

ATTACHMENT 3

Draft

**STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN
FOR EXECUTIVE STAFF EMPLOYEES**

Effective _____, 2007

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**STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN
FOR EXECUTIVE STAFF EMPLOYEES**

EFFECTIVE JUNE 1, 2007

SECTION 1: ESTABLISHMENT AND PURPOSE OF THE PLAN

The State Bar of California (the “Employer”) provides post-retirement medical benefits to its eligible executive staff employees, pursuant to the Employer’s “Rules and Regulations Pertaining to the Employment of Executive Staff Employees.” Effective _____, 2007, the Employer hereby adopts this State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees (“Plan”), in order to set out the terms and conditions of such benefits, and to provide for funding of such benefits under a tax-exempt trust (the “Trust”). It is intended that the benefits provided under this Plan be tax free to the extent provided under the Internal Revenue Code (“Code”). It is also intended that the Trust be tax exempt under section 115 of the Code. Capitalized terms are defined in Section 2, unless expressly defined elsewhere.

SECTION 2: DEFINITIONS

Administrator means one or more persons appointed from time to time by the Board to administer the Plan. If no Administrator is appointed, the Board will act as Administrator.

Alternate Payee means any spouse or former spouse (or domestic partner or former domestic partner) of a Participant who has the right, pursuant to a court-approved domestic relations order, to receive all or a portion of the benefits payable under the Plan with respect to such Participant.

Beneficiary means any spouse, domestic partner or dependent of the Participant who, due to his or her relationship to the Participant, is entitled to receive benefits under the Plan.

Board means the Board of Governors of the Employer.

CalPERS means the California Public Employee Retirement System, of which the Employer is a participating agency, or any successor defined benefit pension plan that the Employer adopts to provide retirement benefits for its Employees.

Code means the Internal Revenue Code of 1986, as amended from time to time, and all applicable rules and regulations issued thereunder pertinent to the tax status of this Plan and the tax-exempt status of the Trust.

Effective Date means June 1, 2007.

Executive Staff Employee means an Employee who (i) is employed by the Employer on a regular, full-time basis, (ii) is classified by the Employer as an executive staff employee, and (iii) whose terms of employment are set forth under the Employer’s “Rules and Regulations Pertaining to the Employment of Executive Staff Employees.” An individual’s status as an

Executive Staff Employee shall be determined solely by the Administrator, in accordance with the terms and conditions of the Plan, and such determination will be conclusive and binding upon all persons.

Employee means an individual employed by the Employer who (i) is classified as a regular employee by the Employer, (ii) is on the regular payroll of the Employer, (iii) for whom the Employer withholds employment taxes, and (iv) for whom the Employer issues a timely IRS form W-2. Therefore, for example, a common-law employee for whom the Employer does not issue a form W-2 is not an Employee. Employee does not include casual or contract employees. An individual's status as an Employee will be determined solely by the Administrator, in accordance with the terms and conditions of the Plan, and such determination will be conclusive and binding upon all persons.

Employer means the State Bar of California, an agency or instrumentality of the State of California exempt from federal income tax under the Internal Revenue Code.

Participant means a person who has met the eligibility requirements under Section 3 to participate in the Plan, and whose participation has not yet ceased.

Plan means this State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees, as amended from time to time.

Plan Year means the calendar year.

Service means all periods of full-time employment with the Employer, subject to the following rules:

(i) An Employee's Service will include any period of authorized paid leave of absence while an Employee and any leave for military service while an Employee, but only if the Employee returns to active employment with the Employer as an Employee within the time prescribed by such leave or within the time following military service during which the Employee's reemployment rights are protected by law, as applicable.

(ii) Service performed before the Effective Date will be counted as Service under this Plan.

(iii) No service or employment with any entity other than the Employer will be counted as Service for any purpose under this Plan.

(iv) Any periods of service for the Employer in any capacity other than Employee will not be counted as Service under this Plan.

Trust means the legal entity established by the Employer to hold Plan assets.

Trust Fund means all monies, securities, and properties of whatever character held by the Trustee pursuant to the Trust.

Trustee means the Employer.

