**AMENDMENT TO IMPLEMENT SECURE 2.0 PROVISIONS FOR TERMINATING PLAN**

**Instructions**

FIS has developed an amendment which may be used to update terminating plans for most provisions of SECURE 2.0 which are mandated to be in effect for the 2023 plan year. The amendment can be used for all types of qualified plans, 403(b) plans, and 457(b) plans.

We anticipate that most employers can simply fill in the identifying information in section 2.1, check Election 2.3(a) and sign the amendment. Section 2.3 lists the amendment’s default provisions. If an employer wishes to override one or more of those defaults, to reflect options SECURE 2.0 makes available, the employer can check Election 2.3(b) and make the appropriate Elections in sections 2.4 or 2.5. Note that many of the provisions in other Articles (e.g., Articles 6, 8, 9, and 11-14) allow the plan to implement optional provisions by policy. Each Article 3-14 is self-contained and lists the statutory citation for ease of reference. Section 1 of each article identifies the plans to which the article applies.

|  |  |  |  |
| --- | --- | --- | --- |
| Article | Subject | Plan Types | Elections |
| 3 | Requires safe harbor notice for QACAs with ACP safe harbor | 401(k), 403(b) | None |
| 4 | Roth Employer Contributions | DC, 403(b), gov’t 457(b) | Turned OFF by default. To allow Roth Employer Contributions, select 2.4(a). Limitations may be specified in elections 2.4(b), (c), or (d) or in plan policies. |
| 5 | Required Minimum Distributions  | All | If plan disregards RBD change in making distributions for 2023, check Election 2.5(a). |
| 6 | Hardship distribution documentation policy | DC, 403(b), gov’t 457(b) | Allows plans to adopt uniform policies regarding documenting hardship (and 457(b) unforeseeable emergency) needs. That policy can, but need not, reflect SECURE 2.0 provisions allowing reliance on participant certification |
| 7 | Qualified Birth and Adoption Distribution (QBAD) | DC, 403(b), gov’t 457(b) | Imposes 3-year QBAD recontribution deadline. |
| 8 | Disaster relief | All plans | Allows plan to adopt policies to implement optional SECURE 2.0 disaster relief provisions.  |
| 9 | 457(b) deferral election timing | Gov’t 457(b) | Allows Gov’t 457(b) plan, by policy, to allow deferral elections to take effect immediately. |
| 10 | PEP Contributions | Pooled Employer Plans | Requires Named Fiduciary to be responsible for collecting contributions.  |
| 11 | Notice to Unenrolled Participants | DC, 403(b) | Allows plan to forego giving notice to Unenrolled Participants if plan provides an Annual Reminder Notice. |
| 12 | De minimis financial incentives | 401(k), 403(b) | Allows provision of de minimis financial incentive to participants who elect to defer. |
| 13 | Permits deferrals in retroactively adopted sole proprietor plan | 401(k) | Allows deferrals for first plan year for sole proprietor plans retroactively adopted after the end of the year. Available only for first year and only if sole proprietor has no employees. |
| 14 | Insurance distributions | Gov’t | If governmental plan allows distributions to pay for insurance of eligible retired public safe officers, the payment may be made directly to the Participant. |

**Can I use this amendment for ongoing plans?**

No. It is designed exclusively for terminating plans. Ongoing plans can be amended in 2025 to reflect SECURE 2.0. Doubtless, in the interim we will receive additional guidance from the IRS which will need to be incorporated into an amendment for ongoing plans.

**Can a document sponsor sign this amendment on behalf of the employer?**

No. This amendment is designed for the employer to sign. We do not anticipate developing a document sponsor version of this amendment, because it is limited to terminating plans.

**Does this amendment contain all the provisions the terminating plan will require?**

No. It does not contain any provisions related to the termination itself, such as freezing the plan. It does not include provisions contained in other FIS amendments, such as the amendment for the original SECURE Act or for CARES.

**When should this amendment be adopted?**

The employer should adopt the amendment prior to, or coincident with, terminating the plan. However, if the employer failed to do so, the employer can likely self-correct the failure under EPCRS if it qualifies as an Eligible Inadvertent Failure under Notice 2023-43.

