

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

**Effective July 11, 2008**

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**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 July 11, 2008, the Employer hereby adopts this State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees ("Plan"). It is intended that the benefits under the Plan be tax free to the maximum extent provided under the Internal Revenue Code ("Code"). Capitalized terms are defined in Section 2, unless context clearly indicates otherwise.

**SECTION 2:     DEFINITIONS**

- (a)     Board means the Employer's Board of Governors.
- (b)     CalPERS means the California Public Employees' 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.
- (c)     Code means the Internal Revenue Code of 1986, as amended.
- (d)     Committee means the entity responsible for operating and administering the Plan in accordance with its terms. See Section 7(c).
- (e)     Effective Date means July 11, 2008.
- (f)     Executive Staff Employee means an Employee who is classified by the Employer as an executive staff employee, and 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 will be determined solely by the Committee.
- (g)     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 also does not include casual or contract employees. An individual's status as an Employee will be determined solely by the Committee.
- (h)     Employer means the State Bar of California, an agency or instrumentality of the State of California exempt from federal income tax under the Code.
- (i)     Participant means a person who has met the eligibility requirements to participate in the Plan, and whose participation has not yet terminated. See Section 3.

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

(k) Service means any period of regular employment with the Employer that is either full-time or part-time on at least 50% full-time basis, subject to the following rules:

(1) 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.

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

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

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

(l) Trust means a legal entity that the Employer may establish to hold assets irrevocably set aside by the Employer to pay benefits under the Plan. See Section 4(c).

(m) 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 the Plan. Each Executive Staff Employee on the Effective Date will be a Participant. Each person who becomes an Executive Staff Employee after the Effective Date will become a Participant on the date of becoming an Executive Staff Employee. In addition, each former Executive Staff Employee listed under attached Appendix A is a Participant on the Effective Date.

(b) Termination of Participation. A Participant's participation in the Plan terminates on the earlier of:

(1) 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, as determined under Section 5;

(2) if the Participant is vested under the Plan upon termination of his or her employment with the Employer and is subsequently reinstated as an active CalPERS member through another employer, the date of that reinstatement;

(3) the date that a Participant who is a former Employee is reemployed by the Employer in a position other than Executive Staff Employee, unless he or she is entitled to

continued receipt of retirement benefits under CalPERS as a retiree of the Employer after the reemployment date; or

(4) the Participant's death.

(c) Reemployment or Reinstatement of Former Participant. A former Participant who is reemployed or reinstated as an Executive Staff Employee will again become a Participant on the effective date of reemployment or reinstatement.

(d) Plan is Binding. Any person with an interest in the Plan will be bound by the Plan's terms, including all amendments thereto, and by decisions made by the Committee in accordance with the Plan's terms. The Plan supersedes any and all prior documentation relating to post-retirement welfare benefits provided by the Employer to Participants, including but not limited to the Employer's Rules & Regulations Pertaining to the Employment of Executive Staff.

#### **SECTION 4: BENEFIT FUNDING**

(a) Benefit Payments. Benefits payable under the Plan will be paid by the Employer at the Committee's direction.

(b) Contributions. All benefits under the Plan will be paid by Employer contributions and earnings thereon; employee contributions are not permitted. In addition, the Employer may set aside contributions and related earnings to pre-fund benefits under the Plan. In determining the amount of any 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.

(c) Trust. The Employer may establish a Trust to receive and invest assets set aside by the Employer to pay benefits under the Plan. The Trust may specifically provide, among other things, for the investment and reinvestment of the Trust assets and the income thereof, the management of the Trust assets, 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 assets. The trustee shall, in accordance with the terms of the Trust, accept and receive all contributions paid to it from time to time, and shall hold, invest, reinvest and manage such moneys and any increment, increase, earnings and income thereof for the exclusive benefit of Participants and for the payment of reasonable expenses of administering the Plan.

#### **SECTION 5: VESTING**

(a) Vesting Requirements. A Participant will be vested in benefits under the Plan only upon meeting the following requirements:

(1) Termination of Employment. On the effective date of the termination of the Participant's employment with the Employer, he or she must be an Executive Staff Employee working on a full-time basis.

(2) 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 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 reemployed or reinstated as an Executive Staff Employee on or after such date), such Participant must complete (A) at least 10 Years of Service as an Executive Staff Employee, and (B) at least 15 total Years of Service as an Employee, counting Service as an Executive Staff Employee and other Service as an Employee.

(3) Medical Coverage. Immediately prior to retirement from the Employer, the Participant must be covered under the medical insurance plan then offered by the Employer to its active Executive Staff Employees.

(4) Retirement under CalPERS. The Participant must retire under CalPERS from the Employer within 120 days after his or her employment with the Employer terminates. 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 requirement.

(b) 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 the Plan that differ from this Section 5. The vesting requirements under any such agreement will supersede the requirements of this Section 5.