Year of Service for an Employee means a completed period of one year of continuous uninterrupted Service. Years of Service before a termination of employment with the Employer (or termination of status as an Employee) will be added to Years of Service earned after a person again becomes an Employee in order to count the person's total Years of Service.

SECTION 3: ELIGIBILITY AND PARTICIPATION

(a) Eligibility and Commencement of Participation. Only Executive Staff Employees are eligible to participate in this Plan. Each Executive Staff Employee on _____, 2007 will be a Participant. Each person who becomes an Executive Staff Employee after _____, 2007, will become a Participant on the date of becoming an Executive Staff Employee.

(b) Termination of Participation. An Executive Staff Employee's participation in this Plan terminates on the earlier of (i) death or, (ii) the date he or she ceases to be an Executive Staff Employee, but only if he or she has no vested interest under the Plan.

(c) Rehire or Reinstatement as an Executive Staff Employee. If a person terminates employment as an Executive Staff Employee (or ceases to be an Executive Staff Employee but remains an Employee) and later again becomes an Executive Staff Employee, he or she will become a Participant on the day he or she again becomes an Executive Staff Employee. If a person is receiving benefits under this Plan at the time he or she again becomes an Executive Staff Employee, then such benefits will cease for as long as he or she is eligible to receive health care coverage benefits under the Employer's plan for active, full-time Employees. Benefits will resume, in the amount then currently being paid, after he or she terminates employment with the Employer.

(d) Plan is Binding. Every Participant and Beneficiary will be bound by the terms of this Plan and the Trust, including all amendments thereto, and will also be bound by decisions made by the Administrator in accordance with the terms of the Plan and Trust.

SECTION 4: CONTRIBUTIONS AND PAYMENTS

(a) Employer Contributions. Only the Employer may make contributions to the Plan. Employer contributions may be made at the time and in the amount determined by the Employer in its sole discretion. In determining the amount of such contributions, the Employer may engage an actuary to conduct actuarial experience studies and periodic actuarial valuations of the Plan benefits and to recommend to the Employer the amount of contributions that are needed in order to fund the Plan's benefits.

(b) Trust and Payments to and From the Plan.

(i) Trust. The Employer has established a Trust to receive and invest contributions made under the Plan. The Trust may specifically provide, among other things, for the investment and reinvestment of the Trust Fund and the income thereof, the management of the Trust Fund, the responsibilities and immunities of the Trustee, removal of the Trustee and appointment of a successor, accounting by the Trustee and the disbursement of the Trust Fund. The Trust is incorporated by reference as a part of the Plan, and the rights of all persons hereunder are subject to the terms of the Trust. However, if there is a conflict between the terms

of the Plan and the Trust, the terms of the Plan will control. The Trustee shall, in accordance with the terms of the Trust, accept and receive all contributions paid to it from time to time in accordance with the Plan, and shall hold, invest, reinvest and manage such moneys and any increment, increase, earnings and income thereof for the exclusive benefit of the Participants and Beneficiaries and for the payment of reasonable expenses of administering the Plan.

(ii) Contributions Under the Plan. All contributions made under the Plan shall be deposited in the Trust, to be held and invested as part of the Trust Fund in accordance with the terms of the Plan and Trust.

(iii) Benefit Payments Under the Plan. All benefits payable under the Plan will be paid out of the Trust Fund by the Trustee pursuant to the directions of the Administrator and the terms of the Trust; provided, however, that if the funds in the Trust are not sufficient to pay any benefits owed under the Plan, the Employer shall pay such benefits from its general assets or from such another source as permitted under applicable law.

(c) Mistake of Fact. If due to a mistake of fact, a contribution to the Trust Fund for any Plan Year is different from contribution amount authorized by the Employer, as soon as such mistake of fact is discovered the Administrator shall notify the Trustee of the mistake. The Administrator shall determine the appropriate correction, which may include (but not be limited to) a return of these contributions to the Employer. A return of such contributions will only occur if the return is without interest and the return occurs no later than one year after the mistaken contribution was made. The standards of the Code and the Employee Retirement Income Security Act (as amended) that are applied to tax qualified retirement plans will apply to determine if a mistaken contribution may be returned.

