

Elmira Heights Central School District
Flexible Benefit Plan and Health Reimbursement Arrangement
ADMINISTRATIVE SERVICE AGREEMENT

THIS AGREEMENT, made and entered into as of the ____ day of _____ 2021, by and between Elmira Heights Central School District having an office for business at 2083 College Ave, Elmira Heights, New York 14903 (hereinafter referred to as the Contract Holder); and SIEBA, LTD, a New York corporation having its principal place of business located at 1310 North St, 2nd floor, PO Box 5000, Endicott, New York 13761-5000 (hereinafter referred to as "**SIEBA**").

WHEREAS the **Contract Holder** has established a Flexible Benefit Plan (hereinafter referred to as the **Plan**) for its employees; and

WHEREAS the **Contract Holder** desires to obtain the services of a claims administrator to administer the benefits provided by the **Plan**; and

WHEREAS **SIEBA** has represented to the **Contract Holder** that **SIEBA** has extensive experience and expertise in the area of benefit plan claims administration, and **SIEBA** desires to be retained by the **Contract Holder** upon the terms hereinafter set forth for the purpose of administering the benefits provided by the **Plan**; and

NOW, THEREFORE, the parties do hereby agree as follows:

ARTICLE 1 - CERTAIN RESPONSIBILITIES OF SIEBA AND THE CONTRACT HOLDER

- a) It is understood that the **Contract Holder** retains all final authority and responsibility for the **Plan** and its operation and that **SIEBA** is empowered to act on behalf of the **Contract Holder** in connection with the **Plan** only as expressly stated in this agreement or as mutually agreed to in writing by **SIEBA** and the **Contract Holder**. In consideration whereof, the **Contract Holder** agrees to indemnify and hold harmless **SIEBA** and its directors, officers, and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses, including attorneys' fees, resulting from, or arising out of the negligence, recklessness or intentional wrongdoing of the **Contract Holder**, their failure to abide by this contract or applicable law, or in the dishonest, fraudulent, or criminal acts of the **Contract Holder** or its employees, acting alone or in the collusion with others. **SIEBA** agrees to indemnify and hold harmless the **Contract Holder** and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses, including attorneys' fees, with respect to this agreement resulting from or arising out of the negligence, recklessness or intentional wrongdoing of **SIEBA**, their failure to abide by this contract or applicable law, or the dishonest, fraudulent, or criminal acts of **SIEBA** or its employees, acting alone or in collusion with others.
- b) References in this agreement to directors, officers, and employees of **SIEBA** shall be deemed to include directors, officers, and employees of affiliated or subsidiary companies of **SIEBA**.

- c) **SIEBA** will not be liable for invalid claim payments when such payments result from the failure of the **Contract Holder** to provide notice of a change in a participant's eligibility status under the **Plan** of Benefits. **SIEBA** shall notify the **Contract Holder** within ten (10) days of the discovery of any overpayment which has not been repaid by the covered person. The **Contract Holder** reserves full rights to proceed with any legal action against the covered person.
- d) **SIEBA** acknowledges that all files and other documentation relative to the **Plan** and maintained by **SIEBA** shall remain the property of the **Contract Holder**.

ARTICLE 2 - ADMINISTRATIVE SERVICES TO BE PROVIDED

In consideration of the compensation provided for in Article 5, **SIEBA** shall provide all reasonable and necessary services to the **Contract Holder** in administering the benefits provided by the **Plan** and all claims arising thereunder, including, without limitation, the following services:

- a) Establish and maintain a list of participants based upon data provided by and received from the **Contract Holder**.
- b) Determine the eligibility for reimbursement of covered expenses under the terms of the **Plan** and appropriate law.
- c) Determine the appropriateness of claims submitted to be sure that the claims are allowable under the terms of the **Plan** and appropriate law.
- d) Maintain individual *Medical Flexible Spending Accounts and Dependent Care Accounts and Health Reimbursement Arrangement Accounts* for each participant.
- e) Furnish a check register to the **Contract Holder** twice a month.
- f) Issue benefit checks directly to participants in accordance with the definitions of the **Plan** twice a month. The minimum amount a check will be processed for is \$25.
- g) Provide worksheets, enrollment forms, claim forms, explanation of benefit statements (EOBs), checks and postage to mail reimbursement checks.
- h) Notify all participants when there are three (3) months remaining in the **Plan** that any balances still in their accounts must be used by the end of the **Plan** year.
- i) Provide the **Contract Holder** with an annual report during the fourth month following the end of the **Plan** year.
- j) Prepare a **Plan** document for the **Contract Holder**, rewrite and/or amend as necessary suitable for reproduction by the **Contract Holder**.

