**AMENDMENT TO PROVIDE FOR MULTIPLE EMPLOYER PLAN**

**(INCLUDING A POOLED EMPLOYER PLAN)**

**ARTICLE 1. PREAMBLE**

1.1 **Adoption**. The Employer hereby adopts this Amendment to the Plan identified below. It is effective on the Effective Date identified in Section 2.2(B).

1.2 **Superseding of inconsistent provisions**. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment. Except as otherwise provided in this Amendment, terms defined in the Plan shall have the same meaning in this Amendment.

1.3 **Construction.** Except as otherwise provided in this Amendment, any "Section" reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section, or other numbering designations.

1.4 **Effect of restatement of Plan.** If the Employer restates the Plan then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).

1.5 **Purpose of Amendment.** The purpose of this Amendment is to enable the Plan to avail itself of the relief from the “unified plan rule” pursuant to Code §413(e) and Prop. Treas. Reg. §1.413-3. If under Section 2.1 the Plan is to be a PEP described in Article 5, then the purpose of this amendment includes satisfaction of the requirements of ERISA §3(43). The provisions of this Amendment shall be interpreted and applied to be consistent with such provisions and guidance issued in connection therewith, whether such guidance is issued before or after the date of this amendment.

**ARTICLE 2. ELECTION; IDENTIFICATION; DEFINITIONS**

2.1 **Type of Plan.** This Plan is intended to be:

(a) [ ] A PEP. Articles 3, 4, and 5 apply.

(b) [ ] A MEP other than a PEP which has a PPP. Articles 3 and 4 apply. Article 5 does not apply.

(c) [ ] A MEP without a PPP, but maintained by employers that all have a common interest other than having adopted the Plan. Articles 3 applies. Articles 4 and 5 do not apply.

2.2 **Identifying information.**

1. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Effective Date *(may not be earlier than the first day of the first plan year beginning after December 31, 2020)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. PPP *(Omit if 2.1(c) selected; Article 4)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Trustee *(Optional unless 2.1(a) selected; Section 5.2)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. Additional Named Fiduciary *(Optional)*:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.3 **Definitions.** The following definitions apply to this Amendment:

1. **MEP.** A “MEP” is a multiple employer plan described in Code §413(c) and Treas. Reg. §1.413-2. In this Amendment, the term “MEP” is limited to a defined contribution plan that is qualified under Code §401(a). A MEP is not a collectively-bargained plan described in Treas. Reg. §1.413-1(a) or ERISA §3(37).
2. **MEP Administrator.** If the plan has a PPP, the MEP Administrator is the PPP. Otherwise, the MEP Administrator is the Plan Administrator as defined in the Plan and Code §414(g). The MEP Administrator shall comply with any and all relevant guidance from the DOL or the IRS in administering this Plan. If the MEP Administrator is a Participating Employer (see Section 2.4(a)) then the MEP Administrator may execute a Participating Agreement setting forth elections that are specific to employees of the MEP Administrator.
3. **Participating Employer.** A “Participating Employer” is an Employer who executes a Participation Agreement to the Plan or whose Employees are otherwise participating in the Plan, and includes any employer that is related to the Participating Employer under Code §414(b), (c), (m), or (o).
4. **PEP.** A “PEP” is a MEP which is a Pooled Employer Plan described in ERISA §3(43). A PEP is subject to Article 5.
5. **PPP**. A “PPP” is a Pooled Plan Provider as described in ERISA §3(44) and Code §413(e)(3). A PPP is subject to Article 4.
6. **Qualification Requirements**. The Qualification Requirements are those provisions required by the Code or IRS guidance to maintain the status of the Plan as a qualified plan under Code §401(a).

2.4 **Participation of MEP Administrator.** *(Optional. If 2.4(a) is selected, the employees of the MEP Administrator will not participate in the Plan.)*

(a) [ ] The MEP Administrator, who may be described in the Plan as the “Lead Employer,” will not be a Participating Employer in the Plan, and the Employees of the MEP Administrator, will not participate in the Plan as such.

**ARTICLE 3. RELIEF FROM UNIFIED PLAN RULE**

3.1 **Employer operational responsibility.** Each Participating Employer agrees to take such actions that the DOL, IRS, or MEP Administrator reasonably determines are necessary to administer the Plan and comply with ERISA and the Qualification Requirements. Each Participating Employer agrees to timely provide disclosures or other information the DOL, the IRS, or the MEP Administrator otherwise determines are necessary to administer the Plan and to comply with ERISA and the Qualification Requirements. The MEP Administrator may provide such deadlines as it may reasonably determine for a Participating Employer to provide this information or to take such actions. Each Participating Employer agrees to conform to those deadlines.

