

**SAMPLE DEPENDENT CARE ASSISTANCE PLAN DOCUMENT
UNDER SEC. 129 of INTERNAL REVENUE CODE
Taxpayer Attorney Review Required**

Employer: _____

ARTICLE 1 - PURPOSE OF THE PLAN

1.1. Employer establishes this Plan under Public Law 107-67, Section 630, to subsidize a portion of the cost of child care incurred by Employer's employees.

1.2. Employer also intends that the Plan qualify as a plan providing dependent care assistance under Internal Revenue Code (Code) Section 129. Only the subsidies provided under the Plan for Eligible Child Care Expenses on behalf of a Qualifying Child who is also a Qualifying Dependent will be eligible for exclusion from the Participant's gross income under Code Section 129(a). Subsidies disbursed on behalf of a Qualifying Child who is not also a Qualifying Dependent must be included in the Participant's gross income.

ARTICLE 2 - DEFINITIONS

2.1. "Benefits" means the amounts paid to Participants under the Plan to subsidize Eligible Child Care Expenses paid or incurred by the Participant.

2.2. "Child" means a member of a household maintained by an Employee who bears the following relationship to the Employee: a biological child who lives with the Employee; an adopted child; a stepchild; a foster child; a child for whom a judicial determination of support has been obtained; or a child to whose support the Employee who is a parent or legal guardian makes regular and substantial contributions.

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

2.4. "Dependent" means any individual who is a dependent of a Participant within the meaning of Code Section 152(a).

2.5. "Earned Income" means all income, as defined under Code Section 32(c)(2), including income from wages, salaries, tips and other employee compensation, and net earnings from self-employment, but does not include any amounts received: (i) as pre-tax benefits under Code Section 129 on behalf of a Qualifying Dependent under the Plan or any other dependent care assistance program; (ii) as a pension or annuity; or (iii) as unemployment or workers' compensation.

2.6. "Educational Institution" means any college or university, the primary function of which is the presentation of formal instruction and that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on.

2.7. "Effective Date" means (date selected for start of program).

2.8. "Eligible Child Care Expenses" means expenses incurred by a Participant for Qualifying Services which are paid to a Qualifying Provider who is not: (i) a Dependent of a Participant or a Dependent of the Spouse of a Participant, (ii) a child of a Participant under the age of 19, and which are incurred to enable the Participant or the Participant's Spouse to be gainfully employed.

2.9. "Eligible Employee" means an individual employed on a full time basis by Employer.

2.10. "Employee" means an employee of Employer.

2.11. "Highly Compensated Employee" means any person who is a highly compensated employee as defined in Code Section 414(q).

2.12. "Maintaining a Household" means that an Employee or, if married, an Employee and Spouse together furnish over one half the cost of maintaining a household.

2.13. N/A

2.14. "Participant" means any Employee who has satisfied the eligibility requirements of Section 3.1, who has made application and been accepted by Employer for benefits under this Plan.

2.15. "Plan" means the Employer Child Care Subsidy Plan.

2.16. "Plan Administrator" means Employer.



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2.17. "Plan Year" means the 12-month period commencing on January 1 and ending on December 31.

2.18. "Qualifying Child" means a Child of a Participant who is: (a) under the age of 13; or (b) under age 18 and is physically or mentally incapable of caring for himself or herself.

2.19. "Qualifying Day Care Center" means a day care center, as described in Code Section 21 and regulations there under, that (i) complies with all applicable laws and regulations of the State and town, city or village in which it is located, (ii) is licensed to provide day care services in the state or location in which the day care center operates, (iii) provides care for individuals (other than individuals who reside at the day care center) and (iv) receives a fee, payment or grant for services for any of the individuals to whom it provides services (regardless of whether the facility is operated for a profit).

2.20. "Qualifying Dependent" means: (i) a Dependent of a Participant who is under the age of 13; or (ii) a Dependent of a Participant who is under the age of 18 and who is physically or mentally incapable of caring for himself or herself.

2.21. "Qualifying Provider" means an individual or a Qualifying Day Care Center licensed to provide child care services in the state or location in which they operate.

2.22. "Qualifying Services" means services performed:

in the home of the Participant, or outside the home of the Participant, or at a Qualifying Day Care Center, or licensed Family Day Care Home for the care of a Qualifying Child or Qualifying Dependent of the Participant; to enable the Participant or the Participant's Spouse to remain gainfully employed; and

for the primary purpose of assuring the Qualifying Child's or Qualifying Dependent's well-being and protection Qualifying Services do not include services provided at a camp where the Qualifying Child or Qualifying Dependent stays overnight.

2.23. "Spouse" means the husband or wife of a Participant but does not include an individual legally separated from a Participant under a decree of legal separation.

2.24. "Student" means an individual who during each of five calendar months during a Plan Year is a full time student at an Educational Institution.

ARTICLE 3 - ELIGIBILITY AND PARTICIPATION

3.1. An Employee is eligible for this Plan immediately upon becoming an Eligible Employee.

3.2. An Eligible Employee will become a Participant in the Plan upon application for Benefits to and approval by Employer.

3.3. If a Participant ceases to be an Eligible Employee, he or she will no longer be eligible to receive Benefits under the Plan. If the Employee again becomes an Eligible Employee, he or she may again become a Participant in the Plan.

ARTICLE 4 - BENEFITS

4.1. A Participant in the Plan will be eligible to receive Benefits under the Plan for all Eligible Child Care Expenses incurred by Participant or his or her Spouse subject to the limitations of Article 6.

4.2. Benefit Amounts.

Benefits will be provided as a percentage of the Eligible Child Care Expenses according to a schedule based on the Participant's total family income.

The current schedule of benefits is shown as Attachment A to this Plan

Employer may adjust the schedule in Attachment A from time to time based on the availability of funding for the program and to maintain an equitable distribution of benefits for all Eligible Employees.

Employer will sign a new Attachment A noting the effective date and provisions of the adjusted Benefits under the Plan and the new Attachment A will become a part of this Plan.

4.3. A Participant will be entitled to Benefits under this Plan only for Eligible Child Care Expenses incurred after the later of: (a) the date he or she becomes a Participant in the Plan; or (b) the Effective Date of the Plan.

4.4. Each Participant who desires to receive a Benefit under the Plan for Eligible Child Care Expenses incurred by the Employee for Qualifying Services must submit to the Plan Administrator, on a form to be provided by Employer, a statement containing the following information:



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Name, home address and employment information for each of the child's parents;
Name, date of birth, child care enrollment information and weekly cost for each Child to be covered;
Completed and signed child care provider information form, along with proof of the Provider's licensure and the Provider's Federal tax identification number; and
Such other information or documents as Employer may require to administer the Plan.

4.5. Following receipt of the information required in Section 4.4, the Plan Administrator will notify the Participant whether he or she is eligible to receive Benefits under the Plan.

4.6. Approval for and payment of Benefits will be subject to the availability of appropriated funds.

4.7. If a Participant ceases to be an Eligible Employee:

no Benefits will be paid for Eligible Child Care Expenses incurred after the date the Participant ceases to be an Eligible Employee; and unless the Participant was discharged from employment for cause, requests for Benefits may be made after the date of termination for Eligible Child Care Expenses incurred prior to the date of termination.

4.8. The Participant is responsible for notifying Employer LLC immediately of any change to information submitted for the purpose of qualifying for Benefits under this Plan.

ARTICLE 5 - AUTHORIZATION AND PAYMENT OF BENEFITS

5.1. At the end of each calendar month, the Plan Administrator will send an invoice approval form to the Qualifying Provider named by the Participant on his or her Benefits application.

5.2. The Qualifying Provider will certify on the invoice approval form that the Qualifying Services for that billing period were actually performed on behalf of the Participant's Qualifying Child.

5.3. The Participant will certify on the invoice approval form that the Qualifying Services for that billing period were in fact received by the Participant's Qualifying Child.

5.4. The Qualifying Provider will then submit the completed invoice approval form to the Plan Administrator for review and payment.

5.5. The Plan Administrator will review the submitted invoice approval form and pay the Benefit amount directly to the Qualifying Provider.

ARTICLE 6 - LIMITATIONS ON BENEFITS

6.1. The following amounts will not be subject to exclusion from the Participant's gross income: benefits payable for Eligible Child Care Expenses on behalf of a Qualifying Child who is not a Qualifying Dependent; or benefits payable for Eligible Child Care Expenses that exceed the following maximum amounts for the calendar year: For a Participant who is not married at the close of the calendar year, the lesser of the Participant's Earned Income for the Plan Year (after all reductions in compensation), or \$5,000; For a Participant who is married at the close of the calendar year, the least amount of the following: the Participant's Earned Income for the calendar year; \$5,000, if the Participant and his or her Spouse file a joint Federal income tax return; or \$2,500, if the Participant and his or her Spouse file separate Federal income tax returns. If the foregoing amounts are changed by an amendment to Code Section 129, the amounts set forth automatically shall be adjusted to reflect the new amounts.

6.2. For purposes of Section 6.1, a Spouse of a Participant who is not employed during any month in which the Participant incurs Eligible Child Care Expenses, and which Spouse is either physically or mentally incapable of caring for himself or herself or is a Student, will be deemed to have Earned Income for such month of: \$200, if there is one Qualifying Dependent for whom the Participant incurs Eligible Child Care Expenses; or \$400, if there is more than one Qualifying Dependent for whom the Participant incurs Eligible Child Care Expenses.

6.3. In accordance with Code Section 129(d), the average Benefits provided to Participants who are not Highly Compensated Employees will be at least 55% of the average Benefits provided to Highly Compensated Employees. Employer may adjust the Benefits payable to Highly Compensated Employees to assure that the Plan remains in compliance with this provision.

ARTICLE 7 - FUNDING

7.1. Employer will provide funding within plan limits. Employees will pay additional amounts.

ARTICLE 8 - PLAN ADMINISTRATION



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8.1. Employer will administer the Plan according to its terms and subject to applicable law, for the exclusive benefit of persons entitled to participate in the Plan, without discrimination among them. In addition to all other powers provided by this Plan, Employer has authority to:

Make and enforce rules and regulations as it deems necessary or proper to efficiently administer the Plan; Interpret the Plan in good faith, and its interpretations will be final and conclusive on all persons claiming benefits under the Plan; Decide all questions concerning the Plan and the eligibility of any person to participate in the Plan; Appoint agents, counsel, accountants, consultants and other persons as needed to help administer the Plan; and Allocate and delegate, in writing, its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan.

8.2. Employer will make available to each Eligible Employee such records under the Plan as pertain to the Eligible Employee, by request under the Privacy Act.

8.3. In administering the Plan, Employer will be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, counsel or other experts employed or engaged by Employer.

8.4. Whenever, in the administration of the Plan, any discretionary action by Employer is required, Employer will exercise its authority in a nondiscriminatory manner so that all persons similarly situated will receive substantially the same treatment.

8.5. The Plan Administrator will provide to each Participant receiving Benefits under the Plan during the Plan Year a statement of the amount of Benefits received by the Participant during that Plan Year. This statement will be furnished to the Participant by January 31st following the end of the Plan Year. The amount of dependent care subsidies provided to the Employee will be reported on the Employee's Form W-2.

ARTICLE 9 - CLAIMS PROCEDURE

9.1. A Participant may make a claim for Benefits by completing the invoice approval form in conjunction with the Qualified Provider, as described in Article 5.

9.2. If a claim is wholly or partially denied, notice of the decision will be furnished to the Participant and to the Qualifying Provider within a reasonable period of time, not to exceed 90 days after receipt of the claim by the Plan Administrator, unless special circumstances require an extension of time for processing the claim. If an extension of time is required to make a decision, the Plan Administrator will notify the Participant prior to the end of the initial 90-day period. The extension may not exceed 90 days from the end of the initial period. The notification will include:

the specific reason(s) for the denial; a description of any additional information necessary to make a decision; and an explanation of the Plan's claims review procedure, as described in Section 9.3.

9.3. N/A

9.4. If a dispute arises on any matter under this Plan, the Plan Administrator may refrain from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved.

ARTICLE 10 - AMENDMENT AND TERMINATION OF PLAN

10.1. Employer may amend or terminate this Plan at any time. The benefits hereunder are not guaranteed and may be reduced by plan amendment.

ARTICLE 11 - MISCELLANEOUS PROVISIONS

11.1. This Plan and the benefits it offers do not provide any additional rights to Participants or Employees other than those expressly set forth herein.

11.2. This Plan will be construed, administered and enforced according to the laws of the United States of America.

Adopted as of the Effective Date by: _____ (Employer)

By: _____ (President) Date: 1/1/20__

Employer CHILD CARE SUBSIDY ASSISTANCE PLAN ATTACHMENT A: BENEFIT SCHEDULE
Effective as of the date stated above, the following Benefit schedule will be in effect under Section 4.2 of the Plan: If Eligible Employee's Total Individual W-2 Income from _____



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is under \$100,000 then the Plan will pay 100% percentage of the Participant's Eligible Child Care Expenses up to a maximum annual benefit per employee of \$5,000. A Participant's Benefits under this Plan will be reduced by the amount of other state or local child care subsidies received by the Participant.