**What provisions of SECURE 2.0 which could require a plan amendment to implement are not reflected in this amendment?**

This amendment does not address provisions becoming effective after December 31, 2023. Some cash balance plans with variable interest crediting rates potentially could need an amendment to comply with SECURE 2.0 §348, which requires reasonable projections of the interest crediting rate, not to exceed 6%.

**Can I modify this amendment?**

Yes. This is a good faith amendment, and the IRS has not reviewed or approved it. We will not incorporate this amendment into the Relius document system.

**Will FIS update this amendment?**

We anticipate updating the amendment near the end of 2023 to address provisions of SECURE 2.0 going into effect in 2024. Please check the Relius.net [Other Resources](https://www.relius.net/News/OtherResources.aspx?T=P) page to find the most current version of the amendment.

**Are other documents available?**

In addition to the Amendment, we have provided a sample Adopting Resolution (for an employer to evidence adoption of the Amendment). We have not prepared a Summary of Material Modifications (SMM) because the plan will be terminating. We have not provided a unanimous written consent or other form to actually adopt the amendment, because this will vary depending on local law and on the structure of the employer.

**AMENDMENT TO IMPLEMENT SECURE 2.0**

**ARTICLE 1**

**PREAMBLE**

1.1 **Adoption and effective date of Amendment**. The Employer hereby adopts this Amendment to the Plan identified below. Unless otherwise stated, the effective date of each Article of this Amendment is the first day of the first Plan Year beginning in 2023.

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 will have the same meaning in this Amendment. Most Articles include definitions which are specific to that Article.

1.3 **Numbering.** 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 **Intention; Construction**. The purpose of this amendment is to amend the Plan in accordance with SECURE 2.0 Act of 2022 (“SECURE 2.0”), enacted by Congress as Division T of the Consolidated Appropriations Act of 2023, and shall be interpreted and applied accordingly. The provisions of this Amendment, and any policies and procedures issued or modified pursuant to this amendment, shall be interpreted and applied to be consistent with SECURE 2.0 and IRS and DOL guidance issued in connection therewith, whether such guidance is issued before or after the date of this amendment. The Plan Administrator may, but is not required to, reduce such policies or procedures to writing.

**ARTICLE 2**

**IDENTIFICATION; ELECTIONS**

2.1 **Identifying information.**

 A. Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 B. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 C. Type of Plan (*select one; optional*)

 (1) [ ] 401(k) Plan

 (2) [ ] Profit-Sharing Plan (other than a 401(k) plan)

 (3) [ ] Money Purchase Pension Plan

 (4) [ ] Defined Benefit Plan (including a cash balance plan)

 (5) [ ] 403(b) Plan

(6) [ ] 457(b) Plan (select one): [ ] Governmental employer [ ] Tax-exempt employer

2.2 **Plan Type Definitions.** “Qualified Plan” means a 401(k) Plan, Profit-Sharing Plan, Money Purchase Pension Plan or Defined Benefit Plan. “Defined Contribution Plan” means a Qualified Plan other than a Defined Benefit Plan.

2.3 **Operating Elections**. Many subsequent Articles of this Amendment refer to elections appearing in this Article 2. Each of Sections 2.4 through 2.5 refers to a corresponding Article. For example, Section 2.4 has the elections related to Article 4. The definitions in those Articles apply to the elections in the corresponding Section of this Article 2, and those elections have the same effective date as the corresponding Article. Each Section of this Article lists the default provisions which will apply if no election is made. If you accept the default(s), there is no need to complete the Section. There are no elective provisions which apply to Article 3 or Articles 6 through 15. The following are the defaults and a summary of the Articles for which there are no elections.

* Article 3. Requires safe harbor notice if QACA will use ACP safe harbor.
* Article 4. Does not permit Roth employer contributions.
* Article 5. Distributions of RMDs will not begin before a Participant turns 73.
* Article 6. Plan can adopt policy regarding documenting hardship distributions.
* Article 7. Three-year deadline for repayment of Qualified Birth and Adoption Distributions.
* Article 8. Plan can adopt policy regarding disaster relief.
* Article 9. Governmental 457(b) elections can be effective immediately.
* Article 10. The PPP or a named fiduciary is responsible for collection of PEP contributions.
* Article 11. Notices are not required for unenrolled participants.
* Article 12. Small deferral incentives allowed.
* Article 13. Sole proprietor can defer to retroactively adopted plan.
* Article 14. Governmental plan that permits distributions for health and long-term care insurance can make distribution directly to participant.

