spending Account (the Dependent Care FSA) to help provide dependent care assistance for those Employees who participate in the Employer’s Flexible Benefit Plan (“Plan”) and who, pursuant to the election procedures set forth in the Plan, choose to make contributions to a Dependent Care Reimbursement Account established pursuant to this Dependent Care FSA. This Dependent Care FSA is intended to provide reimbursement of certain Eligible Employment Related Expenses incurred by the Participant for care of a Qualifying Individual. The Employer intends that the Dependent Care FSA qualify as a Code Section 129 dependent care assistance plan, and that the benefits provided under the Dependent Care FSA be eligible for exclusion from the Participant’s income for federal income tax purposes under Section 129 of the Code. This Dependent Care FSA is a component of, and incorporated by reference into, the Smith Action Program, Inc. Flexible Benefit Plan (“The Flexible Benefit Plan”) and Articles VI, VII, VIII and IX of the Flexible Benefit Plan document apply also to this Dependent Care FSA.

SAMPLE

ARTICLE IB DEFINITIONS

Unless otherwise specified, terms that are capitalized in this Appendix B to the Flexible Benefit Plan have the same meaning as the defined terms in the Flexible Benefit Plan. The definitions of terms defined in this Appendix B, but not defined in the Flexible Benefit Plan, shall be applicable only with respect to this Appendix B. To the extent a term is defined both in the Flexible Benefit Plan and in this Appendix B, the term as defined in the Flexible Benefit Plan shall govern the interpretation of the Flexible Benefit Plan and the term as defined in this Appendix B shall govern the interpretation of this Dependent Care FSA.

1.01B "Dependent" means any individual who is a tax dependent of the Participant as defined in Code Section 152 except that a child with respect to whom Code Section 21(e)(5) applies who is in the custody of the parent for the longest period during the year shall be considered a dependent of such custodial parent for purposes of this Dependent Care FSA.

1.02B "Dependent Care Reimbursement" shall have the meaning assigned to it by Section 4.01B of this Dependent Care FSA.

1.03B "Earned Income" means all income derived from wages, salaries, tips, self-employment, and other Compensation (such as disability or wage continuation benefits), but only if such amounts are includable in gross income for the taxable year. Earned income does not include any other amounts excluded from earned income under Code Section 32(c)(2), such as amounts received under a pension or annuity, or pursuant to workers' compensation.

1.04B "Effective Date" of this Dependent Care FSA means **January 1, 2005**.

1.05B "Eligible Employment Related Expenses" means those expenses that would be considered to be employment-related expenses under Section 21(b)(2) of the Code (relating to expenses for household and dependent care services necessary for gainful employment) if paid for by the Employee to provide Qualifying Services other than amounts paid to:

- (a) an individual with respect to whom a Dependent deduction is allowable under Code Sec. 151(c) to the Participant or his Spouse;
- (b) the Participant's Spouse; or
- (c) a child of the Participant who is under 19 years of age at the end of the taxable year in which the expenses were incurred.

1.06B "Highly Compensated Individual" means an individual defined under Code Section 414(q), as amended, as a "highly compensated individual" or a "highly compensated employee."

1.07B "Reimbursement Account(s)" shall be the funding mechanism by which amounts are withheld from an Employee's Compensation and retained for future Dependent Care Reimbursement (as defined in Section 1.02B herein). No money shall actually be allocated to any individual Participant Account(s); any such Account(s) shall be of a memorandum nature, maintained by the Administrator for accounting purposes, and shall not be representative of any identifiable trust assets. No interest will be credited to or paid on amounts credited to the Participant Account(s).

1.08B "Qualifying Individual" means:

- (a) a Qualifying Child as defined in Code Section 152(a)(1) who is under the age of thirteen (13) and except that a child of divorced parents will be considered a Qualifying Individual of the parent with whom the child resides with for the longest portion of the year without regard to who is entitled to the exemption);
- (b) a Dependent of a Participant who is mentally or physically incapable of caring for himself or herself and who has the same principal place of abode as the employee for more than half the year; or
- (c) The Spouse of a Participant who is mentally or physically incapable of caring for himself or herself and who has the same principal place of abode as the employee for more than half the year.

1.09B "Qualifying Services" means services relating to the care of a Qualifying Individual that enable the Participant or his Spouse to remain gainfully employed which are performed:

- (a) in the Participant's home; or
- (b) outside the Participant's home for (1) the care of a Dependent of the Participant who is under age 13, or (2) the care of any other Qualifying Individual who resides at least eight (8) hours per day in the Participant's household. If the expenses are incurred for services provided by a dependent care center (i.e., a facility that provides care for more than 6 individuals not residing at the facility), the center must comply with all applicable state and local laws and regulations.

