**AMENDMENT FOR RETIRMENT INCOME ACCOUNT 403(b)(9) PLAN UNDER SECURE §111**

**ARTICLE 1**

**PREAMBLE**

1.1 **Adoption and effective date of Amendment**. The Employer hereby adopts this Amendment to the 403(b) Plan identified below. It is effective as of the date specified in Section 2.1. This amendment is valid only if plan assets are held in retirement income accounts described in Code §403(b)(9).

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.

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 Section 111 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE”). The provisions of this Amendment shall be interpreted and applied to be consistent IRS guidance issued in connection therewith, whether such guidance is issued before or after the date of this Amendment. Such guidance includes Section 25 of Rev. Proc. 2021-37.

**ARTICLE 2**

**IDENTIFICATION; ELECTIONS**

2.1 **Identifying information.**

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

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

 C. Effective Date of Amendment: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.2 For purposes of Article 3, the following individuals are Specified Individuals: (*Select any that apply.*)

(a) [ ] An employee of one or more of the following organizations, each of which is exempt from tax under Code §501 and is controlled by or associated with a church or a convention or association of churches (as described in Code §414(e)(3)(D)):

 (1) [ ] The following Church or Churches: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (2) [ ] The following QCCOs: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (3) [ ] The following Non-QCCOs or other organizations: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(b) [ ] The individual or individuals described in Participation Agreements, each of whom must be described in Code §414(e)(3)(B). The Participation Agreement must indicate whether the Participating Employer is a Church, QCCO, or Non-QCCO.

(c) [ ] Describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (*Describe or name one or more individuals or categories of individuals who will be treated as an Employee. Each such individual must be described in Code §414(e)(3)(B)*. *The designation must indicate whether the individuals are employees of Churches, QCCOs, or Non-QCCOs*)

**ARTICLE 3**

**EMPLOYEES PARTICIPATING IN RETIREMENT INCOME ACCOUNT PLAN**

3.1 **Employee.** For all Plan purposes, the term “Employee” includes Specified Individuals as elected in Section 2.2.

3.2 **Testing.** If the Employees of a non-QCCO are Specified Individuals, such individuals shall be subject to the nondiscrimination testing described in Treas. Reg. §1.403(b)-5 without regard to subsection (d) thereof. In applying such nondiscrimination testing, the principles in Article 4 will apply. For purposes of Article 4, the Employees of any organization (referred to in Article 4 as “the Employer”) will be tested separately from the Employees of another organization, except to the extent that the organizations are related under Code §414(b), (c), or (m). The Employees of a Church or a QCCO are not subject to such nondiscrimination testing as described in Sections 2.01(A), 4.06, 4.07, 4.08, 4.09, or 4.10(B) and (C), as contained in Article 4.

**ARTICLE 4**

**NONDISCRIMINATION TESTING PROVISIONS FOR NON-QCCOS**

Sections 4.06, 4.07, 4.08, 4.09, and 4.12 are added to the Plan, and Sections 2.01, 4.10 and 4.11 of the Plan are amended as follows. These provisions are to be applied as described in Section 3.2 of this Amendment.

## **2.01**  ELIGIBILITY. Each Eligible Employee becomes a Participant in the Plan in accordance with the eligibility conditions the Employer elects in its Adoption Agreement. The Employer may elect different age and service conditions for different Contribution Types under the Plan.

### (A) Elective Deferrals/Universal Availability. The provisions of this Section 2.01(A) apply, subject to Section 4.12. if the Employer is not a Church or if the Employer does not maintain another plan that satisfies the universal availability requirements of Code §403(b)(12). An Employee, other than an Excluded Employee with regard to Elective Deferrals, becomes a Participant in the Elective Deferral portion of the Plan on the date the Employer provides the Employee a participant notice of the right to defer. The Employer will provide such a notice to the Employee within 30 days after commencement of employment (or, if later, 30 days after the date the Employee ceases to be an Excluded Employee). If the Plan places any restrictions on a Participant's right to make a deferral election, the Participant, at a minimum, must have the right to make an initial deferral election within a 30‑day period following the date the notice is provided. In no event may a Participant's deferral election be effective prior to the Effective Date of the Plan. For purposes of this Paragraph, an Employee of a Related Employer that is not a Participating Employer is an Excluded Employee with respect to Elective Deferrals.

### (B) Other Contributions. The provisions of this Section 2.01(B) apply to Employer Contributions and Employee Contributions, and do not apply to Elective Deferrals. However, if the Employer is a Church or if the Employer maintains another plan that satisfies the universal availability requirements of Code §403(b)(12), then the provisions of this Section 2.01(B) also apply to Elective Deferrals.

#### (1) **Eligibility Conditions.** The Employer in its Adoption Agreement will elect the age and service conditions applicable to Employer Contributions or Employee Contributions (or Elective Deferrals if the Employer is a Church), if any. For purposes of an Eligible Employee's participation in Employer Contributions or Employee Contributions, the Plan may not impose an age condition exceeding age 21 and may not require completion of more than one Year of Service, except as provided under Sections 2.02(E), (G), or (H).

