FIS CAPITAL MARKETS US LLC
NON-STANDARDIZED PRE-APPROVED DEFINED BENEFIT PLAN

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ARTICLE I
DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.1 "Accrued Benefit" means, at any time, the amount a Participant is entitled to receive pursuant to Plan Section 5.2.

1.2 "Accumulated Employee Contributions Benefit (Account)" means the benefit derived from Employee Mandatory Contributions. Such benefit, as of any applicable date, is in the form of an annual benefit commencing at Normal Retirement Age and nondecreasing for the life of the Participant and is equal to the amount of the Employee Contribution Benefit divided by the "appropriate conversion factor" with respect to that form of benefit. The "appropriate conversion factor" means the present value of an annuity in the form of that annual benefit commencing at Normal Retirement Age at a rate of $1.00 per year, computed using an interest rate and mortality table which would be used under the Plan under Code §417(e)(3) and Regulations §1.417(e)-1 (as of the "determination date"). If the Accumulated Employee Contribution Benefit Account is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at Normal Retirement Age, such benefit shall be the actuarial equivalent of such benefit (determined under Code §411(c)(2)(B)), as determined by the Commissioner of Internal Revenue.

Withdrawals from the Accumulated Employee Contribution Benefit are not permitted prior to termination of employment.

1.3 "Act" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.4 "Actuarial Equivalent" means a form of benefit differing in time, period, or manner of payment from a specific benefit provided under the Plan but having the same value when computed using the interest rate and mortality table specified in the Adoption Agreement.

(a) Notwithstanding the foregoing, for purposes of determining the amount of a distribution in a form other than an annual benefit that is nondecreasing for the life of the Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the Participant's spouse; or that decreases during the life of the Participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability payments, Actuarial Equivalence will be determined on the basis of the "applicable mortality table" and the "applicable interest rate" described below if it produces a greater benefit than that determined by the interest and mortality assumptions specified in the Adoption Agreement or, in cases where the Plan provides for permitted disparity under Code §401(l) and benefits commence to a Participant at an age other than Normal Retirement Age, the Participant's benefit adjusted in accordance with Regulations §1.401(l)-3(e)(3):

(1) The "applicable mortality table" means, for Plan Years beginning before January 1, 2008, the Code §417 applicable mortality table set forth in Rev. Rul. 2001-62. For Plan Years beginning on or after January 1, 2008, the Code §417 applicable mortality table is the applicable mortality table specified for the calendar year in which the "stability period" specified in the Adoption Agreement begins. However, for purposes of applying the limitation on benefits in Article VI, the applicable mortality table in Rev. Rul. 2001-62 continues to apply for years beginning before January 1, 2009, unless an earlier date is elected by the employer in the Adoption Agreement.

(2) The "applicable interest rate" means, for Plan Years beginning before January 1, 2008, the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for the "lookback month" for the "stability period." For Plan Years beginning on or after January 1, 2008, the "applicable interest rate" means the adjusted first, second and third segment rates described in Code §417(e)(3), as specified by the Commissioner for the "lookback month" for the "stability period" specified in the Adoption Agreement. For this purpose, the segment rates are the spot segment rates that would be determined for the applicable month under Code §430(h)(2)(C) without the 24-month averaging under Code §430(h)(2)(D), and determined without regard to the adjustment for the 25-year average segment rates provided in Code §430(h)(2)(C)(iv). For distributions with Annuity Starting Dates occurring during Plan Years beginning on or after January 1, 2008 and before January 1, 2012, these segment rates are adjusted by blending with the rate of interest for 30-year Treasury securities under the transition percentages specified in Code §417(e)(3)(D)(iii).

The "lookback month" applicable to the "stability period" is the month elected in the Adoption Agreement that precedes the "stability period." The "stability period" is the successive period, as elected in the Adoption Agreement, that contains the Annuity Starting Date for the distribution and for which the "applicable interest rate" remains constant. However, except as provided in Regulations, if a Plan amendment changes the time for determining the "applicable interest rate" (including an indirect change as a result of a change in the Plan Year), any distribution for which the Annuity Starting Date occurs in the one-year period commencing at the time the Plan amendment is effective (if the amendment is effective on or after the adoption date) must use the interest rate as provided under the terms of the Plan after the effective date of the amendment, determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the Plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the Plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

A Participant's Accrued Benefit shall not be considered to be reduced in violation of Code §411(d)(6) because the Participant's Accrued Benefit is determined using the "applicable mortality table" and the "applicable interest rate."

(b) Notwithstanding the preceding provisions of this Section, except as elected otherwise on the Adoption Agreement, in the case of benefits payable with respect to a Cash Balance Formula, the amount of any form of benefit under the terms of the Plan, with the exception of a lump-sum amount (which will be equal to the Hypothetical Account Balance), will be the Actuarial Equivalent of the either the Participant's Hypothetical Account Balance as of the Participant's Annuity Starting Date or, if elected on Adoption Agreement, the Participant's Accrued Benefit in the Normal Form commencing at Normal Retirement Age. Notwithstanding the foregoing, for Plan Years beginning on or after January 1, 2016, if the Cash Balance Formula is not a lump-sum based formula as defined in Regulation § 1.411(a)(13)-1(d)(3), taking into account the additional requirements for lump-sum based plans in that section for Plan Years that begin on or after the effective date specified in Regulation § 1.411(a)(13)-1(e)(2)(ii)(A) or Regulation §1.411(a)(13)-1(e)(2)(ii)(B) as applicable (generally, for Plan Years beginning on or after January 1, 2017), then for purposes of determining the amount of a distribution in a form other than an annual benefit that is nondecreasing for the life of the Participant or, in the case of a Qualified Preretirement Survivor Annuity, the life of the Participant's spouse; or that decreases during the life of the Participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability payments, Actuarial Equivalence will be determined on the basis of the Applicable Mortality Table and Applicable Interest Rate if doing so produces a benefit greater than that determined under the preceding paragraph.

(c) Notwithstanding the above, the "Section 417 interest rate" limitations shall not apply to the extent they would cause a Participant's benefit to be less than the Participant's Accumulated Employee Contributions Benefit or the Participant's top-heavy minimum benefit set forth in Plan Section 5.6.

(d) Except as provided herein, in the event this Section is amended, the Actuarial Equivalent of a Participant's Accrued Benefit on or after the date the change is adopted shall be determined as the greater of (1) the Actuarial Equivalent of the Accrued Benefit as of the date of change computed on the old basis, or (2) the Actuarial Equivalent of the total Accrued Benefit computed on the new basis. If, pursuant to the Adoption Agreement, Actuarial Equivalence is determined pursuant to interest and mortality assumptions specified in an insurance or annuity contract, then any change in the insurance or annuity contract, including the substitution of a different contract, that results in a change in the interest and mortality assumptions used to determine actuarial equivalence under the Plan shall be treated as an amendment of the Plan for purposes of this Section.

(e) If the Plan provides for Early Retirement, the lump sum payable prior to Normal Retirement Age will be determined as specified on the Adoption Agreement.

1.5 "Administrator" means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer. "Administrator" also includes any Qualified Termination Administrator (QTA) that has assumed the responsibilities of the Administrator in accordance with guidelines set forth by the Department of Labor.

1.6 "Adoption Agreement" means the separate agreement which is executed by the Employer which sets forth the elective provisions of this Plan as specified by the Employer.

1.7 "Affiliated Employer" means any corporation which is a member of a controlled group of corporations (as defined in Code §414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code §414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code §414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code §414(o).

1.8 "Age" means age at last birthday or nearest birthday, as elected in the Adoption Agreement.

1.9 "Alternate Payee" means the individual(s) specified as such by a qualified domestic relations order that meets the requirements of Code §414(p).

1.10 "Anniversary Date" means the anniversary date elected in the Adoption Agreement.

1.11 "Annuity Starting Date" means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.12 "Average Compensation" means the average Compensation of a Participant as specified in the Adoption Agreement. If a Participant has less than the number of Years of Service or Plan Years of Service specified in the Adoption Agreement from the Participant's date of employment (or, if applicable, date of participation) to the Participant's date of termination, Average Compensation will be based on the Compensation during the months of service from the date of employment (or, if applicable, date of participation). Compensation subsequent to termination of participation pursuant to Plan Section 3.4 shall not be recognized.

1.13 "Beneficiary" means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is payable.

1.14 "Cash Balance Formula" means any formula elected in the Non-Standardized Pre-Approved Adoption Agreement for accruing benefits that is made by reference to the accumulation of Principal Credits and Interest Credits to a Hypothetical Account Balance maintained for a Participant.

1.15 "Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

1.16 "Compensation" means, with respect to any Participant, the amount determined in accordance with the following provisions, except as otherwise provided in the Adoption Agreement:

(a) **Base definition.** One of the following as elected in the Adoption Agreement:

(1) Information required to be reported under Code §§6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(2) Code §3401(a) Wages. Compensation means an Employee's wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) 415 simplified "("safe harbor") compensation" (i.e., as described at Regulation §1.415(c)-2(d)(2)). This subsection is **not** related to the Plan's definition of compensation used by the Plan for purposes of applying the limitations of IRC Section 415 (see 415 Compensation at Plan Section 1.38). Compensation for purposes of this Section 1.16 means wages, salaries, for Plan Years beginning after December 31, 2008, Military Differential Pay, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c))), and excluding the following:

(i) Employer contributions (other than elective contributions described in Code §402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457(b) to a plan of deferred compensation (including a simplified employee pension described in Code §408(k) or a simple retirement account described in Code §408(p), and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than, if the Employer so elects in the Compensation Section of the Adoption Agreement, amounts received during the year by an employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;

(iv) Other amounts which receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in Code §125); and

(v) Other items of remuneration that are similar to any of the items listed in (i) through (iv).

(b) **Earned Income for Self-Employed Individual.** Notwithstanding the foregoing Compensation for any Self-Employed Individual shall be equal to Earned Income. Furthermore, the contributions on behalf of any "owner-Employee" shall be made only with respect to the Earned Income for such "owner-Employee" which is derived from the trade or business with respect to which such Plan is established. Furthermore, the contributions on behalf of any "owner-Employee" shall be made only with respect to the Earned Income for such "owner-Employee" which is derived from the trade or business with respect to which such Plan is established. For this purpose, an "owner-Employee" means a sole proprietor who owns the entire interest in the Employer or a partner (or member in the case of a limited liability company treated as a partnership or sole proprietorship for federal income tax purposes) who owns more than ten percent (10%) of either the capital interest or the profits interest in the Employer and who receives income for personal services from the Employer.)

(c) **Paid during "measuring period" and/or "determination period."** Compensation shall include that Compensation which is actually paid to the Participant during the "measuring period" and/or the "determination period," as applicable. The "measuring period" is defined in Section 19 of the Adoption Agreement and the "determination period" shall be the "measuring period" unless this is a Cash Balance Plan. If the Plan is a Cash Balance Plan, then the "determination period" is the Principal Crediting period selected in Section 23 of the Non-Standardized Pre-Approved Adoption Agreement.

(d) **Inclusion of deferrals.** Notwithstanding the above, unless otherwise elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

(1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code §§125, 402(e)(3), 402(h)(1)(B), 402(k), 403(b), and 132(f)(4). If specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan;

(2) Compensation deferred under an eligible deferred compensation plan within the meaning of Code §457(b); and

(3) Employee contributions (under governmental plans) described in Code §414(h)(2) that are picked up by the employing unit and thus are treated as Employer contributions.

(e) **Post-severance compensation – Code §415 Regulations.** The Administrator shall adjust Compensation, for amounts that would otherwise be included in the definition of Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of Compensation) if:

(i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** Compensation shall include leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** Compensation shall include deferred compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** Compensation shall include payments made to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a Highly Compensated Employee immediately before becoming disabled.

(f) **Dollar limitation.** For Plan Years beginning on or after January 1, 2002, Compensation in excess of $200,000 shall be disregarded for all purposes. Such amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any "determination period" beginning with or within such calendar year. If a "determination period" consists of fewer than twelve (12) months, the $200,000 annual

Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the "determination period," and the denominator of which is twelve (12). (For Plan Years beginning in 2020, the compensation limit was $285,000.)

(g) **Noneligible Employee.** If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a "determination period" shall only include Compensation while the Employee is an Eligible Employee.