**ARTICLE IIB
ELIGIBILITY AND PARTICIPATION**

2.01B Eligibility to Participate. Each Employee who satisfies the eligibility requirements set forth in the Summary Plan Description ("SPD") shall be eligible to participate in this Dependent Care FSA as of the Dependent Care Eligibility Date set forth in the SPD.

2.02B Termination of Participation. Participation shall terminate on the earliest of the dates set forth in the SPD.

2.03B Qualifying Leave Under Family Leave Act. Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the Family and Medical Leave Act of 1993 (the "FMLA"), then to the extent required by the FMLA, the Participant will be entitled to continue the Participant's coverage under this Dependent Care FSA in accordance with the SPD. The requirements for continuing coverage, procedures for FMLA leave and payment option(s) provided by the Employer (as described above) will be set forth in the SPD and will be administered in accordance with the regulations issued under Code Section 125 and in accordance with the FMLA.

**ARTICLE IIIB
ELECTION TO PARTICIPATE**

3.01B Initial Election Period.

- (a) **Currently Eligible Employees.** An Employee who is eligible to become a Participant in this Plan as of the Effective Date must complete, sign and file a flexible benefit plan enrollment form with the Plan Administrator during the election period (as specified by the Plan Administrator) immediately preceding the Effective Date of the Plan in order to become a Participant on the Effective Date. The elections made by the Participant on this initial Flexible benefit plan enrollment form shall be effective, subject to Section 3.02B, for the Plan Year beginning on the Effective Date.
- (b) **New Employees and Employees Who Have Not Yet Satisfied The Plan's Waiting Period.** An Employee who becomes eligible to become a Participant in this Plan after the Effective Date must complete, sign and file a Flexible benefit plan enrollment form with the Plan Administrator during the Initial Election Period set forth in the SPD or the enrollment material. Participation will commence under this Plan as set forth in the SPD (but in no event prior to the election).
- (c) **Failure to Elect.** An eligible Employee who fails to complete, sign and file a Flexible benefit plan enrollment form in accordance with paragraph (a) or (b) above during an initial election period may become a Participant on a later date in accordance with Section 3.02B or 3.03B.

3.02B. Annual Election Period. Each Employee who is a Participant in this Plan or who is eligible to become a Participant in this Plan shall be notified, prior to each Anniversary Date of this Plan, of his right to become a Participant in this Plan, to continue participation in this Plan, or to modify or to cease participation in this Plan, and shall be given a reasonable period of time in which to exercise such right: such period of time shall be known as the Annual Election Period. The date on which the Annual Election Period commences and ends will be set forth in the SPD or the enrollment material. An election is made during the Annual Election Period in the manner set forth in the SPD. The consequences of failing to make an election during the Annual Election Period will be set forth in the SPD.

3.03B Change of Elections. A Participant shall not make any changes to his or her election except for election changes permitted under the SPD, and for changes made during the Annual Election Period, changes caused by termination of employment or cessation of eligibility and changes pursuant to the Family and Medical Leave Act. All election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the first pay period coinciding with or immediately following the date that the election change was filed) but, as determined by the Plan Administrator, election changes may become effective later to the extent the coverage in the applicable component plan commences later.

3.04B Impact of Termination of Employment on Election or Cessation of Eligibility. Termination of employment or cessation of eligibility shall automatically revoke any flexible benefit plan enrollment

form. Except as provided below, if revocation occurs under this Section 3.04B, no new election with respect to the Plan may be made during the remainder of the Plan Year except as set forth in the SPD.

3.05B Reduction of Certain Elections to Prevent Discrimination. If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any requirement imposed by the Code or any limitation on Highly Compensated Individuals, the Plan Administrator shall take such action(s) as (s)he deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation.

ARTICLE IVB REIMBURSEMENTS

4.01B Dependent Care Reimbursement. Each Participant's Dependent Care FSA will be credited for Dependent Care Reimbursement with amounts withheld from the Participant's Compensation, and any Nonelective Contributions allocated thereto by the Employer or where applicable, the Participant. The Dependent Care Account will be debited for Dependent Care Reimbursements disbursed to the Participant in accordance with Article IVB of this document. In the event that the amount in the Account is less than the amount of reimbursable claims at any time during the Plan Year, the excess part of the claim will be carried over into following months within the same Plan Year, to be paid out as the Dependent Care Account balance becomes adequate. In no event will the amount of Dependent Care Reimbursements exceed the amount credited to the Dependent Care Account for any Plan Year. Any amount allocated to the Dependent Care Account shall be forfeited by the Participant and restored to the Employer if it has not been applied to provide Dependent Care Reimbursement for the Plan Year within the run out period set forth in the SPD. Amounts so forfeited shall be used in a manner that is not prohibited by applicable federal or state law. The maximum annual reimbursement amount shall be set forth in the SPD. The Employer may establish a minimum annual reimbursement amount as set forth in the SPD.

4.02B Receiving Dependent Care Reimbursement. Payment shall be made to the Participant in cash as reimbursement for Eligible Employment Related Expenses incurred by him/her while a Participant, during the Plan Year for which the Participant's election is effective, provided that the substantiation requirements of Section 4.03B herein are satisfied.

4.03B Substantiation of Expenses. Each Participant must submit an expense for reimbursement in accordance with the terms of the SPD.

4.04B Repayment of Excess Reimbursements. If, as of the end of any Plan Year, it is determined that a Participant has received payments under this Plan that exceed the amount of Eligible Dependent Care Expenses that have been substantiated by such Participant during the Plan Year as required by Section 4.03B herein, the Plan Administrator shall give the Participant prompt written notice of any such excess amount, and the Participant shall repay the amount of such excess to the Employer within sixty (60) days of receipt of such notification.

4.05B Reimbursement Following Cessation of Participation. Participants in the Dependent Care FSA may submit claims for reimbursement for Eligible Employment Related Expenses incurred during the Plan Year and before the date of participation in the Dependent Care FSA ceases so long as the claim is submitted prior to the end of the run out period set forth in the SPD. To the extent set forth in the SPD, Participants may submit claims for reimbursement of Eligible Employment-Related Expenses incurred during the Plan Year and after they cease participation so long as such claims are submitted

prior to the end of the run out period. Any unused reimbursement benefits at the expiration of the Plan Year (as set forth in the SPD) shall be treated in accordance with Section 4.01B.

4.06B Disbursement Reports. The Plan Administrator shall issue directions to the Employer concerning all benefits that are to be paid from the Employer's general assets pursuant to the provisions of the Plan.

4.07B Timing of Reimbursements. Reimbursements shall be made as soon as administratively feasible after the required forms have been received by the Plan Administrator or its designee.

4.08B Statements. The Plan Administrator or its designated third party administrator may periodically furnish each Participant with a statement, showing the amounts paid or expenses incurred by the Employer in providing Dependent Care Reimbursement under the Dependent Care FSA.

4.09B Post-Mortem Payments. Any benefit payable under the Dependent Care FSA after the death of a Participant shall be paid to his surviving Spouse, otherwise, to his estate. If there is doubt as to the right of any beneficiary to receive any amount, the Plan Administrator may retain such amount until the rights thereto are determined, without liability for any interest thereon.

4.10B Non-Alienation of Benefits. Except as expressly provided by the Administrator, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.

4.11B Mental or Physical Incompetence. Every person receiving or claiming benefits under the Plan shall be presumed to be mentally and physically competent and of age until the Plan Administrator receives a written notice, in a form and manner acceptable to it, that such person is mentally or physically incompetent or a minor, and that a guardian, conservator or other person legally vested with the care of his estate has been appointed.

4.12B Inability to Locate Payee. If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because he cannot ascertain the identity or whereabouts of such Participants or other person after reasonable efforts have been made to identify or locate such person, such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited after a reasonable time after the date any such payment first became due.

4.13B Tax Effects of Reimbursements. Neither the Employer, nor the Plan Administrator makes any warranty or other representation as to whether any reimbursements made under the Plan will be treated as excludable from gross income for local, state, or federal income tax purposes. If for any reason it is determined that any amount paid for the benefit of a Participant or Beneficiary are includable in an Employee's gross income for local, federal, or state income tax purposes, then under no circumstances shall the recipient have any recourse against the Plan Administrator or the Employer with respect to any increased taxes or other losses or damages suffered by the Employees as a result thereof. The Plan is designed and is intended to be operated as a dependent care assistance plan under Section 129 of the Code.

4.14B Forfeiture of Unclaimed Reimbursement Account Benefits. Any Dependent Care FSA Reimbursement Account benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Plan Year in which the Eligible Dependent Care Expense was incurred shall be forfeited.

**ARTICLE VB
FUNDING AGENT**

The Plan shall be funded with amounts withheld from Compensation pursuant to flexible benefit plan enrollment forms, and/or Nonelective Contributions provided by the Employer, if any. The Employer will apply all such amounts, without regard to their source, to pay for the benefits provided herein as soon as administratively feasible and shall comply with all applicable regulations.

**ARTICLE VIB
CLAIMS PROCEDURES**

The Plan has established procedures for reviewing claims denied under this Plan and those claims review procedures are set forth in the SPD.

IN WITNESS WHEREOF, the Employer has executed this Dependent Care FSA as of the date set forth below.

Smith Action Program, Inc.

By: _____

Title: _____

Date: _____