(d) Contributions Conditioned on Initial Tax Status. All contributions to this Plan are expressly conditioned on the initial tax exempt status of the Trust. If the Trust is timely submitted to the Internal Revenue Service for a determination or ruling as to its initial tax status, and the Internal Revenue Service determines or rules that the Trust is not tax exempt, then all contributions, together with all earnings thereon, will be returned to the Employer within one year following such determination or ruling by the Internal Revenue Service.

SECTION 5: VESTING

A Participant will be vested in the benefits provided under this Plan only if he or she meets the following requirements:

(a) Years of Service.

(i) With respect to a Participant who became an Executive Staff Employee on or before August 19, 2006, and who is continuously employed as an Executive Staff Employee from that date through the termination of his or her District employment, such Participant must complete at least 15 Years of Service as an Employee (counting Service as an Executive Staff Employee and other Service as an Employee).

(ii) With respect to a Participant who becomes an Executive Staff Employee after August 19, 2006 (including any Participant re-employed as an Executive Staff Employee on

or after such date), such Participant must complete at least ten (10) Years of Service as an Executive Staff Employee, and at least fifteen (15) total Years of Service as an Employee (counting Service as an Executive Staff Employee and other Service as an Employee).

(b) Medical Coverage. Upon retirement from the Employer, the Participant must be covered under the medical insurance plan then offered by the Employer to its full-time active, regular Employees.

(c) Retirement under CalPERS. The Participant must retire under CalPERS from the Employer within 120 days after his or her employment with the Employer terminates. For purposes of this section 5(c), a person retires under CalPERS from the Employer if he or she did not earn any service credit under CalPERS from any other governmental agency after his or her last date as an Employee of the Employer. If the Participant retires under CalPERS (or under any other governmental retirement plan) from any other governmental agency, he or she will not meet this additional vesting requirement. If a Participant does not meet this additional service requirement, he or she will not have any vested interest under this Plan and will not receive any benefits under this Plan.

(d) Other Arrangements. The Employer reserves the right to enter into an individual agreement with any Executive Staff Employee setting out vesting requirements for benefits under this Plan that differ from this Section 5. The vesting requirements set out in any such agreement between the Employer and an Executive Staff Employee will supersede the requirements under this Section 5.

(e) No Benefits if not Vested. A Participant will not have any vested interest under this Plan unless he or she meets all of the preceding requirements of this Section 5. If a Participant does not have any vested interest under this Plan, neither he/she nor his/her Beneficiary will be entitled to any benefits under this Plan.

SECTION 6: BENEFITS

(a) Eligibility for Benefits. If a Participant meets the vesting requirements of Section 5 above, then (and only then) he or she will be entitled to receive benefits under this Plan.

(b) Benefits.

(i) Each Participant who meets the vesting requirements of Section 5 will be entitled to receive health care coverage identical to that which is provided to the Employer's full-time active, regular Employees. Such coverage will be funded by the Employer at the same group rate(s) that the Employer funds such benefits for full-time active, regular Employees. Any changes in the health care coverage or funding rates for full-time active, regular Employees will also apply to Participants' benefits under this Plan.

(ii) If the Employer's agreement with any benefit carrier does not permit a Participant to receive health care coverage identical to that which is provided to full-time active, regular Employees, the Employer may provide substantially similar coverage, as determined by the Administrator in its sole discretion. If the Administrator determines that substantially similar coverage is not available, the Participant will be entitled to receive a monthly cash payment

equal to the highest amount that the Employer then contributes toward the payment of health care coverage for any of its active, full-time Employees.

(iii) Except as required by law, under no circumstances will the Employer be required to fund health care coverage under this Plan for any Participant at rates exceeding the highest amount paid by the Employer for health care coverage for any of its active, full-time Employees.

(iv) For these purposes, “health care coverage” encompasses medical, hospital and vision care coverage, including dependent care coverage.

(c) Lifetime Benefit for Eligible Retirees. Benefits under the Plan will be provided to a qualifying Participant and his or her Beneficiaries until the Participant’s death. After a Participant’s death, no further benefits will be provided under the Plan with respect to the Participant or his or her Beneficiaries, except as required by law.