- k) Maintain all records as required by current and future applicable law, even though these records are the property of the **Contract Holder**.
- l) **SIEBA** shall, to the extent possible, advise the **Contract Holder** as to matters which come to its attention involving the potential legal actions involving the **Plan** and shall advise the **Contract Holder** of legal actions commenced against the **Contract Holder** which come to its attention within ten (10) days of discovery of such actions. The defense of any legal action involving a claim for benefits under the **Plan** shall be the obligation of **SIEBA** under this agreement if the action arises out of the negligence, recklessness or intentional misconduct of **SIEBA** or their failure to abide by this contract or applicable laws.
- m) **SIEBA** will conduct enrollment/education meeting for the **Contract Holder** prior to the first **Plan** year and each subsequent year.

SIEBA agrees, that, unless otherwise directed by the **Contract Holder**, at all times it and its employees will hold in strict confidence any and all data and other information concerning the **Contract Holder**, its employee benefit **Plan**, participating employees and covered participants, including, but not limited to, individually identified medical information pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder ("HIPAA").

SIEBA agrees to follow the written directives, rules and procedures developed by the **Contract Holder**.

ARTICLE 3 - OBLIGATIONS OF THE CONTRACT HOLDER

The **Contract Holder** is deemed to be the Plan Administrator as defined by ERISA.

During the period of this agreement, the **Contract Holder** agrees that it shall perform the following services and functions:

- a) Reproduce and distribute to all eligible participants in the **Plan** all necessary **Plan** documentation, including **Plan** documents and other **Plan** materials as shall be required for the proper administration of the **Plan**.
- b) Furnish **SIEBA** with accurate census data, including amounts elected for salary redirection, pertaining to the participants in the **Plan** and shall provide updated census data, as may be required on a monthly basis during the term of this agreement.
- c) Determine the tax-exempt status of benefits paid on behalf of domestic partners.
- d) Furnish **SIEBA** with such other data and/or information in writing as may be reasonably required by **SIEBA** for the purpose of implementing the **Plan**.

- e) Furnish **SIEBA** with a payroll schedule identifying each payday for the entire year.
- f) Forward within five (5) working days of each payroll period a payroll deduction register showing the name of each participant and the amount that is being redirected to the participant's Medical Flexible Spending Account or Dependent Care Account. In the event that the payroll deduction register is not provided, **SIEBA** will process the benefit claim in accordance with the payroll schedule and salary redirection agreement on file.
- g) Pay all funding requirements of the **Plan** as outlined in Article 6 no later than five (5) working days after receiving notice from **SIEBA** of the funds required.
- h) Annually execute a timely filing of IRS Form 5500 in accordance with applicable law, rules or regulations and provide **SIEBA** with a copy.
- i) Filing of all other tax reports, plan documents, informational returns, and other filings with the state or federal governmental authorities as may be required by statute, rule or regulation. **SIEBA** shall furnish such necessary information as is contained in its files to the **Contract Holder** upon reasonable advance notice.
- j) Notification of participants and dependents regarding COBRA rights and collection of all COBRA contributions for those persons electing continuation of coverage.
- k) Review all proposed changes to the **Plan** with **SIEBA** at least fourteen (14) days before such changes are made in order to be sure that such changes can be accommodated by **SIEBA's** internal systems. If changes to the **Plan** require special system revisions or adaptations, the costs involved will be charged to the **Contract Holder**.
- l) Determine that the benefits provided are not discriminatory under IRS Section 125 or any other applicable statute.
- m) Communicate in writing to **SIEBA** all **Plan** interpretations, policy decisions and directives made by the **Contract Holder**.
- n) Open and maintain one or more bank accounts for the purposes of providing a means to access funds for Debit Card Transactions and manual claim payments.
- o) Will meet the Required Collateral Funding standards based on a percentage of annual elections which is determined by the method of replenishment as outlined in the Deposit Account Agreement. **SIEBA** will notify the **Contract Holder** if the required amount changes.

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| 7/01/2021– 6/30/2022 | \$4.70 per participant per month if only enrolled in the HRA. |
| OR | |
| 7/01/2021 – 6/30/2022 | \$3.00 per participant per month if also enrolled in the Flexible Spending Account |

- e) Said sums shall be paid within thirty (30) days of receipt of invoice. For the purposes of this computation, a participant unit covered under the **PLAN** for any portion of a month shall be considered a covered participant unit for that entire month. Late payment fees of 1 ½% may apply to payments received after the last calendar day of the month for which the fee is owed.
- f) Any bank service charges incurred will be the responsibility of the **Contract Holder** and will be billed monthly with the administration fee.
- g) Any travel required of SIEBA to attend additional meetings or otherwise comply with this agreement will be billed at \$75 per hour plus travel expenses.

Notwithstanding, the balance of this subparagraph, **SIEBA** will not charge the **Contract Holder** for their time and/or travel expenses if the purpose of the meeting is to review either an act or omission on the part of **SIEBA** which injures or would potentially injure the **Contract Holder**.

- h) **SIEBA** will bill the **Contract Holder** for any special services that they are required to perform, such as computer programming and file retrieval, related but not limited to audits, consultant studies and special projects. These added expenses would be outlined to the **Contract Holder** upon a review of the scope of the audit before commencement of the process. Fees will be billed at the regular fee schedule rates in effect at the time the service is performed.
- i) **SIEBA** agrees that the **Contract Holder's** sole obligation to pay any moneys to **SIEBA** shall be limited to the fees specified in Article 5 herein, and that **SIEBA** shall pay any and all expenses and charges of any kind incurred by **SIEBA** in performing its obligations under this agreement.
- j) Fees for lost/stolen/replacement cards will be the responsibility of the cardholder to pay and will be deducted from their Medical Flexible Spending Account.

It is understood and agreed by the parties hereto that the amount of the fee paid by the **Contract Holder** to **SIEBA** pursuant to this agreement was determined by a good faith estimate of amounts that represent fair and reasonable compensation to **SIEBA** for the provision of claims administration services to the **Contract Holder**.

ARTICLE 6 - METHOD OF FUNDING FOR MANUAL CLAIM PAYMENTS

The **Contract Holder** shall withhold all redirected funds as authorized by the participants from each payroll within the Plan Year. The **Contract Holder** will within five (5) working days of the payroll deduction transfer the redirected funds to a special account held by the **Contract Holder** and used to pay the claims of the participants for the Medical Flexible Spending Account and /or Dependent Care Account and/or HRA.

SIEBA will furnish the **Contract Holder** with a check register twice a month. Once the requested funds are placed in the claim account, **SIEBA** will release any checks.

- a) All manual claim payments made under the **Plan** will be issued by **SIEBA** on drafts payable through a claim account held by **SIEBA**.
- b) All cleared checks will be returned to the **SIEBA** for purposes of reconciliation.

Claims for Medical Flexible Spending Accounts and/or HRA will be honored to the maximum amount contracted for by each participant whether or not the maximum has actually been received. Claims for Dependent Care cannot exceed the amount actually received from the participant in accordance with IRS regulation.

Contract Holder agrees that funding of the benefit claim account is their sole responsibility and that **SIEBA** is not responsible in any way for funding of benefit claims of the **Contract Holder's** employees and their dependents.

ARTICLE 7 - DISCONTINUANCE OF AGREEMENT

- a) This agreement may be discontinued at the earliest time specified below:
 - (i) As of the date of discontinuance of the **Plan**, as specified to **SIEBA** by the **Contract Holder** provided that **SIEBA** has been given a 60-day notice that the **Contract Holder** is discontinuing this agreement.
 - (ii) As of any date agreed to between the **Contract Holder** and **SIEBA**.
 - (iii) As of the date the **Contract Holder** fails to provide funds to the bank as necessary for the payment of drafts accepted by **SIEBA** on behalf of the **Contract Holder** for benefit payments under the **Plan**.
 - (iv) As of the date the **Contract Holder** fails to meet the Required Collateral Funding standards for benefit card payments, after notification has been provided to the **Contract Holder**.
 - (v) As of the last day of an agreement period, provided the **Contract Holder** has not approved continuation of the

agreement by the end of the agreement period, and further provided that **SIEBA** has been given sixty days prior notice of the **Contract Holder's** intention not to continue.

- b) In the event of failure of the **Contract Holder** to pay compensation to **SIEBA** in accordance with Article 5, Compensation of **SIEBA**, **SIEBA** may, at its option, terminate this agreement by providing ten (10) days written notice to the **Contract Holder**.
- c) Discontinuance of this agreement shall not terminate the rights or liabilities of either party arising out of a period prior to such discontinuance.

If **SIEBA's** services are terminated prior to the end of a contract period without a sixty (60) day notice as outlined in this written service agreement, **SIEBA** will be paid for the balance of the contract period or six (6) months, whichever is longer.

If **SIEBA's** services are not renewed at the end of a contract period without a sixty (60) day notice, **SIEBA** will be paid an amount equivalent to two (2) months administrative fees in addition to any fees payable for claims processing during a run out period.