(c) No Benefits if not Vested. A Participant will not have any vested interest under the Plan unless he or she meets all of the preceding requirements of this Section 5. If a Participant does not have any vested interest, the Participant will not be entitled to any benefits under the Plan.

## **SECTION 6: BENEFITS**

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

(b) Benefits.

(1) Each Participant who meets the vesting requirements of Section 5 will be entitled to receive Employer-funded health care coverage comparable to that which is provided to the Employer's active Executive Staff Employees. Any changes in the health care coverage for active Executive Staff Employees will also apply to coverage provided to Participants under the Plan.

(2) If the Committee determines that comparable coverage is not available at the same or lower group rate than the Employer then pays for coverage of any active Executive Staff Employee, the Participant will be entitled to an Employer contribution towards the purchase of comparable coverage, in an amount equal to the Employer's contribution for

coverage of any then active Executive Staff Employee. The Participant will be solely responsible for paying any coverage cost in excess of that contribution.

(3) A Participant who is eligible for Medicare coverage may, as required by the governing agreement with the benefit provider or by the Employer in its sole discretion, be required to elect Medicare coverage as the primary coverage, in which case any coverage subsequently provided under this Plan will be deemed to be supplemental coverage. If the Medicare coverage premiums are required to be deducted from Social Security benefits received by the Participant, the Employer will have no obligation to fund or reimburse such deductions. Employer-funded supplemental coverage will be provided under this Plan, but only to the extent needed to provide the Participant with, together with Medicare coverage, health care coverage comparable to that which is provided to the Employer's active Executive Staff Employees.

(4) For these purposes, "health care coverage" encompasses medical, hospital and vision care coverage, including dependent care coverage provided under the Employer's medical coverage plans to covered Executive Staff Employees and their spouses, domestic partners, and dependents.

(5) Benefits under the Plan will be provided only to those spouses, domestic partners, and dependents who receive health care coverage through a Participant on the date his or her employment with the Employer terminates. For example, if a Participant has a dependent receiving health care coverage when the Participant's employment terminates, benefits under the Plan will extend to the coverage costs attributable to post-termination coverage of that dependent. But if a new dependent is added to the Participant's health care coverage after the termination date, benefits under the Plan will not extend to the new dependent.

(6) A Participant may at any time decline benefits under the Plan by notifying the Employer.

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

(d) Reemployed Participants.

(1) Except as provided in paragraph (2) below, if the Employer reemploys a Participant whose employment with the Employer had previously terminated, any benefits provided under the Plan to that Participant will cease effective on the reemployment date. The Participant will be entitled to benefits under the Plan upon subsequent termination of employment only if he or she is then vested under Section 5.

(2) If a reemployed Participant is entitled to continued receipt of retirement benefits under CalPERS as a retiree of the Employer after the reemployment date, any benefits provided under the Plan to that Participant will continue uninterrupted. If the reemployed Participant ceases to be eligible for continued CalPERS benefits while an Employee, paragraph (1) above will apply.

(e) COBRA and HIPAA Compliance. The Committee 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 B below.

## **SECTION 7: ADMINISTRATION OF THE PLAN**

### (a) General.

(1) Each Plan fiduciary shall discharge its duties solely in the interest of Participants and for the exclusive purpose of providing benefits under the Plan, 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.

(2) A fiduciary may serve in more than one fiduciary capacity and may employ one or more persons to render advice with regard to its fiduciary responsibilities. If the fiduciary is serving as such without compensation, all expenses reasonably incurred by such fiduciary will be paid by the Employer. The Employer may, however, elect to have those expenses paid from Trust assets.

(3) The Committee may allocate and delegate any of its responsibilities for the operation and administration of the Plan to the extent consistent with its fiduciary duties. The Committee shall promptly notify the Board of Governors, 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 Committee may reasonably require for the effective discharge of its duties.

### (c) Committee.

(1) The Committee will initially be composed of the Treasurer of the Board, or designee; the President of the Board, or designee; and the Executive Director/Secretary of the Board, or designee.

(2) The Committee has plenary authority to administer the Plan.

(3) The Committee has the power to construe the Plan and to determine all questions that may arise relating to (i) the eligibility of individuals to participate in the Plan and (ii) Participants' eligibility for benefits under the Plan, including the time and amount of any and all benefit payments, and (iii) any and all other issues that may arise under the Plan.

(4) All decisions and interpretations of the Committee under the Plan will be conclusive and binding on all persons with an interest in the Plan.

(5) All benefit payments under the Plan will be made upon, and in accordance with, the written directions of the Committee.

(6) The Committee 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 their rights to benefits under the Plan.

(7) With respect to each Committee member who is either an officer or employee of the Employer, his or her duty under the Plan will be treated as official duties and the employee 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.

(d) Claims Procedures.

(1) The Committee will receive all claims filed for benefits under the Plan. Upon receiving a claim, the Committee shall review the claim and determine whether the claimant is entitled to receive any benefits pursuant to such claim. The Committee 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 will be written in a manner calculated to be understood by the claimant and must include, as applicable: (i) the specific reason or reasons for the denial; (ii) specific references to the 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 of why such material or information is necessary; and (iv) an explanation of the Plan's claim review procedures.

(2) If the circumstances require an extension of time for processing the initial claim, a written notice of the extension will 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.

(3) If a claim for benefits is denied or if the Committee 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 Committee 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.

(4) Upon request, the Committee 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.

(5) 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 will 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.

(e) Records. All acts and determinations of the Committee will be duly recorded and all such records together with such other documents as may be necessary in exercising its duties under the Plan will 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 Committee 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 governed by laws of the State of California and, to the extent applicable, federal law.

(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 Employer will pay the reasonable expenses of administering the Plan, including but not limited to the reasonable compensation of any counsel, accountants, and other agents hired by the Committee, as well as any other expenses incurred by the Committee in administering the Plan. The Employer may, however, elect to have those expenses paid from Trust assets.

(d) Participant's Rights. The Plan does not provide Participants or anyone else with any right to be retained in the Employer's employment or service. A Participant's sole rights under the Plan are limited to those described in this document.

(e) Prohibition Against Assignment and Alienation of Benefits. To the maximum extent allowed by law: No right or claim to, or interest in, any part of any payment from the 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. Benefits under the Plan will not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor will they be subject to attachment or legal process for or against such person. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under the Plan will be void. No portion of the benefits payable under the Plan will be subject to the bankruptcy estate of any Participant or other person.

(f) Provisions Applicable During Periods of Military Service. Notwithstanding any Plan provision 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: AMENDMENT AND TERMINATION OF THE PLAN**

(a) Amendment of the Plan.

(1) The Employer may at any time amend the Plan in whole or in part. No amendment, however, will have the effect of (i) reverting to the Employer any Plan assets held under the Trust (except as otherwise provided in the Plan or the Trust) or (ii) permitting any part of those assets to be used for, or diverted to, purposes other than the exclusive benefit of the Participants and defraying the reasonable expenses of administering the Plan. In any event and without limitation of any type, the Employer may amend the Plan as necessary or appropriate to maintain the tax exempt status of the Plan.

(2) To the extent that the Employer amends the Plan, the amendment will supersede and override any claim to "vested rights" that any person may otherwise have under California law with respect to benefits under the Plan.

(b) Termination of the Plan.

(1) The Employer has established the 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 or other person will have any vested right to continuance of the Plan or to continuance of any Employer contributions to the Plan. 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 the Plan.

(2) If the Plan is terminated, the Committee shall direct the trustee to compute the value of the Plan assets under the Trust as of the date of termination. Those assets will continue to be held in the Trust, and will be distributed to pay any remaining benefits owed under the Plan until those benefits are satisfied.

(3) The "partial termination" rules of the Code that apply to qualified retirement plans will not apply under this Plan, and no action will be taken with respect to this Plan in connection with any event or events that would be a partial termination for a qualified plan.

(c) Assets After Termination. Any assets remaining in the Trust after all benefits owed under the Plan and all Plan expenses have been paid will revert to the Employer unless otherwise determined by the Committee.

(d) Limitation of Obligations. The Employer must provide all benefits accrued by Participants under the Plan through its termination. Once those benefits are satisfied, the Employer will not have any remaining obligations to provide any benefit under the Plan. No one will accrue benefits under the Plan after its termination.

**SECTION 10: EXECUTION OF PLAN DOCUMENT**

To record the adoption of the Plan, the Employer's authorized representative hereby executes this document on this \_\_\_ day of \_\_\_\_\_, 2008.

STATE BAR OF CALIFORNIA

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

**APPENDIX A: COVERED PARTICIPANTS ON EFFECTIVE DATE —  
FORMER EXECUTIVE STAFF EMPLOYEES**

**Alpha Name**

BAILEY, FELICIA A  
BARRY, LILY  
BRAUN, JEROME  
COTANT, ELYSE P K  
DAVIS, TREV M  
DAVIS, WILLIAM W  
DOYLE, LAWRENCE  
DUFFIELD, JUDY V

FORSYTH, STUART A  
FRIEDMAN, PATRICIA  
GEMINDER, LYNNE  
GERSICK, JEFFREY T

HUFFAKER, PATRICIA  
JONES, DAVID  
KROBOT, KRISTINE  
LONG, DAVID C  
QUAN, SAM Y  
RICHEY, TRUITT A  
ROSENTHAL, HERBERT  
SCHONER, PHILIP G  
SHANNON, MARK  
SIMMONS, DANA C  
SIVANOV, BILJANNA  
STOVITZ, RONALD W  
SWEET, ROBERT  
VIRGO, PAUL J  
WASSAM, ANN  
WILKINSON, MABLE  
WISTRICH, HOWARD  
ZELLMANN, KARL E

## APPENDIX B: 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 will 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 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: Senior Executive of Human Resources 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 will 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" has 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.