3.2 **Informal Resolution.** If the MEP Administrator determines that a PE Failure has occurred, the MEP Administrator will attempt to resolve the PE Failure informally with the UPE.

3.3 **Formal Resolution.** If the UPE does not resolve a PE Failure under Section 3.2 to the satisfaction of the MEP Administrator, the MEP Administrator will commence the notification process described in this Section.

1. **First Notice.** The MEP Administrator will send a notice to the UPE which will include the Required Contents. In the case of an Information Failure, the MEP Administrator will send this notice no later than 12 months after the end of the plan year to which the Information Failure relates. In the case of an Action Failure, the MEP Administrator will send this notice no later than 24 months after the end of the plan year to which the Action Failure relates.
2. **Second Notice.** If the failure is Unresolved 60 days after sending the first notice, then the MEP Administrator will send, within 30 days after the expiration of such 60-day period, a second notice to the UPE which will include the Required Contents. The second notice must also state that if the failure remains Unresolved 60 days following the date the second notice is sent, then a final notice describing the failure and consequences if the failure remains Unresolved will be sent to the Affected Participants and their Beneficiaries and to the DOL.
3. **Final Notice.** If the failure is Unresolved 60 days after sending the second notice, then the MEP Administrator will send, within 30 days after the expiration of such 60-day period, a final notice to the UPE which will include the Notice Contents and the Final Deadline for the UPE to resolve the PE Failure. The MEP Administrator will send, within such 30-day period, a copy of the final notice to the Affected Participants and their Beneficiaries and to the DOL.
4. **Combined Notice.** If an Information Failure becomes an Action Failure (such as when a UPE provides requested information, which discloses that there is a need to make an employer contribution which the UPE has not made), the MEP Administrator will treat the Action Failure as a new PE Failure and begin the process of resolving that failure under Sections 3.2 and 3.3. If first and second notices were sent regarding the Information Failure, the MEP Administrator may combine the first and second notices of the Action Failure, provided that this combined notice is sent as soon as reasonably practicable after determining the existence of the Action Failure. The combined notice will include all information to be provided in the second notice described in section 3.3(B).

3.4 **Remedying the Failure.** A UPE can resolve an Information Failure by providing (or arranging for others to provide) the data, documents, or other information requested by the MEP Administrator. A UPE can resolve an Action Failure by taking all actions requested by the MEP Administrator, such as making corrective contributions, required for the Plan to satisfy the Qualification Requirements

3.5 **Spinoff.** In lieu of remedying the failure, a UPE can initiate a spinoff by directing the MEP Administrator to spin off the Affected Accounts to a separate single-employer qualified defined contribution plan maintained by the UPE in a manner consistent with the terms of the Plan. Upon receiving such direction, the MEP Administrator must implement and complete the spinoff as soon as reasonably practicable after the UPE initiates the spinoff. Following the spinoff, the UPE will cease to be a Participating Employer.

3.6 **Consequences of Unresolved Failure.** If a PE Failure remains Unresolved by the Final Deadline, then:

1. **Full vesting.** The Affected Accounts will be fully vested, as though the Plan had terminated.
2. **No contributions.** As soon as reasonably practicable after the final deadline, the MEP Administrator must (1) stop accepting contributions from the UPE and the Affected Participants, (2) provide Affected Participants and their Beneficiaries with the notice described in Section 3.6(C), and (3) administer the Affected Accounts as described in Section 3.7.
3. **Notice.** The notice described in Section 3.6(B)(2) will state that (1) no further contributions will be made to the Plan on behalf of Affected Participants, (2) Affected Accounts will be fully vested, and (3) Affected Participants and their Beneficiaries will receive additional information regarding the disposition of their accounts.
4. **UPE status.** The UPE will cease to be a Participating Employer.

3.7 **Administration of Affected Accounts.** If a PE Failure remains Unresolved by the Final Deadline, then the MEP Administrator will administer the Affected Account of an Affected Participant or Beneficiary (the “individual”) as follows

