

Dependent Care FSA

Plan Document and Summary Plan Description

**VANDERBILT UNIVERSITY
DEPENDENT DAY CARE FLEXIBLE SPENDING ACCOUNT PLAN
AND SUMMARY PLAN DESCRIPTION**

SECTION 1 - PURPOSE OF PLAN

The purpose of this Plan is to reimburse the Company's Eligible Employees for the cost of dependent care incurred by the Company's Eligible Employees. It is the intention of the Company that the Plan qualify as a plan providing dependent care assistance within the meaning of Code Section 129, and that the Benefits provided under the Plan be eligible for exclusion from the Participants' gross income under Code Section 129(a).

SECTION 2 - DEFINITIONS

2.1 "Benefits" means the amounts paid to Participants under the Plan as reimbursements for Eligible Employment Related Expenses paid or incurred by the Participant.

2.2 "Code" means the Internal Revenue Code of 1986, as amended.

2.3 "Company" means Vanderbilt University.

2.4 "Dependent" means any individual who is a "Qualifying Individual" within the meaning of Code Section 21(b)(1). The Company may request such proof of dependent status as it deems necessary.

2.5 "Earned Income" means all income derived from wages, salaries, tips, self-employment and other employee compensation (such as disability benefits) but such term does not include any amounts received (i) under the Plan or any other dependent care assistance program under Code Section 129; (ii) as a pension or annuity; or (iii) as unemployment or workers' compensation.

2.6 "Educational Institution" means any college or university, the primary function of which is the presentation of formal instruction and that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities regularly occur.

2.7 "Eligible Employment Related Expenses" means all Employment Related Expenses incurred by a Participant that are paid to a person who is not: (i) a Dependent of a Participant or (ii) a child of a Participant under the age of 19.

2.8 "Employment Related Expenses" means expenses as defined in Code § 21(b)(2) incurred for Qualifying Services or for the cost of sending a child of the Participant to a Qualifying Day Care Center during periods in which the Employee is gainfully employed or is in active search of gainful employment. Expenses for care of a Qualifying Individual during an Employee's short, temporary absence from work, such as for vacation or minor illness, shall be considered Employment Related Expenses, provided that the care-giving arrangement requires the Employee to pay for care during the absence. An absence of two consecutive weeks shall be considered a short, temporary absence. Expenses incurred during an absence exceeding two consecutive weeks shall not be considered "Employment Related Expenses."

2.9 "Fully Benefits Eligible Employee" means regular and term employees regularly scheduled to work 30 hours or more per week.

2.10 "Highly Compensated Employee" means any person who is a highly compensated employee as defined in Code Section 414(q).

2.11 "Participant" means any employee of Vanderbilt University or a Related Employer who satisfies the requirements of Section 3.

2.12 "Plan" means this Vanderbilt University Dependent Day Care Flexible Spending Account Plan.

2.13 "Plan Administrator" means the person or persons designated to administer the Plan under Section 7.1.

2.14 "Plan Year" means the 12-month period ending on each December 31st.

2.15 "Qualifying Day Care Center" means a day care center that (i) complies with all applicable laws and regulations of the State, town, city or village in which it is located, (ii) provides care for more than six individuals (other than individuals who reside at the day care center), and (iii) receives a fee, payment or grant for services for any of the individuals to whom it provides services (regardless of whether such facility is operated for a profit).

2.16 "Qualifying Individuals" means: (i) a Dependent of a Participant (as defined in Code Section 152(a)(1)) who is under the age of 13; (ii) a Dependent of a Participant (as defined in Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring for himself or herself and who has the same principal abode as the Participant for more than one-half of the taxable year; or (iii) the Spouse of a Participant (as defined under Revenue Ruling 2013-17 or any subsequent guidance), if the Spouse is physically or mentally incapable of taking care of himself or herself and who has the same principal abode as the Participant for more than one-half of the taxable year.

2.17 "Qualifying Services" means Services performed: (i) in the home of the Participant; or (ii) outside the home of the Participant for (a) the care of a Dependent of the Participant under the age of 13 or (b) the care of any other Qualifying Individual who spends at least eight hours a day in the Participant's home. Qualifying Services do not include Services provided at a camp where the Qualifying Individual stays overnight.

2.18 "Related Employers" means a controlled group of corporations (as defined in Code § 414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code § 414(c)) or an affiliated service group (as defined in Code § 414(m) or in Code § 414(o)). If the Employer is a member of a related group, the term "Employer" includes the related group members for purposes of crediting Service, the definitions of Employee, Highly Compensated Employee, and Compensation, and for any other purpose required by the applicable Code section or by a Plan provision. However, an Employer may permit an Employee of a Related Employer to participate in the Plan only if the Related Employer executes a Participation Agreement for this Plan. If one or more of the Employer's related group members become Participating Employers by executing a Participation Agreement, the term "Employer" includes the participating related group members for all purposes of the Plan, and "Plan Administrator" means the Employer that is the signatory to the Execution Page of this Plan.

2.19 "Services" means the services performed to enable a Participant or a Participant's Spouse to remain gainfully employed and that are related to the care of a Qualifying Individual or Individuals.

2.20 "Spouse" means the spouse of a Participant as defined under applicable law, but shall not include an individual legally separated from a Participant under a decree of legal separation.

2.21 "Student" means an individual who during each of five calendar months during a Plan Year is a full time student at an Educational Institution.

SECTION 3 - ELIGIBILITY AND PARTICIPATION

3.1 Except as excluded under Section 3.2, if an individual is an employee of the Company or a Related Employer he or she is eligible to participate in the Plan if:

- a. the employee is 18 years old or older;
- b. the employee is a Fully Benefits Eligible Employee;
- c. the employee has completed 90 days of employment with the Company; and
- d. the Employee has completed, signed and submitted to the Employer an Enrollment

Form.

3.2 The following individuals are not eligible to participate in the Plan:

a. any leased employee (including but not limited to those individuals defined as leased employees in Code § 414(n)) or an individual classified by the Employer as a contract worker or independent contractor for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the Internal Revenue Service or others to be a common-law employee of the Employer;

b. any individual who performs services for the Employer but who is paid by a third-party temporary or other external employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the Internal Revenue Service or others to be a common-law employee of the Employer;

c. any non-resident aliens who receive no U.S.-source income during the Plan Year; and

d. any self-employed individual (including a partner), or a person who owns (or is deemed to own) more than 2 percent of the outstanding stock of an S corporation.

3.3 An employee who meets the eligibility requirements under this Section 3 (an "Eligible Employee") on the effective date of this Plan shall become a Participant in the Plan as of the effective date, provided he or she has submitted any required election forms to the Plan Administrator. Otherwise, an Eligible Employee who elects to participate in this Plan will become a Participant on the first day of the month coinciding with or next following satisfaction of eligibility requirements. Former employees who are rehired within the same calendar year as their termination are not required to complete the ninety (90) day waiting period before re-enrolling in the Plan.

3.4 If a Participant ceases to be an Eligible Employee, all rights of such Participant and his or her dependents to receive benefits for claims incurred after the termination date shall be forfeited. Such Participant or dependent will, however, retain the right to be reimbursed for claims incurred prior to the termination of employment if a claim for such reimbursement is submitted by April 15th of the Plan Year following the Plan Year in which the Participant ceases to be an Eligible Employee. For this purpose, a claim will be considered to be incurred when the services relating to such claim have been rendered.

3.5 After an employee ceases to be an Eligible Employee, participation in the Plan may be renewed upon the satisfaction of the eligibility requirements contained in this Section 3.

SECTION 4 - BENEFITS

4.1 A Participant in the Plan shall be eligible to receive Benefits under the Plan for all Eligible Employment Related Expenses incurred by such Participant or his or her Spouse subject to the limitations of Section 5.

4.2 A Participant shall be entitled to Benefits under this Plan only for Eligible Employment Related Expenses incurred after he or she became a Participant in the Plan.