#### (2) **New Plan.** Any Eligible Employee who has satisfied the Plan's eligibility conditions and who has reached his/her Entry Date as of the Effective Date is eligible to participate as of the Effective Date, assuming the Employer continues to employ the Employee on that date. Any other Eligible Employee becomes eligible to participate: (1) upon satisfaction of the eligibility conditions and reaching his/her Entry Date; or (2) upon reaching his/her Entry Date if such Employee had already satisfied the eligibility conditions prior to the Effective Date.

#### (3) **Restated Plan.** If this Plan is a Restated Plan, each Employee who was a Participant in the Plan on the day before the restated Effective Date continues as a Participant in the Restated Plan, irrespective of whether he/she satisfies the eligibility conditions of the Restated Plan, unless the Employer provides otherwise in its Adoption Agreement.

#### (4) **Special Eligibility Effective Date (Dual Eligibility).** The Employer in its Adoption Agreement may elect to provide a special Effective Date for the Plan's eligibility conditions, with the effect that such conditions may apply only to Employees who are employed by the Employer after a specified date.

## **4.06**  ANNUAL TESTING ELECTIONS. The Plan Administrator may elect to test for coverage and nondiscrimination by applying, as applicable, annual testing elections under this Section 4.06, and subject to Section 4.12. Any requirement, including a provision in the Adoption Agreement, that a plan provision be nondiscriminatory shall not apply to a Church, even if the Church has elected to be subject to ERISA under ERISA §§4(b)(2) and 3(32).

### (A) Changes and Uniformity. In applying any testing election, the Plan Administrator may elect to apply or not to apply such election in any Testing Year, consistent with this Section 4.06. However, the Plan Administrator will apply the testing elections in effect within a Testing Year uniformly to all similarly situated Participants.

### (B) Plan Specific Elections. The Employer in its Adoption Agreement must elect for the Plan Administrator to apply the following annual testing elections: (1) nondiscrimination testing under the ACP test as a traditional 403(b) Plan; (2) no nondiscrimination testing as a Safe Harbor 403(b) Plan; (3) the calendar year data election under Notice 97‑45; (4) Current or Prior Year Testing as a traditional 403(b) Plan under Treas. Reg. §1.401(m)‑2(a)(2)(ii) as applicable; and (5) any other testing election which the IRS in the future specifies in written guidance as being subject to a requirement of the Employer making a Plan (versus an operational) election.

#### (1) **Special Rules relating to ACP Testing.** If the Employer elects in its Adoption Agreement both safe harbor 403(b) status and nondiscrimination testing under the ACP test, the elections relating to Safe Harbor status will apply only to a disaggregated plan under Treas. Reg. §1.410(b)-7 which is a Safe Harbor 403(b) Plan under Section 3.05. If a disaggregated plan is a Safe Harbor 403(b) Plan and there are other disaggregated plans which are not Safe Harbor 403(b) Plans (such as through operation of the "otherwise excludible employees rule" (OEE) rule described in Section 4.06(C) and Section 3.05(D)), Current Year Testing will apply to the disaggregated plan covering Otherwise Excludible Employees unless the Employer otherwise elects in the Adoption Agreement. See Section 3.05(I)(1) regarding ACP testing in connection with the maybe notice. See Section 3.05(G) regarding the application of the ACP test to Employee Contributions if the Plan qualifies for the ACP test safe harbor.

### (C) Operational Elections. The Plan Administrator operationally may apply any testing election available under IRS Guidance, other than those plan specific elections described in 4.06(B), including but not limited to: (i) the "otherwise excludible employees rule" ("OEE rule") under Code §410(b)(4)(B); (ii) the "early participation rule" ("EP rule") under Code § 401(m)(5)(C); (iii) except as Section 4.07 may limit, the application of any Code §414(s) nondiscriminatory definition of compensation for nondiscrimination testing, regardless of the Plan's definitions of Compensation for any other purpose; (iv) application of the general nondiscrimination test under Treas. Reg. §1.401(a)(4)‑2(c); (v) application of the "compensation ratio test" under Treas. Reg. §1.414(s)‑1(d)(3); (vi) application of imputed permitted disparity under Treas. Reg. §1.401(a)(4)‑7; (vii) application of restructuring under Treas. Reg. §1.401(a)(4)‑9; (viii) application of the average benefit test under Code §410(b)(2), except as limited under Section 3.06(F); (ix) application of permissive aggregation under Code §410(b)(6)(B); or (x) application of the "qualified separate line of business rules" under Code §410(b)(5).

#### (1) **Application of otherwise excludible employees and early participation rules.** In applying the OEE and EP rules in clauses (i) and (ii) of Section 4.06(C) above, the Plan Administrator will apply the following provisions.