***Check (a) or (b).***

(a) [ ] All defaults apply. *Skip the rest of Article 2 and sign the amendment.*

(b) [ ] One or more defaults do not apply. *Complete those sections in Article 2 for which you do not accept the default; then sign the amendment.*

2.4 **Article 4 – Roth Employer Contributions**. In the absence of an election below, Article 4 does NOT apply. To permit a participant to elect Roth Employer Contributions, check (a).If Roth Employer Contributions are available, they are available for all types of vested contributions except as provided in Article 4, in elections (b), (c), or (d), or in Plan policies. *(Select all that apply.)*

(a) [ ] Article 4 applies to contributions made after \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (*Enter date after December 29, 2022.*)

(b) [ ] Roth Employer Contributions may be elected only for contributions in which the Participant is fully vested.

(c) [ ] Roth Employer Contributions may be elected only with respect to the following contributions*:* [Check all that apply]

 (1) [ ] ADP safe harbor contributions (nonelective or matching)

 (2) [ ] ACP safe harbor matching contributions

 (3) [ ] Matching Contributions (other than ADP/ACP safe harbor contributions)

 (4) [ ] Nonelective Contributions (other than ADP safe harbor contributions)

 (5) [ ] Describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(must be definitely determinable and not*

 *subject to discretion, e.g., “prevailing wage contributions”)*

(d) [ ] Describe additional limitations: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *(must be definitely determinable and not subject to discretion)*

2.5 **Article 5 – RMD Timing.** Unless Section 2.5(a) is selected, distribution of RMDs will begin for Affected Participants no sooner than April 1 of the calendar year following the year the Participant attains age 73.

(a) [ ] Distribution of RMDs to Affected Participants will NOT be delayed on account of this Amendment (i.e., distributions will generally commence no later than April 1 of the calendar year following the year the Affected Participant attains age 72), in accordance with Section 5.5. This election is effective only for the 2023 distribution calendar year.

**ARTICLE 3**

**QACA PLANS – SECURE 2.0 §401**

3.1 **Application.** This Article 3 will apply only if the Plan is a Qualified Automatic Contribution Arrangement (“QACA”) described in Code §401(k)(13). This Article is effective as of the first day of the first plan year beginning in 2020, or such later date as the Plan is a QACA.

3.2 **Safe harbor notice required to use ACP safe harbor.** The Plan is required to provide a safe harbor notice, as described in Code §401(k)(13)(E), if the plan utilizes the ACP safe harbor described in Code §401(m)(12).

**ARTICLE 4**

**ROTH EMPLOYER CONTRIBUTIONS – SECURE 2.0 §604**

4.1 **Application.** This Article 4 will apply only if (1) the Plan is a Defined Contribution Plan, a 403(b) Plan, or a Governmental 457(b) Plan, and (2) the Employer elects in Section 2.4(a) for this Article 4 to apply, effective on the date specified in Section 2.4(a).

4.2 **Election Authorized.** A Participant may elect, subject to the limitations provided in this Article, Section 2.4, and any additional policies adopted by the Employer or Plan Administrator, that some or all Employer Contributions for the Participant which are nonforfeitable at the time contributed will be characterized as Roth Employer Contributions.

4.3 **Treatment; Separate Accounting.** The Plan Administrator will establish one or more Roth Employer Contribution Accounts for each Participant who elects Roth Employer Contributions. The Plan Administrator will credit only Roth Employer Contributions and earnings thereon (allocated on a reasonable and consistent basis) to a such an Account. Except as otherwise provided by law or as the circumstances may require, the Plan Administrator will treat a Roth Employer Contribution as the corresponding Pretax Employer Contribution. For example, a safe harbor matching contribution that the Participant has elected to treat as a Roth Employer Contribution shall be subject to the same rules that apply to other safe harbor matching contributions.

