**AMENDMENT TO IMPLEMENT DEEMED IRA**

**ARTICLE 1; PREAMBLE**

1.1 **Adoption**. The Employer hereby adopts this Amendment to the Plan identified below in order to implement the deemed IRA provisions of Code §408(q)

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 **References.** 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 Code §408(p) while retaining the status of the plan as a qualified plan, a 403(b) plan, or a governmental 457(b) plan and shall be interpreted in accordance therewith.

1.5 **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).

**ARTICLE 2; IDENTIFICATION; ELECTIONS**

2.1 **Identifying information.**

A. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Type of Plan (check one)

(a) [ ] Qualified defined contribution plan

(b) [ ] 403(b) plan

(c) [ ] Governmental 457(b) Plan

2.2 **Effective date.** The Plan permits Deemed IRAs effective as of Plan Years beginning after \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (Note: The Deemed IRA provisions must be in effect when the Plan accepts the Deemed IRA contributions).

2.3 **Type of IRA contributions.** The plan permits the following Deemed IRAs *(choose one)*:

(a) [ ] Traditional IRAs.

(b) [ ] Roth IRAs.

(c) [ ] Traditional IRAs or Roth IRAs as the Participant elects at the time of contribution.

2.4 **Type of account.** A Participant’s Deemed IRA contributions will be held in the following form of account: *(Choose one)*:

(a) [ ] Individual Retirement Account described in Code §408(a).

(b) [ ] Individual Retirement Annuity described in Code §408(b).

(c) [ ] Individual Retirement Account or Annuity as the Participant elects at the time of contribution.

**ARTICLE 3; IN-SERVICE PENSION DISTRIBUTIONS**

3.1 **Deemed IRA contributions allowed.** A Participant can make a Deemed IRA contribution to the Plan on or after the effective date specified in Section 2.2. Such contributions will be of the type specified in Section 2.3 and will be held in the account type specified in Section 2.4.

3.2 **Trustee or Custodian.** A trustee or custodian satisfying the requirements of Code §408(a)(2) must hold Deemed IRA contributions accounts. If the Trustee holding the Deemed IRA contribution assets is a non‑bank trustee, the Trustee, upon receipt of notice from the Commissioner of Internal Revenue that substitution is required because the Trustee has failed to comply with the requirements of Treas. Reg. §1.408‑2(e), will substitute another Trustee in its place.

3.3 **Additional IRA requirements.** All Deemed IRA contributions: (a) must be made in cash; (b) are subject to the IRA contribution limit under Code §408(a)(1) ($6,000 in 2021), including cost‑of‑living adjustments under Code §219(b)(5)(C) and, as to Catch‑Up Eligible Participants, to the IRA Catch‑Up limit of ($1,000 in 2021); and (c) must be 100% Vested.

3.4 **Not for deposit of SEP or SIMPLE IRA amounts/no Rollover Contributions.** An Employer which maintains a SEP or a SIMPLE IRA may not deposit contributions under these arrangements to the Deemed IRA contribution accounts. A Participant may not make a Rollover Contribution to his or her Deemed IRA contribution account.

3.5 **Deemed Roth IRA Contributions.**

**(a) Contribution Limit.** A Participant's contribution to the Deemed Roth IRA and to all other Roth IRAs for a Taxable Year may not exceed the lesser of the amount described in Section 3.3 or the Participant's Compensation under Section 3.5(c). However, if (i) and/or (ii) below apply, the maximum (non‑rollover) contribution that can be made to all of the Participant's Roth IRAs (including to this Deemed Roth IRA which must not be a rollover contribution) for a Taxable Year is the smaller amount determined under (i) or (ii).

**(i) General.** The maximum contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in Section 3.5(b)) as provided in Code §408A(c)(3).

**(ii) Roth and non‑Roth IRA contributions.** If the Participant makes (non‑rollover) contributions to both Roth and non‑Roth IRAs for a Taxable Year, the maximum contribution that can be made to all of the Participant's Roth IRAs for that Taxable Year is reduced by the contributions made to the Participant's non‑Roth IRAs for the Taxable Year.

**(iii) Conversion.** A Participant may convert a Deemed non‑Roth IRA Contributions Account to a Deemed Roth IRA Contributions Account in accordance with Treas. Reg. §1.408A‑4. A Participant may not effect a conversion by means of contributing a Rollover Contribution to his or her Deemed IRA under this Plan.

**(b) Modified AGI.** For purposes of Section 3.5(a), a Participant's modified AGI for a Taxable Year is defined in Code §408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a non‑Roth IRA conversion.

**(c) Compensation.** For purposes of Section 3.5(a), Compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code §401(c)(2) (reduced by the deduction the Self‑Employed Individual takes for contributions made to a self‑employed retirement plan). For purposes of this definition, Code §401(c)(2) shall be applied as if the term "trade or business" for purposes of Code §1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. Compensation includes any amount includible in the Participant's gross income under Code §71 with respect to a divorce or separation instrument described in Code §71(b)(2)(A). In the case of a married Participant filing a joint return, the greater compensation of his or her spouse is treated as the Participant's Compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a non‑Roth IRA.

3.6 **Accounting and Investments.** The Plan Administrator may cause Deemed IRA contributions to be held and invested: (1) in a separate trust for each Participant; (2) as a single trust holding all Participant Deemed IRA contributions; or (3) as part of a single trust holding all of the assets of the Plan. If the Plan Administrator establishes a single trust under clause (2) or (3), the Plan Administrator must account separately for each Participant's Deemed IRA contributions and for the Earnings attributable thereto. If the Deemed IRA contributions are invested in an individual retirement annuity, the Plan Administrator may establish separate annuity contracts for each Participant's Deemed IRA contributions or may establish a single annuity contract for all Participants, with separate accounting for each Participant. If the Plan Administrator establishes a single annuity contract, such contract must be separate from any other annuity contract under the Plan. The Plan Administrator also may invest Deemed IRA contributions in any common or collective fund. The Trust provisions otherwise apply to the investment of Deemed IRA contributions except that no part of such contributions may be invested in life insurance contracts and a Participant may not borrow from a Deemed IRA contributions Account or take such amounts into account in determining the maximum amount available for a loan from the Participant's other Plan assets. The Plan Administrator or Trustee/Custodian may not cause Deemed IRA contribution accounts to be commingled with any non‑Plan assets. Any Deemed IRA contribution account is established for the exclusive benefit of the affected Participant and his or her Beneficiaries. No part of the Trust attributable to Deemed IRA contributions may be invested in collectibles as described in Code §408(m), except as may be permitted under Code §408(m)(3).

3.7 **Participant Contribution and Designation.** A Participant may make Deemed IRA contributions directly or through payroll withholding as the Plan Administrator may permit. At the time of the Participant's contribution (or when the Deemed IRA contribution is withheld from payroll), the Participant must designate the contribution as a Deemed IRA contribution and, if applicable, also must designate whether the contribution is traditional or Roth and whether the account is an individual retirement account or an individual retirement annuity.

3.8 **Treatment as IRA.** For all purposes of the Code except as otherwise provided in this Article 3, Deemed IRA contributions are subject to the IRA rules under Code §§408 and 408A as applicable. Deemed IRA contributions are not annual additions under Code §415 and are not subject to any otherwise applicable testing of nondiscrimination of amounts of contributions. After January 1, 2020, a Participant will not be barred from making Deemed IRA contributions on account of attainment of age 70½ or any other age.

3.9 **Reporting.** The Deemed IRA contribution Trustee or Custodian must comply with all Code §408(i) reporting requirements, including providing required information regarding RMDs.

3.10 **Distributions.** A Participant may request and receive distribution of his or her Deemed IRA Account at any time, subject the requirements of the required minimum distribution (“RMD”) rules of Code §401(a)(9) and the regulations thereunder as applicable to IRAs. For purposes of the RMD rules, (1) the Participant’s required beginning date with regard to the Deemed IRA contribution accounts is April 1 of the calendar year following the calendar year in which the Participant attains age 72; (2) if the Deemed IRA contribution account is a Roth Account, there are no lifetime RMDs; and (3) to the extent that the provisions of the Plan differ, RMDs from Deemed IRA contribution accounts otherwise are subject to the required minimum distribution rules applicable to IRAs under Code §§408(a)(6) or 408A(c)(5) as applicable, and under the corresponding Treasury regulations, which are incorporated by reference herein.

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

Name of Employer:

By: