

## **SECTION 125 DISCRIMINATION TEST**

### **TEST 1 - ELIGIBILITY**

The Flexible Benefits Plan shall benefit all employees as classified by the Employer and shall not be discriminatory in favor of highly compensated employees or their dependents.

### **TEST 2 – CONTRIBUTIONS AND BENEFITS**

Qualified benefits and total benefits may not discriminate in favor of highly compensated.

### **TEST 3 - 25% KEY EMPLOYEE CONCENTRATION TEST**

The total benefits provided to Key Employees can not exceed 25% of the total benefits of all employees under the Plan.

## **DEFINITIONS**

### **KEY EMPLOYEES**

A "Key Employee" is any employee who, during the plan year, was any of the following:

- (1) an officer of the employer with annual compensation greater than \$160,000 (as indexed for cost-of-living adjustments);
- (2) a 5% owner of the employer; or
- (3) a 1% owner of the employer with annual compensation in excess of \$110,000 (not indexed); and
- (4) a spouse (if employed by the employer) of a sole proprietor or a partner who is not self employed or a partner.

### **OFFICERS**

An officer of the employer should include all elected "officers" as well as appointed officers who actually have authority to manage the business. Purely administrative officers who have an officer's title but no management authority (VP of finance with authority limited to signing checks, etc.) may not have to be included. No more than 50 employees shall be counted as officers (or, if less than 50 officers, the greater of three employees or 10% of the employees)

### **COMPENSATION**

The employee's actual compensation for the relevant period based on the employee's Form W-2 for the calendar year that ends with or within the plan year. An officer-employee hired after the beginning of the plan year may not exceed the applicable threshold for the first year of employment if his compensation from the date of hire to the end of the plan year does not exceed the threshold stated above.



**EMPLOYEE AND EMPLOYER PAID PORTION OF BENEFIT COSTS**

*All Employee pre-tax contributions (employee paid portion of benefit costs) and Employer contributions must be included in the Section 125 test. Please provide the appropriate information below:*

EMPLOYEE PRE-TAX PREMIUM CONTRIBUTIONS FOR ALL KEY EMPLOYEES MONTHLY BENEFIT COSTS  
\$ \_\_\_\_\_

EMPLOYER CONTRIBUTIONS FOR ALL KEY EMPLOYEES MONTHLY BENEFIT COSTS  
\$ \_\_\_\_\_

EMPLOYEE PRE-TAX PREMIUM CONTRIBUTIONS FOR ALL NON-KEY EMPLOYEES MONTHLY BENEFIT COSTS  
\$ \_\_\_\_\_

EMPLOYER CONTRIBUTIONS FOR ALL NON-KEY EMPLOYEES MONTHLY BENEFIT COSTS  
\$ \_\_\_\_\_

\_\_\_\_\_  
**EMPLOYER**

**2011 Plan Year**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

\_\_\_\_\_  
**DATE**