###### (a) **Definitions of Otherwise Excludible Employees and Includible Employees.** For purposes of this Section 4.06(C), an Otherwise Excludible Employee means a Participant who has not reached the Cross‑Over Date. For purposes of this Section 4.06(C), an Includible Employee means a Participant who has reached the Cross‑Over Date.

###### (b) **Satisfaction of coverage.** To apply the OEE or EP rules for nondiscrimination testing, the Plan must satisfy coverage as to the disaggregated plans under Code §410(b)(4)(B).

###### (c) **Definition of Cross‑Over Date.** The Cross‑Over Date under the OEE rule means the date on which an Employee changes status from the disaggregated plan benefiting the Otherwise Excludible Employees to the disaggregated plan benefiting the Includible Employees. The Cross‑Over Date has the same meaning under the EP rule except it is limited only to NHCEs. Under the EP rule, all HCE Participants remain subject to nondiscrimination testing.

###### (d) **Determination of Cross‑Over Date.** The Plan Administrator may elect to determine the Cross‑Over Date for an Employee by applying any date which is not later than the maximum permissible entry date under Code §410(a)(4).

###### (e) **Amounts in testing in Cross‑Over Plan Year.** For purposes of the OEE rule, the Plan Administrator will count the total Plan Year Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the Includible Employees plan test for the Employees who become Includible Employees at any time during such Plan Year. For purposes of applying the EP rule, the Plan Administrator will count the Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the single test for the Includible Employees, but only such of these items as are attributable to the period on and following the Cross‑Over Date.

###### (f) **Application of other conventions.** Notwithstanding Sections 4.06(C)(1)(c), (d), and (e) the Plan Administrator under a Restated Plan operationally may apply the Plan terms commencing in the Plan Year beginning after the Employer executes the Restated Plan in lieu of applying the Plan terms retroactive to the Plan's restated Effective Date; and the Plan Administrator operationally may apply any other reasonable conventions, uniformly applied within a Plan Year.

###### (g) **Allocations not effected by testing.** The Plan Administrator's election to apply the OEE or EP rules for testing does not control the Plan allocations, or the Compensation or Elective Deferrals taken into account for Plan allocations. The Plan Administrator will determine Plan allocations, and Compensation and Elective Deferrals for Plan allocations, based on the Employer's Adoption Agreement elections, including elections relating to Participating Compensation or Plan Year Compensation. For this purpose, an election of Participating Compensation means Compensation and Elective Deferrals on and following the Cross‑Over Date as to the allocations for the disaggregated plan benefiting the Includible Employees.

### (D) Coverage Transition Rule. The Plan Administrator in determining the Plan's compliance with the coverage requirements of Code §410(b), to the extent applicable to the Plan, in the case of certain acquisitions or dispositions described in Code §410(b)(6)(C) and in the regulations thereunder, will apply the "coverage transition rule" described therein.

## **4.07**  TESTING BASED ON BENEFITS. In applying the general nondiscrimination test under Section 4.06(C) to any non‑uniform Plan allocation, the Plan Administrator may elect to test using allocation rates or using equivalent accrual (benefit) rates ("EBRs") as defined in Treas. Reg. §1.401(a)(4)‑(8)(b)(2). If the Plan Administrator elects to test using EBRs, the Plan must comply with this Section 4.07, subject to Section 4.12.

### (A) Gateway Contribution. Except as provided in Section 4.07(A)(2), if the Plan Administrator will perform nondiscrimination testing using EBRs, the Employer must make a Gateway Contribution.

#### (1) **Definition of Gateway Contribution.** A Gateway Contribution is an additional Employer Contribution or Nonelective Contribution in an amount necessary to satisfy the minimum allocation gateway requirement described in Treas. Reg. §1.401(a)(4)‑8(b)(1)(vi).

#### (2) **Exception to Gateway Contribution requirement.** An Employer is not required to make any Gateway Contribution in the event that the Employer's elected allocation under Section 4.07(A) satisfies; (a) the "broadly available allocation rate" requirements; (b) the "age‑based allocation with a gradual age or service schedule" requirements; or (c) the uniform target benefit allocation requirements each as described in Treas. Reg. §1.401(a)(4)‑8(b)(1)(B).

### (B) Eligibility for Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution for a Plan Year to each NHCE Participant who receives an allocation of any Employer Contribution or Nonelective Contribution for such Plan Year. The Plan Administrator will allocate the Gateway Contribution without regard to any allocation conditions under Section 3.06 otherwise applicable to Employer Contributions or Nonelective Contributions under the Plan. However, if the Plan Administrator disaggregates the Plan for testing pursuant to the OEE rule under Section 4.06(C), the Otherwise Excludible Employees will not receive an allocation of any Gateway Contribution.

