



NEO Administration Company
525 N. Cleveland-Massillon Rd.
Suite 204
Akron, Ohio 44333
p: 1.800.775 (FLEX) 3539
f: (330) 572-8125
e: admin@flexneo.com
www.flexneo.com

Section 125 Flexible Spending Account Plan Client Setup & Document Checklist

Submit your forms to NEO in one of three ways:

1. NEO prefers that you securely submit the employer setup packet via our **Secure Upload**. Use our web portal to transfer files: <https://www.flexneo.com/secure-file-upload/>.
2. Email the packet to sales@flexneo.com
3. Send by mail:

NEO Administration Company
525 N. Cleveland-Massillon Rd, Suite 204
Akron, Ohio 44333

COMPANY INFORMATION

Legal Company Name: City of Avon

DBA/AKA: _____

Website: cityofavon.com

Mailing address: 36080 Chester Rd

City, State, Zip: Avon, OH 44011

Physical Address (if different): _____

City, State, Zip: _____

Main Phone: 440-937-7800

Fax: 440-937-7824

Federal Tax ID: 34-6000165

Structure: Please select below
(e.g. Taxable corporation, S Corp, LLC, partnership, Non-Profit - see descriptions to the left)

Business Industry/Product: Municipality

Approximate number of W-2 employees (include FTE & PTE): 150

Estimate number of FSA participants: 30

Number eligible employees: 136

Note:

Taxable C-Corp – owners may participate, but subject to non discrimination testing.

S-Corp - owners with 2% or more stock and family members cannot participate in plan.

Partnership – Partners cannot participate, but spouse or other family members may (if bona-fide employees)

LLC, LLP – Members typically cannot participate in the plan, but it depends on how they file federal taxes.

If taxed as partnership, then follow rules of partnership above.

If taxed as C-Corporation, then members may participate.

EMPLOYER CONTACT INFORMATION

1. HR/Benefit Manager Contact:

Name: Tania Gray Title: Human Resource Specialist

Phone: 440-934-7975 Ext. _____ Email address: tgray@cityofavon.com

Check here if you want this person to have HR Administrator web access to the plan

2. Finance Contact (for billing invoices and ACH notifications of fund transfers):

Name: Bill Logan Title: Finance Director

Phone: 440-937-7806 Ext. _____ Email address: blogan@cityofavon.com

Check here if you want this person to have HR Administrator web access to the plan

PLAN DESIGN

1. 12-month Plan Year Begins: 04/01/2017 Ends: 12/31/2017

2. Plan # (i.e., 501, 502): _____

3. Effective date of New Plan (or Reinstatement): 04/01/2017

4. Original effective date: _____

(If re-instating a prior Plan, the date the Section 125 for Premium Conversion or Flexible Spending Accounts was first effective. The new document will be a restatement of that Plan)

5. Affiliated Employers who will be covered under the plan (if any):

Company name: _____ EIN: _____

Use additional page if needed.

ELIGIBILITY & ENTRY DATE

For Pretax premiums, the eligibility will be the same as the group plan's eligibility requirements.

1. Is eligibility for the Health and Dependent Care FSA the same as the group health plan?

Yes No

If no, complete the following: (check all that apply)

Age: _____ years old (may not exceed 25 years)

Service: _____ days/months (under ACA, may not exceed 90 days)

Minimum Hours: _____ hours per week (under ACA, may not exceed 30 hours in 2015 and after)

2. Effective date of coverage after eligibility is met:

Immediately (date eligibility requirements are met), or

First of month following date eligibility is met

PLAN DESIGN

Please check the boxes below for each type of reimbursement account plan(s) that will be managed by NEO Administration.

- DCAP** – Dependent Care FSA (\$5,000 annual limit)
- HFSA** – General Purpose Health FSA

(Standard FSA plans managed by NEO include both a health FSA and Dependent Care FSA. All enrollment and communication materials refer to both the health and dependent care FSA)

- LHFSA** – Limited Purpose Health FSA (compatible with HSA coverage, reimburses only dental and vision care expenses. Recommended with Carryover – see below)
- Transit*** – Mass Transit such as bus, railway, or subway that is used for transportation to and from work.
- Parking*** – Work-related parking expenses

*Additional fees apply for these benefits. A revised services contract is required if selected.

HFSA and LHFSA Plan Design Choices

1. The general-purpose and/or limited purpose health **FSA maximum contribution** is limited by current law and indexed annually for cost of living increases. Or the employer may set a lower maximum amount that will remain consistent and unchanged unless a Plan amendment is adopted. Choose one of the entries below to specify the limit for your plan.

a. The General Purpose and Limited Purpose (if elected) Health FSA maximum annual election amount shall be fixed at \$ _____ (no more than the current \$2,600 IRS limit)

or

b. The General Purpose and Limited Purpose (if elected) Health FSA maximum annual election amount shall be the maximum allowed by current law, and will be increased when the current maximum indexed amount allowed by applicable law increases.

2. **Extended Coverage Period or Carryover for Health FSAs (optional plan design choice)**

A health FSA plan may permit a limited Carryover of unused FSA funds to the next plan year, or an Extended Grace Period, or neither. Review the options below and select your plan design.

a. **Health FSA Carryover** - An employer *may* (but is not required to) allow participants to carry over up to **\$500** of unused Health FSA funds remaining at the end of the plan year to the immediate following plan year (*e.g. from 2016 to 2017*).

Note: If you elect Carryover for the health FSA, and you offer a high-deductible health plan with HSAs, we highly recommend you maintain a Limited Health FSA to enable carryover to an HSA-eligible FSA. See [our article](#) for more information about how carryover affects HSA eligibility.

b. **Extended Grace Period (EGP)** - EGP allows health expenses incurred in the first two and a half months of a new Plan Year to be paid first from funds remaining in the prior Plan Year. Unused funds after the end of EGP and the claim runout period are forfeited. This option is not recommended if you also offer HSAs. **You cannot elect EGP and carryover.**

c. **None** - We do not want to either option – no Carryover and no EGP.

3. Employer Contributions:

Are there any Employer contributions to the FSA benefit? Yes No

If yes, describe how contributions are made (e.g. Employer contributions to the health FSA are made upon meeting wellness criteria, matching, flat dollar amount, etc.)

4. Debit Card:

Are you offering the Benny™ debit card? Yes No

5. Claim run-out Policy:

Active participants have **90 days** after the end of the Plan Year to submit claims incurred while they were a participant.

Terminated participants have **90 days** after the end of the Plan Year to submit claims incurred while they were a participant.

Check here if you have a different policy for participants who **terminate** before the end of the Plan Year. Claims must be submitted within _____ days after termination date (run out should not be less than 90 days after termination). *It is the client's responsibility to communicate the shorter run-out period to terminating employees.*

HEALTH PLAN COVERAGE WAIVER

1. Are employees offered additional taxable compensation for waiving coverage under the group health plan? Yes No

If employees receive additional taxable compensation for waiving health coverage, we will include that in your written Section 125 plan document, per IRS 125 regulations.

OTHER PLANS

HSA - Health Savings Account

1. If employees can contribute to their HSA by pretax payroll deductions, that must be included in your written Section 125 plan document, per IRS 125 regulations.

Can employees contribute to an HSA with pretax payroll deductions? Yes No
Are there employer contributions to the HSA? Yes No

HRA - Health Reimbursement Account

1. Do you have an employer-funded Health Reimbursement Account (HRA), or plan to start one during the plan year? Yes No

PRE-TAX PREMIUMS

1. Do employees pay for any of the following premiums pre-tax?
Do not include any coverage that the employer pays 100% of the coverage cost.

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Health Insurance | <input checked="" type="checkbox"/> Vision | <input checked="" type="checkbox"/> Dental |
| <input type="checkbox"/> Group Term Life
(employee term life only) | <input type="checkbox"/> Short or Long Term Disability | |

For premium deductions, the plan language will reflect that any payroll-deducted insurance premiums will *automatically* be deducted pre-tax, unless the employee completes a waiver to pay premiums with after-tax-income.

OTHER INFORMATION

Please provide any other issues/items not addressed above.

BROKER OF RECORD (BOR)

This shall confirm our "Broker of Record."

This appointment rescinds and supersedes all previous broker appointments and the authority contained herein shall remain in full force until canceled in writing.

This letter authorizes NEO Administration Company to furnish our BOR with all information that they may require. This will include but is not limited to the following information (including Protected Health Information covered under HIPAA): client reports, member census data, claim history, plan documents, billing information, etc.

Broker Agency: _____

Main contact at this Broker Agency: _____

Email address: _____

Unless instructed otherwise, NEO will release requested documentation to other contacts at this specified Broker Agency acting on your behalf.

Authorized by: _____ (initial here)

AUTHORIZATION

The Employer is responsible for ensuring that the eligibility requirements and the other plan design elements comply with the Eligibility, Contributions and Benefits nondiscrimination requirements under IRC Section 105 & 125.

Sign here to verify the plan design as it is to be set up and administered by NEO Administration Company

Signed: _____ Date: _____

Form completed by: _____
Print name of Authorized Employer representative (not broker)

ERISA requires a written plan document and SPD for benefits provided under a Section 125 plan. NEO Administration Company will create a Section 125 Plan document and Summary Plan Description in accordance with the plan design choices made on this checklist for the fee stated on your Service Agreement, ***unless you waive this service below.***

If you are waiving our plan documentation service (you already have a written plan or will have one prepared from another source), initial here. _____

If you have any questions, please call us at 1.800.775.FLEX (3539) or (330) 864.0690 and a member of our support team will be happy to assist you.



525 N. Cleveland-Massillon Rd. Suite 204 Akron, Ohio 44333

■ phone: 330.864.0690 ■ fax: 330.572.8125

www.FlexNEO.com ■ email: sales@flexneo.com



FSA ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is made and entered into by and between NEO Administration Company ("NEO") and _____, (the "Employer") effective as of the date this Agreement is executed.

WITNESSETH, THAT:

WHEREAS, the Employer desires to or has established a Flexible Benefit Plan under Section 125 of the Internal Revenue Code (the "Plan"); and

WHEREAS, the Employer desires to retain the services of NEO to act as the claims administrator with respect to that Plan; and

WHEREAS, the parties to this arrangement desire to set forth their understandings in this matter in a written agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follow:

1.0 Status of the Parties.

1.1 The Employer acknowledges and agrees that it is and shall remain the Plan Administrator of the Plan. NEO acknowledges and agrees that it is and shall remain the claims administrator of the Plan during the Term of this Agreement.

2.0 Duties of NEO.

NEO shall, consistent with its obligations as the Plan's claims administrator:

- (a) Create a signature-ready **Plan document** (if requested), in the standard format used by NEO, according to the specifications of the Employer;
- (b) Create a **Summary Plan Description** (if requested) in the standard format used by NEO for that Plan to be distributed by the Employer to all participants in the Plan;
- (c) Provide annual **open enrollment materials**, including an electronic copy of an election form and an electronic FSA and debit card brochure each Plan Year. If requested, NEO will also provide an online enrollment page customized for the Employer's plan on the NEO website at no additional fee.
- (d) Establish **individual accounts** for all participants electing to participate in the Employer's Plan.

- (e) Send **confirmation letters** directly to employees to verify elections and provide instructions for submitting claims to NEO as the claims administrator for the Plan.
- (f) Coordinate **debit card administration (if elected)** with traditional Flexible Spending Account administration in compliance with Internal Revenue Service guidelines and by the terms and stated procedures of the debit card services Agreement between Employer and NEO.
- (g) Process submitted claims and apply such claims to debit cards transactions, if applicable, or **provide reimbursements by check or direct deposit** to participants on a **weekly** basis as agreed to between Employer and NEO.
- (h) Post a **payment register** online for the Employer to view the reimbursements issued each processing date.
- (i) **Post employee contributions** to the Employer's Plan according to per pay elections made by the participants adjusted for any changes, additions and/or terminations provided by the Employer. An additional fee of \$25 per payroll report applies if NEO posts and reconciles contributions based on actual deduction reports provided by the Employer.
- (j) Provide **online access to Employee Account Balance Reports** that list all Plan participants and year to date contributions, claims amounts, payments and balances.
- (k) Provide online access to appropriate **forms and employee education materials** to assist the Employer in the administration of the Plan.
- (l) Conduct **discrimination testing*** on elected FSA benefits on an annual basis, based upon benefit enrollment information and identification of key employee and highly compensated employees provided by the Employer. The specific tests conducted by NEO include and are limited to the 25% Key Employee Concentration test, and the 55% Average Benefits Test and 5% Owners Test for Dependent Care FSA.

* NEO conducts discrimination tests only for single-employer plans. If your company is part of a Controlled Group (common ownership among companies), benefits under your Section 125 Plan must be aggregated with the pre-tax benefits of the other companies in the Controlled Group and tested together.

2.1 NEO shall, consistent with its duties and obligations as the claims administrator also provide the following communication services on behalf of Employer to participants in the Plan:

- (a) **Maintain web access** where employees have daily access to their account information (and general information about the Plan, including qualified expenses) through a password-protected site with such web site information updated daily.

(b) Provide online access for the Employer to report participant changes, terminations and additions through the HR portal at www.FlexNEO.com. The employer shall also have access to year-to-date reports and individual participant account detail, as well as forms and reference materials online.

(c) Issue **warning notices** to plan participants with balances to claim approximately 45 days 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.

3.0 Duties of Employer.

3.1 Employer shall, consistent with its duties and obligations as the Plan Administrator, take all of the following actions with respect to the Plan:

(a) Report participant terminations, additions, and election changes to NEO at such time periods as the parties may mutually agree.

(b) Notify any terminated participants eligible under COBRA as to their rights for continuation coverage for their health care reimbursement account. NEO shall notify terminated participants when appropriate if the Employer has a current COBRA Administration Services Agreement in effect with NEO and the Employer notifies NEO's COBRA department of the loss of coverage.

(c) Reimburse NEO by ACH debit initiated by NEO for claims payments issued to participants. An additional fee of \$25 per month applies if another fund transfer method is required by Employer.

(d) Identify key employees and highly compensated employees and provide requested plan election and testing data to enable NEO to conduct annual discrimination tests, if requested by the Employer. The Employer will initiate any action required in the event the plan(s) become discriminatory.

(e) Maintain a written plan document that is consistent with the terms and administrative procedures of the Plan. It is the Employer's responsibility to review and verify the accuracy of the Plan document and Summary Plan Description for the Employer's Plan, and take all steps to make sure those documents are in accord with all applicable laws.

(f) Execute a Business Associate Agreement with NEO, as required by HIPAA Privacy and Security regulations.

(g) Pay the fees provided for in this Agreement.

4.0 Mutual Risk and Liability Coverage

4.1 Each party agrees to be responsible for its own wrongful or negligent acts or omissions or those of its officers, agents, or employees arising in any way out of this Agreement to the extent permitted by law.

4.2 Indemnification by NEO: NEO agrees to indemnify and hold harmless Employer from and against any and all claims, suits, actions, liability, losses, damages, costs, charges, expenses, judgments, and settlements that Employer sustains as a result of any act or omission of NEO in connection with this Agreement. NEO will not be obligated to indemnify Employer if it is determined that a judgment, determination, or settlement in litigation was paid as a result of an act or omission by Employer which was:

- criminal or fraudulent;
- an intentional disregard of Employer's obligations under this Agreement; or
- grossly negligent.

Notwithstanding the foregoing, NEO will indemnify and hold Employer harmless to the extent NEO concurred in, instructed, directed, or caused such acts or omissions by Employer.

4.3 Insurance: NEO represents and warrants that it will maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Upon reasonable request from Employer, NEO will furnish certification of insurance demonstrating the coverages listed above. All insurance will be carried by one or more insurance carriers A.M. Best rated A- or better.

4.4 Limitation of Damages: Under no circumstances, shall either party be liable for any indirect, special, incidental, or consequential damages (whether alleged in tort, contract, indemnity or otherwise, even if it has been apprised of the possibility of the damages), including, without limitation, damages for loss of profit or interruption of business or from any interruption or errors in NEO's website.

4.5 Force Majeure: Both NEO and Employer shall be excused from each party's performance hereunder to the extent that such performance is prevented, delayed, or obstructed by causes beyond its reasonable control (whether or not foreseeable), including acts of any foreign, federal, state, or local government; fires, floods, or other natural disasters; strikes or labor unrest; terrorism or acts of war; degradation or interruption of telecommunications or internet service; or severe weather conditions.

5.0 Bonding and Representations.

5.1 NEO warrants and represents that it has secured the appropriate bonding required by ERISA and applicable state law.

5.2 NEO warrants and represents that it is a licensed third party administrator under Ohio law and that it shall at all times maintain that licensure.

6.0 Fees.

6.1 The parties acknowledge and agree that the amount of compensation to be paid by Employer to NEO is based upon the fee schedule executed between Employer and NEO. That fee schedule is hereby incorporated into this Agreement by reference as if fully rewritten herein. NEO shall submit an invoice by the fifteenth of the month showing the amount of fees due for that month. Employer acknowledges and agrees that it shall pay NEO for those fees within thirty (30) days of receipt of the invoice.

7.0 Term and Termination.

7.1 This Agreement shall be effective upon the date first mentioned above and shall automatically renew on an annual basis on the first day of each Plan Year, unless terminated as provided in this Agreement.

7.2 Either party may terminate this Agreement during the Term hereof by giving ninety (90) days' notice in writing to the other party of its intention to terminate.

7.3 Either party may terminate this Agreement immediately upon default by the other party in the performance of an obligation under this Agreement, any misconduct in the performance of this Agreement, or a breach of any of the terms or conditions of this Agreement by the other party, if that other party fails to cure or remedy that default or breach within ten (10) days after service upon it upon notice of that default or breach.