(h) **Nonresident aliens.** Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code §7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(i) **Amendment.** If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.17 "Contract" or **"Policy"** means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

All Contracts or Policies issued pursuant to Plan Section 5.9 shall be acquired on a uniform and nondiscriminatory basis with respect to the face amount of the death benefit stated in such Contract or Policy.

1.18 "Conversion Amendment" means any amendment (or series of amendments) that meets two criteria, as determined on a Participant-by-Participant basis in accordance with Regulations §1.411(b)-1(c)(4): (1) the amendment reduces or eliminates the benefits that, but for the amendment, the Participant would have accrued after the effective date of the amendment under a benefit formula that is not a Cash Balance Formula and under which the Participant was accruing benefits prior to the amendment; and (2) after the effective date of the amendment, all or a portion of the Participant's benefit accruals under the Plan are determined under a Cash Balance Formula.

Notwithstanding any other provisions in the Plan, in accordance with Code §411(d)(6), the terms of the Conversion Amendment will apply on the later of the date such amendment is adopted or effective.

1.19 "Covered Compensation" means, with respect to any Participant for a Plan Year, the average (without indexing) of the Taxable Wage Bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the Participant attains (or will attain) Social Security Retirement Age. A Participant's Covered Compensation shall be adjusted each Plan Year and no increase in Covered Compensation shall decrease a Participant's Accrued Benefit. In determining the Participant's Covered Compensation for a Plan Year, the Taxable Wage Base for all calendar years beginning after the first day of the Plan Year is assumed to be the same as the Taxable Wage Base in effect as of the beginning of the Plan Year for which the determination is being made. Covered Compensation will be determined based on the year designated by the Employer in the Adoption Agreement. In addition, any of the rounding tables issued by the IRS may be used provided the same table is used for all Participants.

A Participant's Covered Compensation for a Plan Year before the 35-year period described above is the Taxable Wage Base in effect as of the beginning of the Plan Year. A Participant's Covered Compensation for a Plan Year after the 35-year period described above is the Participant's Covered Compensation for the Plan Year during which the 35-year period ends.

1.20 "Credited Service" means a Participant's total Years of Service or Plan Years of Service, as elected by the Employer in the Adoption Agreement. However, if this is a fully-insured Code §412(e)(3) plan, then the current benefit formula may not recognize Years of Service before an Employee commences participation in the Plan. Notwithstanding the preceding sentence, a Plan with a current benefit formula that was adopted and in effect on September 19, 1991, may continue to recognize Years of Service prior to an Employee's participation in the Plan to the extent provided in the Plan on such date. The preceding sentence does not apply with respect to an Employee who first becomes a Participant in the Plan after that date.

1.21 "Custodian" means a person or entity that has custody of all or any portion of the Plan assets.

1.22 "Directed Trustee" means a Trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed Investment Manager, a named Fiduciary, or Plan Participant. To the extent the Trustee is a Directed Trustee, the Trustee does not have any discretionary authority with respect to the investment of Plan assets. In addition, the Trustee is not responsible for the propriety of any directed investment made pursuant to this Section and shall not be required to consult or advise the Employer regarding the investment quality of any directed investment held under the Plan.

1.23 "Discretionary Trustee" means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets.

1.24 "Earliest Retirement Age" means the earliest date on which, under the Plan, a Participant could elect to receive retirement benefits.

1.25 "Early Retirement Date" means the date specified in the Adoption Agreement on which a Participant or Former Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.

A Former Participant who severs from employment after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan (other than any accelerated vesting and benefit accruals) as though the requirements for Early Retirement Age had been satisfied.

1.26 "Earned Income" means the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions made by the Self-Employed Individual to a qualified plan to the extent deductible under Code §404. In addition, net earnings shall be determined with regard to the deduction allowed to the taxpayer by Code §164(f).

1.27 "Effective Date" means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date.

If this Plan is a frozen Plan, then after the Effective Date of the freezing of the Plan, no additional Employees will become Participants and the Accrued Benefit of any Participant will not increase, except for additional accruals required by the top-heavy rules in Article IX, by a fresh-start adjustment or by amendments adopted pursuant to Plan termination to allocate surplus assets.

The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the effective date of the plan merger(s).

1.28 "Eligible Employee" means any Eligible Employee as elected in the Adoption Agreement and as provided herein.

A "reclassified Employee" shall not be an Eligible Employee unless the Employer in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) elects to include "reclassified Employees." A "reclassified Employee" is any person the Employer does not treat as a common law employee or as a self-employed individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), regardless of whether there is a binding determination that the individual is an Employee or a Leased Employee of the Employer. Self-Employed Individuals are not "reclassified Employees."

Employees who became Employees as the result of a "Code §410(b)(6)(C) transaction" will, unless otherwise specified in the Adoption Agreement or if a separate entity becomes a Participating Employer, only be Eligible Employees after the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A "Code §410(b)(6)(C) transaction" is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business that is subject to the special rules set forth in Code §410(b)(6)(C). However, regardless of any election made in the Adoption Agreement, if a separate entity becomes an Affiliated Employer as the result of a "Code §410(b)(6)(C) transaction," then Employees of such separate entity will not be treated as Eligible Employees prior to the date the entity adopts the Plan as a Participating Employer or, if earlier, the expiration of the transition period set forth above.

If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining and if two percent (2%) or less of the Employees covered pursuant to that agreement are professionals as defined in Regulations §1.410(b)-9, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement unless the agreement provides for coverage in this Plan. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service in each respective category are treated separately.

If, in the Adoption Agreement, the Employer elects to exclude nonresident aliens, then Employees who are nonresident aliens (within the meaning of Code §7701(b)(1)(B)) who received no earned income (within the meaning of Code §911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code §861(a)(3)) shall not be eligible to participate in this Plan. In addition, this paragraph shall also apply to exclude from participation in the Plan an Employee who is a nonresident alien (within the meaning of Code §7701(b)(1)(B)) but who receives earned income (within the meaning of Code §911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code §861(a)(3)), if all of the Employee's earned income from the Employer from sources within the United States is exempt from United States income tax under an applicable income tax convention. The preceding sentence will apply only if all Employees described in the preceding sentence are excluded from the Plan.

If, in the Adoption Agreement, the Employer elects to exclude part-time/temporary/seasonal Employees, then notwithstanding any such exclusion, if any such excluded Employee actually completes or completed a Year of Service (or Period of Service if the elapsed time method is selected), then such Employee will cease to be within this particular excluded class.

If, in the Adoption Agreement, the Employer elects to exclude interns, the Employer will exclude Employees that it defines in its payroll records as "interns." The Employer will not apply this exclusion in a manner to effectively require an age or service condition in violation of Regulation §1.401(a)-3(e)(1).

1.29 "Employee" means any person who is employed by the Employer. The term "Employee" shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code §414(n) or (o).

1.30 "Employee Mandatory Contribution" means the amount a Participant is (or was) required to contribute to the Plan, if any, in order to be eligible to participate in Plan benefits.

1.31 "Employee Mandatory Contribution Benefit" means the total of:

(a) Employee Mandatory Contributions,

(b) Interest (if any) on such contributions, computed at the rate provided by the Plan to the end of the last Plan Year to which Code §411(a)(2) does not apply,

(c) Interest on the sum of (a) and (b) above compounded annually at the rate of 5 percent per annum from the beginning of the first Plan Year to which Code §411(a)(2) applies or the date the Participant began participation in the Plan, whichever is later, to the last day of the Plan Year ending before the first Plan Year beginning after December 31, 1987, or to the date on which the Participant would attain Normal Retirement Age, if earlier, and

(d) Interest on the sum of (a), (b) and (c) above compounded annually:

(1) At the rate of 120 percent of the federal mid-term rate (as in effect under Code §1274 for the first month of a Plan Year) from the beginning of the first Plan Year beginning after December 31, 1987, or the date the Participant began participation in the Plan, whichever is later, and ending with the date on which the determination is being made, and

(2) At the interest rate used under the Plan pursuant to Code §417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the Participant would attain Normal Retirement Age.

1.32 "Employer" means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

1.33 "Fiduciary" means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.34 "Final Average Compensation" means, with respect to any Plan Year, the Compensation of a Participant averaged over the three (3) consecutive "measuring periods" ending with or within the Plan Year. If a Participant has less than three (3) consecutive "measuring periods," as applicable, from the Participant's date of employment to date of termination, Final Average Compensation will be based on the months of service from the date of employment to the date of termination. In determining a Participant's Final Average Compensation, Compensation for any "measuring period" in excess of the Taxable Wage Base in effect at the beginning of such year shall not be taken into account. In addition, Final Average Compensation in excess of such Participant's Average Compensation shall be disregarded. No increase in Final Average Compensation shall decrease a Participant's Accrued Benefit. The "measuring period" will be the Plan Year unless a different measuring period is specified on the Adoption Agreement for purposes of determining "Average Compensation."

1.35 "Fiscal Year" means the Employer's accounting year.

1.36 "Former Participant" means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.37 "414(s) Compensation" means any definition of compensation that satisfies the nondiscrimination requirements of Code §414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.38 "415 Compensation" means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Code §3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation.

415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code §402(g)(3)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457, and 132(f)(4).

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) **Post-severance compensation.** The Administrator shall adjust 415 Compensation, for Limitation Years beginning on or after July 1, 2007, or such earlier date as the Employer specifies in the Compensation Section of Adoption Agreement, for amounts that would otherwise be included in the definition of 415 Compensation but are paid by the later of 2 ½ months after an Employee's severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** 415 Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of 415 Compensation) if:

(i) The payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) the payments would have been paid to the employee prior to a severance of employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** 415 Compensation shall include leave cash-outs if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred Compensation.** 415 Compensation shall include deferred compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in gross income.

(4) **Military Differential Pay.** Effective for Plan Years beginning after December 31, 2008, 415 Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** 415 Compensation shall include payments made to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a Highly Compensated Employee immediately before becoming disabled.

(c) **Administrative delay ("the first few weeks") rule.** 415 Compensation for a Limitation Year shall generally not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates. However, if elected in the Compensation Section of the Adoption Agreement, 415 Compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no Compensation is included in more than one Limitation Year.

(d) **Back pay.** Back pay, within the meaning of Regulations §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(e) **Dollar limitation**. 415 Compensation will be limited to the same dollar limitation set forth in Plan Section 1.16(f).

(f) **Amendments.** Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

For Limitation Years beginning after December 31, 1997, compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under Code §125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

For Limitation Years beginning after December 31, 2000, or such earlier effective date as the Employer specifies in the Compensation Section of the Adoption Agreement, Compensation shall also include any elective amounts that are not includible in the gross income of the Employee by reason of Code §132(f)(4).

1.39 "Fresh-Start Date" generally means the last day of the Plan Year preceding a Plan Year for which any amendment of the Plan that directly or indirectly affects the amount of a Participant's benefit determined under the current benefit formula (such as an amendment to the definition of Compensation used in the current benefit formula or a change in the Normal Retirement Age under the Plan) is made effective. However, if under this Adoption Agreement the "Fresh-Start Group" is limited to an "acquired group of Employees," or a group of Employees with a Frozen Accrued Benefit attributable to assets and liabilities transferred to the Plan, the Fresh-Start Date will be the date designated in the Adoption Agreement.

1.40 "Frozen Accrued Benefit" means a Participant's Accrued Benefit under the Plan determined as if the Participant terminated employment with the Employer as of the latest Fresh-Start Date, (or the date the Participant actually terminated employment with the Employer, if earlier), without regard to any amendment made to the Plan after that date other than amendments recognized as effective as of or before the date under Code §401(b) or Regulations §1.401(a)(4)-11(g). If the Participant has not had a Fresh-Start Date, the Participant's Frozen Accrued Benefit shall be zero.

If, as of the Participant's latest Fresh-Start Date, the amount of a Participant's Frozen Accrued Benefit was limited by the application of Code §415, the Participant's Frozen Accrued Benefit will be increased for years after the latest Fresh-Start Date to the extent permitted under Code §415(d)(1). In addition, the Frozen Accrued Benefit of a Participant whose Frozen Accrued Benefit includes the top-heavy minimum benefits provided in Plan Section 5.6, will be increased to the extent necessary to comply with the average compensation requirement of Code §416(c)(1)(D)(i).