### (C) Amount of Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution pro rata based on the Compensation of each Participant who receives a Gateway Contribution allocation for the Plan Year, but in no event will an allocation of the Gateway Contribution to any Participant exceed the lesser of: (1) 5% of Compensation; or (2) one‑third (1/3) of the Highest Allocation Rate for the Plan Year. The Plan Administrator will reduce (offset) the Gateway Contribution allocation for a Participant under either the 5% or the 1/3 Gateway Contribution alternative, by the amount of any other Employer Contributions or Nonelective Contributions the Plan Administrator allocates (including forfeitures allocated as an Employer Contribution or Nonelective Contribution and Safe Harbor Nonelective Contributions, but excluding other QNECs, as defined under Section 1.48(C)) for the same Plan Year to such Participant; provided that if an NHCE is receiving only a QNEC and the QNEC amount equals or exceeds the Gateway Contribution, the QNEC satisfies the Gateway Contribution requirement as to that NHCE.

### (D) Compensation for 5% Gateway Contribution. For allocation purposes under the 5% Gateway Contribution alternative, "Compensation" means Compensation described under Treas. Reg. §1.401(a)(4)‑8(b)(1)(vi)(B).

### (E) Compensation for Determination of Highest Rate and 1/3 Gateway Contribution. The Plan Administrator under the 1/3 Gateway Contribution alternative: (i) will determine the Highest Allocation Rate and the resulting Gateway Contribution rate for the NHCE Participants entitled to the Gateway Contribution; and (ii) will allocate the Gateway Contribution, based on Compensation the Employer elects in its Adoption Agreement, provided that such definition satisfies Code §414(s) and if it does not, the Plan Administrator will allocate the Gateway Contribution based on a Code §414(s) definition which the Plan Administrator operationally selects.

#### (1) **Definition of Highest Allocation Rate.** The Highest Allocation Rate means the greatest allocation rate of any HCE Participant and is equal to the Participant's total Employer Contribution or Nonelective Contribution allocation (including any QNECs, Safe Harbor Nonelective Contributions and forfeitures allocated as a Nonelective Contribution divided by his/her Compensation, as described in this Section 4.07(E)).

### (F) Employer Contribution Excludes Match. For purposes of this Section 4.07, an Employer Contribution excludes Matching Contributions.

## **4.08**  AMENDMENT TO PASS TESTING. In the event that the Plan fails to satisfy Code §§410(b) or 401(a)(4) in any Plan Year (and is required to do so), the Employer may elect to amend the Plan consistent with Treas. Reg. §1.401(a)(4)‑11(g) to correct the failure, or as otherwise permitted in the regulation. The Employer may make such an amendment in any form or manner as the Employer deems reasonable, but otherwise consistent with Section 9.02. Any amendment under this Section 4.08 will not affect reliance on the Plan's Advisory Letter.

## **4.09**  APPLICATION OF COMPENSATION LIMIT. The Plan Administrator in performing any nondiscrimination testing under this Article 4, subject to Section 4.12 will limit each Participant's Compensation to the amount described in Section 1.11(E).

## **4.10**  403(b) TESTING. The Plan Administrator will test Elective Deferrals, Matching Contributions and Employee Contributions under the Plan, in accordance with this Section 4.10, subject to Section 4.12.

### (A) Annual Elective Deferral Limitation. A Participant's Elective Deferrals for a Taxable Year may not exceed the Elective Deferral Limit. Qualified Organization Catch-up Deferrals and Age 50 Catch-up Deferrals are not subject to the Elective Deferral Limit. See Sections 3.02(D) and (E).

#### (1) **Definition of Elective Deferral Limit.** The Elective Deferral Limit is the Code §402(g) limitation on each Participant's Elective Deferrals for each Taxable Year as described in Section 4.10(A)(3). If the Participant's Taxable Year is not a calendar year, the Plan Administrator must apply the Code §402(g) limitation in effect for the calendar year in which the Participant's Taxable Year begins.

#### (2) **Definition of Excess Deferral.** A Participant's Excess Deferral is the amount of Elective Deferrals for a Taxable Year which exceeds the Elective Deferral Limit.

#### (3) **Elective Deferral Limit.** The Elective Deferral Limit is the amount as in effect under Code §402(g) ($18,000 in 2017), subject to adjustment by the IRS in multiples of $500 under Code §402(g)(4). However, in no event shall a Participant's Elective Deferrals exceed the Participant's Compensation for the Taxable Year.

#### (4) **Suspension after reaching limit.** If, pursuant to a Salary Reduction Agreement or pursuant to a CODA election, the Employer determines a Participant's Elective Deferrals to the Plan for a Taxable Year would exceed the Elective Deferral Limit, the Employer will suspend the Participant's Elective Deferrals under his/her Salary Reduction Agreement, if any, until the following January 1 and will pay to the Participant in cash the portion of the Elective Deferrals which would result in the Participant's Elective Deferrals for the Taxable Year exceeding the Elective Deferral Limit.

#### (5) **Correction.** If the Plan Administrator determines a Participant's Elective Deferrals already contributed to the Plan for a Taxable Year exceed the Elective Deferral Limit, the Plan Administrator will distribute the Excess Deferrals as adjusted for Allocable Income, no later than April 15 of the following Taxable Year (or if later, the date permitted under Code §§7503 or 7508A).