1. **Accounts Other Than Mandatory Distribution Accounts.** The MEP Administrator will provide the individual who has an Affected Account other than a Mandatory Distribution Account with an election to have the Affected Account directly rolled over to an Eligible Retirement Plan or remain in the Plan. If the individual fails to make an affirmative election, the individual will be treated as having elected to have the funds will remain in the Plan. Amounts remaining in the Plan will remain until the individual is otherwise entitled to a distribution from the Plan without regard to this Amendment. The MEP Administrator may rely on an individual’s representation that the individual has severed employment unless the MEP Administrator has actual knowledge to the contrary. The MEP Administrator may amend the Plan as relating to the Affected Accounts, including signing a participation agreement or adoption agreement relating to the Affected Accounts. Plan expenses relating to the Affected Accounts remaining in the Plan will be charged to the Affected Accounts.
2. **Mandatory Distribution Accounts Subject to Automatic Rollover.** A Mandatory Distribution Account that is subject to the automatic rollover provisions of Code §401(a)(31)(B) must be directly rolled over to an Eligible Retirement Plan. The MEP Administrator must provide the individual with an election for the Eligible Retirement Plan to be (1) a plan chosen by the individual, or (2) a plan of a designated trustee or issuer (such as a default rollover IRA).
3. **Mandatory Distribution Accounts Not Subject to Automatic Rollover.** A Mandatory Distribution Account that is not subject to the automatic rollover provisions of Code §401(a)(31)(B) must be paid in cash to the individual, unless the Account is subject to Code §401(a)(31)(A), in which case the individual may elect instead to have the account directly rolled over to an Eligible Retirement Plan chosen by the individual.
4. **Amounts Not Eligible for Rollover.** If an amount is to be directly rolled over to an Eligible Retirement Plan pursuant to Section 3.6(A), (B), or (C) that is not an Eligible Rollover Distribution (such as a required minimum distribution), that amount must be paid directly to the individual.

3.8 **Employer Fiduciary Responsibility.** Each Participating Employer retains fiduciary responsibility for (1) the initial selection of the Plan as the appropriate retirement plan vehicle for its employees and their beneficiaries; (2) the selection and monitoring, in accordance with ERISA §404(a), of the Plan, the MEP Administrator and any other Named Fiduciary of the Plan to ensure the Plan remains the proper vehicle for such employees and their beneficiaries; (3) and evaluating the fees and other expenses charged or allocated to the employees and beneficiaries and determining initially and on an ongoing basis that they are reasonable.

3.9 **Definitions.** The following definitions apply to this Article:

1. **Action Failure.** An “Action Failure” is a failure of a Participating Employer to comply in a timely manner with a reasonable request by the MEP Administrator to take action needed for the Plan to satisfy a Qualification Requirement as it relates to the Participating Employer.
2. **Affected Accounts.** Affected Accounts are accounts of Affected Participants and their Beneficiaries attributable to plan assets in the Plan that related to employment with the UPE. If there is no separate account for amounts related to the UPE and other Participating Employers, and an Affected Participant’s account includes amounts related to the UPE and to other employers, then (1) if the most recent Participating Employer of the Affected Participant is the UPE, the participant’s entire account will be treated as related to employment with the UPE, but otherwise (2) none of the participant’s account will be treated as related to employment with the UPE and the individual will not be treated as an Affected Participant.
3. **Affected Participant.** An “Affected Participant” of a PE Failure is a participant who is an employee of the UPE, except as provided in Section 3.9(B)(2).
4. **Beneficiary.** An individual is a “Beneficiary” of an Affected Participant if the individual is an alternate payee (as defined in Code §414(p)) of the Affected Participant or a beneficiary of a deceased Affected Participant.
5. **Days**. All references to “days” refer to calendar days, (not business days).
6. **Eligible Retirement Plan.** An “Eligible Retirement Plan” is a plan described in Code §402(c)(8).
7. **Eligible Rollover Distribution.** An “Eligible Rollover Distribution” is a distribution described in Code §402(f)(2)(A).
8. **Final Deadline.** The “Final Deadline” is 60 days after the final notice described in Section 3.3(C) is sent.
9. **Information Failure.** An “Information Failure” is a failure of a Participating Employer to respond in a timely manner to a reasonable request by the MEP Administrator for data, documents, or any other information that the MEP Administrator reasonably believes is necessary to determine whether the Plan complies with the Qualification Requirements as they relate to the Participating Employer.
10. **Mandatory Distribution Account.** A “Mandatory Distribution Account” is an Affected Account of an Affected Participant that would have been subject to a mandatory distribution under the terms of the Plan if the participant had severed employment.
11. **PE Failure.** A “PE Failure” is an Information Failure or an Action Failure.
12. **Required Contents.** With regard to a PE Failure, the “Required Contents” are the actions the Participating Employer must take to remedy the failure (Section 3.4), the option to initiate a spinoff (Section 3.5), and the consequences under the Plan if the UPE neither remedies the failure nor initiates a spinoff. The description of the consequences must include that Affected Participants will not have any further contributions made to the Plan on their behalf and that those individuals who are responsible for the failure may have adverse tax consequences.
13. **Unresolved.** A PE Failure is “Unresolved” unless and until the Participating Employer, prior to the Final Deadline, either remedies the failure (Section 3.4) or initiates a spinoff (Section 3.5).
14. **UPE.** A “UPE” is an Unresponsive Participating Employer: a Participating Employer with a PE Failure.