If: (a) the Plan's normal form of benefit in effect on the Participant's latest Fresh-Start Date is not the same as the normal form under the Plan after such Fresh-Start Date and/or (b) the Normal Retirement Age for any Participant on that date was greater than the Normal Retirement Age for that Participant under the Plan after such Fresh-Start Date, the Frozen Accrued Benefit will be expressed as an actuarially equivalent benefit in the normal form under the Plan after the Participant's latest Fresh-Start Date, commencing at the Participant's Normal Retirement Age under the Plan in effect after such Fresh-Start Date.

If the Plan provides a new optional form of benefit with respect to a Participant's Frozen Accrued Benefit, such new optional form of benefit will be provided with respect to each Participant's entire Accrued Benefit (i.e., accrued both before and after the Fresh-State Date). In addition, if this Plan is a unit credit plan or has a Cash Balance Formula, with respect to Plan Years beginning after the latest Fresh-Start Date, the current benefit formula will provide each Participant in the "Fresh-Start Group" a benefit of not less than one half of one percent (.5%) of the Participant's Average Compensation times the Participant's Years of Service after the latest Fresh-Start Date. If this is a flat benefit Plan, then, with respect to Plan Years beginning after the Plan's latest Fresh-Start Date, the current benefit formula will provide each Participant a benefit of not less than twenty-five percent (25%) of the Participant's Average Compensation. If a Participant will have less than fifty (50) Years of Service after the latest Fresh-Start Date through the year the Participant attains Normal Retirement Age (or current age, if later), then such minimum percentage will be reduced by multiplying it by the following ratio:

$$\frac{\text{Participant's Years of Service after the Latest Fresh-Start Date}}{50}$$

Each Participant's Frozen Accrued Benefit will be increased, to the extent necessary, so that the base benefit percentage, determined with reference to all years of Credited Service as of the latest Fresh-Start Date, is not less than fifty percent (50%) of the excess benefit percentage as of the latest Fresh-Start Date, determined with reference to all years of Credited Service as of the latest Fresh-Start Date.

Each Participant's offset applied to determine the Frozen Accrued Benefit will be decreased, to the extent necessary, so that it does not exceed fifty percent (50%) of the benefit determined without applying the offset, taking into account all years of Credited Service as of the latest Fresh-Start Date.

With respect to any Participant with at least one Hour of Service in a Plan Year beginning after the Fresh-Start Date, the Participant's Frozen Accrued Benefit (as adjusted above, if applicable) shall be multiplied by a fraction, not less than one, the numerator of which is the Participant's compensation for the current Plan Year determined under the compensation definition and formula used to determine the Participant's Frozen Accrued Benefit, and the denominator of which is the Participant's compensation for the Plan Year ending on the Fresh-Start Date determined under the same compensation definition and formula used in the numerator.

1.41 "Highly (Nonhighly) Compensated Employee" means an Employee described in Code §414(q) and the Regulations thereunder, and generally means any Employee who:

(a) was a "five percent (5%) owner" as defined in Section 1.41(b) at any time during the "determination year" or the "look-back year"; or

(b) for the "look-back year" had 415 Compensation from the Employer in excess of $80,000 and, if elected in the Adoption Agreement, was in the Top-Paid Group for the "look-back year." The $80,000 amount is adjusted at the same time and in the same manner as under Code §415(d).

The "determination year" means the Plan Year for which testing is being performed and the "look-back year" means the immediately preceding twelve (12) month period. However, if the calendar year data election is made in the Adoption Agreement, for purposes of (b) above, the "look-back year" shall be the calendar year beginning within the twelve (12) month period immediately preceding the "determination year."

A Highly Compensated Former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that "determination year."

In determining who is a Highly Compensated Employee, Employees who are nonresident aliens and who received no earned income (within the meaning of Code §911(d)) from the Employer constituting United States source income within the meaning of Code §861(a)(3) shall not be treated as Employees. If a nonresident alien Employee has U.S. source income, that Employee is treated as satisfying this definition if all of such Employee's U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty. Additionally, all Affiliated Employers shall be taken into account as a single Employer and Leased Employees within the meaning of Code §§414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code §414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

A "Nonhighly Compensated Employee" means is an Employee who is not a Highly Compensated Employee.

1.42 "Highly (Nonhighly) Compensated Participant" means any Highly Compensated Employee who is eligible to participate in this Plan. A "Nonhighly Compensated Participant" means a Participant who is not a Highly Compensated Participant.

1.43 "Hour of Service" means (a) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (b) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation §2530.200b-2 which is incorporated herein by reference); (c) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (a) or (b), as the case may be, and under (c).

Notwithstanding (b) above, (1) no more than 501 Hours of Service will be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (2) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code §414(n) or 414(o) and the Regulations thereunder. Furthermore, the provisions of Department of Labor Regulations §2530.200b-2(b) and (c) are incorporated herein by reference.

Hours of Service will be determined using the actual hours method unless one of the methods below is elected in the Adoption Agreement. If the **actual hours** method is used to determine Hours of Service, an Employee is credited with the actual Hours of Service the Employee completes with the Employer or the number of Hours of Service for which the Employee is paid (or entitled to payment). For Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees) the **months worked** method will be used unless otherwise elected in the Adoption Agreement.

If the **days worked** method is elected, an Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

If the **weeks worked** method is elected, an Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

If the **semi-monthly payroll periods worked** method is elected, an Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.

If the **months worked** method is elected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

If the **bi-weekly payroll periods worked** method is elected, an Employee will be credited with ninety (90) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the bi-weekly payroll period.

1.44 "Hypothetical Account Balance" means, if the Plan uses a Cash Balance Formula, the account established for a Participant to receive the Principal Credits and Interest Credits set forth in the Non-Standardized Pre-Approved Adoption Agreement. This Hypothetical Account Balance shall be a hypothetical account for bookkeeping purposes only and neither the maintenance nor the adding of credits thereto shall be construed as an allocation of assets of the Plan to, or a segregation of such assets in, any such hypothetical account, or otherwise creating a right for any individual to receive specific assets of the Plan. Benefits provided under the Plan shall be paid from the general assets of the Trust in the amounts, in the forms, and at the times provided, under the terms of the Plan. When applying any statutory or Plan limitation and/or minimum benefit that is expressed in terms of an annuity to the benefit derived from the Hypothetical Account Balance, the limit shall be applied to the annuity derived from the Hypothetical Account Balance that is payable at the time and in the form corresponding to the Plan limitation or minimum benefit, determined under the terms of the Plan.

Preservation of Capital. A Participant's Hypothetical Account Balance as of the Participant's Annuity Starting Date shall be no less than the sum of the Principal Credits to such Participant's Hypothetical Account Balance, reduced to reflect the value of any prior distributions. This requirement applies only as of an Annuity Starting Date as of which a distribution of the Participant's entire remaining vested benefit under the Plan commences.

Cumulative Floor. If a cumulative floor is elected in the Adoption Agreement, then a Participant's Hypothetical Account Balance as of the Annuity Starting Date as of which the distribution of the Participant's entire remaining vested benefit under the Cash Balance Formula commences shall be equal to the greater of (a) the Hypothetical Account Balance determined using the actual Interest Credit Rate(s) that applied during the guarantee period, or (b) the Hypothetical Account Balance determined as if the Plan had used the annual interest rate specified in the Adoption Agreement. For this purpose, the guarantee period is the period beginning on the date specified in the Adoption Agreement and ending on the Annuity Starting Date as of which the distribution of the Participant's entire remaining vested benefit under the Cash Balance Formula commences, and the cumulative floor is applied taking the value of any previous distributions into account.

1.45 "Insurer" means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

1.46 "Interest Credit" means the amount of hypothetical earnings (determined in accordance with the Interest Credit Rate) which is added to the Participant's Hypothetical Account Balance in accordance with the elections made in the Adoption Agreement.

1.47 "Interest Credit Period" means each period as set forth in the Adoption Agreement.

1.48 "Interest Credit Rate" means the rate set forth in the Adoption Agreement.

If the Interest Credit Rate can vary, then for Interest Credit Periods after the termination of the Plan, the Interest Credit Rate used to credit the Hypothetical Account Balance shall be equal to the average of the Interest Credit Rates used under the Plan during the 5-year period ending on the date of Plan termination as required under Regulation §1.411(b)(5)-1(e)(2)(ii).

If elected in the Adoption Agreement, the Interest Credit Rate applied to a Participant's beginning Hypothetical Account Balance for each Interest Credit Period shall be the Actual Rate of Return on the aggregate assets of the Plan for that period, including both positive and negative returns. If the use of Actual Rate of Return is elected in the Adoption Agreement, Plan assets must be diversified so as to minimize the volatility of returns in accordance with Regulation §1.411(b)(5)-1(d)(5)(ii)(A). The Actual Rate of Return, which includes both realized and unrealized gains and losses, will be calculated as provided in the Adoption Agreement. Additionally, the Employer may elect in the Adoption Agreement for purposes of the first Plan Year only of the Plan that the Interest Credit Rate for such Plan Year shall be the fixed rate specified in the Adoption Agreement and then for all subsequent Plan Years will be the Actual Rate of Return.

Protected Rate. In no event shall any future amendment to the Plan retroactively reduce any Accrued Benefit, including, but not limited to, the Participant's right to future Interest Credits using the Interest Credit Rate under the terms of the Plan prior to such amendment. (In other words, the Participant's right to future Interest Credits shall continue to be determined using an Interest Credit Rate that is no less than the

Interest Credit Rate that was in effect prior to the later of the adoption date or the effective date of an amendment changing the Interest Credit Rate.)

Prohibited Rate. If this document is the restatement of the Plan, then the Plan is not a preapproved plan within the meaning of the IRS preapproved plan program (as defined below) if the document provides (or ever provided) for an Interest Credit that is not permitted under the preapproved plan program. Similarly, in the event this Plan is ever amended to use an Interest Credit Rate that is not permitted under the preapproved plan program, the Plan shall cease to be a preapproved plan. For purposes of this definition, the preapproved plan program is the program described by Revenue Procedures 2016-37, 2017-41, and 2022-4, as subsequently modified or superseded.

Pro-Rating Rate. If the Plan's Interest Credit Rate is determined by reference to a published annual rate for a stability period which is determined quarterly, then the Interest Credit Rate for that stability period shall be no more than the rate determined as the product of the published annual rate times a fraction, the numerator of which is the actual number of days in each such Interest Credit Period and the denominator of which is the actual number of days in the annual period described by the annual rate, unless such days are approximated as specified in the next sentence. An Employer may use 360 deemed days in lieu of actual days for a one-year period, and may use 90 deemed days in lieu of actual days for a quarter-year period, and may use 30 deemed days in lieu of actual days for a one-month period, as applicable.

If within a stability period there is more than one Interest Credit Period, then the Interest Credit Rate for each such Interest Credit Period shall be no more than the rate determined as the product of the Interest Credit Rate for the stability period times a fraction, the numerator of which is the actual number of days in each Interest Credit Period and the denominator of which is the actual number of days in the stability period, unless such days are approximated as specified in the next sentence. An Employer may use 360 deemed days in lieu of actual days for a one-year period, and may use 90 deemed days in lieu of actual days for a quarter-year period, and may use 30 deemed days in lieu of actual days for a one-month period, as applicable.

If the Employer chooses to use deemed days in lieu of actual days, then the employer must do so for both the numerator and denominator of all of the applicable fractions described in the past two paragraphs.

1.49 "Investment Manager" means a Fiduciary as described in Act §3(38).

1.50 "Joint and Survivor Annuity" means an immediate annuity for the life of a Participant with a survivor annuity for the life of the Participant's Spouse which is not less than fifty percent (50%), nor more than one hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's Spouse. The Joint and Survivor Annuity will be the Actuarial Equivalent of the Participant's Present Value of Vested Accrued Benefit.

1.51 "Key Employee" means, an Employee as defined in Code §416(i) and the Regulations thereunder. Generally, any Employee or former Employee (including any deceased Employee as well as each of the Employee's or former Employee's Beneficiaries) is considered a Key Employee if the Employee or former Employee, at any time during the Plan Year that contains the "determination date," has been included in one of the following categories:

(a) An officer of the Employer (as that term is defined within the meaning of the Regulations under Code §416) having annual 415 Compensation greater than $130,000 (as adjusted under Code §416(i)(1));

(b) A "five percent (5%) owner" of the Employer. "Five percent (5%) owner" means any person who owns (or is considered as owning within the meaning of Code §318) more than five percent (5%) of the value of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer; and

(c) A "one percent (1%) owner" of the Employer having annual 415 Compensation from the Employer of more than $150,000. "One percent (1%) owner" means any person who owns (or is considered as owning within the meaning of Code §318) more than one percent (1%) of the value of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer.

In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code §§414(b), (c), (m) and (o) shall be treated as separate employers. In determining whether an individual has 415 Compensation of more than $150,000, 415 Compensation from each employer required to be aggregated under Code §§414(b), (c), (m) and (o) shall be taken into account.

1.52 "Late Retirement Date" means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant's actual retirement after having reached the Normal Retirement Date.

1.53 "Leased Employee" means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased

Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated workforce.

1.54 "Limitation Year" means the Plan Year. However, the Employer may elect a different Limitation Year in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption Agreement. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new "Limitation Year" must begin on a date within the "Limitation Year" in which the amendment is made. The Limitation Year may only be changed by a Plan amendment.

1.55 "Military Differential Pay" means, for any Plan or Limitation Year beginning after June 30, 2007, any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of compensation that was paid to the individual while working for the Employer. Notwithstanding the preceding sentence, for Compensation determination periods (as defined in Section 1.16(c)) beginning after December 31, 2008, an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an Employee of the Employer making the payment.

The Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the Military Differential Pay. The preceding sentence applies only if all Employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

1.56 "Non-Key Employee" means any Employee or former Employee (and such Employee's or former Employee's Beneficiaries) who is not a Key Employee.

1.57 "Normal Retirement Age" means the age elected in the Adoption Agreement at which time a Participant's Accrued Benefit shall be nonforfeitable (if the Participant is employed by the Employer on or after that date).

1.58 "Normal Retirement Date" means the date elected in the Adoption Agreement.

1.59 "1-Year Break in Service" means, if the hour of service method is used, the applicable computation period that is used to determine a Year of Service during which an Employee or former Employee has not completed more than 500 Hours of Service. However, if the Employer selected, in the Service Crediting Method Section of the Adoption Agreement, to define a Year of Service as less than 1,000 Hours of Service, then the 500 Hours of Service in this definition of 1-Year Break in Service shall be proportionately reduced. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the elapsed time method is elected in the Adoption Agreement, a "1-Year Break in Service" means a twelve (12) consecutive month Period of Severance beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

1.60 "Participant" means any Employee or Former Employee who has satisfied the requirements of Plan Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a

Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the individual has an Accrued Benefit in the Plan).

1.61 "Participant Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with Participant direction procedures.

1.62 "Participant's Rollover Account" means the account established and maintained by the Administrator for each Participant with respect to such Participant's interest in the Plan resulting from amounts transferred from another qualified plan or a "conduit" Individual Retirement Account or Annuity in accordance with Plan Section 4.3.

1.63 "Participating Employer" means an Employer which, with the consent of the "lead Employer" adopts the Plan pursuant to Section 11.1 or Article XII. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

1.64 "Period of Service" means the aggregate of all periods of service commencing on Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Service, or for benefit accrual purposes, ending on the severance from service date. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For benefit accrual purposes, a Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, and whether or not such service is actual service or imputed service (under the service-spanning rule above), expressed in the number of whole years represented by such sum, and for this purpose, fractional periods of a year will be expressed in terms of days.

For any plan that credits a Year of Service for accrual purposes as being a 3-month Period of Service, the Plan will treat the service requirement as being met as soon as the Participant is credited with a 3-month Period of Service during any Plan Year, and no further Service is required in addition to such 3-month Period of Service. If for any Plan the accrual period is defined as being any other 12-month period, such 12-month period shall be substituted for the "Plan Year" in the preceding sentence.

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a break in service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In determining Periods of Service for benefit accrual purposes, the Plan will disregard any period of employment during which an Employee did not make Employee Mandatory Contributions (if required by the Plan). In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Plan Section 3.5.

In the event the method of crediting service is amended from the hour of service method to the elapsed time method, an Employee will receive credit for a Period of Service consisting of:

(a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and

(b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the hour of service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

1.65 "Period of Severance" means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for "maternity or paternity" reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for "maternity or paternity" reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the

adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.66 "Plan" means this instrument hereinafter referred to as FIS Capital Markets US LLC Non-Standardized Pre-Approved Defined Benefit Plan (Basic Plan Document and the Adoption Agreement) as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

1.67 "Plan Month" means the calendar month if a Plan Year begins on the first day of a calendar month. If the Plan Year begins on a day other than the first day of a calendar month, each Plan Month begins on the day of the calendar month that corresponds to the date of the calendar month that is the first day of the Plan Year. However, if a calendar month does not contain a day that corresponds to the day of the calendar month which is the first day of the Plan Year (for example, if a calendar month has only 30 days and the first day of the Plan Year is the 31st day of a calendar month), then the first day of the Plan Month that begins during that calendar month is the last day of that calendar month.

1.68 "Plan Quarter" means the three-month period beginning on the first day of the first, fourth, seventh or tenth Plan Month.

1.69 "Plan Year" means the Plan's accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

1.70 "Plan Year of Service" means a Plan Year during which an Employee is a Participant and, except as provided in Section 1.65 if the elapsed time method is used, completes a Year of Service for benefit accrual purposes.

If this document constitutes an amendment to a Plan that previously required Employee Contributions as a condition for participation in the Plan, then in no event shall an Employee receive credit for a Plan Year of Service for benefit purposes for any period of employment during which the Employee elected not to make Employee Contributions.

1.71 "Pre Retirement Survivor Annuity" means an immediate annuity for the life of the surviving spouse of a Participant who dies prior to the Annuity Starting Date.

1.72 "Present Value of Accrued Benefit" means the Actuarial Equivalent lump-sum amount of a Participant's Accrued Benefit at date of valuation. Notwithstanding the foregoing, the Present Value of Accrued Benefit for the determination of Top-Heavy Plan status shall be made exclusively pursuant to the provisions of Plan Section 9.2.

> **Cash Balance Plan exception.** Unless elected to the contrary on the Adoption Agreement, then notwithstanding the above or any other provision of the Plan to the contrary (including the Plan provisions relating to Code §417(e)), the "Present Value of Accrued Benefit" for purposes of making a distribution of a Participant's Accrued Benefit attributable to a Cash Balance Formula means the Participant's Hypothetical Account Balance as of the date of distribution. However, the "Present Value of the Accrued Benefit" shall also include the Actuarial Equivalent lump-sum amount of the excess, if any, of the Participant's Accrued Benefit as of the determination date less the portion of the Accrued Benefit attributable to the Participant's Hypothetical Account Balance (i.e., the portion of the Accrued Benefit attributable to the Top-Heavy minimum benefit). Furthermore, the Present Value of the Accrued Benefit for the determination of Top-Heavy Plan status shall be made exclusively pursuant to the provisions of Section 9.2.

Employee contribution exception. Notwithstanding the above or any other provision of the Plan to the contrary, the Present Value of Accrued Benefit shall not be less than the Accumulated Employee Contributions Benefit.

1.73 "Principal Credit" means, with respect to a Cash Balance Formula, the amount set forth in the Adoption Agreement.

> **Adjustment to Principal Credit**. If, in the Adoption Agreement, an election is made to adjust the Principal Credit, then the dollar amount of the Principal Credit for a Participant shall be adjusted as described as follows: A "Year of Participation" shall mean a Plan Year during which the Participant completes 2,000 Hours of Service. If the Participant either completes more than 500 Hours of Service during the Plan Year or is employed on the last day of the Plan Year but has less than 2,000 Hours of Service during the Plan Year, such Participant shall receive an accrual for such year which bears the same ratio to a full accrual as the number of hours the Participant actually completes bears to 2,000. If the Principal Credit Period is less than a 12-month period, then the 500 and the 2,000 hour requirements will be proportionately reduced for such shorter period.

1.74 "Principal Credit Period" means the period elected in the Non-Standardized Pre-Approved Adoption Agreement.

1.75 "Qualified Voluntary Employee Contribution Account" means the account established hereunder to which a Participant's tax deductible qualified voluntary employee contributions made pursuant to Plan Section 4.6 are allocated.

1.76 "Regulations" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.77 "Retired Participant" means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.78 "Retirement Date" means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant's Normal Retirement Date, or Early Retirement Date or Late Retirement Date (see Plan Section 5.1).

1.79 "Section 414(k) Account" means the account maintained by the Administrator for a Participant pursuant to Plan Section 5.5(b). Effective as of the date this plan document is adopted, no new Section 414(k) Accounts may be established and no new additions may be added to such Accounts other than adjustments for income, losses, or distributions. The prohibition on establishing new 414(k) Accounts does not apply with respect to the establishment of Participant Rollover Accounts if otherwise permitted under the Plan.

1.80 "Self-Employed Individual" means an individual who has Earned Income for the taxable year from the trade or business for which the Plan is established, and, also, an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year. A Self-Employed Individual shall be treated as an Employee.

1.81 "Short Plan Year" means, if specified in the Adoption Agreement or as the result of an amendment, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the elapsed time method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year. The determination of whether an Employee has completed a Year of Service (or Period of Service) for vesting and eligibility purposes shall be made in accordance with Department of Labor regulation §2530.203-2(c). In addition, if this Plan is integrated with Social Security, then the level of Covered Compensation shall also be proportionately reduced based on the number of days in the Short Plan Year.

1.82 "Social Security Retirement Age" with respect to a Participant means age 65 if the Participant attains age 62 before January 1, 2000 (i.e., born before January 1, 1938), age 66 if the Participant attains age 62 after December 31, 1999, but before January 1, 2017 (i.e., born after December 31, 1937, but before January 1, 1955), and age 67 if the Participant attains age 62 after December 31, 2016 (i.e., born after December 31, 1954).

1.83 "Spouse" means a spouse as determined under federal tax law. In addition, with respect to benefits or rights not mandated by law (e.g., Section 5.9(k) with respect to death benefits in excess of the Pre-Retirement Survivor Annuity), Spouse also includes a spouse as elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), except that such expanded definition shall not apply to any spousal right provisions mandated by federal law (such as the required minimum distributions, qualified joint and survivor annuity and pre-retirement survivor annuity provisions). The Employer may also elect, in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to require that a Participant be married for at least one (1) year before the Participant is treated as married (and having a Spouse) for all purposes of the Plan. If the election in the prior sentence is made and a Participant is married on the Annuity Starting Date (without regard to the length of marriage), then a Participant and spouse are deemed to have been married for the one year period ending on the Annuity Starting Date. If, after the Annuity Starting Date, the Participant do not remain married for one year then the spouse is not entitled to any survivor benefit requirements that would otherwise be payable under the Plan.

1.84 "Straight Life Annuity" means an annuity payable in equal installments for the life of a Participant that terminates upon the Participant's death.

1.85 "Taxable Wage Base" means, with respect to any Plan Year, the contribution and benefit base in effect under Section 230 of the Social Security Act at the beginning of such Plan Year.

1.86 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated with the Employer (including an Affiliated Employer) or applicable Participating Employer other than by death, Total and Permanent Disability or retirement.

1.87 "Theoretical Contribution" means the contribution that would be made on behalf of the Participant, using the individual level premium funding method from the age at which participation commenced to Normal Retirement Age, to fund the Participant's entire retirement benefit without regard to pre-retirement ancillary benefits. The entire retirement benefit for this purpose is based upon a single life annuity and assumes continuation of current salary (no salary scale).

1.88 "Theoretical Individual Level Premium Reserve" means the reserve that would be available at the time of death if for each year of Plan participation a contribution had been made on behalf of the Participant in an amount equal to the Theoretical Contribution.

1.89 "The Value of the Total Prior Contributions" means the accumulated value of a level annual deposit using the actuarial assumptions stated in Plan Section 1.4. Such level annual deposit shall be computed from date of entry into the Plan to Normal Retirement Date, recalculated each year based on the monthly pension computed using Average Compensation and accumulated based on the Participant's Plan Years of Service. In no event shall the accumulated value be less than the accumulated value as of the prior Anniversary Date.

1.90 "Top-Heavy Plan" means a plan described in Plan Section 9.2(a).

1.91 "Top-Heavy Plan Year" means a Plan Year, commencing after December 31, 1983, during which the Plan is a Top-Heavy Plan.