#### (6) **415 interaction.** If the Plan Administrator distributes the Excess Deferrals by the April 15 deadline under Section 4.10(A)(5), the Excess Deferrals are not an Annual Addition under Section 4.05, and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. Elective Deferrals distributed to a Participant as an Excess Amount in accordance with Section 4.03 are not taken into account in determining the Participant's Elective Deferral Limit.

#### (7) **More than one plan.** If a Participant participates in another plan subject to the Code §402(g) limitation under which he/she makes elective deferrals pursuant to a 401(k) Plan, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a 403(b) plan (irrespective of whether the Employer maintains the other plan), the Participant may provide to the Plan Administrator a written claim for Excess Deferrals made to the Plan for a Taxable Year. The Participant must submit the claim no later than the March 1 following the close of the particular Taxable Year and the claim must specify the amount of the Participant's Elective Deferrals under this Plan which are Excess Deferrals. The Plan Administrator may require the Participant to provide reasonable evidence of the existence of and the amount of the Participant's Excess Deferrals. If the Plan Administrator receives a timely claim which it approves, the Plan Administrator will distribute the Excess Deferrals (as adjusted for Allocable Income under Section 4.11(B)(1)) the Participant has assigned to this Plan, in accordance with this Section 4.10(A). If a Participant has Excess Deferrals because of making Elective Deferrals to this Plan and other plans of the Employer (but where the Elective Deferral Limit is not exceeded based on Deferrals to any single plan), the Participant for purposes of this Section 4.10(A)(7) is deemed to have notified the Plan Administrator of this Plan of the Excess Deferrals.

#### (8) **Roth and Pre‑Tax Deferrals.** If a Participant who will receive a distribution of Excess Deferrals, in the Taxable Year for which the corrective distribution is made, has contributed both Pre‑Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Vendor to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Vendor will make the corrective distribution. However, the amount of a corrective distribution of Excess Deferrals to any Participant from the Pre‑Tax Deferral or Roth Deferral sources under this Section 4.10(A)(8) may not exceed the amount of the Participant's Pre‑Tax Deferrals or Roth Deferrals for the Taxable Year of the correction.

### (B) Actual Contribution Percentage (ACP) Test. If: (i) there are Employee Contributions or (ii) the Plan is not a Safe Harbor 403(b) Plan and the Plan includes Matching Contributions, a Participant's Aggregate Contributions may not exceed the ACP Limit. However, this Section 4.10(B) will not apply to a Plan Year if: (1) for the Plan Year no NHCE was an ACP Participant, (2) for the Plan Year no HCE was an ACP Participant, or (3) the Plan is a Governmental Plan, or (4) the Employer is a Church. In accordance with Treas. Reg. §1.401(m)‑1(c)(2), it is impermissible for the Plan to use ACP testing for a Plan Year in which it is intended for the Plan through its written terms to use the ACP test safe harbor, even though the Plan fails to satisfy the requirements of such safe harbor for the Plan Year.

#### (1) **Definition of ACP Limit.** The ACP Limit is the maximum dollar amount of Aggregate Contributions each HCE Participant may receive or may make under the Plan such that the Plan passes the ACP test.

#### (2) **Definition of Aggregate Contributions.** Aggregate Contributions are Matching Contributions and Employee Contributions. Aggregate Contributions also include any QNECs the Plan Administrator includes in the ACP test.

#### (3) **Definition of Excess Aggregate Contributions.** Excess Aggregate Contributions are the amount of Aggregate Contributions allocated on behalf of the HCEs which exceed the ACP Limit.

#### (4) **ACP test.** For each Plan Year, Aggregate Contributions satisfy the ACP test if they satisfy either of the following tests: (a) The ACP for the HCE Group does not exceed 1.25 times the ACP of the NHCE Group; or (b) The ACP for the HCE Group does not exceed the ACP for the NHCE Group by more than two percentage points and the ACP for the HCE Group is not more than twice the ACP for the NHCE Group.

#### (5) **Calculation of ACP.** The ACP for either group is the average of the separate ACRs calculated to the nearest one‑hundredth of one percent for each ACP Participant who is a member of that group. The Plan Administrator will include in the ACP test as a zero an ACP Participant who for the Testing Year: (i) is eligible to make Employee Contributions but who does not do so; or (ii) is eligible to make Elective Deferrals and to receive an allocation of any Matching Contributions based on Elective Deferrals but who does not make any Elective Deferrals. An Employee who fails to satisfy an allocation condition applicable to Matching Contributions is excluded from the ACP test unless the Employee is eligible to make Employee Contributions or the Plan Administrator re‑characterizes any of the Employee's Elective Deferrals as Employee Contributions.

###### (a) **Definition of ACR (actual contribution ratio).** An ACP Participant's ACR for a Plan Year is the ratio of the ACP Participant's Aggregate Contributions for the Plan Year to the ACP Participant's Compensation for the Plan Year.

###### (b) **Definitions of ACP Participant and HCE and NHCE Groups.** See Section 4.11(A), (E), and (F).

###### (c) **QNECs.** The Plan Administrator operationally may include in the ACP test QNECs, provided such amounts are not impermissibly targeted under Section 4.10(C).

###### (d) **Current/Prior Year Testing.**

(i) **Election.** In determining whether the Plan's 401(m) arrangement satisfies the ACP test, the Plan Administrator will use Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement. Any such election applies for such Testing Years as the Employer elects (and retroactively as the Employer elects in the case of a Restated Plan).

(ii) **Permissible changes.** The Employer may amend its Adoption Agreement to change from Prior Year Testing to Current Year Testing at any time, subject to Section 4.06(B). The Employer, under Section 4.06(B) may amend its Adoption Agreement to change from Current Year Testing to Prior Year Testing only: (A) if the Plan has used Current Year Testing in at least the 5 immediately preceding Plan Years (or if the Plan has not been in existence for 5 Plan Years, the number of Plan Years the Plan has been in existence); (B) the Plan is the result of aggregation of 2 or more plans and each of the aggregated plans used Current Year Testing for the period described in clause (A); or (C) a transaction occurs to which the coverage transition rule under Code §410(b)(6)(C) applies and as a result, the Employer maintains a plan using Prior Year Testing and a plan using Current Year Testing. Under clause (C), the Employer may make an amendment to change to Prior Year Testing at any time during the coverage transition period.

(iii) **Employee Contribution, Matching and QNEC deadline/limitation under Prior Year Testing.** The Plan Administrator includes Employee Contributions in the ACP test in the Testing Year in which the Employer withholds the Employee Contributions from the Participant's pay, provided such contributions are contributed to the Plan within a reasonable period thereafter. The Plan Administrator may include Matching Contributions and QNECs (as defined in Section 1.48(C)) in determining the HCE or NHCE ACP only if the Employer makes such contribution to the Plan within 12 months following the end of the Plan Year to which the Plan Administrator will allocate the Matching Contribution or QNEC. To be included in the ACP test, a Matching Contribution must be made on account of an Employee's Elective Deferrals or Employee Contributions for the Testing Year. Under Prior Year Testing, to count the QNEC in the ACP test, the Employer must contribute a QNEC by the end of the Testing Year. The Employer may not make an Operational QNEC if the Plan uses Prior Year Testing.

(iv) **First Plan Year under Prior Year Testing.** For the first Plan Year the Plan permits Matching Contributions or Employee Contributions, if the Plan is not a Successor Plan and is using Prior Year Testing, the prior year ACP for the NHCE Group is equal to the greater of 3% or the actual ACP for the NHCE Group in the first Plan Year. If the Plan continues to use Prior Year Testing in the second Plan Year, the Plan Administrator must use the actual first Plan Year ACP for the NHCE Group in the ACP test for the second Plan Year.

(v) **Plan coverage changes under Prior Year Testing.** If the Employer's Plan is using Prior Year Testing and the Plan experiences a plan coverage change under Treas. Reg. §1.401(m)‑2(c)(4), the Plan Administrator will make any adjustments such regulations may require to the NHCEs' ACP for the prior year.

#### (6) **Special aggregation rule for HCEs.** To determine the ACR of any HCE, the Plan Administrator must take into account any Aggregate Contributions allocated to the HCE under any other Plan tested under Code §401(m) maintained by the Employer. If the 401(m) Plans have different Plan Years, the Plan Administrator will determine the combined Aggregate Contributions on the basis of the Plan Years ending in the same calendar year. If the 401(m) Plans have different Plan Years, all Aggregate Contributions made during the Plan Year will be aggregated. Notwithstanding the foregoing, the Plan Administrator will not apply the aggregation rule of this Section 4.10(B)(6) to plans which may not be aggregated under Treas. Reg. §1.401(m)‑2(a)(3)(ii)(B).

#### (7) **Aggregation of certain 401(m) plans.** If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(m) Plans under such plans to determine whether the plans satisfy the ACP test. This aggregation rule applies to the ACR determination for all ACP Participants (and ACP participants under the other plans), irrespective of whether an ACP Participant is an HCE or an NHCE. An Employer may not aggregate: (a) plans with different Plan Years; (b) a Safe Harbor 403(b) Plan with a non‑Safe Harbor 403(b) Plan; (c) plans which use different testing methods (Current Year Testing versus Prior Year Testing); or (d) any other plans which must be disaggregated under Treas. Reg. §1.410(b)-7. If the Employer aggregating 401(m) Plans under this Section 4.10(B)(7) is using Prior Year Testing, the Plan Administrator must adjust the NHCE Group ACP for the prior year as provided in Section 4.10(B)(5)(d)(v).

#### (8) **Distribution of Excess Aggregate Contributions.** If the Plan Administrator determines the Plan fails to satisfy the ACP test for a Plan Year, the Vendor, as directed by the Plan Administrator, by the end of the Plan Year which follows the Testing Year (or any later date determined under Code §7508A), must distribute the Vested Excess Aggregate Contributions, as adjusted for Allocable Income under Section 4.11(B)(2).

###### (a) **Calculation of total Excess Aggregate Contributions.** The Plan Administrator will determine the total amount of the Excess Aggregate Contributions by starting with the HCE(s) who has the greatest ACR, reducing his/her ACR (but not below the next highest ACR), then, if necessary, reducing the ACR of the HCE(s) at the next highest ACR, including the ACR of the HCE(s) whose ACR the Plan Administrator already has reduced (but not below the next highest ACR), and continuing in this manner until the ACP for the HCE Group is equal to the ACP Limit. All reductions under this Section 4.10(B)(8)(a) are to the ACR only and do not result in any actual distributions.

###### (b) **Apportionment and distribution of Excess Aggregate Contributions.** After the Plan Administrator has determined the total Excess Aggregate Contribution amount, the Vendor, as directed by the Plan Administrator, then will distribute (to the extent Vested) to each HCE his/her respective share of the Excess Aggregate Contributions. The Plan Administrator will determine each HCE's share of Excess Aggregate Contributions by starting with the HCE(s) who has the highest dollar amount of Aggregate Contributions, reducing the amount of his/her Aggregate Contributions (but not below the next highest dollar amount of the Aggregate Contributions), then, if necessary, reducing the amount of Aggregate Contributions of the HCE(s) at the next highest dollar amount of Aggregate Contributions, including the Aggregate Contributions of the HCE(s) whose Aggregate Contributions the Plan Administrator already has reduced (but not below the next highest dollar amount of Aggregate Contributions), and continuing in this manner until the Vendor has distributed all Excess Aggregate Contributions.

#### (9) **Allocable Income/Testing Year.** A corrective distribution under Section 4.10(B)(8) must include Allocable Income. See Section 4.11(B)(2).

#### (10) **Vesting/Forfeiture of non‑Vested Excess Aggregates.** To the extent an HCE's Excess Aggregate Contributions are attributable to Matching Contributions, and he/she is not 100% Vested in his/her Matching Contribution Account, the Plan Administrator will distribute only the Vested portion and will forfeit the non‑Vested portion. The Vested portion of the HCE's Excess Aggregate Contributions attributable to Employer Matching Contributions is the total amount of such Excess Aggregate Contributions (as adjusted for allocable income) multiplied by his/her Vested percentage (determined as of the last day of the Plan Year for which the Employer made the Matching Contribution).

#### (11) **Treatment as Annual Addition.** Distributed Excess Aggregate Contributions are Annual Additions under Sections 4.01 through 4.05 in the Limitation Year in which such amounts were allocated.

### (C) QNEC and Matching Targeting Restrictions. The Plan Administrator in performing the ACP test may not include in the tests any impermissibly targeted QNEC or Matching Contribution as described in this Section 4.10(C). These targeting restrictions apply to Matching Contributions and to Plan‑Designated and Operational QNECs. The Employer will not contribute Operational QNECs which would violate the targeting restrictions.

#### (1) **QNEC targeting rules.** The Plan Administrator may include in the ACP test only such amounts of any QNEC as are not impermissibly targeted. A QNEC is impermissibly targeted if the QNEC amount allocated to any NHCE exceeds the greater of: (a) 5% of Compensation; or (b) 2 times the Plan's Representative Contribution Rate.

###### (a) **Definition of Representative Contribution Rate.** The Plan's ACP Representative Contribution Rate is the lowest ACP Applicable Contribution Rate of any ACP Participants who are NHCEs in a group consisting of: (A) any one‑half of the ACP Participants who are NHCEs for the Plan Year; or (B) if it would result in a greater Representative Contribution Rate than under clause (A), all of the ACP Participants who are NHCEs and who are employed by the Employer on the last day of the Plan Year.

###### (b) **Definition of Applicable Contribution Rate.** The Applicable Contribution Rate of an ACP Participant who is an NHCE for the ACP test is the sum of the NHCE's Matching Contributions and QNECs used in the ACP test, divided by the NHCE's Compensation.

#### (2) **Matching Contribution targeting rules.** The Plan Administrator may include in the ACP test only such Matching Contribution amounts as are not impermissibly targeted. A Matching Contribution is impermissibly targeted if the Matching Contribution amount allocated to any NHCE exceeds the greatest of: (i) 5% of Compensation; (ii) the amount of the NHCE's Elective Deferrals; or (iii) the product of 2 times the Plan's Representative Matching Rate and the NHCE's Elective Deferrals for the Plan Year.