ARTICLE 8 - DUTIES UPON TERMINATION

Upon termination of this agreement, **SIEBA** will turn over to the **Contract Holder** any funds remaining in its control and custody of all records of the **Contract Holder** and its participants. Records, files and documents shall be returned by **SIEBA** to the **Contract Holder's** address as described in Article 12 within seven (7) days of the **Contract Holder's** request. The **Contract Holder** shall be obligated to remove all **Plan** files, books, records and other documentation from the offices of **SIEBA** no later than thirty (30) days following the effective date of the termination of this agreement or as otherwise agreed to by the **Contract Holder** and **SIEBA**. All expenses for retrieval and transportation of these materials shall be the responsibility of the **Contract Holder**.

SIEBA will continue to process claims that were incurred prior to the termination of this agreement for a three (3) month run out period. The run out claim processing fee will be invoiced by **SIEBA, LTD.** and paid by the **Contract Holder**. This fee shall be equivalent to three (3) times the administrative fee invoiced, excluding adjustments, for the last month prior to the termination of this agreement.

Any services performed by **SIEBA** following the termination of this agreement other than claims processing during the run out period will be billed as administrative services at **SIEBA's** then hourly rate for such work plus expenses.

ARTICLE 9 – CONFIDENTIALITY

SIEBA agrees that, unless otherwise directed by the **Contract Holder**, at all times it and its employees will hold in strict confidence any and all data and other information concerning the **Contract Holder**, its employee benefit plan, participating employees and covered dependents, including, but not limited to, individually identified medical information pursuant to HIPAA.

ARTICLE 10 - RELATIONSHIP OF PARTIES

SIEBA agrees at all times to administer properly the employee benefits provided by the **Plan** in accordance with the stated purposes of the **Contract Holder** as set forth in the **Plan** Document. In furtherance of the agreement hereby entered into between the parties, the **Contract Holder** and **SIEBA** agree that it is their intent to create a business relationship between them in which **SIEBA** is retained by the **Contract Holder** as an independent contractor only, and under no circumstances is **SIEBA** to be considered the employee or agent of the **Contract Holder**.

The **Contract Holder** agrees that **SIEBA** is acting as administrator for the payment of claims pursuant to the **Plan**, but that nothing herein shall be construed or interpreted to mean that **SIEBA** has assumed the responsibilities of an insurer of claims under the **Plan**. **SIEBA** shall not be liable for the payment of any benefits under the **Plan** from its own funds.

ARTICLE 11 - EXAMINATION AND MAINTENANCE OF RECORDS

The **Contract Holder** shall have the right to examine any records of **SIEBA** relating to benefit payments and requests for benefit payments under the **Plan** and the issuing of drafts for benefit payments under the **Plan**, provided that any examination of individual benefit payment records shall be carried out in a manner agreed to between the **Contract Holder** and **SIEBA** designed to protect the confidentiality of the individual's medical information. Any examination of records will be done at **SIEBA** during normal business hours and at the expense of the **Contract Holder** as outlined in Article 5e.

SIEBA shall keep and maintain all records for a period of six (6) years as long as the **Contract Holder** remains an active client for this benefit, during which period all books and records will be available to the **Contract Holder** for inspection and audit. If this agreement is terminated or not renewed, the provisions of Article 8 shall apply to the maintenance of records.

ARTICLE 12- NOTICES

Any notices which may or are required to be given hereunder must be in writing, and, except as otherwise specifically provided herein, shall be given by mailing same by registered or certified mail, return receipt requested, fax, e-mail, hand delivery or delivery by an overnight courier and addressed, if to **Contract Holder**, to Elmira Heights Central School District at 2083 College Ave, Elmira Heights, New York 14903, and if to **SIEBA**, at 1310 North St, 2nd Floor, PO Box 5000, Endicott, New York 13761-5000, or to such other address or other persons as either party may designate hereinafter by such a notice for the mailing of notices to it. All notices shall be deemed served and given when mailed.

ARTICLE 13 - ENTIRE AGREEMENT

This agreement contains the entire agreement by the parties concerning the subject matter hereof, and, except as is specifically set forth herein, no prior representations, warranties, promises or statements made by either party to the other shall have or be given any force or effect. All modifications to this agreement shall be null and void unless in writing and signed by the parties.

In the event any one or more of the provisions contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 14 - VENUE

This agreement shall be governed by and construed in accordance with the laws of the State of New York. In the event that any action or proceeding is commenced by either party against the other, all such actions or proceedings shall be commenced and maintained within the County of Broome, State of New York.

ARTICLE 15 – LIABILITY

Notwithstanding any other language to the contrary, SIEBA shall be liable for benefit payments from its own funds to the extent it is liable under Article 1.a) of the agreement.

IN WITNESS WHEREOF, the parties have duly executed this agreement on _____ 2021.

Elmira Heights Central School District



SIEBA