

**DAVIDSON COLLEGE  
EMPLOYEE BENEFITS PROGRAM**

**Effective  
January 1, 2003**

# Davidson College Employee Benefits Program

## Table of Contents

Article		Page
	Introduction	1
Article I	Definitions	2
Article II	Eligibility and Benefits	5
Article III	Contributions	6
Article IV	Amendment or Termination	7
Article V	Administration	8
Article VI	Miscellaneous Provisions	11
Article VII	Claims Procedure	13
Table I	Benefit Plans	14
Addendum A	Sample Draft Plan Document Provisions	15

## **INTRODUCTION**

Effective January 1, 2003, Davidson College (the “Company”) established the Davidson College Employee Benefits Program (the “Plan”). The plan number for this plan will be 512. The purpose of the Plan is to provide eligible Employees, and their eligible dependents, with medical, dental, health flexible spending account, and dependent care spending account benefits.

The Plan is intended to qualify under any applicable Section of the Internal Revenue Code of 1986 and is to be interpreted in a manner consistent with the applicable requirements of the Code. The Plan is also intended to conform with any applicable requirements of ERISA.

## ARTICLE I

### Definitions

As used herein, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context. Words in the masculine gender shall be deemed to include the feminine gender and words in the feminine gender shall be deemed to include the masculine gender; and, unless the context otherwise requires, the singular shall include the plural and the plural the singular. Any headings herein are included for reference only and are not to be construed so as to alter any of the terms of the Plan.

- 1.01 Accidental Death and Dismemberment Plan means any plan of coverage that may be offered by the Company on the lives of Participants that provides an indemnity benefit in the event of Participants' accidental death or dismemberment.
- 1.02 Benefit Plan means any Accidental Death and Dismemberment Plan, Business Travel Accident Plan, Health Plan, Life Insurance Plan or, Long-Term Disability Plan as set out in Table I (which is attached to the end of this document and herein incorporated by references). The terms of each Benefit Plan, as they may be set out in insurance contracts or other documents, shall form a part of this Plan in the same manner as if all the terms and provisions thereto were included herein.
- 1.03 Board means the Board of Directors of Davidson College.
- 1.04 Business Travel Accident Plan means any plan of coverage providing benefits to Employees in the event of an accident while the Employee is traveling on the Employer's business that may be offered by the Company.
- 1.05 COBRA means the extension of medical coverage that must be offered in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985, along with any amendments to such law and any pertinent Treasury and ERISA regulations, rulings, notices or other promulgations.
- 1.06 Code means the Internal Revenue Code of 1986, as amended from time to time, along with any pertinent Treasury regulations, rulings, notices or other promulgations. Reference to any section or subsection of the Code includes references to any comparable or successor provisions of any legislation that amends, supplements or replaces such section or subsection.
- 1.07 Company means Davidson College, a corporation incorporated in the State of North Carolina.

- 1.08 Dependent Care Spending Account means the benefit offered by the Employer allowing Participants to pay for applicable dependent care expenses on a pre-tax basis, as permitted under Section 129 of the Code.
- 1.09 Effective Date means January 1, 2003.
- 1.10 Employee means those individuals employed by the Employer.
- 1.11 Employer means the Company which has adopted and currently maintains the Plan for the benefit of its eligible Employees.
- 1.12 ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time, along with any pertinent Department of Labor regulations, rulings or other promulgations. Reference to any section or subsection of ERISA includes references to any comparable or successor provisions of any legislation that amends, supplements or replaces such section or subsection.
- 1.13 Health Flexible Spending Account means the benefit offered by the Employer allowing Participants to pay for applicable health care expenses on a pre-tax basis, as permitted under Section 105 of the Code.
- 1.14 Health Plan means any health (medical, dental and/or vision care) plans, including any HMO plans, that are offered by the Employer.
- 1.15 HMO means any of one or more health maintenance organizations that may offer health benefits to eligible Employees, from time to time.
- 1.16 Life Insurance Plan means any plan of group-term life insurance (as described in Section 79 of the Code) or any other life insurance plan that may be offered by the Employer.
- 1.17 Long-Term Disability Plan means any plan of long-term disability insurance that may be offered by the Employer.
- 1.18 Participant means those individuals who participate in a Benefit Plan in accordance with the terms of such Benefit Plan.
- 1.19 Plan means this Davidson College Employee Benefits Program.
- 1.20 Plan Administrator means the person or persons responsible for the administration of the Plan, as identified in Section 5.01.
- 1.21 Plan Year means the twelve (12) month period beginning each January 1 and ending each December 31.

1.22 Qualified Beneficiary means any person afforded rights of continued medical coverage under COBRA as a result of a qualifying event, as defined in COBRA and in the Health Plan document.

## ARTICLE II

### Eligibility and Benefits

- 2.01 Eligibility and Benefits. The classes of Employees eligible under the Plan, the requirements regarding waiting periods to become eligible, the conditions which must be met in order to become insured, the procedures governing Participants' elections under the Plan, the amount and type of benefits available, the circumstances under which benefits under the Plan are not available or may terminate, the other provisions affecting the benefits provided by the Plan are set forth in the respective Benefit Plans referred to in Table I.
- 2.02 COBRA. A Health Plan provided under this Plan may be subject to COBRA. In the event any provision of this document is inconsistent with COBRA, the provisions of COBRA shall prevail. A statement of COBRA rights under any Health Plan, if applicable, is contained in such plan's own plan document.

## ARTICLE III

### Contributions

- 3.01 Source of Contributions. The Company may require a Participant to pay any portion of the cost of the benefits provided under a Benefit Plan. Such contributions may or may not be made as part of a cafeteria plan as defined in Section 125 of the Code. Amounts payable by Participants may differ, depending on the type of coverage provided or other factors. Any remaining costs shall be borne by the Employer.
- 3.02 Funding. Different funding mechanisms may be used to provide benefits under any Benefit Plan. Such funding mechanisms shall be set out in the policies, contracts or other documents that form part of such Benefit Plan.

## ARTICLE IV

### **Amendment or Termination**

- 4.01 Amendment or Termination. Except as provided herein, the Board reserves the right to amend or terminate this Plan at any time and in any manner. The Board may delegate this authority to any officer of the Company. Any action by the Board shall be evidenced by a valid resolution. Any action by any officer shall be evidenced by a valid officer's certificate. The resolutions and officer's certificates shall be attached to this Plan and considered a part hereof. No modification or amendment shall become effective if made by participating employers (other than the Company) until set forth in a revised participation agreement approved by the Board. In the event of a termination of the Plan, all liabilities of the Plan shall be satisfied to the extent and as provided by an insurance policy or other agreement with an insurer, third party administrator or other entity, and any applicable law. Provided however, that any Plan amendment or termination may be limited by the terms of any insurance policy underlying a Benefit Plan.

## ARTICLE V

### Administration

- 5.01 Administrator. The administration of the Plan shall be under the supervision of the Company, as Plan Administrator. It shall be a principal duty of the Company to see that the Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in the Plan.
- 5.02 Fiduciary Liability. No named fiduciary shall be liable with respect to a breach of fiduciary duty if such breach was committed before he became a named fiduciary or after he ceases to be a named fiduciary. No fiduciary shall be liable for an act or omission of another person in carrying out any fiduciary responsibility where such fiduciary responsibility is allocated to such other person by the Plan, or where such other person was designated to carry out such fiduciary responsibility in the manner prescribed by the Plan, except to the extent that such fiduciary is in violation of his duty under Section 405(a) or Section 405(e)(2) of ERISA.
- 5.03 Powers and Duties. The Plan Administrator will have full power to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Plan Administrator's powers will include, but will not be limited to, the following discretionary authority, in addition to all other powers provided by this Plan:
- (a) To establish a funding policy and method consistent with the objectives of the Plan and ERISA.
  - (b) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan, including the establishment of any claims procedures that may be required by applicable provisions of law.
  - (c) To interpret the Plan, its interpretation in good faith to be final and conclusive on all persons claiming benefits under the Plan.
  - (d) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan.
  - (e) To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan.
  - (f) To allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan (including but not limited to delegating certain claims administration duties to a claims

administrator), provided that any such allocation, delegation or designation shall be set out in a written instrument executed by the Plan Administrator and the designated party.

- (g) To communicate to any insurer or other supplier or administrator of benefits under this Plan in writing all information required to carry out the provisions of the Plan.
- (h) To notify the Participants in writing of any substantive amendment or termination of the Plan or of a change in benefits available under the Plan.

Notwithstanding the provisions of this Section, the powers and duties allocated to the Plan Administrator and described in this section shall only be applicable with respect to a claim arising under a Benefit Plan or to the administration of such Benefit Plan to the extent that such power or duty is not allocated (either expressly or by implication) to the individual(s) or entity appointed to serve as administrator of such plan.

- 5.04 Examination of Records. The Plan Administrator will make available to each Participant such records under the Plan as pertain to him, for examination at reasonable times during normal business hours.
- 5.05 Reliance on Other Information. In administering the Plan, the Plan Administrator will be entitled to the extent permitted by law to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by, or in accordance with the instructions of the insurers or administrators of any of the Benefit Plans offered within the Plan, or by accountants, counsel or other experts employed or engaged by the Company.
- 5.06 Nondiscriminatory Exercise of Authority. Whenever, in the administration of the Plan, any discretionary action by the Plan Administrator is required, the Plan Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated will receive substantially the same treatment.
- 5.07 Standard of Review. The Plan Administrator shall perform its duties as the Plan Administrator and in its sole discretion shall determine appropriate courses of action in light of the reason and purpose for which this Plan is established and maintained. In particular, the Plan Administrator shall interpret all Plan provisions, and make all determinations (including factual determinations) as to whether any particular Participant or beneficiary is entitled to receive any benefit under the terms of this Plan, which interpretation shall be made by the Plan Administrator in its sole discretion. Any construction of the terms of the Plan that is adopted by the Plan Administrator and for which there is a rational basis shall be final and legally binding on all parties.

Any interpretation of the Plan or other action of the Plan Administrator shall be subject to review only if such interpretation or other action is without rational basis. Any review of a final decision or action of the Plan Administrator shall be based only on such evidence presented to or considered by the Plan Administrator at the time it made the decision that is the subject of review and shall be entitled to the maximum deference permitted by law.

## ARTICLE VI

### Miscellaneous Provisions

6.01 Information to be Furnished. Participants shall provide the Plan Administrator with such information and evidence and shall sign such documents, as may reasonably be requested from time to time, for the purpose of administration of the Plan.

6.02 Limitation of Rights. Neither the establishment of the Plan nor any amendment thereof; nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right against the Company, except as provided herein.

This Plan shall not be deemed to constitute a contract between the Company and any Participant, nor to provide any Participant or Employee with a right to continued employment. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Company or to interfere with the right of the Company to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

6.03 Governing Law. This Plan shall be construed, administered and enforced according to the laws of New Hampshire except as may be preempted by federal law.

6.04 Facility of Payment. If the Plan Administrator deems any person entitled to receive any amount under the provisions of this Plan incapable of receiving or disbursing the same by reason of minority, death, illness or infirmity, mental incompetency or incapacity of any kind, the Plan Administrator may, in its discretion, direct the payment of such benefit:

- (a) Directly to such person;
- (b) To the legally appointed guardian or conservator of such person;
- (c) To a relative, friend or institution for the comfort, support and maintenance of the person entitled to receive such amount, including without limitation, any relative who had undertaken, wholly or partially, the expense of such person's comfort, care and maintenance, or any institution caring for such person; or
- (d) As directed by a court of competent jurisdiction.

The Plan Administrator may, in its discretion, deposit any amount due to a minor to his credit in any savings or commercial bank of the Plan Administrator's choice.

6.05 Lost Payee. Any amount due and payable to a Participant or beneficiary shall be forfeited if the Plan Administrator, after reasonable effort, is unable to locate the Participant or beneficiary to whom payment is due. Such forfeited amounts shall be applied toward

Employer contributions to the Plan. However, if a claim is made by the Participant or beneficiary, any such forfeited amount will be reinstated through a special contribution to the Plan by the Employer and become payable in accordance with the terms of the Plan. The Plan Administrator shall prescribe uniform and nondiscriminatory rules for carrying out this provision.

6.06 No Guarantee of Tax Consequences. Notwithstanding anything herein to the contrary, the Company neither insures nor makes any commitment or guarantee that any amounts paid to a Participant pursuant to the Plan or any amounts by which a Participant's wages are reduced pursuant to Article III will be excludable from the Participant's gross income or wages for federal, state or local tax purposes.

6.07 Agent for Service of Legal Process. Legal process may be served upon the Plan Administrator at its main office location. In addition, the agent for service of legal process is:

Helms, Mullis & Wicker, PLLC  
201 North Tyson Street  
Charlotte, NC 28202

Benefit Attorney: Jim Culbreth, (704) 343-2000

6.08 HIPAA Privacy Provisions. Addendum A, attached hereto and incorporated herein by reference, sets out the Plan's provisions relating to compliance with HIPAA privacy requirements.

**ARTICLE VII**

**Claims Procedure**

- 7.01 Claims Filing Procedure. Claims and reimbursement for this Davidson College Employee Benefits Program shall be administered in accordance with the claims procedures for the applicable underlying benefit plans, as set forth in the plan document and/or summary plan description for the applicable plans.
- 7.02 Denial of Claims. If a claim for reimbursement under this Davidson College Employee Benefits Program is wholly or partially denied, claims shall be administered in accordance with the claims procedure set forth in the plan document and/or summary plan description for the underlying benefit plans.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed in its name and behalf this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by its officer thereunto duly authorized.

ATTEST (SEAL)

DAVIDSON COLLEGE

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**TABLE I**

**Benefit Plans**

<b>Policy #</b>	<b>Benefit</b>	<b>Issued By</b>	<b>Effective Date</b>
3192620-SL	Health Plan	CIGNA Healthcare	January 1, 2003
	Dental	Flores and Associates	January 1, 2003
	Health Flexible Spending Account, Dependent Care Spending Account	Flores and Associates	January 1, 2003

## ADDENDUM A

### Sample Draft Plan Document Provisions<sup>1</sup>

1. Definitions — The following underscored terms, when appearing herein with an initial capital will have the meanings indicated for them in this Section 1.

Designated Employees means the following employees, classes of employees, and other persons under the control of the Plan Sponsor:

[List names and/or titles of all employees or classes of employees (or others under the control of the Plan Sponsor) who receive or use PHI in connection with the Plan Administration Functions in the ordinary course of Plan operations]

Disclosed PHI means PHI maintained by the Plan Sponsor, to the extent that such PHI is or has been disclosed to the Plan Sponsor by the Plan (or by an Insurer, if the Plan provides for or permits such disclosure to the Plan Sponsor), except that it does not include PHI released to the Plan Sponsor pursuant to written authorization of the individual that is the subject of the PHI given in accordance with and meeting the requirements of Section 164.508 of the Privacy Rules.

Effective Date means April 14, 2004.

Enrollment Information means information described in Section 164.504(f)(1)(iii) of the Privacy Rules.

Excepted Benefits means any one or more of the following:

- (a) Coverage for accident, disability income insurance, or any combination thereof.
- (b) Coverage issued as a supplement to liability insurance.
- (c) Liability insurance, including general liability insurance and automobile liability insurance.

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<sup>1</sup> The sample draft language provided in this Addendum is the substance of the plan document provisions that the Privacy Rules require for plans that provide PHI to the employer sponsoring the plan. This Addendum does not include all of the provisions that ERISA requires in a plan document, nor does it include provisions for adopting these provisions as an amendment to an existing plan document. To use these sample draft provisions, an employer will need to consider whether they actually reflect the administration of the employer's plan, and make modifications accordingly. In addition, whether the employer adapts these sample draft provisions for use as part of a new plan document, or as an amendment to an existing plan document, further modifications will be needed to make them fit with the other provisions of the new or existing plan document. If an employer is amending an existing plan document, the employer also will need to refer to the existing plan document to determine what formalities are required to amend that document.

- (d) Workers' compensation or similar insurance.
- (e) Automobile medical payment insurance.
- (f) Credit-only insurance.
- (g) Coverage for on-site medical clinics.
- (h) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

Insurer means either or both of:

- (a) An insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a state, is subject to State laws that regulate insurance, and is providing coverage under the Plan; or
- (b) A federally-qualified health maintenance organization, an organization recognized as a health maintenance organization under applicable state law, or a similar organization regulated for solvency under applicable state law in the same manner and to the same extent as a health maintenance organization, that is providing coverage under the Plan.

Medical Care means the diagnosis, cure, mitigation, treatment, or prevention of disease; services and supplies applied for the purpose of affecting any structure or function of the body; transportation primarily for and essential to obtaining any of the foregoing; and insurance covering any of the foregoing.

Operations Functions means any of the following activities with respect to the Plan:

- (a) Quality assessment and improvement activities.
- (b) Population-based activities relating to improving health or reducing health care costs, protocol development, case management, disease management, care coordination, and contacting health care providers and enrollees with information about treatment alternatives and related functions.
- (c) Rating provider and plan performance, including accreditation, certification, licensing or credentialing activities.
- (d) Fraud and abuse detection and compliance activities.
- (e) Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and

ceding, securing, or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance and excess of loss insurance).

- (f) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
- (g) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Plan, including formulary development and administration, and development or improvement of payment methods or coverage policies.
- (h) Business management and general administrative activities, including, but not limited to:
  - Management activities relating to the implementation of and compliance with HIPAA's administrative simplification requirements, or
  - Customer service, including the preparation and provision of data analyses for use of the Plan Sponsor and others.
- (i) Resolution of internal grievances.
- (j) Due diligence in connection with the sale or transfer of assets to a potential successor in interest if the potential successor in interest:
  - Is a covered entity for purposes of HIPAA, or
  - Will become a covered entity following completion of the sale or transfer.
- (k) Assisting other health plans, health care providers and health care clearinghouses with their health care operations activities that are like those listed above in subsections (a)-(d) of this definition, but only to the extent that both the Plan and the recipient of the disclosed information have a relationship with the individual whose PHI is involved and the PHI pertains to that relationship.
- (l) Assisting health plans, other than the Plan, which are sponsored by the Plan Sponsor and any Insurers with respect to those plans, with their health care operations activities similar to the activities listed in this definition with respect to the Plan.

Payment Functions means activities undertaken to obtain premium payments or to determine or fulfill the Plan's responsibility for coverage of, and provision of health benefits with respect to, an individual to whom health care is provided. Payment functions include, but are not limited to, the following:

- (a) Determining individuals' eligibility for coverage under the Plan, including determinations of rights pursuant to COBRA.
- (b) Obtaining reimbursement for benefits paid during a period of ineligibility.

- (c) Determining whether individuals have coverage in effect under the Plan, and in what capacity.
- (d) Determining whether particular expenses are covered under the Plan with respect to individuals (including, without limitation, coordination of benefits determinations, cost sharing determinations, subrogation determinations, medical necessity determinations, and all other determinations necessary or appropriate to determine whether Plan benefits are payable for particular health benefit claims) and making claims payments based on those determinations.
- (e) Coordination of benefits, including, without limitation, collecting amounts from another plan covering an individual, and determining order of benefits payment and the extent to which benefits have been paid from another plan.
- (f) Activities related to rights of reimbursement the Plan may have with respect to previously-paid benefits, and subrogation activities, including asserting liens against actual or potential recoveries, exercising rights of reimbursement with respect to third parties, and making demand for repayment of Plan benefits.
- (g) Determining cost-sharing amounts applicable to particular claims under the terms of the Plan, including determining whether an individual has reached applicable plan limits, satisfied deductibles or out-of-pocket limits, or is required to make a copayment or satisfy coinsurance with respect to a particular claim.
- (h) Adjudicating benefit claims under the Plan (including appeals and other payment disputes).
- (i) Claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes, and responding to enrollees' inquiries about payments.
- (j) Billing and collection activities, and related data processing.
- (k) Obtaining payment under a contract for reinsurance (including stop-loss and excess loss insurance), including notification to carriers issuing such insurance of diagnoses or claims that trigger reporting requirements under such policies.
- (l) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges.
- (m) Determining required employee contributions under the Plan

- (n) Risk adjusting amounts due for coverage based on enrollees' health status, claims history and demographic characteristics, to the extent permissible under applicable law.
- (o) Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services.
- (p) Disclosure to consumer reporting agencies relating to collection of premiums or reimbursement, limited to any or all of the following:
  - (i) Name and address;
  - (ii) Date of birth;
  - (iii) Social security number
  - (iv) Payment history
  - (v) Account number; and
  - (vi) Name and address of the Plan.
- (q) Assisting other health plans (including other health plans sponsored by the Plan Sponsor), health care providers, and health care clearinghouses with their payment activities, which include activities similar to those listed above in this definition with respect to the Plan.

PHI means protected health information, as defined in Section 164.501 of the Privacy Rules; provided, however, that neither Summary Health Information nor Enrollment Information shall constitute PHI.<sup>2</sup>

Plan means Davidson College Employee Benefits Program insofar as it provides or pays the cost of Medical Care and does not provide or pay the cost of Excepted Benefits.<sup>3</sup>

Plan Administration Functions means Payment Functions and Operations Functions.

Plan Sponsor means Davidson College.

Privacy Rules means the Standards for Privacy of Individually Identifiable Health Information promulgated by the Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996, and found at 45 CFR part 160 and part 164, subparts A and E.

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<sup>2</sup> The plan sponsor may receive summary health information if the sponsor requests the summary health information for the purpose of obtaining premium bids from health plans for providing health insurance coverage under the group health plan; or modifying, amending, or terminating the group health plan. Additionally, the plan sponsor may receive information as to whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.

<sup>3</sup> This provision defines the Plan for purposes of these provisions as being only the health benefits portion of a plan that includes non-health benefits. The Privacy Rules prohibit use or disclosure of PHI obtained from a health program in connection with any other benefits, even if included in the same plan document as the health program, without express authorization from the individual that is the subject of the PHI.

Summary Health Information means summary health information as defined in Section 164.504(a) of the Privacy Rules to the extent disclosed to the Plan Sponsor in accordance with Section 163.504(f)(1)(ii) of the Privacy Rules.

2. Use and Disclosure of PHI by Plan Sponsor

- (a) Plan Sponsor may use and disclose Disclosed PHI:
  - For purposes of performing Plan Administration Functions on behalf of the Plan;
  - As required by law, as that term is defined in Section 164.501 of the Privacy Rules;
  - As authorized by the individual that is the subject of the PHI in accordance with the requirements of Section 164.508 of the Privacy Rules.
- (b) Plan Sponsor shall use and disclose Disclosed PHI in the same manner and to the same extent that the Plan would be required to do so with respect to such Disclosed PHI under the Privacy Rules.
- (c) Plan Sponsor shall not use or further disclose the Disclosed PHI other than as permitted or required by the documents setting out the terms of the Plan (including this one) or as required by law.
- (d) Plan Sponsor shall require its agents, including subcontractors, to whom the Plan Sponsor provides Disclosed PHI, to agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such Disclosed PHI.
- (e) Plan Sponsor shall not use or disclose the Disclosed PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Plan Sponsor.
- (f) Plan Sponsor shall report to the Plan any use or disclosure of the Disclosed PHI of which the Plan Sponsor becomes aware that is inconsistent with the uses or disclosures provided for in the documents setting out the terms of the Plan (including this one).
- (g) Plan Sponsor will make available the Disclosed PHI in accordance with Section 164.524 of the Privacy Rules.
- (h) Plan Sponsor will make available the Disclosed PHI for amendment and incorporate any amendments to such Disclosed PHI in accordance with Section 164.526 of the Privacy Rules.
- (i) Plan Sponsor will make available the information required to provide an accounting, in accordance with Section 164.528 of the Privacy Rules, of

disclosures of the Disclosed PHI made by the Plan Sponsor, its agents or subcontractors.

- (j) Plan Sponsor will make its internal practices, books, and records relating to the use and disclosure of the Disclosed PHI available to the Secretary for purposes of determining compliance by the Plan with the Privacy Rules.
- (k) If feasible, the Plan Sponsor will return or destroy all Disclosed PHI maintained by the Plan Sponsor in any form, and retain no copies, when such Disclosed PHI is no longer needed for the purpose for which disclosure of it was made to the Plan Sponsor, except that, if such return or destruction is not feasible, the Plan Sponsor shall instead, with respect to Disclosed PHI as to which return or destruction is infeasible, limit further uses and disclosures by the Plan Sponsor, its agents and subcontractors to those required by law or those for the purposes that make the return or destruction of the Disclosed PHI infeasible.

3. Disclosure of PHI to Plan Sponsor

The Plan shall disclose PHI to the Plan Sponsor only as permitted or required under the Privacy Rules. The Plan shall disclose PHI to Plan Sponsor only upon receipt of a certification by the Plan Sponsor that the documents setting out the terms of the Plan incorporate the provisions set forth in Section 2(c) through 2(k) and Section 4 hereof, and that the Plan Sponsor agrees that:

- (a) It will not use or further disclose the Disclosed PHI other than as permitted or required by the documents setting out the terms of the Plan or as required by law.
- (b) It will ensure that any of the Plan Sponsor's agents, including a subcontractor, to whom the Plan Sponsor provides Disclosed PHI, agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such Disclosed PHI.
- (c) It will not use or disclose the Disclosed PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Plan Sponsor.
- (d) It will report to the Plan any use or disclosure of the Disclosed PHI of which the Plan Sponsor becomes aware that is inconsistent with the uses or disclosures provided for in the documents setting out the terms of the Plan.
- (e) It will make available the Disclosed PHI in accordance with Section 164.524 of the Privacy Rules.
- (f) It will make available the Disclosed PHI for amendment and incorporate any amendments to such Disclosed PHI in accordance with Section 164.526 of the Privacy Rules.

- (g) It will make available the information required to provide an accounting, in accordance with Section 164.528 of the Privacy Rules, of disclosures of the Disclosed PHI made by the Plan Sponsor, its agents or subcontractors.
- (h) It will make its internal practices, books, and records relating to the use and disclosure of the Disclosed PHI available to the Secretary for purposes of determining compliance by the Plan with the Privacy Rules.
- (i) If feasible, it will return or destroy all Disclosed PHI maintained by the Plan Sponsor in any form, and retain no copies, when such Disclosed PHI is no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, the Plan Sponsor shall instead, with respect to Disclosed PHI as to which return or destruction is infeasible, limit further uses and disclosures by the Plan Sponsor, its agents and subcontracts to those purposes that make the return or destruction of the Disclosed PHI infeasible.
- (j) It will insure that the adequate separation required in Section 4 hereof is established.

4. Adequate Separation

- (a) No one who is an employee, or is otherwise under the control, of the Plan Sponsor, other than the Designated Employees, may have access to the Disclosed PHI. The Plan Sponsor shall implement appropriate administrative, physical and technical safeguards to prohibit its employees and other persons under its control, other than the Designated Employees, from accessing the Disclosed PHI.
- (b) The Designated Employees may have access to and use of the Disclosed PHI only for the purposes specified in Section 2(a) hereof. The Plan Sponsor shall implement appropriate administrative, physical and technical safeguards to prohibit and/or prevent Designated Employees from accessing the Disclosed PHI for purposes other than those specified in Section 2(a) hereof.
- (c) Any Designated Employee who acts with respect to the Disclosed PHI in a manner contrary to the provisions of this Section 4 will be subject to disciplinary action at the Plan Sponsor's discretion, which may include termination of employment.