###### (a) **Definition of Representative Matching Rate.** The Plan's Representative Matching Rate is the lowest Matching Rate for any ACP Participants who are NHCEs in a group consisting of: (i) any one‑half of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year; or if it would result in a greater Representative Matching Rate, (ii) all of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year and who are employed by the Employer on the last day of the Plan Year.

###### (b) **Definition of Matching Rate.** The Matching Rate for an NHCE is the NHCE's Matching Contributions divided by his/her Elective Deferrals; provided that if the Matching Rate is not the same for all levels of Elective Deferrals, the Plan Administrator will determine each NHCE's Matching Rate by assuming an Elective Deferral equal to 6% of Compensation.

###### (c) **Employee Contributions.** If the Plan permits Employee Contributions, the Plan Administrator will apply this Section 4.10(C)(2) by adding together an NHCE's Employee Contributions and Elective Deferrals. If the Plan provides a Matching Contribution only as to Employee Contributions, the Plan Administrator will apply this Section 4.10(C)(2) by substituting the Employee Contributions for Elective Deferrals.

#### (3) **Accrued fixed contributions.** The Employer must contribute any accrued fixed contribution, even if any or all of such contribution is impermissibly targeted under this Section 4.10(C).

## **4.11**  ‑DEFINITIONS:SECTIONS 4.06‑4.10. For purposes of Sections 4.06 through 4.10:

### (A) ACP Participant. ACP Participant means an Eligible Employee who has satisfied the eligibility requirements under Article 2 and the allocation conditions under Section 3.06 applicable to any Matching Contributions such that the Participant would be entitled to a Matching Contribution allocable to the Testing Year if he/she makes an Elective Deferral or any other contribution that is matched under the Adoption Agreement. An ACP Participant also includes an Eligible Employee who has satisfied the eligibility requirements under Article 2 applicable to Employee Contributions and who has the right at any time during the Testing Year to make Employee Contributions. Any Employee with zero Compensation for the Testing Year is not an ACP Participant.

### (B) Allocable Income. Allocable Income means as follows:

#### (1)  **Excess Deferrals.** For purposes of making a distribution of Excess Deferrals pursuant to Section 4.10(A), Allocable Income means Earnings allocable to the Excess Deferrals for the Taxable Year in which the Participant made the Excess Deferral.

###### (a) **Reasonable or alternative (pro rata) method.** To calculate such Allocable Income for the Taxable Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §1.402(g)‑1(e)(5)(iii). See Section 4.11(B)(2)(a) as to the alternative method except the Plan Administrator will apply such modifications as are necessary to determine Taxable Year Allocable Income with respect to the Excess Deferrals.

#### (2) **Excess Aggregate Contributions.** For purposes of making a distribution of Excess Aggregate Contributions under Section 4.10(B), Allocable Income means Earnings allocable to such amounts.

###### (a) **Reasonable or alternative (pro rata) method.** To calculate such Allocable Income for the Testing Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §1.401(m)‑2(b)(2)(iv)(C). Under the alternative method, the Plan Administrator will determine the Allocable Income for the Testing Year by multiplying the Testing Year income with respect to a Participant's Excess Contributions (or Excess Aggregate Contributions) by a fraction, the numerator of which is the Participant's Excess Aggregate Contributions and the denominator of which is the Participant's end of the Testing Year Account Balance attributable to Matching Contributions and Employee Contributions and any other amounts included in the ACP test, but disregarding Earnings on such amounts for the Testing Year.

### (C) Compensation. Compensation means, except as otherwise provided in this Article 4, Compensation as defined for nondiscrimination purposes in Section 1.11(F).

### (D) Current Year Testing. Current Year Testing means for purposes of the ACP test described in Section 4.10(B), the use of data from the Testing Year in determining the ACP for the NHCE Group.

### (E) HCE Group. HCE Group means the group of ACP Participants who are HCEs for the Testing Year.

### (F) NHCE Group. NHCE Group means the group of ACP Participants who are NHCEs for the Testing Year, or for the immediately prior Plan Year under Prior Year Testing, except as the Testing Year may apply in the first Plan Year, in accordance with Section 4.10(B)(5)(e)(iv).

### (G) Prior Year Testing. Prior Year Testing means for purposes of the ACP test described in Section 4.10(B), the use of data from the Plan Year immediately prior to the Testing Year in determining the ACP for the NHCE Group, unless the first Plan Year provisions of Section 4.10(B)(5)(d)(iv) apply.

### (H) Testing Year. Testing Year means the Plan Year for which the Plan Administrator is performing coverage or nondiscrimination testing including the ACP test.

## **4.12**  ‑TESTING EXEMPTION. The Employees of a Church or a QCCO are not subject to nondiscrimination testing as described in Sections 2.01(A), 4.06, 4.07, 4.08, 4.09, or 4.10(B) and (C), as contained in Article 4. For purposes of these provisions, the Employees of any organization (referred to in such Sections as “the Employer”) will be tested separately from the Employees of another organization, except to the extent that the organizations are related under Code §414(b), (c), or (m).

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

Name of Employer:

By: