

**Valdosta State College**

**DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT PLAN**

Effective January 1, 1988

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ARTICLE 1

Name, Purpose and Effective Date

1.01           Name and Purpose of Plan. This Plan shall be known as the Valdosta State College Dependent Care Flexible Spending Account Plan. This Plan is intended to be a “dependent care assistance plan” within the meaning of section 129 of the Internal Revenue Code.

1.02           Effective Date. The Effective Date of the Plan is January 1, 1989.

ARTICLE 2

Definitions

The following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

- 2.01 “Code” means the Internal Revenue Code of 1986, as amended.
- 2.02 “Effective Date” means January 1, 1989, the date when this Plan became effective.
- 2.03 “Elective Employer Contributions” means the contributions made by the Employer to the Plan pursuant to salary reduction agreements between Employees and the Employer.
- 2.04 “Employee” means any person who is employed by the Employer.
- 2.05 “Employer” means Valdosta State College
- 2.06 “Participant” means an Employee who is eligible for and has elected to participate in the Plan and whose membership in the Plan has not ceased as provided in Section 3.03.
- 2.07 “Plan” means the Valdosta State College Dependent Care Flexible Spending Account Plan and all authorized amendments.
- 2.08 “Plan Administrator” or “Administrator” means Valdosta State College.
- 2.09 “Plan Year” means the twelve (12) month period beginning on January 1 and ending on December 31.

Wherever used in the instrument, a masculine pronoun shall be deemed to include the masculine and feminine gender, a singular word shall be deemed to include the singular and plural and a plural word shall be deemed to include the singular and plural in all cases where the context requires.

ARTICLE 3

Eligibility

3.01 Current Employees. Each Employee who is an Employee on the effective date and who is eligible to participate in the Valdosta State College group benefit plans will be eligible to participate in the Plan on the Effective Date.

3.02 Future Employees. Each future Employee will be eligible to participate in the Plan on the date he becomes eligible for the Valdosta State College group benefit plans.

3.03 Termination of Participation. Each Employee shall be eligible to continue to participate in the Plan until he ceases to be an Employee, or until he otherwise ceases to be eligible to participate in the Valdosta State College group benefit plans.

ARTICLE 4

Election Process and Benefits

4.01 Election Process. Each Employee will have the opportunity to make an initial benefit election effective on his date of eligibility for the Plan, and thereafter, each Employee will have the opportunity to change his benefit election on the first day of each Plan Year. Such an election shall be made on an election form provided by the Administrator, shall be made on a timely basis according to rules promulgated by the Administrator and shall remain in effect until changed by the Employee.

Each Employee may elect to have the salary otherwise payable to him for each applicable payroll period during the Plan Year reduced so that the Participants' Employer shall make contributions in the form of credits to the Participant's Dependent Care Flexible Spending Account equal to the amount by which the Employee elected to have his salary reduced. Each Employee may elect to reduce his salary by any amount not exceeding \$5,000 per year.

An Employee will not be permitted to change any benefits election for a Plan Year after the deadline date established by the Administrator for the timely filing of such elections, except as provided in the next sentence. An Employee whose family status changes (e.g., by reason of marriage, divorce or legal separation, death of spouse or child, birth or adoption of child, or change in employment status of spouse) during a Plan Year may change his benefit election, in accordance with rules promulgated by the Administrator for the remainder of such Plan Year solely to accommodate the change in his family status.

4.02 Maintenance of Dependent Care Flexible Spending Account. The Administrator shall maintain for each Participant a Dependent Care Flexible Spending Account. The Administrator shall record the amounts credited to the Participant's Dependent Care Flexible Spending Account in accordance with Section 4.01 and the amounts charged against the Dependent Care Flexible Spending Account in accordance with the provisions of Section 4.05. The Participant's Dependent Care Flexible Spending Account maintained for any Plan Year can only be used to reimburse dependent or child care expenses incurred in that Plan Year.

Amounts credited to a Participant's Dependent Care Flexible Spending Account do not represent actual deposits made on his behalf to a separate fund of trust but are bookkeeping accounts made on his behalf to a separate fund or trust but are bookkeeping accounts representing assets of the Employer from which payments will be made to

Participants in accordance with the terms of the Plan. No interest shall be credited to Participants with respect to the Dependent Care Flexible Spending Account.

4.03 Dependent Care Assistance Benefits. Each Participant shall be entitled to reimbursement for those dependent care expenses incurred during a Plan Year which are considered eligible employment-related expenses under the child and dependent care credit provisions of section 21(b)(2) of the Code (and applicable regulations thereunder) and which do not exceed the earned income limitations specified in Section 4.04, but only to the extent of the credit balance in the Participant's Dependent Care Flexible Spending Account for such Plan Year.

The following rules (and any other applicable rules of sections 21(b)(2) and 129 of the Code) apply in determining whether the expenses of the Participant are for dependent care reimbursable under the Plan:

(a) The expenses must be for household services attributable in part to the care of a "qualifying individual" as hereinafter defined, and for the care of a qualifying individual, which expenses are incurred to enable the Participant (and if the Participant is married, the Participants' spouse) to be gainfully employed during the period in which there is a qualifying individual with respect to the Participant. Educational expenses for a child in the first or higher grade level are not payments for the care of a qualifying individual eligible for reimbursement.

(b) Qualifying individuals are any of the following persons who live in the household maintained by the Participant (or by the Participant and spouse):

(i) Participant's child under age 13 if the Participant can claim the child as an exemption deduction for Federal Income Tax purposes, (provided, however, that the requirement that the Participant be able to claim the child as an exemption deduction is not applicable if the Participant is divorced or legally separated under a decree of divorce or separate maintenance or separated under a written separation agreement, the Participant had custody of the child for a longer period during the Plan Year than the other parent, the child is under age 13 or unable to care for himself and has been in the custody of one or both parents more than half of the Plan Year and received more than half of his support from one or both parents):

(ii) A dependent of the Participant for whom the Participant can claim an exemption deduction (or could claim such deduction but for the fact that the person

has gross income for the Plan Year of \$1, 900 or more) and who is physically or mentally not able to care for himself: and

(iii) The spouse of the Participant if the spouse is physically or mentally not able to care for himself.

(c) This Plan will not reimburse a Participant for payments made to a child of the Participant or for payments made to a person the Participant can claim as a dependent.

4.04 Earned Income Limitation. In any Plan Year, the payments under this Plan shall not exceed the earned income limitation calculated under the following rules:

(a) In the case of a Participant who is not married at the close of the Plan Year, this limitation is the earned income of the Participant. "Earned income" means the total of wages, salary, and other employee compensation and any net earnings from self-employment for the Plan Year.

(b) In the case of a Participant who is married at the close of the Plan Year, this limitation is the lesser of the earned income to the Participant or the earned income of the Participant's spouse.

(c) If the Participant's spouse is either a full-time student at an educational institution, or physically or mentally unable to take care of himself, during any month in the Plan year, the spouse shall be deemed to have "earned income" for each such month of \$200, or \$400 if there are at least two qualifying individuals with respect to the Participant as defined in Section 4.03(b).

(d) Married Participants who are legally separated or living apart will be considered not married if they are treated as not married under the rules of section 21(e)(3) and (4) of the Code.

4.05 Claim and Payment Procedures. Claims for reimbursement shall be made on the appropriate form or forms furnished by the Administrator for purposes of the Plan and submitted to the Administrator or the person designated by the Administrator. The Participant may be required to furnish additional information, such as receipts and statements from the providers of dependent care.

All claims submitted by a Participant during a pay period shall be processed as of the end of each pay period (or less frequently at the discretion of the Administrator) on the basis of the balance in the Participant's Dependent Care Flexible

Spending Account at the end of such pay period. To the extent that any claims for a pay period cannot be paid in full because of an insufficiency in the Participant's Dependent Care Flexible Spending Account, they shall be returned and resubmitted when sufficient funds are available for such Plan Year, but shall not be carried over or charged against the balance of any subsequent Plan Year.

Payments pursuant to this Section 4.05 shall be made only to Participants (except as otherwise provided in Section 7.04), and no payment shall be made directly to the provider of the dependent care.

In the interest of minimizing administrative expenses, the Administrator may establish rules governing the minimum benefit requests that will be honored for payments under the plan.

4.06            Credit Balance at End of Plan Year. The Administrator will establish rules governing the expiration of the period for submitting claims for the Plan Year under the Plan. A Participant or former Participant shall not be entitled to receive cash or any other form of compensation or benefits with respect to any credit balance in his Dependent Care Flexible Spending Account at the end of a Plan Year. Similarly, no credit balance remaining after the expiration of the period for submitting claims for one Plan Year will be carried forward into any succeeding Plan Year.

ARTICLE 5

Plan Administration

5.01 Administrative Powers and Duties of the Plan Administrator. The Administrator shall have the following administrative responsibilities and authority with respect to the Plan:

(a) Make such uniform and nondiscriminatory rules and regulations for the administration and interpretation of the Plan as are not inconsistent with the terms hereof or of applicable law.

(b) Establish and maintain records appropriate to permit the Plan to be administered according to its terms and requirements of applicable law.

(c) Prepare and file or otherwise disseminate all reports, filings and documents required by applicable law or regulation.

(d) Establish in writing a claims procedure in accordance with regulations of the Secretary of Labor.

(e) Retain the services of one or more persons, including an enrolled actuary, and independent qualified public accountant and counsel, to perform such duties as may from time to time be required and to render advice upon request with regard to any matters arising under the Plan.

(f) Interpret the Plan and decide any matters arising hereunder in the administration and operation of the Plan, and any interpretations or decisions so made will be conclusive and binding on all persons having an interest in the Plan; provided, however, that all such interpretations and decisions will be applied in a uniform manner to all Employees similarly situated.

(g) Take all other steps deemed necessary to properly administer the Plan in accordance with its terms and the requirements of applicable law.

ARTICLE 6

Amendments to or Termination of the Plan

6.01 Right of Employee to Amend or Terminate the Plan. The Plan may be amended or terminated, in whole or part, at any time by the Employer; provided, however, that neither amendment nor termination shall prevent the Participant from receiving benefits to which he was entitled under the terms of the Plan immediately prior to amendment or termination.

ARTICLE 7

Miscellaneous

7.01 Rights of Employees. Nothing herein contained shall be deemed to give any Employee the right to be retained in the employ of the Employer or to interfere with the right of the Employer to discharge such Employee at any time, nor shall it be deemed to give the Employer the right to require the Employee to remain in its employ, nor shall it interfere with the Employer's right to terminate his employment at any time.

7.02 Notice of Address. Each person entitled to benefits under the Plan must file with the Administrator, in writing, his post office address and each change of post office address. Any communication, statement or noticed addressed to such person at such address shall be deemed sufficient for all purpose of the Plan, and there shall be no obligation on the part of the Employer or the Administrator to search for or to ascertain the location of such person.

7.03 Data. Each person entitled to benefits under the Plan must furnish to the Administrator such documents, evidence, or other information as the Administrator considers necessary or desirable for the purposes of administering the Plan or to protect the Plan. The Administrator shall be entitled to rely on representations made by Employees, with respect to age, marital status and other personal facts, unless it knows said representations are false.

7.04 Payments Due Incompetent or Deceased Participants. If the Administrator determines that any Participant to whom payment is due hereunder is incompetent by reason of physical or mental disability, the Administrator shall have power to cause the payments becoming due to such Participant to be made to another for the benefit of the incompetent, without responsibility of the Administrator to see to the application of such payment.

If the Participant to whom a payment is due is deceased, the Administrator shall make the payment to the person the Participant shall have designated as his beneficiary under the Employer's group life insurance program, or if no such beneficiary shall survive the Participant, to the Participant's estate. Payment make pursuant to this Section 7.04 shall operate as a complete discharge of the Administrator.

7.05 Headings. The headings of the Plan are inserted for convenience and reference only and shall have no effect upon the meaning of the provisions hereof.

7.06 Construction. The Plan shall be constructed, regulated and administered under the laws of the State of Georgia, except that if any such laws are superseded by any applicable Federal Law or statute, such Federal law or statute shall apply.

IN WITNESS WHEREOF, Valdosta State College has caused this instrument to be duly executed in its name and on its behalf this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Valdosta State College

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

Witness:

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