**ARTICLE 4. PPP: POOLED PLAN PROVIDER**

4.1 **PPP.** This Article 4 applies if 2.1(a) or 2.1(b) is selected. The PPP of the Plan is the person or organization named in Section 2.2(C). The provisions of the Plan relating to the appointment, resignation, removal and replacement of the Plan Administrator apply to the PPP, subject to the registration requirements of Section 4.4.

4.2 **Named Fiduciary.** The PPP is a Named Fiduciary of the Plan, as defined in ERISA §402(a). The PPP is the sole Named Fiduciary unless Section 2.2(E) designates one or more additional persons or organizations to serve with the PPP as Named Fiduciary. By its signature to this Amendment, the PPP acknowledges that it is a Named Fiduciary with regard to the Plan.

4.3 **Plan Administrator; related duties.** The PPP is the Plan Administrator. The PPP is responsible for the performance of all administrative duties (including conducting proper testing with respect to the Plan and the Employees of each Participating Employer) which are reasonably necessary to ensure the Plan satisfies all Qualification Requirements and that each Participating Employer complies with the requirements of Section 3.1. By its signature to this Amendment, the PPP acknowledges that it is the Plan Administrator of the Plan. The administrative duties of the PPP specifically include the following:

1. Monitoring compliance with the Plan, the Code, and ERISA;
2. Maintaining accurate plan data including up-to-date participant and beneficiary information;
3. Performing and conducting coverage, top-heavy, and discrimination testing under Code §401(a)(4), (k), (m), 410, and 416, as applicable;
4. Processing all employee transactions (such as investment changes, loans, and distributions);
5. Ensuring that all persons who handle assets of, or who are fiduciaries of, the Plan are bonded in accordance with ERISA §412;
6. Satisfying Code and ERISA reporting and notice requirements (such as reporting requirements under sections 6047 and 6058 and notice requirements under sections 401(k)(12)(D) and (13)(E) and 402(f)); and
7. Updating the plan to reflect statutory changes to the Code and ERISA, to the extent the responsibility for updating the plan document has been delegated to the PPP.

4.4 **Registration.** The PPP has previously registered or promptly will register as a Pooled Plan Provider with the DOL and shall provide such additional or supplemental filings as required by law.

4.5 **Related entities; service providers.** The PPP may delegate any of its duties hereunder to an organization which is related to the PPP, as described in Code §414(b), (c), (m), or (o), and may engage, at the expense of the Plan, other service providers to assist it in performing those duties.

**ARTICLE 5. PEP: POOLED EMPLOYER PLAN**

5.1 **Pooled employer plan.** If this Article 5 applies (under Section 2.1(a) this plan is a PEP. One or more of the Participating Employers does not have a common interest with one or more of the other Participating Employers, other than having adopted the Plan. If the Plan was in existence prior to December 20, 2019, then by its signature to this Amendment the PPP (who is also the MEP Administrator) elects that the Plan will be treated as a PEP.

5.2 **Trustee.** Section 2.2(D) names the Trustee at the time of the adoption of this Amendment. At all times, the Trustee must be a bank, or another financial institution qualified to act as an IRA trustee under Code §408(a). No Participating Employer can be a Trustee. The Trustee shall otherwise be subject to all provisions of the Trust related to the appointment, resignation, removal, replacement, and powers of Trustees. The Trustee is responsible for collecting contributions to, and holding the assets of, the Plan. The Trustee shall implement written contribution collection procedures that are reasonable, diligent, and systematic.

5.3 **Employer fiduciary responsibility.** In addition to the responsibilities described in Section 3.8, and subject to ERISA §404(c), each Participating Employer retains fiduciary responsibility for the investment and management of the portion of the Plan’s assets attributable to the Employees of that Participating Employer (or their Beneficiaries or alternate payees), unless the PPP has delegated that responsibility to another fiduciary. Except with regard to the administrative duties described in Section 4.3, each Participating Employer shall be treated as the plan sponsor with respect to the portion of the Plan attributable to Employees of such Employer (or their Beneficiaries).

5.4 **Disclosures.** The PPP shall provide (or authorize its agents to provide) to the Participating Employers any disclosures or other information the DOL may require, including any disclosures and other information to facilitate performance of the fiduciary duties of the Participating Employers under Section 5.3.

5.5 **No unreasonable fees.** Participating Employers, Participants and Beneficiaries shall not be subject to

 unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or

 otherwise transferring assets of the plan in accordance with Code §414(l), ERISA §208, or Article 3 of this Amendment.

5.6 **Electronic communication.** Any disclosure or other information required to be provided under this Amendment may be provided in electronic form and shall be designed to ensure only reasonable costs are imposed on the Pooled Plan Provider and Participating Employers.

This Amendment has been executed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_.

Name of Employer:

By:

Pooled Plan Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Trustee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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