7.4 The parties acknowledge and agree that in the event of termination of this Agreement that NEO shall cooperate in providing such reasonable information as necessary for the Employer to comply with its duties as Plan Administrator. Additionally, NEO shall continue to perform services through the end date of termination and Employer shall continue to pay NEO for those services through that time of termination.

8.0 Miscellaneous.

8.1 This Agreement may not be assigned by either party without the prior written consent of the other party. Subject to the foregoing limitation, this Agreement shall inure to the benefit of, and be binding on the parties hereto and their respective successors and assigns.

8.2 This Agreement shall not be modified or amended except in writing signed by the parties hereto.

8.3 No waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by the party against whom it is sought to be enforced. No waiver of any provision of this Agreement at any time will be deemed a waiver of any other provision of this Agreement at such time or will be deemed a waiver of such provision at any other time.

8.4 The invalidity or unenforceability of any provision or section of this Agreement shall in no way effect the validity or enforceability of any other provision or section hereof.

8.5 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes any and all other agreements, understandings, statements, or representations, either oral or in writing, between the parties.

8.6 The captions in this Agreement are for convenience only and shall not be construed to limit or interpret any term hereof.

8.7 This Agreement shall be governed by, enforced under and construed in accordance with, the laws of the State of Ohio.

IN WITNESS WHEREOF, this Agreement is executed as of the date first set forth above.

NEO Administration Company



Company Name: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

(Please initial your choice for each administration option below.)

1. **I request a new or restated plan document and SPD created by NEO (see fee schedule)**

Initial yes or no: _____ (YES) _____ (NO)

2. **Include debit cards with our FSA plan.**

Initial yes or no: _____ (YES) _____ (NO)

**FEE SCHEDULE
FLEXIBLE SPENDING ACCOUNT ADMINISTRATION SERVICES**

Fees At Set-Up

Initial Setup Fee (One-time fee)	
• Under 250 eligible employees	\$ 300.00
• 250-500 eligible employees	\$ 500.00

Initial set up includes electronic employee enrollment materials, online enrollment setup, and initial system set-up. One day for employee enrollment meetings in the NE Ohio area included.

Debit Card Employer Setup Fee (One-time fee)	\$ 250.00
(If debit card service is requested)	

Two debit cards are issued in the employee's name to each participant at no charge*. The second card can be signed and used by the spouse, or be an extra card for single participants.

* Card Services charges a \$2.50 per card replacement fee to the cardholder's account if a replacement card is requested for lost or stolen card.

Ongoing Fees

Monthly Administration Fee per Participant *	
• Based on fewer than 100 FSA participants	\$ 4.50
• Based on between 101 and 300 FSA participants	\$ 4.25

A minimum monthly fee of \$125 applies and includes debit cards. Administrative fees are charged for employees enrolled in the Flexible Spending Accounts on a per participant basis.

* Standard rates assume that the Employer will provide NEO with email addresses for a majority (at least 80%) of participants. Additional fees of .25 PPPM (min. \$10 per month) may apply to cover postage costs for debit card substantiation notifications if Employer does not provide the required level of email addresses with enrollment data.

Annual FSA renewal fee per participant (second year and thereafter)	\$ 5.00
(Minimum annual renewal \$350)	

Annual Non-discrimination Testing for elected benefits	no charge
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Optional Service or Non-Standard Service Fees

Plan Document and Summary Plan Description	\$ 495.00
(If requested for a new or restated plan)	

Preparation of Form 5500	\$ 300.00
(if required for over 100 medical FSA participants)	

Payroll Deduction and Reconciliation, per payroll report:	\$ 25.00
Applies only if NEO posts and reconciles contributions based on actual deduction reports provided by the Employer. (See Section 2.0 (i) of the Agreement).	

Non-ACH Fund Transfer	\$ 25.00
NEO initiates an ACH debit to transfer funds from the Employer to NEO to cover payments issued to participants. An additional fee of \$25 per month applies if another fund transfer method is required by Employer (See Section 3.1 (c) of the Agreement).	

NEO reserves the right to apply additional fees for any service required or requested outside the scope of its contracted services.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, is entered into as of _____, 20____, by and between _____ Health Plan (the "Plan" or "Covered Entity"); and NEO Administration Company (the "Business Associate").

WITNESSETH:

WHEREAS, the Covered Entity previously has entered into an agreement (the "Agreement") with the Business Associate, whereby the Business Associate has agreed to provide certain services to the Plan;

WHEREAS, to provide such services to the Plan, the Business Associate must have access to certain protected health information ("Protected Health Information" or "PHI"), as defined in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards") set forth by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), part of the American Recovery and Reinvestment Act of 2009 ("ARRA"), the Genetic Information Nondiscrimination Act of 2008 ("GINA"), and the final regulations to such Acts promulgated in January 2013;

WHEREAS, to comply with the requirements of the Privacy Standards, the Covered Entity must enter into this Business Associate Agreement with the Business Associate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

I. Definitions

The following terms used in this Agreement shall have the same meaning as those terms in the Privacy Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Secretary, Subcontractor, and Use. If other terms are used, but not otherwise defined under this Business Associate Agreement, such terms shall then have the same meaning as those terms in the Privacy Rule.

- (a) **Business Associate**. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.
- (b) **Covered Electronic Transactions**. "Covered Electronic Transactions" shall have the meaning given the term "transaction" in 45 CFR §160.103.
- (c) **Covered Entity**. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.
- (d) **Electronic Protected Health Information**. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103.
- (e) **Genetic Information**. "Genetic Information" shall have the same meaning as the term "genetic information" in 45 CFR §160.103.
- (f) **HIPAA Rules**. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (g) **Individual**. "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (h) **Privacy Rule**. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

- (i) **Protected Health Information (PHI)**. "Protected Health Information (PHI)" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of a Covered Entity pursuant to this Agreement.
- (j) **Required By Law**. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- (k) **Secretary**. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (l) **Standards for Electronic Transactions Rule**. "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- (m) **Security Incident**. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.
- (n) **Security Rule**. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C.
- (o) **Subcontractor**. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR §160.103.
- (p) **Transaction**. "Transaction" shall have the meaning given the term "transaction" in 45 CFR §160.103
- (q) **Unsecured Protected Health Information**. "Unsecured Protected Health Information" shall have the meaning given the term "unsecured protected health information" in 45 CFR §164.402.

II. Safeguarding Privacy and Security of Protected Health Information

(a) ***Permitted Uses and Disclosures***. The Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on the Covered Entity's behalf or receives from the Covered Entity (or another business associate of the Covered Entity) and to request Protected Health Information on the Covered Entity's behalf (collectively, "Covered Entity's Protected Health Information") only:

(i) **Functions and Activities on the Covered Entity's Behalf**. To perform those services referred in the attached services agreement.

(ii) **Business Associate's Operations**. For the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, provided that, with respect to disclosure of the Covered Entity's Protected Health Information, either:

(A) The disclosure is Required by Law; or

(B) The Business Associate obtains reasonable assurance from any person or entity to which the Business Associate will disclose the Covered Entity's Protected Health Information that the person or entity will:

(1) Hold the Covered Entity's Protected Health Information in confidence and use or further disclose the Covered Entity's Protected Health Information only for the purpose for which the Business Associate disclosed the Covered Entity's Protected Health Information to the person or entity or as Required by Law; and

(2) Promptly notify the Business Associate (who will in turn notify the Covered Entity in accordance with the breach notification provisions) of any instance of which the person or entity becomes aware in which the confidentiality of the Covered Entity's Protected Health Information was breached.

(C) To de-identify the information in accordance with 45 CFR 164.514(a) – (c) as necessary to perform those services required under the Agreement.

(iii) Minimum Necessary. The Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of the Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that the Business Associate will not be obligated to comply with this minimum-necessary limitation if neither the Business Associate nor the Covered Entity is required to limit its use, disclosure or request to the minimum necessary. The Business Associate and the Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act.

(b) Prohibition on Unauthorized Use or Disclosure. The Business Associate will neither use nor disclose the Covered Entity's Protected Health Information, except as permitted or required by this Agreement or in writing by the Covered Entity or as Required by Law. This Agreement does not authorize the Business Associate to use or disclose the Covered Entity's Protected Health Information in a manner that will violate Subpart E of 45 CFR Part 164 if done by the Covered Entity.

(c) Information Safeguards.

(i) Privacy of the Covered Entity's Protected Health Information. The Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of the Covered Entity's Protected Health Information. The safeguards must reasonably protect the Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made to a use or disclosure otherwise permitted by this Agreement.

(ii) Security of the Covered Entity's Electronic Protected Health Information. The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that the Business Associate creates, receives, maintains, or transmits on the Covered Entity's behalf as required by the Security Rule. The Business Associate will comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.

(iii) No Transfer of PHI Outside United States. Business Associate will not transfer Protected Health Information outside the United States without the prior written consent of the Covered Entity. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or subcontractors physically located outside the United States are able to access, use, or disclose Protected Health Information.

(iv) Policies and Procedures. The Business Associate shall maintain written policies and procedures, conduct a risk analysis, and train and discipline of its workforce.

(d) Subcontractors and Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, the Business Associate will ensure that any of its Subcontractors and agents that create, receive, maintain, or transmit Protected Health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

(e) Prohibition on Sale of Records. As of the effective date specified by HHS in final regulations to be issued on this topic, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual unless the Covered Entity or Business Associate obtained from the individual, in accordance with 45 CFR §164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that individual, except as otherwise allowed under the HITECH Act.

(f) Prohibition on Use or Disclosure of Genetic Information. Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA rules.

(g) Penalties For Noncompliance. The Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the privacy rule and security rule under the HIPAA Rules, as amended by the HITECH Act.

III. Compliance with Electronic Transactions Rule

If the Business Associate conducts in whole or part Electronic Transactions on behalf of the Covered Entity for which HHS has established standards, the Business Associate will comply, and will require any Subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule. The Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

IV. Obligations of the Covered Entity

The Covered Entity shall notify the Business Associate of:

- (a) Any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information;
- (b) Any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information; and
- (c) Any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by the Covered Entity

The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

VI. Individual Rights

(a) Access. The Business Associate will, within twenty-five (25) calendar days following the Covered Entity's request, make available to the Covered Entity or, at the Covered Entity's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of the Covered Entity's Protected Health Information about the individual that is in the Business Associate's custody or control, so that the Covered Entity may meet its access obligations under 45 CFR §164.524. Effective as of the date specified by HHS, if the Protected Health Information is held electronically in a designated record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such form. The Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such format; if it is not readily producible in such format, the Business Associate will work with the Covered Entity to determine an alternative form and format as specified by the Covered Entity to meet its electronic access obligations under 45 CFR 164.524.

(b) Amendment. The Business Associate will, upon receipt of written notice from the Covered Entity, promptly amend or permit the Covered Entity access to amend any portion of the Covered Entity's Protected Health Information in a designated record set as directed or agreed to by the Covered Entity, so that the Covered Entity may meet its amendment obligations under 45 CFR §164.526.

(c) Disclosure Accounting. The Business Associate will maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528.

(i) Disclosures Subject to Accounting. The Business Associate will record the information specified below ("Disclosure Information") for each disclosure of the Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that the Business Associate makes to the Covered Entity or to a third party.

(ii) Disclosures Not Subject to Accounting. The Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of the Covered Entity's Protected Health Information if the Covered Entity need not account for such disclosures under the HIPAA Rules.

(iii) Disclosure Information. With respect to any disclosure by the Business Associate of the Covered Entity's Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, the

Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

(A) Disclosure Information Generally. Except for repetitive disclosures of the Covered Entity's Protected Health Information as specified below, the Disclosure Information that the Business Associate must record for each accountable disclosure is (1) the disclosure date, (2) the name and (if known) address of the entity to which the Business Associate made the disclosure, (3) a brief description of the Covered Entity's Protected Health Information disclosed, and (4) a brief statement of the purpose of the disclosure.

(B) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of the Covered Entity's Protected Health Information that the Business Associate makes for a single purpose to the same person or entity (including the Covered Entity), the Disclosure Information that the Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (1) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (2) the frequency, periodicity, or number of the repetitive accountable disclosures; and (3) the date of the last of the repetitive accountable disclosures.

(iv) Availability of Disclosure Information. The Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). The Business Associate will make the Disclosure Information available to the Covered Entity within twenty-five (25) calendar days following the Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, the Business Associate shall provide the accounting directly to an individual making such a disclosure request, if a direct response is requested by the individual. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(d) Restriction Agreements and Confidential Communications. The Covered Entity shall notify the Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information. The Business Associate will comply with any agreement that the Covered Entity makes that either (i) restricts use or disclosure of the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(a), or (ii) requires confidential communication about the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(b), provided that the Covered Entity notifies the Business Associate in writing of the restriction or confidential communication obligations that the Business Associate must follow. The Covered Entity will promptly notify the Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct the Business Associate whether any of the Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. Effective February 17, 2010 (or such other date specified as the effective date by HHS), the Business Associate will comply with any restriction request if: (i) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

VII. Breaches and Security Incidents

(a) Reporting.

(i) Impermissible Use or Disclosure. The Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this Agreement not more than twenty-five (25) calendar days after Business Associate becomes aware of such non-permitted use or disclosure.

(ii) Privacy or Security Breach. The Business Associate will report to the Covered Entity any use or disclosure of the Covered Entity's Protected Health Information not permitted by this Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.40, and any Security Incident of which it becomes aware. The Business Associate will make the report to the Covered Entity's Privacy Official not more than twenty-five (25) calendar days after the Business Associate

becomes aware of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, the Business Associate may delay notifying the Covered Entity for the applicable time period. The Business Associate's report will at least:

- (A) Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of the Breach;
- (B) Identify the Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
- (C) Identify who made the non-permitted use or disclosure and who received the non-permitted use or disclosure;
- (D) Identify what corrective or investigational action the Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
- (E) Identify what steps the individuals who were subject to a Breach should take to protect themselves; and
- (F) Provide such other information, including a written report and risk assessment under 45 CFR §164.402, as the Covered Entity may reasonably request.

(iii) Security Incidents. The Business Associate will report to The Covered Entity any Security Incident of which the Business Associate becomes aware. The Business Associate will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth above.

(b) Mitigation. The Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this Agreement.

VIII. Term and Termination

(a) Term. The term of this Agreement shall be effective as of as of the date specified below, and shall terminate when all Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

(b) Right to Terminate for Cause. The Covered Entity may terminate this Agreement if it determines, in its sole discretion that the Business Associate has breached a material term of this Agreement, and upon written notice to the Business Associate of the breach, the Business Associate fails to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in the Covered Entity's notice of termination.

(c) Treatment of Protected Health Information on Termination.

(i) Return or Destruction of Covered Entity's Protected Health Information as Feasible. Upon termination or other conclusion of this Agreement, the Business Associate will, if feasible, return to the Covered Entity or destroy all of the Covered Entity's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived there from that allow identification of any individual who is a subject of the Covered Entity's Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of the Business Associate. Further, the Business Associate shall require any such Subcontractor or agent to certify to the Business Associate that it returned to the Business Associate (so that the Business Associate may return it to the Covered Entity) or destroyed all such information which could be returned or destroyed. The Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

(ii) Procedure When Return or Destruction Is Not Feasible. The Business Associate will identify any of the Covered Entity's Protected Health Information, including any that the Business Associate has disclosed to

subcontractors or agents as permitted under this Agreement, that cannot feasibly be returned to the Covered Entity or destroyed and explain why return or destruction is infeasible. The Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. The Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Agreement.

(iii) Continuing Privacy and Security Obligation. The Business Associate's obligation to protect the privacy and safeguard the security of the Covered Entity's Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

IX. Miscellaneous Provisions

(a) Definitions. All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance.

(b) Inspection of Internal Practices, Books, and Records. The Business Associate will make its internal practices, books, and records relating to its use and disclosure of the Covered Entity's Protected Health Information available to the Covered Entity and to HHS to determine compliance with the HIPAA Rules.

(c) Amendment to Agreement. This Amendment may be amended only by a written instrument signed by the parties. In case of a change in applicable law, the parties agree to negotiate in good faith to adopt such amendments as are necessary to comply with the change in law.

(d) No Third-Party Beneficiaries. Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.

(e) Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(f) Survival. The respective rights and obligations of the Business Associate under Section IX (f) of this Agreement shall survive the termination of this Agreement.

(g) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with the HIPAA Rules.

(h) Notices. All notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested or by overnight delivery. Notices shall be directed to the parties at their respective addresses set forth in the first paragraph of this Business Associate Agreement or below their signature, as appropriate, or at such other addresses as the parties may from time to time designate in writing.

(i) Entire Agreement; Modification. This Business Associate Agreement represents the entire agreement between the Business Associate and the Covered Entity relating to the subject matter hereof. No provision of this Business Associate Agreement may be modified, except in writing, signed by the parties.

(j) Assistance in Litigation or Administrative Proceedings. The Business Associate shall make itself, and any subcontractors, employees or agents assisting the Business Associate in the performance of its obligations under this Agreement, available to the Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA regulations, or other laws relating to security and privacy, except where the Business Associate or its subcontractors, employees, or agents are named as an adverse party.

(k) Binding Effect. This Business Associate Agreement shall be binding upon the parties hereto and their successors and assigns. For purposes of this agreement, a signed copy delivered by facsimile or electronically shall be treated by the parties as an original of this agreement and shall be given the same force and effect.

(l) Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by the laws of the state of Ohio except to the extent preempted by federal law.

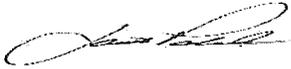
(m) Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(n) Construction and Interpretation. The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language of the Agreement. Accordingly, the Agreement shall be treated as having been drafted equally by the parties and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the date written below.

BUSINESS ASSOCIATE:

NEO Administration Company
1735 Merriman Road
Akron, OH 44313



By: _____

Janet Palcko
Title: Managing Partner

COVERED ENTITY:

(Employer Name)

(Employer mailing address)

(Company authorized signature)

(Print name & title)

(Date)