4.4 **No Recharacterization.** An Employer Contribution contributed to the Plan either as a Pretax Employer Contribution or as a Roth Employer Contribution may not be re-classified as the other type of contribution; provided, however that a Pretax Employer Contribution may be converted to Roth by means of an in-plan Roth rollover (as described in Code §402A(c)(4)) if otherwise permitted under the Plan. However, if a Participant validly elected to receive a Pretax or Roth Employer Contribution, and the Plan Administrator or a vendor mistakenly classified it incorrectly, the Plan Administrator will re-classify the contribution, plus the earnings thereon, as the Participant had elected prior to the contribution.

4.5 **Definitions.** The following definitions apply for this Article 4 and Section 2.4:

1. An “**Employer Contribution**” is a Matching Contribution or a Nonelective Contribution.
2. A “**Matching Contribution”** is (1) any matching contribution described in section 401(m)(4)(A), and (2) any contribution to a Governmental 457(b) on behalf of a Participant and on account of such Participant’s elective deferral under such plan.
3. A “**Nonelective Contribution**” is a contribution made by the Employer which is not an elective deferral or a Matching Contribution.
4. A “**Roth Employer Contribution”** is a contribution described in Code §402A(a)(2) or (3). Such contributions are not excludable from the Participant’s income and are nonforfeitable.
5. A “**Pretax Employer Contribution**” is an Employer Contribution which is not a Roth Employer Contribution.

**ARTICLE 5**

**REQUIRED MINIMUM DISTRIBUTIONS – SECURE 2.0 §§107, 201, 202, 204**

5.1 **Application.** This Article 5 will apply to all plans, regardless of type. It is effective with regard to RMDs required to be made after December 31, 2022.

5.2 **Delay of Required Beginning Date.** An Affected Participant’s RBD shall not be earlier than April 1 of the calendar year following the year the Affected Participant attains age 73. For purposes of determining an Affected Participant’s RBD, an Affected Participant will be treated as a more than 5% owner if the Participant was a 5-percent owner (as defined in Code §416(i)(1)(B)) as to the Plan Year ending in the calendar year the Participant attains age 73.

5.3 **Spousal Distributions.** If an Affected Participant dies prior to the Participant’s RBD, and the Participant’s sole Designated Beneficiary is the Participant’s surviving spouse, then the RMDs to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 73, if later. However, this Section will apply only if the Plan, prior to this Amendment, permitted a surviving spouse to delay RMD distributions to December 31 of the calendar year in which the Participant would have attained age 72.

5.4 **Definitions.** The following definitions apply for this Article 5:

1. A Participant is an “**Affected Participant**” if the Participant was born after December 31, 1950.

(b) An “**RMD**” is a Required Minimum Distribution as described in Code §401(a)(9).

(c) A Participant’s “**RBD**” is the Participant’s Required Beginning Date as described in Code §401(a)(9)(C), as amplified by Section 5.2.

5.5 **Optional Distribution Timing.** If the Employer elects in Section 2.5(a) for this Section 5.5 to apply, the timing and form of distributions to an Affected Participant for the 2023 distribution calendar year (as defined in Treas. Reg. §1.401(a)(9)-5) will be determined as though this Article 5 had not been adopted. Distributions pursuant to this paragraph, which are not RMDs, will be treated as eligible rollover distributions for purposes of the direct rollover provisions of Code §401(a)(31).

5.6 **Commercial Annuities.** The Plan Administrator may adopt and implement nondiscriminatory policies relating to the purchase and use of commercial annuities in connection with RMDs. Such policies shall comply with Code §401(a)(9), and with IRS guidance as modified by SECURE §§201, 202, and 204.

**ARTICLE 6**

**HARDSHIP DOCUMENTATION POLICY – SECURE 2.0 §312**

6.1 **Application.** This Article 6 will apply to 401(k) Plans, 403(b) Plans and Governmental 457(b) plans which permit Hardship Distributions. It is effective for Plan Years beginning after December 29, 2022

6.2 **Policy.** The Plan Administrator may adopt and modify from time to time a uniform policy regarding the documentation required in connection with a Hardship Distribution. Such a policy may, but is not required to, provide for reliance upon an employee’s written certification as described in Code §§401(k)(14)(C), 403(b)(7)(D), 403(b)(11), or 457(d)(4) in the absence of the Plan Administrator’s actual knowledge to the contrary.

6.3 **Definition.** The following definition applies for this Article 6:

(a) A “**Hardship Distribution**” is (1) a distribution from a 401(k) Plan or a 403(b) Plan which is on account of an immediate and heavy financial need described in Treas. Reg. §1.401(k)-1(d)(3)(ii)(B); or (2) a distribution from a Governmental 457(b) Plan which is on account of an unforeseeable emergency described in Treas. Reg. §1.457-6(c)(2)(i).

**ARTICLE 7**

**BIRTH/ADOPTION DISTRIBUTIONS – SECURE 2.0 §311**

7.1 **Application.** This Article 7 will apply only if the Plan permits Qualified Birth and Adoption Distributions (“QBADs”) as described in Code §72(t)(2)(H).

7.2 **Rollover Deadline.** A Participant who received one or more QBADs from this Plan may, if the Plan then permits the Participant to make rollover contributions, make one or more contributions in an aggregate amount not to exceed the amount of such QBADs. The Plan will treat such a contribution in the same manner as a rollover contribution made by direct trustee-to-trustee transfer within 60 days of distribution. However, any such contribution must be received by the Plan no later than December 31, 2025, or prior to Plan termination (if earlier than December 31, 2025).

**ARTICLE 8**

**DISASTER RELIEF – SECURE 2.0 §331**

8.1 **Application; Effective Date.** This Article 8 will apply to all plans. The effective date of this Section with regard to any Major Disaster is the date the disaster was declared, or such later date specified in the Plan’s disaster relief policy.

8.2 **Policy.** The Plan Administrator may adopt a uniform, nondiscriminatory disaster relief policy to authorize Qualified Individuals to receive the disaster relief described in this Section as authorized in the policy. The disaster relief policy may (1) specify the Qualified Disasters for which relief applies, (2) require that any such distribution be from an account in which the Participant is fully vested, (3) otherwise limit the accounts from which relief is available, (4) limit the amount available with respect to a Qualified Disaster Distribution to an amount less than the Maximum Amount, (5) provide lower loan limits than those described in Section 8.5, (6) impose (within the limitations described in this Article) different conditions or different relief for different Qualified Disasters, or (7) impose other reasonable nondiscriminatory limitations.

8.3 **Qualified Disaster Recovery Distributions.** A Qualified Individual may take from a plan, other than a Defined Benefit Plan, one or more Qualified Recovery Disaster Distributions as authorized in the Plan’s disaster relief policy. The total amount of Qualified Disaster Recovery Distributions to a Qualified Individual pursuant to this Amendment from all plans maintained by the Employer, or any Related Employer, will not exceed the Maximum Amount per Qualified Disaster. The Qualified Disaster Recovery Distributions from the Plan to a Qualified Individual will not exceed the amount of the individual’s vested account balance.

8.4 **Repayment of Qualified Disaster Recovery Distribution.** If the Plan permits rollover contributions, then, in accordance with the Plan’s disaster relief policy, an individual who receives a Qualified Disaster Recovery Distribution (from this Plan or another eligible retirement plan as defined in Code §402(c)(8)(B)), at any time during the 3-year period beginning on the day after receipt of the distribution, may make one or more contributions to the Plan, as rollover contributions, in an aggregate amount not to exceed the amount of such distribution.

8.5 **Increased Loan Limit.** Notwithstanding the loan limitation that otherwise would apply under the plan’s loan policy, in accordance with the Plan’s disaster relief policy, the Plan may determine the loan limit under Code §72(p)(2)(A) for a loan to a Qualified Individual, made during the period beginning on the Applicable Date and ending 180 days thereafter, by substituting "$100,000" for "$50,000," and by substituting "the present value of the nonforfeitable accrued benefit of the employee under the Plan (or loan program or policy)" for "one-half of the present value of the nonforfeitable accrued benefit of the employee under the Plan."