4.3 Each Participant who desires to receive a Benefit under the Plan for Eligible Employment Related Expenses incurred by the Participant for Qualifying Services shall submit to the Plan Administrator a statement containing the following information:

- a. the Dependent or Dependents for whom the Services will be performed;
- b. the nature of the Services to be performed for the Participant and the amount for which he or she will seek reimbursement;
- c. the relationship, if any, of the person to perform the Services for the Participant;
- d. if the Services will be performed by a child of the Participant, the age of the child;
- e. a statement as to where the Services will be performed;
- f. if any of the Services will be performed outside the Participant's home, a statement as to whether the Dependent for whom such services will be performed spends at least eight hours a day in the Participant's household;
- g. if the services will be performed in a day care center, a statement that (i) the day care center complies with all applicable state laws and regulations; (ii) the day care center provides care for more than six individuals (other than individuals residing at the center); and (iii) the amount of fees paid to the center by the Participant; and
- h. if the Participant is married and his or her Spouse is unemployed, a statement that the Spouse is (i) incapacitated, or (ii) a full-time student attending an Educational Institution and the months during the year which he or she will attend such Institution.

4.4 Within 30 days after receiving the information contained in Section 4.3 above, the Plan Administrator will notify the Participant of whether he or she is eligible to receive Benefits under the Plan.

4.5 If the Participant is eligible to receive Benefits under the Plan, he or she shall submit a claim for Benefits to the Plan Administrator by April 15th following the end of the grace period as provided in Section 5.5 below stating the amount of Eligible Employment Related Expenses incurred by the Participant or the Participant's Spouse. Such claims for Benefits shall be accompanied by bills, invoices, receipts, or other statements showing the amounts of such expenses, together with any additional documentation that the Plan Administrator may request. The Participant shall also submit a statement indicating whether any information submitted pursuant to Section 4.3 has changed. Within 30 days of receiving the claim for Benefits, the Plan Administrator will pay the Participant the Benefit the Participant is entitled to receive under the Plan or notify the Participant of the Plan's benefit determination as provided in Section 8 hereof.

4.6 No Benefits shall be paid for Eligible Employment Related Expenses incurred after the date the Participant ceases to be an Eligible Employee. Claims for Benefits for Eligible Employment Related Expenses incurred prior to the date the Participant ceases to be an Eligible Employee must be submitted within 60 days of cessation of eligibility or the Benefits will be forfeited.

SECTION 5 - LIMITATIONS ON BENEFITS

5.1 The maximum dollar amount elected by the Participant for reimbursement of Eligible Employment Related Expenses incurred during a Plan Year (reduced by prior reimbursements during the Plan Year) shall only be available to the extent of the actual amounts credited to the Participant's Dependent Day Care Reimbursement Account pursuant to Section 6. No reimbursement will be made to the extent that such reimbursement would exceed the balance in the Participant's Dependent Day Care Reimbursement Account.

5.2 The maximum amount of Benefits for Eligible Employment Related Expenses that the Participant may elect to receive in any Plan Year shall be:

a. In the case of a Participant who is not married at the close of the calendar year, the lesser of the Participant's Earned Income for the Plan Year (after all reductions in compensation including the reduction related to dependent care assistance) or \$5,000;

b. In the case of a Participant who is married at the close of the calendar year, the lesser of:

i. The Participant's Earned Income for the calendar year;

ii. The Earned Income of the Participant's Spouse for the calendar year;

iii. \$5,000, if the Participant and his or her Spouse file a joint federal income tax return;

or

iv. \$2,500, if the Participant and his or her Spouse file separate federal income tax returns.

5.3 For purposes of Section 5.1, a Spouse of a Participant who is not employed during any month in which the Participant incurs Eligible Employment Related Expenses and which Spouse is either incapacitated or a Student shall be deemed to have Earned Income for such month of:

a. \$250, if there is one Qualifying Individual for whom the Participant incurs Eligible Employment Related Expenses; or

b. \$500, if there is more than one Qualifying Individual for whom the Participant incurs Eligible Employment Related Expenses.

5.4 In accordance with Code Section 129(d), not more than 25% of Benefits paid or incurred each year under the Plan shall be attributable to principal (5%) shareholders or owners of the Company; and the average Benefits provided to Participants who are not Highly Compensated Employees shall be at least 55% of the average Benefits provided to Highly Compensated Employees.

5.5 The Company has elected to adopt the provisions of Internal Revenue Notice 2005-42 and Prop. Treas. Reg. § 1.125-1(e). The grace period will apply to all Participants in the Plan. Expenses for Eligible Employment Related Expenses incurred during the grace period may be paid or reimbursed from the Plan from

benefits or contributions remaining unused at the end of the immediately preceding plan year. The grace period will not extend beyond March 15th after the end of the immediately preceding Plan Year to which it relates. A Participant who has unused benefits or contributions related to the Plan from the immediately preceding Plan Year, and who incurs Eligible Employment Related Expenses under the Plan during the grace period, may be paid or reimbursed for such expenses from the unused benefits or contributions as if the expenses had been incurred in the immediately preceding Plan Year. During the grace period, the Plan may not permit unused benefits or contributions to be cashed-out or converted to any other taxable or nontaxable benefit. Unused benefits or contributions related to the benefits provided under the Plan may only be used to pay or reimburse Eligible Employment Related Expenses incurred with respect to the Plan. To the extent any unused benefits or contributions from the immediately preceding Plan Year exceed the Eligible Employment Related Expenses incurred during the grace period, those remaining unused benefits or contributions may not be carried forward to any subsequent period (including any subsequent plan year) and are forfeited. Eligible Employment Related Expenses incurred during the Plan Year and the grace period must be submitted for payment or reimbursement within 90 days following the end of the grace period.

SECTION 6 - FUNDING

Benefits paid under the Plan are funded completely by Participant pre-tax salary deferrals. The Company will establish and maintain a Dependent Day Care Reimbursement Account with respect to each Participant who has elected to participate in the Plan, but will not create a separate fund or otherwise segregate assets for this purpose. The Dependent Day Care Reimbursement Account so established will merely be a recordkeeping account with the purpose of keeping track of contributions and determining forfeitures. The Company will maintain these deferrals as general assets of the Company and pay these amounts out of the general assets of the Company at the time such benefits are to be paid. The total of Participant salary deferrals is subject to the limits set forth in Section 5 above. The benefits shall be paid to or for Participants upon the submission and approval of the claims for benefits pursuant to Section 4 and the claims procedures set forth in Section 8. There shall be no special fund out of which benefits shall be paid.

SECTION 7 - PLAN ADMINISTRATOR

7.1 Vanderbilt University is hereby designated as the Plan Administrator to serve until resignation or removal by the Company's governing body and appointment of a successor by duly adopted resolution. The Plan Administrator shall have the authority to control and manage the operation and administration of the Plan, including the sole discretionary authority to make and enforce rules or regulations for the efficient administration of the Plan; to interpret the Plan; and to decide all questions concerning the Plan and the eligibility of any person to participate in the Plan.

7.2 The Plan Administrator may appoint third party administrators to act for it under the plan to the extent specified in the appointment. The Plan Administrator may engage agents to assist it and may engage legal counsel, including counsel to defend any action taken or omitted to be taken pursuant to the written opinions or certificates of any agent or counsel.

7.3 The Plan Administrator shall give reasonable notice of the availability and terms of the Plan to Eligible Employees.

7.4 The Plan Administrator shall submit to each Participant receiving Benefits under the Plan during a Plan Year a statement of the amount of Benefits received by such Participant during that Plan Year.

SECTION 8 - CLAIMS PROCEDURE

8.1 Filing Claims. A Participant or duly authorized representative shall file with the Plan Administrator or its designated third party administrator a written claim for any benefit to be provided by the Plan in accordance with Section 4.3.

8.2 Plan Administrator's Initial Review. The Plan Administrator or its designated third party administrator shall review and grant or deny such written claims for benefits as follows. The Plan Administrator or its designated third party administrator shall notify a claimant, in accordance with Section 8.3, of the Plan's benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim by the Plan, unless the Plan Administrator or its designated third party administrator determines that special circumstances require an extension of time for processing the claim. If the Plan Administrator or its designated third party administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 30-day period. In no event shall such extension exceed a period of 90 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the benefit determination.

8.3 Notice of Decision. The Plan Administrator or its designated third party administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. The notification shall set forth, in a manner calculated to be understood by the claimant:

- a. The specific reason or reasons for the adverse determination;
- b. Reference to the specific Plan provisions on which the determination is based;
- c. 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
- d. A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

8.4 Right to Review of Denial of Claim. The Participant shall have the right for a full and fair review by the Plan Administrator or its designated third party administrator. For this purpose, the claimant or authorized representative has the following rights:

- a. to request a review upon written application to the Plan Administrator or its designated third party administrator within 60 days following receipt of a notification of an adverse benefit determination;
- b. to be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- c. to submit written comments, documents, records, and other information relating to the claim for benefits to the Plan Administrator or its designated third party administrator; and
- d. to have a review that takes into account all comments, documents, records, and other information submitted by the claimant, without regard to whether such information was submitted or considered in the initial benefit determination.

8.5 Decision on Review. A request for review of an adverse benefit determination shall be made within 60 days after notification of denial of the claim. The Plan Administrator or its designated third party administrator will notify the claimant of the Plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the claimant's request for review by the Plan, unless the Plan Administrator or its designated third party administrator determines that special circumstances require an extension of time for processing the claim. If the Plan Administrator or its designated third party administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review.

8.6 Notice of Decision on Review. The Plan Administrator or its designated third party administrator shall provide a claimant with written or electronic notification of a Plan's benefit determination on review. In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant:

- a. The specific reason or reasons for the adverse determination;
- b. Reference to the specific plan provisions on which the benefit determination is based; and
- c. A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.

8.7 If a dispute arises with respect to any matter under this Plan, the Plan Administrator or its designated third party administrator may refrain from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved.

SECTION 9 - MISCELLANEOUS

9.1 The Company shall retain the right, by action of its governing body or other designated party, in their sole and final discretion, to amend the Plan at any time and from time to time to any extent that these persons may deem advisable or desirable, but in no event shall any amendment to the Plan result in discrimination in favor of a Participant who is a Highly Compensated Participant or key employee as defined in the Code. A copy of the resolution of the party making such amendment shall be delivered to the Plan Administrator. This Plan shall be amended in a manner and effective as of the date set forth in such resolution, and the Participants and beneficiaries and all others having any interest under the Plan shall be bound thereby as of that effective date. Notwithstanding the foregoing, no amendment will affect the pre-tax benefits of the Participants and beneficiaries on a retroactive basis. Participants and beneficiaries shall be able to receive the Benefits of the Plan unaffected until an amendment occurs.

9.2 The Company shall have the right by action of its governing body, in its sole and final discretion, to terminate the Plan at any time. Upon such termination benefits shall cease. A copy of the resolution shall be delivered to the Plan Administrator and the Plan shall be terminated as of the date of termination specified in the resolution. The Plan shall automatically terminate upon cessation of operations by the Company and all Benefits cease unless a successor employer adopts and continues the Plan.

9.3 Except where otherwise indicated by the context, any masculine terminology used shall also include the feminine and vice versa, and the definition of any term in the singular shall also include the plural, and vice versa.

9.4 This Plan shall not be deemed to constitute a contract between the Company and any Participant or to be a consideration or an inducement for the employment of any Participant or Eligible Employee. Nothing contained in this Plan shall be deemed to give any Participant or Eligible 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 Eligible Employee at any time regardless of the effect which such discharge shall have upon him or her as a Participant of this Plan.

9.5 This Plan shall be construed and enforced according to the laws of the State of Tennessee, other than its laws respecting choice of law, to the extent not preempted by any federal law.

SECTION 10 - MILITARY SERVICE

Notwithstanding any provisions of the Plan to the contrary, the rights of employees who leave employment to serve in the military will be governed by the Uniformed Services Employment and Reemployment Rights Act.

SECTION 11 - GENERAL INFORMATION

11.1 Plan Sponsor: Vanderbilt University

11.2 Plan Sponsor's Federal Employer Identification Number is 62-0476822.

11.3 The Plan Administrator is Vanderbilt University. The Plan Administrator may engage agents to assist it and may engage legal counsel, including counsel to defend any action taken or omitted to be taken pursuant to the written opinions or certificates of any agent, counsel, or physician.

11.4 The agent for service of legal process is the Plan Administrator.

11.5 The Plan is funded by Employee salary deferrals of the Participants.

11.6 The Plan is restated effective January 1, 2017.


11.7 The Plan Year ends December 31st.

11.8 The Plan Number is 513.

IN WITNESS WHEREOF, Vanderbilt University, by its duly authorized officer, has executed this Plan on this 21st day of March, 2017.

VANDERBILT UNIVERSITY

Plan Sponsor

By: 
Its: Associate Vice Chancellor and Chief
Human Resources Officer