

## CAFETERIA PLAN, INCLUDING PREMIUM-ONLY PLAN, ENROLLMENT, AND BILLING SERVICES AGREEMENT

This Agreement is entered into by and between **Nueces County**, Plan Sponsor (“Employer”); **Aflac**, a Nebraska corporation with its principal place of business located at 1932 Wynnton Road, Columbus, Georgia 31999 as the provider of enrollment services for the voluntary, supplemental insurance policies offered for sale by Aflac; **WageWorks, Inc.**, a Delaware corporation with its principal place of business located at 1100 Park Place, San Mateo, California 94403 (“WageWorks”), as the provider of the Nueces County Flexible Employee Benefit Plan intended to be a Cafeteria Plan, including a Premium-Only Plan; and, **Paylogix, Inc.**, a New York corporation with its principal place of business located at 1025 Old Country Road, Westbury, New York 11590 (“Paylogix”), as a provider of consolidated billing services to the Plan.

### (1). NATURE AND SCOPE OF THIS AGREEMENT

Nueces County has adopted a Nueces County Flexible Employee Benefit Plan and such Plan is intended to be a Cafeteria Plan with optional employee welfare benefits (“Qualified Benefits”) available for selection by Participant employees which satisfies the requirements under Section 125 of the Internal Revenue Code of 1986 (“Code”) as amended from time to time. Participant employees are permitted to elect a reduction in compensation to purchase Qualified Benefits with the inclusion or exclusion of such contributions from the employee’s gross income being governed by the applicable provisions of the Code. The Qualified Benefits shall be governed exclusively by their separate written documents, and the Plan includes and incorporates herein by reference such written documents as described.

The purpose of this Agreement is to appoint providers of the Plan and contract for services related to the open enrollment fair and consolidated billing. The Employer remits premiums or contributions relating to the Qualified Benefits to WageWorks and WageWorks shall accept, account for, hold, and disburse such premiums or contributions in a fiduciary capacity for and on behalf of Employer for the benefit of the Plan Employee Participants in accordance with the terms and provisions of this Agreement and Plan.

WageWorks shall maintain Section 125 Cafeteria Plan documents in compliance with Federal regulations, enroll, monitor individual accounts, calculate plan year forfeitures, file annual IRS returns, plan and manage open enrollment fairs, and make reimbursement payments via direct deposit, check, or debit card for Employee Participants.

Paylogix shall manage the billing, remittance, and eligibility for all product lines (including voluntary products), except for the group major Medicare coverage and group life insurance, offered or made available to County employees, i.e. Medical, Dental, Life, Long-Term Disability, Short-Term Disability, Medical Care Reimbursement, and Dependent Care Assistance Plan.

## (2). APPOINTMENTS

The Employer hereby appoints WageWorks, an alliance partner<sup>1</sup> of Aflac that is responsible for the administration of the Section 125 Cafeteria Plans offered for sale by Aflac, and Paylogix, an alliance partner of Aflac that is responsible for consolidated billing services performed in connection with the Section 125 Cafeteria Plans offered for sale by Aflac, as the parties to providing the following technical, advisory, administrative, and recordkeeping services for the Plan as the Employer may from time to time deem necessary for the proper administration of the Plan:

- Consulting with Employer regarding design and/or amendments of the Plan, including the Premium-Only Plan, Medical Care Reimbursement Plan, Dependent Assistance Plan, if applicable, and other benefits identified in the Request for Proposals, and drafting of initial Plan document(s) for review by legal counsel of Employer and plan amendments as necessary to stay compliant with regulations;
- Preparation of open enrollment and communication materials for approval by the director of human resources;
- Assist the employer with the conduct of the open enrollment fair by providing clerical and administrative services;
- Monitoring Plan usage for compliance with applicable tests for nondiscrimination under Section 125 of the Internal Revenue Code of 1986;
- Administration and accounting of deposits and disbursements from salary reduction Contributions towards the Medical Care Reimbursement Plan and Dependent Assistance Plan and provide Employer monthly and annual financial reports as such;
- Processing of flexible spending account reimbursements and dependent care reimbursements and providing employee reports on reimbursement accounts;
- Preparation and delivery to Employer annual reporting and disclosure forms for timely filing with appropriate governmental agency;
- Provide debit cards for the Medical Care Reimbursement Plan and Dependent Assistance Plan;
- Provide consolidated billing for product lines except for group major medical and group life insurance ;
- Maintain all licenses, permits, IRS filings as required by applicable federal, state, and local statutes and regulations to carry out obligations under this Agreement.

Employer has sole and final authority to interpret, control, and manage operation of the Plan. WageWorks and Paylogix are and shall remain independent contractors with respect to the services provided under this Agreement and shall not for any purpose be deemed an employee, partner, or joint venturer with Employer.

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<sup>1</sup>As used in this document, the term “alliance partner” means only that Aflac maintains a close business relationship with WageWorks and Paylogix. This term shall not be construed or used to imply that Aflac has entered into or formed a legal partnership with either of these separate business entities, or to suggest that Aflac has any ownership interest in either WageWorks or Paylogix.

Aflac will be providing the open enrollment services for the County's Benefit Fair. WageWorks, Inc. will be providing the administration of the Cafeteria Plan, Reimbursement accounts, such as the Dependent Assistance Care and Medical Assistance Care programs. Paylogix, Inc. will be providing the Wingspan consolidating billing services under this Agreement. Each party (Aflac, WageWorks, Paylogix) shall indemnify and save harmless the Employer and its officers and employees from all claims and liability due to activities of itself, its agents, employees, which are caused by or result from error, omission, or negligent act of that party. Each party shall also save harmless the Employer from any and all expense, including but not limited to, attorney fees that may be incurred by the Employer in litigation or otherwise resisting said claim or liabilities, which may be imposed on the Employer as a result of such error, omission, or negligent activity. This section will survive any termination of this agreement.

### (3). PLAN DOCUMENTS

Nueces County has adopted a Nueces County Flexible Employee Benefit Plan intended to be a Cafeteria Plan, including a Premium-Only Plan. WageWorks will administer this adopted Plan and make recommended changes for approval by employer. (See Adopted Plan)

The following additional programs are available by WageWorks an option to Employer at no cost: Health Savings Account ("HSA"), Limited Health Care Flexible Spending Accounts ("LFSA"), Child Day Care Accounts, Elder Care and Adult Day Care Accounts, Commuter Benefit Accounts, and Adoption Reimbursement. The Employer may consider these programs at a later time.

The following additional program is available by Aflac as an option to Employer at no cost: Payroll-Deducted, Supplemental Insurance Policies. The Employer may consider this program at a later time.

WageWorks agrees to provide recommended changes to the existing Nueces County Flexible Employee Benefit Plan with a synopsis of the recommended changes to ensure the Plan's compliance with current and future applicable federal, state laws and regulations. WageWorks also agrees to draft a Summary Plan Description for distribution to Employer's employees.

### (4). INFORMATION FURNISHED

The Employer agrees that services provided by Aflac, WageWorks, and Paylogix under this Agreement are based upon information furnished by the Employer or insurers contracting with Employer to provide benefits available for selection under the Plan and that each of these parties may rely without detriment or damage on such information and the Employer agrees to hold harmless and indemnify each of these parties as permitted by law for any claim, damages, or other liability which may be incurred on account or reliance on such information.

#### (5). TERM OF THE AGREEMENT/TERMINATION/AMENDMENT

This Agreement covers administration of the Plan for a period of one (1) year (“Initial Term”) with the option to renew for four (4) one (1) year terms (“Renewal Terms”). The Initial term begins October 1, 2012 and ends September 30, 2013. A request for renewal shall be provided in writing one hundred twenty (120) days prior to the end of each one year period. Both parties have the right to terminate this Agreement at any time for no cause by giving thirty (30) days written notice to the other party pursuant to the notice provisions in this Agreement. The Employer agrees to pay all fees owed up to the date of termination. This Agreement may be amended upon written agreement by both parties and approved by Commissioners Court at a noticed meeting.

#### (6). FEE ARRANGEMENTS/START-UP FEES

The Employer and WageWorks agree to the following fees outlined in Exhibit “A” and are incorporated in this paragraph.

If for any reason this Agreement is terminated within the term, Employer agrees that in addition to payment of the monthly administrative fee described above from the effective date of termination, Employer shall pay WageWorks for preparation of draft plan documents, summary plan descriptions, and shall pay Aflac for preparation of any enrollment materials, for voluntary, supplemental insurance policies, with such charges based on each party’s-current fee hour rate as per this Agreement. Employer further agrees that in the event the effective date is postponed for any reason after acceptance of this Agreement and any work has been commenced by the parties, pursuant to this Agreement, Employer will pay each individual party for such services rendered in accordance to this Agreement.

Any services which may be requested from time to time by the Employer and have been described in this Agreement may be billed in accordance to this Agreement fee structure, Exhibit “A”.

#### (7). ACCOUNTING FOR CONTRIBUTIONS AND PAYMENTS

The Employer shall deposit all salary reductions contributions to the Medical Care Reimbursement Plan and Dependent Care Assistance Plan into a bank account established by the Employer. WageWorks shall have signature authority along with Employer over such bank account in its capacity as a fiduciary with respect to the Plan. WageWorks shall make payments to Plan participants from the bank account in accordance with the terms of the Plan.

For claims paid by other than a debit card, upon proper proof of claim for payment, WageWorks shall make the payment from the bank account no later than five (5) days after the date on which valid proof of claims has been received by WageWorks or such earlier time as may be required by applicable law and regulation or by the governing Plan documents.

WageWorks shall use reasonable care and due diligence in the exercise of its powers under the performance of its duties under this Agreement. If WageWorks makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, WageWorks shall make a diligent effort to recover any such payment made to or on behalf of an ineligible person or any

overpayment. WageWorks agrees to indemnify Employer and hold Employer harmless against any and all amounts and expenses (including reasonable attorney's fees and court costs) for which Employer may become liable resulting from or arising out of negligent, fraudulent or criminal acts of WageWorks employees, either acting alone or in collusion with others.

Aflac agrees to indemnify Employer and hold Employer harmless against any and all amounts and expenses (including reasonable attorney's fees and court costs) for which Employer may become liable resulting from or arising out of negligent, fraudulent, or criminal acts of Aflac employees, either acting alone or in collusion with others.

Unused amounts remaining in the Dependent Case Assistance Plan shall be retained by the Employer in accordance with the terms of the documents regarding each Plan.

#### (8). MAINTENANCE OF INFORMATION

WageWorks and Paylogix will maintain in their respective principal administrative offices, adequate books and records of all transactions in which they each engage with the Employer and Plan participants. Such books and records shall be made available by these parties to the Commissioner of Insurance, State of Texas Insurance Code. Such books and records shall be maintained for the duration of this Agreement and up to the date this Agreement is terminated; provided however, these parties in the event of termination of this Agreement upon Employer's election shall deliver to successor administrator appointed by Employer or to the Employer, the books and records maintained by them in accordance with this Agreement. Upon giving notice to the Commissioner of Insurance regarding the location to which such records were transferred, these parties shall be relieved of any further responsibility for maintenance or custody thereof.

#### (9). CONFIDENTIALITY OF INFORMATION/OWNERSHIP AND USE OF DATA

Any information that identifies an individual covered by a Plan administered by WageWorks pursuant to this Agreement is confidential. During the time such information is in the custody or control of WageWorks shall take reasonable precautions to prevent disclosure or use of the information of the Plan. Such information shall only be disclosed (i) in response to a court order; (ii) for an examination conducted by the Commissioner of Insurance, State of Texas; (iii) for an audit or investigation conducted under the Employee Retirement Income Security Act of 1974 (29U.S.C. 1001, et. seq.); (iv) to or at the request of the Employer or the insurer of a Plan administered for the Employer by the Third Party Plan Administrators; or (v) with the written consent of the identified individual or legal representative thereof.

WageWorks agrees that all books, records, lists of names, journals, ledgers, and other recorded information developed specifically in connection with the administration of the Plan shall always be and remain the property of Employer. Employer shall be reasonably entitled to access to said records and Plan information for purposes of fulfilling its obligations to Plan enrollees. Upon termination of this Agreement, the WageWorks may deliver said records and Plan information, in original form or on electronic media, as determined by Employer in its sole discretion. Records are shipped at the cost of

Employer. Any special turnover reports at time of termination will be provided at an additional cost to Employer. WageWorks shall maintain copies of any records required by law following termination of this Agreement.

Paylogix agrees to provide a state of the art online program to streamline billing process for volunteer products at no cost to Employer. Employer agrees that Paylogix is the sole owner of the following materials and that Employer has no right to their use following termination of this Agreement. It is agreed that the following were not prepared at the expense of Employer and remain the property of Paylogix:

- Paylogix data processing system designs; computer programs, software, and equipment.

#### (10). INCORPORATION BY REFERENCE

To the extent the provisions of the Plan as it now exists or may be amended from time to time further identify the administrative services and responsibilities of the parties hereto, such documents are incorporated in this Agreement by reference as fully as if copied verbatim herein.

#### (11). COMPLIANCE WITH THE LAW

Aflac, WageWorks, and Paylogix shall comply with all Federal, State, Local Laws and Regulations, as well as any HIPPA requirements, if applicable.

#### (12). VENUE

The laws of the State of Texas shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the Parties. Of any action brought in connection with this Agreement, the exclusive venue for such action shall be any federal or state court located in Nueces County, Texas. Each of the parties hereto expressly submits to jurisdiction in any federal or state court located in Nueces County, Texas and waives any claim of improper jurisdiction or lack of venue in connection with such matter.

#### (13). ASSIGNMENT

This Agreement shall be binding on the parties and their respective successors and assigns. No party to this Agreement may assign or delegate its rights under this Agreement without the prior written consent of Employer.

(14). NOTICES

Wherever under this Agreement either party is required or permitted to give notices to the other, such notice shall be deemed given when in writing and (i) when personally delivered in hand or (ii) sent by certified mail return receipt requested to the other party at the addresses set forth below:

**Nueces County**

County Judge

901 Leopard, Suite 301

Corpus Christi, Texas 78401

(361) 888-0444

**Aflac**

Andrew Garcia

906 Carmel Parkway

Corpus Christi, Texas 78411

(361) 585-3158

**WageWorks**

Attn: Cynthia Parrott

4200 W. 115<sup>th</sup> Street

Leawood, Kansas 66211

(877) 924-3967

**Paylogix**

Attn: Michael McCue

1025 Old Country Road

Suite 310

Westbury, New York 11590

(303) 670-2727

(15). INSURANCE AND LIABILITY

For the duration of this Agreement, the parties shall maintain all insurance requirements at the amounts specified in Exhibit “B” and incorporated in this paragraph. In addition, for the duration of this Agreement, the parties shall maintain fidelity insurance coverage in the sum of not less than \$2,000,000 and errors and omissions<sup>2</sup> insurance coverage in the sum of not less than \$2,000,000.

(16). ENTIRE AGREEMENT

This Agreement, including Exhibits attached to this Agreement, each of which is incorporated herein for all purposes, including Employer’s Request for Proposal No. 2912-12 and addenda, WageWork’s and disclosed Affiliate’s Response to the Request for Proposal RFP No. 2912-12 and Addenda, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement as of the date hereof and supersedes any prior agreements or arrangements between the parties regarding the subject matter of this Agreement. In case of conflicts with any provision of the RFP and the provisions of the Agreement, the provisions of this Agreement govern.

This Agreement and all Exhibits hereto are subject to the Texas Public Information Act under Texas Government Code Chapter 552.

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<sup>2</sup> Aflac does not maintain Errors and Omissions (E&O) coverage as a company. We believe our assets are sufficient to cover any losses resulting from E&O. Aflac encourages its agents to maintain their own E&O coverage.



Aflac is a self-insured company that maintains a blanket fidelity bond through St. Paul Guardian Insurance Company in the amount of \$20,000,000 aggregate policy limit. We also maintain general, automobile, and employer's liability coverage. Coverage applies to employees of Aflac Incorporated only.

(17). EFFECTIVE DATE

This Agreement is effective as of the date of acceptance by the parties evidenced by signature below.

Executed this \_\_\_ day of \_\_\_\_, 2012

FOR NUECES COUNTY:

\_\_\_\_\_  
Samuel L. Neal, Jr., County Judge

ATTESTED BY:

\_\_\_\_\_  
Diana Barrera, Nueces County Clerk

PROVIDER OF SECTION 125 CAFETERIA PLAN SERVICES, WAGEWORKS:

\_\_\_\_\_  
**Cynthia Parrott**  
**Manager, Client Services**

Date: \_\_\_\_\_

PROVIDER OF CONSOLIDATED BILLING SERVICES, PAYLOGIX:

\_\_\_\_\_  
**Michael McCue**  
**National Sales Director**

Date: \_\_\_\_\_

PROVIDER OF ENROLLMENT SERVICES FOR SUPPLEMENTAL INSURANCE POLICIES, AFLAC:

\_\_\_\_\_  
**Wendy L. Herndon**  
**Second Vice President, Product Development**

Date: \_\_\_\_\_

NOTARIZED BY:

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