8.6 **Suspension and Extension of Repayments.** If a Qualified Individual has an outstanding loan from the Plan on or after the first day of the Loan Suspension Period, then, to the extent provided in the Plan’s disaster relief policy: (1) if the date for any repayment of such loan occurs during the Loan Suspension Period, the due date is extended for one year; (2) the Plan will adjust any subsequent repayments to reflect the extension of the due date under (1) and any interest accrued during the extension; and (3) the Plan will disregard the period of extension described in (1) in determining the 5-year period and the loan term under Code §72(p)(2)(B) or (C). The disaster relief policy may specify whether the suspension and extension described herein will apply automatically or will be available upon the Qualified Individual’s request.

8.7 **Recontribution of Home Purchase Withdrawal.** A Participant who received a hardship distribution from a 401(k) or 403(b) Plan during the Hardship Distribution Period to purchase or construct a principal residence in a Qualified Disaster Area, but who, on account of the disaster, did not use the funds to purchase or construct a principal residence, may, to the extent provided in the Plan’s disaster relief policy, make one or more contributions to the Plan, as rollover contributions, during the Recontribution Period, in an aggregate amount not to exceed the amount of such hardship distribution. This section 8.7 shall not apply to a 457(b) Plan.

8.8 **Definitions.** The following definitions apply for this Article 8:

(a) The “**Maximum Amount**” with regard to any Qualified Disaster is $22,000, or a lesser amount specified in the Plan’s disaster relief policy.

(b) A “**Major Disaster**” is a disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act after December 27, 2020.

(c) With respect to a Major Disaster, the “**Disaster Area**” is the area with respect to which the Major Disaster was declared.

(d) With respect to a Major Disaster, the “**Incident Period**” is the period specified by the Federal Emergency Management Agency as the period during which the Major Disaster occurred.

(e) With respect to a Major Disaster, the “**Applicable Date**” is the latest of (1) December 29, 2022, (2) the first day of the Incident Period for the disaster, or (3) the date the disaster was declared by the President.

(f) With respect to a Major Disaster, the “**Loan Suspension Period**” is the period beginning on the first day of the Incident Period of the disaster and ending on the date which is 180 days after the last day of the Incident Period.

(g) With respect to a Major Disaster, the “**Hardship Distribution Period**” is the period beginning 180 days before the first day of the Incident Period of the disaster and ending on the date which is 30 days after the last day of such Incident Period.

(h) With respect to a Major Disaster, the “**Applicable Period**” is the period beginning on the first day of the Incident Period of the disaster and ending on the date which is 179 days after the last day of such Incident Period.

(i) A “**Qualified Disaster Recovery Distribution**” is a distribution to a Qualified Individual with respect to a Qualified Disaster during the Applicable Period.

(j) With respect to a Major Disaster, a “**Qualified Individual**” is an individual whose principal place of abode during the Incident Period of the Major Disaster was located in the Disaster Area, and who sustained an economic loss by reason of the Major Disaster. Participants, alternate payees and beneficiaries of deceased Participants can be treated as Qualified Individuals, as defined below. The Plan Administrator may rely on an individual’s certification that the individual satisfies a condition to be a Qualified Individual unless the Plan Administrator has actual knowledge to the contrary.

**ARTICLE 9**

**457(B) DEFERRAL ELECTIONS – SECURE 2.0 §306**

9.1 **Application; Effective Date.** This Article 9 will apply to 457(b) Plans. The effective date of this Section is January 1, 2023.

9.2 **Policy.** The Plan Administrator may adopt or change a salary reduction agreement policy addressing contributions pursuant to salary reduction agreements of Participants. With regard to a Governmental 457(b) Plan, the policy may provide that a Participant’s salary reduction agreement may take effect at any time prior to the date the compensation is currently available to the Participant.

**ARTICLE 10**

**COLLECTION OF PEP CONTRIBUTIONS – SECURE 2.0 §105**

10.1 **Application.** This Article 10 will apply only if the Plan is a Pooled Employer Plan (“PEP”) described in ERISA §3(43).

10.2 **Named Fiduciary.** The Pooled Plan Provider (“PPP”) of the Plan or another Named Fiduciary, other than an Employer in the Plan, will be responsible for collecting contributions to the Plan. The PPP or other Named Fiduciary shall implement written contribution collection procedures that are reasonable, diligent, and systematic.

**ARTICLE 11**

**NOTICES TO UNENROLLED PARTICIPANTS – SECURE 2.0 §320**

11.1 **Application.** This Article 11 will apply only if the Plan is a Defined Contribution Plan or a 403(b) Plan. It is effective for Plan Years beginning after December 31, 2022.

11.2 **Optional Elimination of Notices to Unenrolled Participants.** No disclosure, notice, or other plan document (other than the Alternative Notices) shall be required to be furnished under this Plan to any Unenrolled Participant who is furnished with the Alternative Notices.

11.3 **Definitions.** The following definitions apply for this Article 11:

(a) An “**Unenrolled Participant**” is a Participant in the Plan who (1) has been furnished the summary plan description of the Plan described in ERISA §104(b) and any other notices related to eligibility under the Plan and required to be furnished under the Plan, the Code or ERISA in connection with such Participant’s initial eligibility to participate in such plan, (2) is not participating in the Plan, and (3) satisfies such other criteria as determined by the IRS and/or DOL.

(b) The “**Alternative Notices**” consist of the Annual Reminder Notice and any document the Participant requests that the Participant would be entitled to receive notwithstanding this Article.

(c) An “**Annual Reminder Notice**” is a notice which (1) is provided in accordance with DOL Reg. §2520.104b–1; (2) is furnished in connection with the annual open season election period with respect to the Plan or, if there is no such period, is furnished within a reasonable period prior to the beginning of each Plan Year; (3) notifies the Unenrolled Participant of the Unenrolled Participant’s eligibility to participate in the Plan, the key benefits and rights under the plan, with a focus on Employer contributions and vesting provisions, and any applicable election deadlines; and (4) provides such information in a prominent manner calculated to be understood by the average participant.

**ARTICLE 12**

**DE MINIMIS FINANCIAL INCENTIVES – SECURE 2.0 §113**

12.1 **Application.** This Article 12 will apply only if the Plan is a 401(k) Plan or a 403(b) Plan. It is effective for Plan Years beginning after December 29, 2022.

12.2 **Optional Provision of De Minimis Financial Incentives.** A de minimis financial incentive (not paid for with plan assets) may be provided to Participants who elect to have the Employer make contributions under the arrangement in lieu of receiving cash.

**ARTICLE 13**

**SOLE PROPRIETOR RETROACTIVE DEFERRALS – SECURE 2.0 §317**

13.1 **Application.** This Article 13 will apply only if the Plan is a 401(k) Plan. It is limited to a plan retroactively adopted (pursuant to Code §401(b)(2)) by a sole proprietor with regard to a sole proprietorship which has no employees (other than the sole proprietor). It is effective for Plan Years beginning after December 29, 2022.

13.2 **Deadline for First Year Deferral.** Any elective deferrals under the Plan for the first Plan Year which are made by the sole proprietor before the deadline (determined without regard to any extensions) for filing his or her income tax return for the tax year for which the Plan is adopted shall be treated as having been made before the end of such first plan year.

**ARTICLE 14**

**INSURANCE DISTRIBUTIONS FROM GOVERNMENTAL PLANS – SECURE 2.0 §328**

14.1 **Application.** This Article 14 will apply only if the Plan is a Governmental Plan. It is effective for distributions made after December 29, 2022.

14.2 **Optional Direct Distribution.** To the extent the Plan permits plan distributions to pay for certain insurance of eligible retired public safety officers pursuant to Code §402(l), such payment may be made directly to the provider of the insurance by deduction from a distribution from the Plan or made directly to the Participant.

This Amendment has been executed this \_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_.

Name of Employer:

By:

**CERTIFICATE OF ADOPTING RESOLUTION**

The undersigned authorized representative of (the Employer) hereby certifies that the following resolution was duly adopted by Employer on , and that such resolution has not been modified or rescinded as of the date hereof:

RESOLVED, the Amendment to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Plan for the SECURE 2.0 Act (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Plan Administrator the Amendment and to take any and all actions as it may deem necessary to effectuate this resolution.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

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

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [print name/title]