(d) Payments to Alternate Payees. No benefit will be paid to an Alternate Payee unless and until the Participant is eligible to receive benefits. The total benefits paid under the Plan in any period to one or more Alternate Payees and to the Participant will not exceed the total benefits that may be paid to the Participant without regard to any Alternate Payee. If payments are required to be made to an Alternate Payee pursuant to a domestic relations order issued by a court, such payments will be at the same time, in the same form and subject to the same conditions as the payment of benefits to the Participant. Payments to an Alternate Payee shall commence as directed by the order but no earlier than the first date that a benefit under this Plan is payable to the Participant. The foregoing notwithstanding, payments to an Alternate Payee will commence at any date later than provided above if directed by the domestic relations order. To the extent that a domestic relations order creates or recognizes an Alternate Payee’s right to any portion of the benefit otherwise payable to or with respect to a Participant, such portion thereafter will reduce the benefit payable to or with respect to such Participant.

If the Alternate Payee predeceases the Participant before the commencement of payments to either the Participant or the Alternate Payee, the Administrator shall deem the domestic relations order to be void and shall pay benefits to the Participant (when he or she meets the required conditions for receipt of benefits) without regard to such order. If the domestic relations order directs payments to be made over the life of the Participant and the Alternate Payee predeceases the Participant, payments under the domestic relations order will cease upon the Alternate Payee’s death.

(e) COBRA and HIPAA Compliance. The Administrator shall comply with the applicable requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”), and with the applicable requirements of HIPAA in accordance with the rules set out in Appendix A below.

SECTION 7: ADMINISTRATION OF THE PLAN

(a) General. Each Plan fiduciary shall discharge his or her duties solely in the interest of the Participants and Beneficiaries and for the exclusive purpose of providing such benefits as are provided herein to such persons, or defraying reasonable expenses of

administering the Plan. Each Plan fiduciary, in carrying out such duties and responsibilities, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use.

A fiduciary may serve in more than one fiduciary capacity and may employ one or more persons to render advice with regard to his or her fiduciary responsibilities. If the fiduciary is serving as such without compensation, all expenses reasonably incurred by such fiduciary shall be paid from the Trust Fund.

A Plan fiduciary may allocate and delegate any of his or her responsibilities for the operation and administration of the Plan to the extent consistent with his or her fiduciary duties. The fiduciary shall promptly notify the Administrator, in writing, of any such allocation or delegation.

(b) Employer. The Employer shall supply such full and timely information for all matters relating to the Plan as the Administrator may reasonably require for the effective discharge of its duties.

(c) Trustee. The Trustee shall hold the assets of the Trust Fund in accordance with the Trust. However, the Administrator will have exclusive authority and discretion to manage and control the assets of the Plan and direct the Trustee with respect to such investment. The Administrator may in its discretion employ at any time and from time to time qualified investment manager(s) to direct the Trustee with respect to all or a designated portion of the assets comprising the Trust Fund.

(d) Administrator.

(i) The Administrator has plenary authority to administer the Plan.

(ii) The Administrator has the power to construe the Plan and to determine all questions that may arise hereunder relating to (a) the eligibility of individuals to participate in the Plan and (b) the amount of benefits to which any Participant or Beneficiary may become entitled hereunder, and (c) any and all other issues that may arise under the Plan.

(iii) All disbursements by the Trustee, except for the ordinary expenses of administration of the Trust Fund or the reimbursement of reasonable expenses at the direction of the Employer, as provided herein, shall be made upon, and in accordance with, the written directions of the Administrator. When the Administrator is required in the performance of its duties hereunder to administer or construe, or to reach a determination, under any of the provisions of the Plan, it shall do so on a uniform, equitable and non-discriminatory basis.

(iv) The Administrator has authority to establish rules and procedures to be followed by individuals in filing applications for benefits and for furnishing and verifying proofs necessary to establish age, service and any other matters required in order to establish their rights to benefits in accordance with the Plan.

(v) The Administrator may employ such counsel, accountants, and other agents as it deems prudent. The Employer shall pay, or cause to be paid from the Trust Fund, the

reasonable compensation of such counsel, accountants, and other agents and any other expenses incurred by the Administrator in the administration of the Plan and the Trust.

(vi) If the Administrator is an officer or employee of the Employer, his or her duty under this Plan will be treated as official duties and he or she will be entitled to relief from liability, and defense and indemnification, to the same extent as provided for any government officer or employee in the conduct of his or her official duties.

(e) Claims Procedures. The Administrator shall receive all claims filed for benefits under the Plan. Upon receipt, the Administrator shall review the claims and determine whether the claimant is entitled to receive any benefits pursuant to such claim. The Administrator shall notify the claimant in writing of any adverse decision with respect to his or her claim within 90 days after its submission. The notice of any adverse decision shall be written in a manner calculated to be understood by the claimant and must include:

- (i) The specific reason or reasons for the denial;
- (ii) Specific references to the pertinent Plan provisions on which the denial is based;
- (iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation why such material or information is necessary; and
- (iv) An explanation of the Plan's claim review procedures.

If the circumstances require an extension of time for processing the initial claim, a written notice of the extension shall be furnished to the claimant before the end of the initial 90 day period. In no event will such extension exceed a period of 90 days from the last day of the initial 90-day period. The extension notice must indicate the circumstances requiring an extension of time.

In the event a claim for benefits is denied or if the Administrator has given no response to such claim within the time period set out in the above paragraph (in which case the claim for benefits will be deemed to be denied, the claimant or his or her duly authorized representative, at the claimant's sole expense, may appeal the denial by submitting written notice of such appeal to the Administrator within 90 days of the receipt of written notice of the denial or 60 days from the date such claim is deemed to be denied.

Upon request, the Administrator will provide the claimant the right of a hearing with respect to any finding of fact or determination within 30 days of receipt of the notice of appeal. In pursuing such appeal the claimant or his or her duly authorized representative:

- (i) may, upon request, review all documents, records and other information relating to the claim; and
- (ii) may submit written comments, documents, records, and other information relating to the claim.

The claimant will be notified of the decision on review within 60 days of receipt of the request for review or 30 days following the hearing, unless circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of a request for review. If such an extension of time is required, written notice of the extension will be furnished to the claimant before the end of the original 60-day period. The notice of decision on review must be made in writing, written in a manner calculated to be understood by the claimant, and include specific references to the provisions of the Plan on which such denial is based. If the decision on review is not furnished within the time specified above, the claim will be deemed denied on review.

(f) Records. All acts and determination of the Administrator will be duly recorded and all such records together with such other documents as may be necessary in exercising its duties under the Plan shall be preserved for no less than six years. Such records and documents will at all times be open for inspection and for the purpose of making copies by any person designated by the Employer. The Administrator shall provide such timely information (no less frequently than once every calendar quarter), resulting from the application of its responsibilities under the Plan, as needed by the Employer for the effective discharge of its duties.

SECTION 8: GENERAL PROVISIONS

(a) Governing Law. The Plan will be construed, regulated and administered according to the laws of the State of California, and will also be construed to the maximum extent possible in accordance with the Code in order for the Plan to be tax qualified.

(b) Construction. The headings and subheadings in the Plan have been inserted for convenience of reference only and will not affect the construction of the provisions hereof. In any necessary construction the masculine will include the feminine and the singular the plural, and vice versa.

(c) Administration Expenses. The reasonable expenses of administering this Plan and the Trust Fund will be paid from the Trust Fund, unless paid by the Employer. Except as prohibited by law, the Administrator will be reimbursed for its reasonable costs of performing its duties under the Plan.

(d) Participant's Rights. No Participant will acquire any right to be retained in the Employer's employment by virtue of the Plan, nor, upon his or her dismissal, or upon his or her voluntary termination of employment, will have any right or interest in and to the Trust Fund or benefits provided under the Plan other than as specifically provided herein.

(e) Prohibition Against Assignment and Alienation of Benefits. To the maximum extent provided by law, no right or claim to, or interest in, any part of any payment from this Plan will be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, garnishment, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court except to such extent required by law. No benefit payable from this Plan to any person will in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except to such extent required by law. Any attempt to anticipate,

alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under this Plan will be void, except as required by law. No portion of the benefits payable under this Plan will be subject to the bankruptcy estate of any Participant or Beneficiary, except as required by law.

(f) Provisions Applicable During Periods of Military Service. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided as required by any law concerning veterans rights, including chapter 43 of title 38, United States Code.

SECTION 9: MODIFICATION AND TERMINATION OF THE PLAN

(a) The Employer may at any time modify, alter or amend the Plan in whole or in part; provided, however, that no such modification, alteration or amendment will have the effect of (i) reverting to the Employer any part of the principal or income of the Trust Fund (except as otherwise provided in the Plan or the Trust) or (ii) permitting any part of the corpus or income of the Trust Fund to be used for, or diverted to, purposes other than the exclusive benefit of the Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan. In any event and without limitation of any type, the Employer may make any modifications, alterations or amendments necessary or appropriate to maintain the tax exempt status of the Plan.

(b) To the extent that the Employer makes modifications to the Plan, such modifications will supersede and override any claim to “vested rights” that any person may otherwise have under California law with respect to benefits under this Plan.

(c) Termination of the Plan.

(i) The Employer has established this Plan with the expectation that it will be continued, but continuance is not a contractual or other obligation of the Employer and no employee of the Employer will have any vested right to continuance of the Plan or to continuance of contributions thereto. The Employer reserves the right at any time to terminate the Plan, and such termination will supersede and override any claim to “vested rights” that any person may otherwise have with respect to benefits under this Plan.

(ii) In the event of termination of the Plan, the Administrator shall direct the Trustee to compute the value of the Trust Fund as of the date of termination. The benefits provided hereunder will continue to be administered as a part of the Trust Fund and will not be distributed in any other manner. Upon termination of the Plan, the Trust will continue until the Trust Fund or the appropriate portion thereof has been distributed as provided in this section. The “partial termination” rules of the Code that apply to qualified retirement plans will not apply under this Plan, and no action shall be taken with respect to this Plan in connection with any event or events that would be a partial termination for a qualified plan.

(d) Assets After Termination. If after all assets held in the Trust Fund are distributed pursuant to this Section and all benefits owed hereunder have been paid and all Plan and Trust Fund expenses have been paid), there are assets remaining in the Trust Fund, such assets will revert to the Employer.

(e) Limitation of Obligations. Notwithstanding any other provision hereof, the Employer has no obligation to continue to make contributions to the Plan after the Plan's termination. Neither the Employer nor any other person will have any liability or obligation to provide benefits hereunder on or after the termination of the Plan. Upon termination of the Plan, all Participants, Beneficiaries and other persons who may claim an interest therein shall look solely to the Trust Fund for their benefits.

SECTION 10: EXECUTION OF PLAN DOCUMENT

To record the adoption of the Plan as set forth herein, the Employer has caused its authorized representative to execute this document on this ____ day of _____, 2007.

STATE BAR OF CALIFORNIA

By: _____

(Title)

APPENDIX A: HIPAA COMPLIANCE

(a) General. Members of the Employer's workforce may, from time to time, have access to protected health information ("PHI") of Plan Participants for administrative functions of the Plan. The Health Insurance Portability and Accountability Act of 1996, ("HIPAA"), and the regulations issued thereunder at 45 C.F.R. Parts 160 and 164 (the "HIPAA regulations"), impose privacy obligations on the Plan and restrict the disclosure of PHI. The Employer shall have access to PHI from the Plan only as permitted under this Appendix A or as otherwise required or permitted by HIPAA or other applicable law. All capitalized terms within this Appendix A not otherwise defined in the Plan shall have the meaning provided under HIPAA.

(b) Definition of PHI. Protected health information or PHI means information that is created or received by the Plan and relates to the past, present, or future physical or mental health or condition of a Participant; the provision of health care to a Participant; or the past, present, or future payment for the provision of health care to a Participant; and that identifies the Participant or for which there is a reasonable basis to believe the information can be used to identify the Participant. Protected health information includes information of persons living or deceased.

(c) Uses and Disclosures of PHI. The Plan may disclose a Participant's PHI to the Employer (or to the Employer's agent) to the fullest extent permitted by the HIPAA regulations (but not in a manner inconsistent with 45 C.F.R. § 164.404(f)), including but not limited to:

(i) Enrollment/Disenrollment Information. The Plan may disclose to the Employer information on whether the individual is participating in the Plan, or is enrolled in or has disenrolled in the Plan.

(ii) Summary Health Information. The Plan may disclose Summary Health Information to the Employer, provided the Employer requests the Summary Health Information for the purpose of (a) obtaining premium bids from health plans for providing health insurance coverage under the Plan, or (b) modifying, amending, or terminating the Plan. "Summary Health Information" means: (a) information that summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a plan sponsor had provided health benefits under the Plan; and (b) from which the information described at 45 C.F.R. § 164.514(b)(2)(i) has been deleted, except that the geographic information described in 45 C.F.R. § 164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit zip code.

(iii) Plan Administrative Purpose. The Plan may disclose PHI to the Employer, provided the Employer uses or discloses such PHI only for Plan administration purposes. "Plan administration purposes" means administration functions performed by the Employer on behalf of the Plan; such as quality assurance, claims processing, auditing, and monitoring. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and do not include any employment-related functions.

(d) Restriction on Plan Disclosure to the Employer. Neither the Plan nor any of its business associates will disclose PHI to the Employer except upon the Plan's receipt of the Employer's certification that the Plan has been amended to incorporate the provisions under

Section (e) below, except as otherwise permitted or required by law. Execution of the Plan document by the Employer will serve as the required certification.

(e) Privacy Agreements of the Employer. As a condition for obtaining PHI from the Plan and its business associates, the Employer agrees it will:

(i) Not use or further disclose such PHI other than as permitted by this Section (e), as permitted by 45 C.F.R. § 164.508, 45 C.F.R. § 164.512, and other sections of the HIPAA regulations, or as required by law;

(ii) Ensure that any of its agents, including a subcontractor, to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to such information;

(iii) Not use or disclose the PHI for employment-related actions and decisions or connection with any other benefit or employee benefit plan of the Employer;

(iv) Report to the Plan any use or disclosure of the PHI that is inconsistent with permitted disclosures that the Employer becomes aware;

(v) Make the PHI of a particular Participant available for purposes of the Participant's requests for inspection, copying, and amendment, and carry out such requests in accordance with HIPAA regulation 45 C.F.R. §§ 164.524 and 164.526;

(vi) Make the PHI of a particular Participant available for purposes of a required accounting of disclosures by the Employer pursuant to the Participant's request for such an accounting in accordance with HIPAA regulation 45 C.F.R. § 164.528;

(vii) Make the Employer's internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance by the Plan with HIPAA;

(viii) If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, the Employer agrees to limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(ix) Ensure that there is adequate separation between the Plan and the Employer by implementing the terms of Section (f).

(f) Separation between Plan and the Employer.

(i) Employees With Access to PHI. The following employees or other individuals under the control of the Employer are the only individuals that may access PHI received from the Plan: Director of Administrative Services and his or her designated assistants.

(ii) Use Limited to Plan Administration. The access to and use of PHI by the individuals described in Section (f)(i), above, is limited to Plan Administration functions as defined in HIPAA regulation 45 C.F.R. § 164.504(a) that are performed by the Employer for the Plan.

(iii) Mechanism for Resolving Noncompliance. If the Employer, or person(s) responsible for monitoring compliance, determines that any person described in Section (f)(i), above, has violated any of the restrictions of this Section (f), then such individual shall be disciplined in accordance with the policies of the Employer established for purposes of privacy compliance, up to and including dismissal from employment. The Employer shall arrange to maintain records of such violations along with the persons involved, as well as disciplinary and corrective measures taken with respect to each incident.

(g) Security Provisions.

(i) The provisions of this Section (g) take effect on April 20, 2006.

(ii) “Electronic Protected Health Information” or “ePHI” shall have the same meaning as “Electronic Protected Health Information” in 45 C.F.R. §160.103.

(iii) The Employer shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI that it creates, maintains or transmits on behalf of the Plan as required by 45 C.F.R. Part 164, Subpart C.

(iv) The Employer shall ensure that the adequate separation required by Section (f) is supported by reasonable and appropriate security measures.

(v) The Employer shall ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable and appropriate safeguards to protect the ePHI.

(vi) The Employer shall report to the Plan any security incident of which it becomes aware.