1.92 "Top-Paid Group" shall be determined pursuant to Code §414(q) and the Regulations thereunder and generally means the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of 415 Compensation received from the Employer during such year. All Affiliated Employers shall be taken into account as a single employer, and Leased Employees shall be treated as Employees if required pursuant to Code §414(n) or (o). Employees who are nonresident aliens who received no earned income (within the meaning of Code §911(d)(2)) from the Employer constituting United States source income within the meaning of Code §861(a)(3) shall not be treated as Employees. Furthermore, for the purpose of determining the number of active Employees in any year, the following additional Employees may also be excluded, however, such Employees shall still be considered for the purpose of identifying the particular Employees in the Top-Paid Group:

(a) Employees with less than six (6) months of service;

(b) Employees who normally work less than 17 ½ hours per week;

(c) Employees who normally work less than six (6) months during a year; and

(d) Employees who have not yet attained age twenty-one (21).

In addition, if ninety percent (90%) or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representatives and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the Top-Paid Group.

The foregoing exclusions set forth in this Section shall be applied on a uniform and consistent basis for all purposes for which the Code §414(q) definition is applicable. Furthermore, in applying such exclusions, the Employer may substitute any lesser service, hours or age.

1.93 "Total and Permanent Disability" means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders the Participant incapable of continuing the usual and customary employment with the Employer. The disability of a Participant shall be determined by a licensed physician. The determination shall be applied uniformly to all Participants. Notwithstanding the above, if elected in the Adoption Agreement, "Total and Permanent Disability" means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders the Participant incapable of continuing any gainful occupation and which condition constitutes total disability under the federal Social Security Acts.

1.94 "Trustee" means any person or entity that is named in the Adoption Agreement or has otherwise agreed to serve as Trustee, or any successors thereto. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured.

If the provider is a bank, savings and loan, trust company, credit union or similar institution, a person or entity other than such provider (or its affiliates or subsidiaries) may not serve as Trustee without the consent of such provider.

1.95 "Trust Fund" means, if the Plan is funded with a trust, the assets of the Plan as the same shall exist from time to time.

1.96 "Vested" means the nonforfeitable portion of a Participant's Accrued Benefit.

1.97 "Voluntary Contribution Account" means the account maintained by the Administrator for each Participant with respect to such Participant's total interest in the Plan resulting from the Participant's after-tax voluntary Employee contributions made pursuant to Plan Section 4.4.

1.98 "Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a lower number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). Unless otherwise elected in the Service Crediting Method Section of the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) Years of Service for eligibility purposes upon completing two (2) consecutive Years of Service without an intervening 1-Year Break in Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Service Crediting Method Section of the Adoption Agreement. If no election is made in the Service Crediting Method Section of the Adoption Agreement, then the computation period shall be the Plan Year.

In no event shall an Employee receive credit for a Year of Service for benefit purposes for any period of employment during which the Employee did not make Employee Mandatory Contributions (if required by the Plan). In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Plan Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other employer shall be recognized as elected in the Adoption Agreement.

In the event the method of crediting service is amended from the elapsed time method to the hour of service method, to the extent permitted by Code §411(d)(6), an Employee will receive credit for Years of Service equal to:

(a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and

(b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method, if any) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

ARTICLE II
ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee (or Insurer) and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove one or more Trustees (or Insurers) and Administrators from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan, the Code, and the Act. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Funding policy and method.** The Employer shall establish a "funding policy and method," i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. If the Trustee (or Insurer) has discretionary authority, the Employer or its delegate shall communicate such needs and goals to the Trustee (or Insurer), who shall coordinate such Plan needs with its investment policy. The communication of such a "funding policy and method" shall not, however, constitute a directive to the Trustee (or Insurer) as to the investment of the Trust Funds. Such "funding policy and method" shall be consistent with the objectives of this Plan and with the requirements of Title I of the Act.

(c) **Appointment of Investment Manager.** The Employer may appoint, at its option, one or more Investment Managers, investment Advisers, or other agents to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

(d) **Review of fiduciary performance.** The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

(e) **Employee Mandatory Contribution Procedure.** If the Plan requires Employee Mandatory Contributions, then the Employer shall establish a procedure by which Employee Mandatory Contributions are to be made to the Plan. Such procedure may be by payroll deduction or such other method as determined by the Employer.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator.

Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. If no such delegation is made by the Employer, then the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee (or Insurer) in writing of such action and specify the responsibilities of each Administrator. The Trustee (or Insurer) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee (or Insurer) a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code §401(a), and shall comply with the terms of the Act and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

(a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;

(b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;

(c) to compute, certify, and direct the Trustee (or Insurer) with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

(d) to authorize and direct the Trustee (or Insurer) with respect to all discretionary or otherwise directed disbursements from the Trust Fund;

(e) to maintain all necessary records for the administration of the Plan;

(f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;

(g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;

(h) to compute and certify to the Employer and to the Trustee (or Insurer) from time to time the sums of money necessary or desirable to be contributed to the Plan;

(i) to consult with the Employer and the Trustee (or Insurer) regarding the short and long-term liquidity needs of the Plan in order that the Trustee (or Insurer) can exercise any investment discretion (if the Trustee (or Insurer) has such discretion), in a manner designed to accomplish specific objectives;

(j) to prepare and implement a procedure for notifying Participants and Beneficiaries of their rights to elect Joint and Survivor Annuities and Pre-Retirement Survivor Annuities if required by the Plan, Code and Regulations thereunder;

(k) to assist Participants regarding their rights, benefits, or elections available under the Plan;

(l) to act as the named Fiduciary responsible for communicating with Participants as needed to maintain Plan compliance with Act §404(c) (if the Employer intends to comply with Act §404(c)) including, but not limited to, the receipt and transmission of Participants' directions as to the investment of their accounts under the Plan and the formation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their accounts; and

(m) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

2.6 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

2.7 INFORMATION FROM EMPLOYER

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise the Trustee (or Insurer) of such of the foregoing facts as may be pertinent to the Trustee's (or Insurer's) duties under the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator or Trustee (or Insurer) in carrying out the instructions of Participants as to the directed investment of their accounts (if permitted) and other specialists and their agents, the costs of any bonds required pursuant to Act §412, and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee. If liquid assets of the Plan are insufficient to cover the fees of the Trustee (or Insurer) or the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Plan Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

2.10 CLAIMS PROCEDURES

(a) **Initial Claim.** Claims for benefits under the Plan may be filed in writing with the Administrator. Written or electronic notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) after the application is filed, or such period as is required by applicable law or Department of Labor regulation. Any electronic notification shall comply with the standards imposed by Department of Labor Regulations §2520.104b-1(c)(1)(i), (iii) and (iv) or any subsequent guidance. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

(b) **Claims review.** Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.10 shall be entitled to request the Administrator to give further consideration to the claim by filing with the Administrator a written request. Such request, together with a written statement of the reasons why the claimant believes such claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Plan Section 2.10. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) of receipt of the appeal (unless there has been an extension of sixty (60) days (45 days if the claim involves disability benefits and disability is not

based on the Social Security Acts) due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts)). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. The communication may be written or electronic (provided the electronic communication complies with the standards imposed by Department of Labor Regulations §2520.104b-1(c)(1)(i), (iii) and (iv) or any subsequent guidance). Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

(c) **Deadline to file claim.** To be considered timely under the Plan's claims procedures, a claim must be filed under Sections 2.10(a) or (b) above within one year after the claimant knew or reasonably should have known of the principal facts upon which the claim is based. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to the claimant for the purpose of applying this deadline.

(d) **Exhaustion of administrative remedies.** The exhaustion of the claims procedures is mandatory for resolving every claim and dispute arising under this Plan. As to such claims and disputes: (1) no claimant shall be permitted to commence any legal action to recover Plan benefits or to enforce or clarify rights under the Plan under Act §502 or §510 or under any other provision of law, whether or not statutory, until the claims procedures set forth in Subsections (a) and (b) above have been exhausted in their entirety; and (2) in any such legal action all explicit and all implicit determinations by the Administrator (including, but not limited to, determinations as to whether the claim, or a request for a review of a denied claim, was timely filed) shall be afforded the maximum deference permitted by law.

(e) **Deadline to file action.** No legal action to recover Plan benefits or to enforce or clarify rights under the Plan under Act §502 or §510 or under any other provision of law, whether or not statutory, may be brought by any claimant on any matter pertaining to this Plan unless the legal action is commenced in the proper forum before the earlier of: (1) 30 months after the claimant knew or reasonably should have known of the principal facts on which the claim is based, or (2) six months after the claimant has exhausted the claims procedure under this Plan. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to every claimant who is or claims to be a Beneficiary of the Participant or otherwise claims to derive an entitlement by reference to the Participant for the purpose of applying the previously specified periods.

(f) **Plan Administrator discretion; court review.** The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

ARTICLE III
ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

An Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility, if any, elected in the Adoption Agreement. However, unless otherwise elected in the Adoption Agreement or otherwise stated in a Plan amendment, any Eligible Employee who was a Participant in the Plan prior to the effective date of any amendment or restatement shall continue to participate in the Plan.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Plan Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement. Regardless of any election in the Adoption Agreement to the contrary, an Eligible Employee who has satisfied the maximum age (21) and service requirements of two (2) Years of Service and who is otherwise entitled to participate, will become a Participant no later than the earlier of (1) six (6) months after such requirements are satisfied, or (2) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

(b) **Rehired Employee.** If an Eligible Employee is not employed on the date determined pursuant to (a) above, but is reemployed before a 1-Year Break in Service has occurred, then such Eligible Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment. If such Employee incurs a 1-Year Break in Service, then eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(c) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become

a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

(d) **Noneligible to eligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to noneligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(f) **Frozen Plan**. If the Plan is frozen, then notwithstanding anything in the Plan to the contrary, any Eligible Employee who has not become a Participant as of the date the Plan was frozen shall not enter and shall not become a Participant in the Plan on or after such date.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan and the Act. Such determination shall be subject to review pursuant to Section 2.10(b).

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the elapsed time method is used) completed while an ineligible Employee, until such time as the Participant's Accrued Benefit is forfeited or distributed pursuant to the terms of the Plan.

3.5 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee the Employee does not satisfy the eligibility conditions taking into account prior service to the extent such prior service is not disregarded pursuant to Section 3.5(d) or (e) below. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

(b) **Rehired Eligible Employee who satisfied eligibility.** If any Eligible Employee had satisfied the Plan's eligibility requirements but, due to a severance of employment, did not become a Participant, then such Eligible Employee shall become a Participant as of the later of (1) the entry date on which he or she would have entered the Plan had there been no severance of employment, or (2) the date of his or her re-employment. Notwithstanding the preceding, if the rehired Eligible Employee's prior service is disregarded pursuant to Section 3.5(d) or (e) below, then the rehired Eligible Employee shall be treated as a new hire.

(c) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan. However, in applying any shift in an eligibility computation period, the Eligible Employee is not treated as a new hire unless prior service is disregarded in accordance with Section 3.5(d) or (e) below.

(d) **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions).** If any Employee is reemployed after five (5) 1-Year Breaks in Service has occurred, Years of Service (or Periods of Service if the elapsed time method is being used) shall include Years of Service (or Periods of Service if the elapsed time method is being used) prior to the five (5) 1-Year Break in Service subject to the rules set forth below. The Employer may elect in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to make the provisions of this paragraph inapplicable for purposes of eligibility, vesting and/or accruals.

(1) In the case of a Former Employee who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (i) five (5) or (ii) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Employee who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Employee would otherwise enter the Plan pursuant to Plan Sections 3.1 and 3.2 taking into account all service not disregarded.

(e) **One-year hold-out rule.** If the "one-year hold-out" rule is elected in the Service Crediting Method Section of the Adoption Agreement, then the "one-year hold-out" rule under Code §410(a)(5)(C) applies. Under this rule, a Participant will incur a suspension of participation in the Plan after incurring a 1-Year Break in Service and the Plan disregards a Participant's service completed prior to a 1-Year Break in Service until the Participant completes one Year of Service following the 1-Year Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the eligibility computation period following the eligibility computation period in which the Participant incurs the 1-Year Break in Service.

(1) **Completion of one Year of Service.** If a Participant completes one Year of Service following a 1-Year Break in Service, the Plan restores the Participant's pre-break service retroactively to the first day of the eligibility computation period in which the Participant first completes one Year of Service following the 1-Year Break in Service.

(2) **Eligibility computation period.** The Administrator measures the initial eligibility computation period under this Subsection from the date the Participant first receives credit for an Hour of Service following the 1-Year Break in Service. The Administrator measures any subsequent eligibility computation periods, if necessary, in a manner consistent with the eligibility computation periods, using the re-employment commencement date in determining the anniversary of the date of hire, if applicable.

(3) **Limited to separated Employees.** The "one-year hold-out" rule applies only to a Participant who has incurred a separation from service.

(4) **Application to Employee who did not enter.** The Administrator also will apply the "one-year hold-out" rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions, but who incurs a separation from service and a 1-Year Break in Service prior to becoming a Participant.

(5) **No effect on vesting.** This Subsection does not affect a Participant's service for Vesting purposes.

(6) **No restoration if two (2) Years of Service required for eligibility.** The Administrator in applying this Subsection does not restore any service disregarded under the provision set forth in Section 1.98 which provides that a Participant will only have completed two (2) Years of Service for eligibility purposes upon completing two (2) consecutive Years of Service without an intervening 1-Year Break in Service.

(7) **USERRA.** An Employee who has completed qualified military service and who the Employer has rehired under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), does not incur a 1-Year Break in Service under the Plan by reason of the period of such qualified military service.

(f) **Vesting after five (5) 1-Year Breaks in Service.** For a fully insured plan within the meaning of Code §412(e)(3), if a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Accrued Benefit attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounting will be maintained as follows:

(1) one representing nonforfeitable benefits attributable to pre-break service; and

(2) one representing the Participant's Accrued Benefit attributable to post-break service.

(g) **Buyback provisions.** If any Former Employee who had been a Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Participant had received a distribution of the entire Vested interest prior to reemployment, then the Participant shall have the right to have his or Employer-provided Accrued Benefit (including optional forms of benefits and subsidies relating to such benefits), to the extent forfeited, restored upon repayment to the Plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate determined for purposes of Code §411(c)(2)(C). Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. If a non-Vested Participant was deemed to have received a distribution and such Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, then the Employer-provided Accrued Benefit will be restored to the amount of such Accrued Benefit on the date of the deemed distribution.

(h) **Frozen Plan.** If the Plan is frozen, then notwithstanding anything in the Plan to the contrary, any Eligible Employee who has not become a Participant as of the date the Plan was frozen shall not enter and shall not become a Participant in the Plan on or after such date. Furthermore, if any Employee becomes a former Employee due to severance from employment and is reemployed by the Employer on or after the date the Plan was frozen, then such Employee shall not enter and shall not become a Participant in the Plan on or after such date. Lastly, if any Employee either is or becomes ineligible to participate in the Plan and the status of the Employee

subsequently changes to an Eligible Employee on or after the date the Plan was frozen, then such Employee shall not enter and shall not become a Participant in the Plan on or after such date.

3.6 ELECTION NOT TO PARTICIPATE

(a) **Non-Standardized Pre-Approved plan.** An Employee may, subject to the approval of the Employer on a nondiscriminatory basis in accordance with Code §401(a)(4) and the Regulations thereunder, elect voluntarily not to participate in any component of the Plan before the Employee first becomes eligible to participate in any qualified plan (subject to Code §401(a)) maintained by the Employer. Such election must be made upon inception of the Plan or at any time prior to the time the Employee first becomes eligible to participate under any such plan maintained by the Employer. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the date the Employee would have otherwise entered the Plan. Notwithstanding anything in this Section to the contrary, if any prior Plan document of this Plan contained a provision permitting an Employee to make a revocable election not to participate and an Employee made such revocable election not to participate while that prior Plan document was in effect, then such Employee's waiver shall continue to be in effect.

(b) **Effect of election.** An Employee who elects, or had previously elected, not to participate under the Plan is treated as a nonbenefiting Employee for purposes of the minimum participation requirements of Code §401(a)(26) and the minimum coverage requirements under Code §410(b).

3.7 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer may take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System (i.e., Rev. Proc. 2019-29 or any subsequent guidance).

ARTICLE IV
CONTRIBUTION AND VALUATION

4.1 PAYMENT OF CONTRIBUTIONS

The Employer shall pay to the Plan from time to time such amounts in cash as the Administrator and Employer shall determine to be necessary to provide the benefits under the Plan determined by the application of accepted actuarial methods and assumptions. The method of funding shall be consistent with Plan objectives. However, the Employer may pay such contributions as appropriate directly to the Insurer, and such payment shall be deemed a contribution to the Plan to the same extent as if the payment had been made to the Trustee, if any.

4.2 ACTUARIAL METHODS

In establishing the liabilities under the Plan and contributions thereto, the enrolled actuary will use such methods and assumptions as will reasonably reflect the cost of the benefits. The Plan assets are to be valued on the basis of any reasonable method of valuation that takes into account fair market value pursuant to Regulations. There must be an actuarial valuation of the Plan at least once every year. This paragraph shall not apply to any Plan Year in which the Plan complies with the provisions of Code §412(e)(3) relating to fully insured plans, except to the extent of any increase in benefits that are due to Top-Heavy minimum accruals.

4.3 ROLLOVER CONTRIBUTIONS

(a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." A Participant's Rollover Account shall be fully Vested at all times and shall not be subject to forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include former Employees if the Employer and Administrator consent to accept "rollovers" of distributions made to former Employees from any plan of the Employer.

(b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Distribution of "rollovers."** A Participant's Rollover Account shall be distributable at such time as elected in the Adoption Agreement. If no election is made in the Adoption Agreement, then the Participant's Rollover Account may be distributed at any time. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Plan Section 5.11, including, but not limited to, all the notice and consent requirements of Code §411(a)(11). The qualified joint and survivor annuity requirements of Code §417 and the Regulations thereunder, however, shall not apply to the distribution of "rollovers." Furthermore, unless otherwise elected in the Adoption Agreement, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a valuation date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of "rollover" contributions that may be accepted by the Plan.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), a SIMPLE IRA described in Code section 408(p) for rollovers occurring after December 18, 2015, a qualified trust (an employees' trust described in Code §401(a) which is exempt from tax under Code §501(a)), an annuity plan described in Code §403(a), an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A), and an annuity contract described in Code §403(b).

4.4 VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **Non-Standardized Pre-Approved.** Voluntary Employee contributions are permitted if elected in the Non-Standardized Pre-Approved Adoption Agreement.

(b) **Full Vesting.** The Administrator shall maintain a separate Participant's Voluntary Employee Contribution Account for each Participant's interest in the Plan derived from any contributions made pursuant to this Section, which account shall be fully Vested at all times.

(c) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Voluntary Employee Contribution Account shall be used to provide additional benefits to the Participant pursuant to Plan Section 5.1(b).

(d) **Distributions at any time.** A Participant may elect at any time to withdraw amounts from the Participant's Voluntary Employee Contribution Account in a manner which is consistent with and satisfies the provisions of Plan Section 5.11, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. No forfeitures shall occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

4.5 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted by the Plan's administrative procedures, all Participants may direct the investment of all or a portion of their individual account balances (excluding such Participant's Accrued Benefit as set forth in the Adoption Agreement). Participants may direct the Trustee (or Insurer) in writing (or in such other form which is acceptable to the Trustee (or the Insurer)), to invest their accounts in specific assets, specific funds, or other investments permitted under the Plan and the Participant direction procedures. That portion of the account of any Participant that is subject to the investment direction of such Participant will be considered a Directed Investment Account.

(b) **Establishment of Participant direction procedures.** The Administrator will establish a Participant direction procedure, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often

changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant direction procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of gains or losses.** As of each valuation date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee (or Insurer) that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Trustee (or Insurer) reserves the right to not value an investment option on any given valuation date for any reason deemed appropriate by the Employer, Administrator or Trustee (or Insurer). Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable valuation date for an investment transaction.

(f) **Other documents required by Directed Investments.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant direction procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant direction procedures and are not thereby incorporated by reference into this Plan.

4.6 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **Maintenance of existing Qualified Voluntary Employee Contribution Accounts.** If this is an amendment to a Plan that previously permitted deductible voluntary contributions, then each Participant who made a "qualified voluntary employee contribution" within the meaning of Code §219(e)(2) as it existed prior to the enactment of the Tax Reform Act of 1986, shall have such contributions held in a separate Qualified Voluntary Employee Contribution Account which shall be fully Vested at all times. Such contributions, however, shall not be permitted for taxable years beginning after December 31, 1986.

(b) **Distribution from Qualified Voluntary Employee Contribution Account.** A Participant may, upon written request delivered to the Administrator, make withdrawals from such Qualified Voluntary Employee Contribution Account. Any distribution shall be made in a manner which is consistent with and satisfies the provisions of Section 5.11, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

(c) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Qualified Voluntary Employee Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

4.7 ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) **ACP test.** Except as otherwise provided herein, this Subsection applies if the prior year testing method was used by the Plan (based on the terms of the Plan prior to the adoption of this Plan). The "Actual Contribution Percentage" (hereinafter ACP) for Participants who are Highly Compensated Employees (hereinafter "HCEs") for each Plan Year and the prior year's ACP for Participants who were Nonhighly Compensated Employees (hereinafter "NHCEs") for the prior Plan Year must satisfy one of the following tests:

(1) The ACP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ACP for Participants who were "NHCEs" for the prior Plan Year multiplied by 1.25; or

(2) The ACP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ACP for Participants who were "NHCEs" for the prior Plan Year multiplied by 2.0, provided that the ACP for Participants who are

"HCEs" does not exceed the prior year's ACP for Participants who were "NHCEs" in the prior Plan Year by more than two (2) percentage points.

Notwithstanding the above, for purposes of applying the foregoing tests with respect to the first Plan Year (as defined in Regulations §1.401(m)-2(c)(2)) in which the Plan permits any Participant to make Employee contributions, the ACP for the prior year's "NHCEs" shall be deemed to be three percent (3%) unless the Employer has elected in the Adoption Agreement to use the current Plan Year's ACP for these Participants. However, the provisions of this paragraph may not be used if the Plan is a successor plan or is otherwise prohibited from using such provisions pursuant to Regulations §1.401(m)-2(c)(2).

(b) **Current year testing method.** Notwithstanding the preceding, if the current year testing method was used by the Plan (based on the terms of the Plan prior to the adoption of this Plan), the ACP tests in (a)(1) and (a)(2) above shall be applied by comparing the current Plan Year's ACP for Participants who are "HCEs" with the current Plan Year's ACP (rather than the prior Plan Year's ACP) for Participants who are "NHCEs" for the current Plan Year. Once made, the Employer can elect prior year testing for a Plan Year only if the Plan has used current year testing for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years the Plan has been in existence) or if, as a result of a merger or acquisition described in Code §410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing and a plan using current year testing and the change is made within the transition period described in Code §410(b)(6)(C)(ii).

(c) **Determination of "HCEs" and "NHCEs."** A Participant is an "HCE" for a particular Plan Year if the Participant meets the definition of an "HCE" in effect for that Plan Year. Similarly, a Participant is an "NHCE" for a particular Plan Year if the Participant does not meet the definition of an "HCE" in effect for that Plan Year.

(d) **Calculation of ACP.** For the purposes of this Section, ACP for a specific group of Participants for a Plan Year means the average of the "contribution percentages" (calculated separately for each Participant in such group). For this purpose, "contribution percentage" means the ratio (expressed as a percentage) of the Participant's "contribution percentage amounts" to the Participant's 414(s) Compensation. The actual contribution ratio for each Participant and the ACP for each group, shall be calculated to the nearest one-hundredth of one percent of the Participant's 414(s) Compensation.

(e) **Amounts included in ACP.** "Contribution percentage amounts" means the amount of after-tax voluntary Employee contributions.

(f) **Participants taken into account.** For purposes of this Section, a Highly Compensated Participant and a Nonhighly Compensated Participant shall include any Employee eligible make after-tax voluntary Employee contributions pursuant to Section 4.4 (whether or not after-tax voluntary Employee contributions are made) allocated to the Participant's account for the Plan Year.

(g) **Timing of allocations.** For purposes of determining the ACP test, Employee contributions are considered to have been made in the Plan Year in which contributed to the Plan.

(h) **Definition of "employee contribution."** For purposes of this Section, "Employee contribution" means any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is maintained under separate account to which earnings and losses are allocated.

(i) **Definition of "excess aggregate contributions."** For purposes of this Section, "excess aggregate contributions" means, with respect to any Plan Year, the excess of:

(1) The aggregate "contribution percentage amounts" actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ACP, over

(2) The maximum "contribution percentage amounts" permitted by the ACP test in this Section (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of their "contribution percentages" beginning with the highest of such percentages).

(j) **Disaggregation and otherwise excludable employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulations §1.401(m)-5. Furthermore, the provisions of Code §401(m)(5)(C) may be used to exclude from consideration all "NHCEs" who have not satisfied the minimum age and service requirements of Code §410(a)(1)(A). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code §410(a) provided such date is applied on a consistent and uniform basis to all Participants.

(k) **"HCEs" as sole eligible employees.** If, for the applicable year for determining the ACP of the "NHCEs" for a Plan Year, there are no eligible "NHCEs," then the Plan is deemed to satisfy the ACP test for the Plan Year.

(l) **Authority to correct.** In the event the Plan does not satisfy one of the tests set forth in Plan Section 4.7(a), the Administrator shall adjust "excess aggregate contributions."

(m) **Corrective distribution.** On or before the close of the following Plan Year, the Highly Compensated Participant having the largest allocation of "contribution percentage amounts" shall have a portion of such "contribution percentage amounts" (and "income" allocable to such amounts) distributed until the total amount of "excess aggregate contributions" has been distributed, or until the amount of the Participant's "contribution percentage amounts" equals the "contribution percentage amounts" of the Highly Compensated Participant having the next largest amount of "contribution percentage amounts." This process shall continue until the total amount of "excess aggregate contributions" has been distributed.

(n) **Determination of income or loss.** For the purpose of this Section, "income" means the income or losses allocable to "excess aggregate contributions," which amount shall be determined and allocated, at the discretion of the Administrator, using any of the methods set forth below. The method must be used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year. "Gap period" income may not be distributed.

(1) **Method of allocating "income."** The Administrator may use any reasonable method for computing the "income" allocable to Excess Contributions, provided that the method does not violate Code §401(a)(4), is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating "income" to Participant's Accounts. A Plan will not fail to use a reasonable method for computing the "income" allocable to Excess Contributions merely because the "income" allocable to Excess Contributions is determined on a date that is no more than seven (7) days before the distribution.

(2) **Alternative method of allocating Plan Year income.** The Administrator may allocate "income" to "excess aggregate contributions" for the Plan Year by multiplying the "income" for the Plan Year allocable to the amounts taken into account under this Section (including contributions made for the Plan Year), by a fraction, the numerator of which is the "excess aggregate contributions" for the Employee for the Plan Year, and the denominator of which is the sum of the:

(i) Account balance attributable to contributions taken into account under this Section as of the beginning of the Plan Year, and

(ii) Any additional amount of such contributions made for the Plan Year.

(o) **Excise tax.** Any "excess aggregate contributions" (and "income") which are distributed after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code §4979.

(p) **Aggregation with other plans.** In the event this Plan satisfies the requirements of Code §401(a)(4), 401(m), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code sections only if aggregated with this Plan, then this Section shall be applied by determining the ACP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's "NHCEs" are involved in a plan coverage change as defined in Regulations §1.401(m)-2(c)(4), then any adjustments to the "NHCE's" ACP for the prior year will be made in accordance with such Regulations, if the Employer has elected in the Adoption Agreement to use the prior year testing method. Plans may be aggregated in order to satisfy Code §401(m) only if they have the same Plan Year and use the same ACP testing method.

(q) **ACP if multiple plans.** For the purposes of this Section, if an "HCE" is a Participant under two (2) or more plans (other than an employee stock ownership plan as defined in Code §4975(e)(7)) which are maintained by the Employer or an Affiliated Employer to which "matching contributions," nondeductible voluntary Employee contributions, or both, are made, all such contributions on behalf of such "HCE" shall be aggregated for purposes of determining such HCE's actual contribution ratio. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code §401(m).

4.8 EMPLOYEE MANDATORY CONTRIBUTIONS

(a) **Non-Standardized Pre-Approved plan.** Each Eligible Employee must contribute the amount set forth in the Adoption Agreement to become a Participant. The Employee Mandatory Contributions shall be credited to the Participant's Accumulated Employee Contributions Benefit Account.

(b) **Full vesting.** The Accumulated Employee Contributions Benefit shall be fully Vested at all times.

(c) **Withdrawals.** Withdrawals from the Accumulated Employee Contributions Benefit Account are not permitted prior to termination of employment. Furthermore, no forfeitures shall occur solely as a result of an Employee's withdrawal of Employee Contributions.

(d) **Discontinuance.** A Participant may discontinue Employee Mandatory Contributions by notifying the Employer at least ten (10) days prior to the end of an applicable pay period in accordance with procedures established by the Employer.

(e) **Resumption of contributions.** Any Participant who has elected to discontinue Employee Mandatory Contributions may resume making Employee Mandatory Contributions at any time pursuant to the procedures established by the Employer.

4.9 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator, amounts may be transferred (within the meaning of Code §414(l)) to this Plan from other tax qualified plans under Code §401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Transfer Account."

(b) **Accounting of transfers.** Amounts in a "Participant's Transfer Account" shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (d) below, provided the restrictions of Subsection (c) below are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Restrictions on Elective Deferrals.** Except as permitted by Regulations (including Regulations §1.411(d)-4), amounts attributable to elective contributions (as defined in Regulations §1.401(k)-6), including amounts treated as elective contributions, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in the Code §401(k) Regulations.

(d) **Distribution of plan–to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Plan Sections 5.11 and 5.12, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(e) **Segregation.** The Administrator may direct that Employee transfers made after a valuation date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(f) **Protected benefits.** Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall not result in the elimination or reduction of any "Section 411(d)(6) protected benefit" (as described in Section 8.1(e)) that may not be eliminated or reduced pursuant to Regulations §1.411(d)-4.

ARTICLE V
BENEFITS

5.1 RETIREMENT BENEFITS

(a) **Normal Retirement Benefit.** The retirement benefit to be provided for each Participant who retires on the Normal Retirement Date shall be equal to the Participant's Accrued Benefit (herein called the Participant's "Normal Retirement Benefit"). A Participant's Accrued Benefit is based on the Participant's Frozen Accrued Benefit (if any) and the retirement benefit formula specified in the Adoption Agreement.

The "Normal Retirement Benefit" of each Participant shall not be less than the largest periodic benefit that would be payable to the Participant upon separation from service at or prior to Normal Retirement Age under the Plan exclusive of Social Security supplements, early retirement subsidies, premiums on disability or term insurance, and the value of the disability benefits not in excess of the "Normal Retirement Benefit." For purposes of comparing periodic benefits in the same form, commencing prior to and at Normal Retirement Age, the greater benefit is determined by converting the benefit payable prior to Normal Retirement Age into the same form of annuity benefit payable at Normal Retirement Age and comparing the amount of such annuity payments. In the case of a Top-Heavy Plan, the "Normal Retirement Benefit" shall not be smaller than the minimum benefit to which the Participant is entitled under Plan Section 5.6.

(1) **Cash Balance Formula.** If benefits are based on a Cash Balance Formula then the following provisions apply.

(i) **Adjustments to Hypothetical Account Balance**. With respect to that portion of the Participant Accrued Benefit attributable to the amount accumulated under a Cash Balance Formula, a Participant's Accrued Benefit is equal to, as of any determination date on or prior to the Participant's Normal Retirement, a single life annuity which is the Actuarial Equivalent to the projected value of the such Participant's Hypothetical Account Balance as of such determination date, with the projected value of the Participant's Hypothetical Account Balance determined using all Principal Credits determined under this Section through the determination date and Interest Credits under this Section through such Participant's Normal

Retirement Age, using the last Interest Credit of the Plan Year containing the determination date as the Interest Credit for subsequent periods through such Participant's Normal Retirement Age. However, if this Plan was amended from a traditional defined benefit plan formula to a Cash Balance Formula (a conversion amendment), then with respect to a Participant in the Plan as of the date of such amendment, the Accrued Benefit as of any determination date is equal to, and in no event less than, the sum of (1) the Participant's Accrued Benefit as of the date of the conversion amendment (pre conversion frozen benefit) and (2) the Participant's Accrued Benefit that accrues after the effective date of the conversion amendment such date (post-conversion cash balance benefit) determined under the preceding sentence. For purposes of determining a Participant's prior Accrued Benefit under clause (1) of the preceding sentence, such Participant's Accrued Benefit shall be credited with the amount of any early retirement benefit or retirement-type subsidy for the Plan Year in which the Participant retires if, as of such time, the Participant has met the age, service or other requirements under the Plan for entitlement to such benefit or subsidy.

At the end of each Principal Credit Period, the Hypothetical Account Balance shall be credited with the Principal Credit as set forth in the Adoption Agreement. Plan Section 1.67 applies if the Principal Credit is based on the Plan Month and Plan Section 1.68 applies if the Principal Credit is based on the Plan Quarter.

Except as provided in the next sentences, the Interest Credit shall be calculated by multiplying the Participant's Hypothetical Account Balance at the beginning of the Interest Credit Period by the Interest Credit Rate applicable for such Interest Credit Period. If a Participant's Annuity Starting Date occurs before the end of an Interest Credit Period, the Interest Credit for the partial Interest Credit Period shall be the amount elected in the Adoption Agreement. No Interest Credits shall accrue to any portion of the Hypothetical Account Balance after the Annuity Starting Date that applies to that portion.

(ii) **Eligibility for Allocation**. Notwithstanding the preceding provisions of this Subsection, a Participant shall only be eligible to receive the Principal Credit if he or she satisfies the conditions set forth in the Adoption Agreement for receiving Principal Credits.

(iii) **Top-Heavy Minimum**. Notwithstanding the above, a Participant's Accrued Benefit shall not be less than the amount of any Top-Heavy minimum benefit pursuant to Section 5.6.

(b) **Normal form of distribution.** The "Normal Retirement Benefit" payable to a Retired Participant pursuant to this Plan Section 5.1 shall be a pension commencing on the Participant's Retirement Date and continuing for the period specified by the Employer as the Normal Form of Benefit in the Adoption Agreement. The actual form of distribution of such benefit, however, shall be determined pursuant to the provisions of Plan Section 5.11.

(c) **No duplication of benefits/repayment of prior distributions.** If a Participant or Former Participant has received a distribution of all or a portion of his or her Accrued Benefit, then a Participant shall not be entitled to a duplication of benefits with respect to the portion of the Accrued Benefit which has been distributed. Accordingly, unless a repayment is made pursuant to the following paragraph, if the Participant has received, or was deemed to have received, a distribution of all or a portion of his or her Accrued Benefit, then the Participant's "Normal Retirement Benefit" and Accrued Benefit shall be actuarially reduced by the amount of such distribution.

If a Participant was not fully Vested at the time of a total distribution of his or her Vested Accrued Benefit, then the Participant may repay the amount of such distribution in order to restore the non-Vested portion of the Accrued Benefit. The Participant must make the repayment, with interest, within a period of the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. Any repayment by a Participant shall be equal to the total of:

(1) the amount of the distribution,

(2) interest on such distribution compounded annually at the rate of five percent (5%) per annum from the date of distribution to the date of repayment or to the last day of the first Plan Year ending on or after December 31, 1987, if earlier, and

(3) interest on the sum of (1) and (2) above compounded annually at the rate of one-hundred twenty percent (120%) of the federal mid-term rate (as in effect under Code §1274 for the first month of a Plan Year) from the beginning of the first Plan Year beginning after December 31, 1987, or the date of distribution, whichever is later, to the date of repayment.

(d) **Offset formula prior to January 1, 1989.** Notwithstanding anything in this Plan to the contrary, if this is an amendment to a Plan which was integrated with Social Security under an offset formula, then effective for Plan Years beginning after May 27, 1986, (or in the case of a Plan in existence on May 27, 1986, effective for Plan Years beginning after December 31, 1986) and before January 1, 1989, the following reductions shall be made in addition to any other required reductions.

(1) If the Plan (before amendment) assumed that the Participant would continue to receive, after retirement or severance, income which would be treated as wages for purposes of the Social Security Act, then the amount of the offset shall not exceed the maximum offset otherwise allowable prior to Plan Years beginning in 1989 multiplied by a fraction (not to exceed 1):

$$\frac{\text{Actual Years of Service at retirement or severance}}{\text{Total Years of Service at Social Security Retirement Age}}$$

(2) The amount of the offset shall not exceed the maximum offset otherwise allowable prior to Plan Years beginning in 1989 (determined in accordance with paragraph (1), if applicable), reduced by 1/15 for each of the first five years and 1/30 for each of the next five years by which the starting date of such benefit precedes the Social Security Retirement Age of the Participant, and reduced actuarially for each additional year thereafter.

5.2 ACCRUED BENEFITS

(a) **Accrual Method.** Except as otherwise provided in this Section, except for Plans with a Cash Balance Formula, a Participant's Accrued Benefit shall equal the following as elected in the Adoption Agreement:

(1) If the fractional rule is selected in the Adoption Agreement, a Participant's Accrued Benefit is the retirement benefit such Participant would receive at the Participant's Normal Retirement Date based on the retirement benefit formula set forth in Plan Section 5.1 of this Plan, multiplied by a fraction (not greater than one (1)), the numerator of which is the Participant's total number of Plan Years of Service or Years of Service, as selected in the Adoption Agreement, and the denominator of which is the aggregate number of Plan Years of Service or Years of Service, as selected in the Adoption Agreement, the Participant would accumulate if employment continued until Normal Retirement Age.

When determining a Participant's Accrued Benefit, the retirement benefit projected to be received at the Normal Retirement Date is the benefit to which the Participant would be entitled if the Participant continued to earn until the Normal Retirement Age the same rate of Average Compensation upon which the retirement benefit formula is based. This rate of Average Compensation is computed on the basis of Average Compensation taken into account under the Plan (but not to exceed the ten (10) years of service immediately preceding the determination).

(2) If the 133 1/3% (unit credit) rule is selected in the Adoption Agreement, a Participant's Accrued Benefit is the retirement benefit the Participant is entitled to receive pursuant to the retirement benefit formula set forth in Plan Section 5.1 of this Plan, based on the Participant's Average Compensation and Years of Service or Plan Years of Service as of the date of the determination of the Accrued Benefit.

(3) If the 3% rule is selected in the Adoption Agreement, a Participant's Accrued Benefit is the amount the Participant would receive at the Participant's Normal Retirement Date based on the formula as provided in Section 5.1 of this Plan (assuming the Participant had participated in the Plan at the earliest possible entry age and had served continuously until the earlier of Normal Retirement Age or age 65), multiplied by three percent (3%) for each Plan Year of Service (including years after the Participant's Normal Retirement Age) not to exceed 33 1/3 years. The benefit to which a Participant would be entitled shall be determined as if the Participant continued to earn the same rate of Average Compensation taken into account under the Plan, but not to exceed 10 years, whichever produces the highest average.

(4) If this Plan is funded exclusively by the purchase of individual insurance Contracts (except for any Top-Heavy sidefund trust maintained for purposes of meeting the minimum benefit requirements of Code §416(c)) and Contracts will be purchased to provide all benefits under the Plan, then a Participant's Accrued Benefit will be determined under this paragraph. Each Participant's Accrued Benefit is the cash surrender value the Participant's insurance Contracts would have had on the applicable date if (A) premiums payable for the Plan Year, and all prior Plan Years, under such Contracts had been paid before lapse or there was reinstatement of the Policy, (B) no rights under such Contracts had been subject to a security interest at any time during the Plan Year, and (C) no policy loans other than loans to pay Contract premiums which are repaid at the end of the Plan Year were outstanding at any time during the Plan Year. Furthermore, in order for this accrual rule to apply, the following must be satisfied:

(i) All contracts must provide for level annual premium payments to be paid for the period commencing with the date that each individual became a Participant in the Plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective) and extending to the Normal Retirement Age for each such individual;

(ii) Benefits provided by the Plan must be equal to the benefits provided under each Contract at Normal Retirement Age under the Plan and must be guaranteed by an insurance carrier (licensed under the laws of a State to do business with the Plan) to the extent premiums have been paid;

(iii) The premium payments for a Participant who continues benefiting after Normal Retirement Age must be equal to the amount necessary to fund additional benefits that accrued under the Plan's benefit formula for the Plan Year;

(iv) All benefits must be funded through Contracts of the same series which must have cash values based on the same terms (including interest and mortality assumptions) and the same conversion rights. A Plan does not fail to satisfy this requirement, however, if any prospective change in the Contract series or Insurer applies on the same terms to all Participant's in the Plan; and

(v) No rights under any Contracts may be subject to a security interest at any time, and no policy loans, including loans to Participant's, will be made at any time.

Notwithstanding the preceding, a group insurance Contract may be used in lieu of individual Contracts provided the requirements of Regulations §1.412(i)-1(c) are satisfied.

(b) **Years prior to Code §411.** For Plan Years beginning before Code §411 is applicable hereto, a Participant's Accrued Benefit shall be the greater of that provided by the Plan, or 1/2 of the benefit which would have accrued had the provisions of this Section been in effect. In the event the Accrued Benefit as of the effective date of Code §411 is less than that provided by this Section, such difference shall be accrued pursuant to this Section.

(c) **Post-NRA accruals.** Notwithstanding the above, the Accrued Benefit of any Participant who was credited with at least one Hour of Service in a Plan Year beginning after December 31, 1987, attributable to the retirement benefit formula at the close of any Plan Year coinciding with or next following the attainment of Normal Retirement Age shall be equal to the retirement benefit determined pursuant to the retirement benefit formula pursuant to Section 5.1 based upon Average Compensation and Years of Service (or Plan Years of Service, if applicable) determined at the close of any such Plan Year.

(d) **Employee contributions.** A Participant's Accrued Benefit derived from Employer contributions is the excess, if any, of the total Accrued Benefit over the Accumulated Employee Contributions Benefit derived from Voluntary Employee Contributions and Employee Mandatory Contributions. A Participant's Accrued Benefit derived from Employee Contributions shall be equal to the Accumulated Employee Contributions Benefit and Employee Mandatory Contribution Benefit.

(e) **Fresh-start rules.** Regardless of the preceding, the Accrued Benefit of each Participant in the "Fresh-Start Group" (as selected in the Adoption Agreement) shall not be less than the amount determined pursuant to the following, as selected in the Adoption Agreement. However, if accruals are based on the fractional accrual method, the 3% method, or if the Plan satisfies the safe harbor for insurance contract plans in Regulations §1.401(a)(4)-3(b)(5), (1) below shall be the only method used to determine the Participant's Frozen Accrued Benefit. Furthermore, in the case of a plan that is exempt from Code §412 pursuant to Code §412(e)(3) ("Section 412(i) Plan"), the words "projected benefit" and "frozen projected benefit" (as defined in Plan Section 5.2(g)) will be substituted for "Accrued Benefit" and "Frozen Accrued Benefit" respectively, wherever they appear in this Section. The "projected benefit" is the Participant's Normal (or late, if the Participant has previously attained Normal Retirement Age) Retirement Benefit determined on the basis of current average annual compensation and all years of Credited Service plus years of Credited Service projected through the later of the year the Participant attains Normal Retirement Age or the current Plan Year.

(1) Formula with wear-away -- the greater of (A) the Participant's Frozen Accrued Benefit, or (B) the Participant's Accrued Benefit calculated pursuant to this Section (taking into account the Participant's total years of Credited Service) based on the current retirement benefit formula under the Plan.

(2) Formula without wear-away -- The sum of (A) the Participant's Frozen Accrued Benefit and (B) the Participant's Accrued Benefit calculated pursuant to this Section, except that the number of years of Credited Service taken into account pursuant to Plan Section 5.1(a), if this is a unit benefit Plan, shall be limited to the number of years of Credited Service completed by the Participant after the Fresh-Start Date.

(3) Formula with extended wear-away -- The greater of (1) or (2) above.

(f) **Adjustment to Frozen Accrued Benefit.** If the Frozen Accrued Benefit is to be adjusted for increases in Compensation pursuant to the election made by the Employer in the Adoption Agreement, then the following provisions shall apply to adjust each Participant's Frozen Accrued Benefit determined as of the latest Fresh-Start Date under the Plan, if, as of that date, the Plan contained a benefit formula under which the Participant's Accrued Benefit could be determined with reference to Compensation earned by the Participant in years beginning after the latest Fresh-Start Date occurring before the first Plan Year beginning on or after January 1, 1994. In the case of a "Section 412(i) Plan," the words "projected benefit" and "frozen projected benefit" will be substituted for "Accrued Benefit" and "Frozen Accrued Benefit" respectively, wherever they appear in this Subsection.

(1) If a "Fresh-Start Group" fails to satisfy the minimum coverage requirements of Code §410(b) for any Plan Year, then the provisions of this Subsection (g) will not apply for that year or any subsequent year. A "Fresh-Start Group" is deemed to satisfy the minimum coverage requirement of Code §410(b) for any Plan Year if any one of the following requirements is satisfied:

(i) the "Fresh-Start Group" satisfied the minimum coverage requirements of Code §410(b) for the first five Plan Years beginning after the Fresh-Start Date;

(ii) the "Fresh-Start Group" satisfied the ratio percentage test of Regulations §1.410(b)-2(b)(2) as of the Fresh-Start Date;

(iii) the "Fresh-Start Group" consists of an "acquired group of Employees" that satisfied the minimum coverage requirements of Code §410(b) (determined without regard to any of the special rules pertaining to certain dispositions or acquisitions provided in Code §410(b)(6)(c)) as of the Fresh-Start Date; or

(iv) the Fresh-Start Date with respect to the "Fresh-Start Group" occurs before the first day of the first Plan Year beginning on or after January 1, 1994.

(2) If this is a unit credit plan, then with respect to Plan Years beginning after the latest Fresh-Start Date, the current benefit formula will provide each Participant in the "Fresh-Start Group" a benefit of not less than one-half of one percent (.5%) of the Participant's Average Compensation times the Participant's years of service after the latest Fresh-Start Date.

(3) If this is a flat benefit plan, then with respect to Plan Years beginning after the Plan's latest Fresh-Start Date, the current benefit formula will provide each Participant in the "Fresh-Start Group" a benefit of not less than twenty-five (25%) of the Participant's Average Compensation. If a Participant will have less than fifty (50) years of service under the Plan after the latest Fresh-Start Date through the year the Participant attains Normal Retirement Age (or current age, if later), then such minimum percentage will be reduced by multiplying it by the following ratio:

$$\frac{\text{Participant's years of service after the latest Fresh-Start Date}}{50}$$

(4) The minimum benefit in paragraphs (5) through (7) below take into account an Employee's past service in determining the Participant's Accrued Benefit under the Plan and may cause the Plan to fail to satisfy the safe harbor for past service in Regulations §1.401(a)(4)-5(a)(3).

(5) If this Plan was a defined benefit excess plan as of the latest Fresh-Start Date, then the Frozen Accrued Benefit of each Participant in the "Fresh-Start Group" will be increased, to the extent necessary, if any, so that the base benefit percentage, determined with reference to all years of Credited Service as of the latest Fresh-Start Date, is not less than fifty percent (50%) of the excess benefit percentage as of the latest Fresh-Start Date, determined with reference to all years of Credited Service as of the latest Fresh-Start Date. For this purpose, a defined benefit excess plan is a defined benefit plan under which the rate at which Employer-provided benefits are determined with respect to Average Compensation above the integration level under the Plan is greater than the rate at which Employer-provided benefits are determined with respect to Average Compensation at or below the integration level.

(6) If this Plan was a PIA offset plan as of the latest Fresh-Start Date, then the offset applied to determine the Frozen Accrued Benefit of each Participant in the "Fresh-Start Group" will be decreased, to the extent necessary, if any, so that it does not exceed fifty percent (50%) of the benefit determined without applying the offset, taking into account all years of Credited Service as of the latest Fresh-Start Date. For this purpose, a PIA offset plan is a plan that applies the Plan's benefit rates uniformly regardless of an Employee's Compensation, but that reduces an Employee's benefit by a stated percentage of the Employee's primary insurance amount under the Social Security Act.

(7) In the case of a Plan other than a Plan described in paragraphs (5) and (6) above, the Frozen Accrued Benefit of each Participant in the "Fresh-Start Group" will be increased, to the extent necessary, if any, in a manner that is economically equivalent to the adjustment required under paragraphs (5) and (6).

(8) The Frozen Accrued Benefit (as adjusted under paragraphs (5) through (7) above, as applicable) of each Participant in the "Fresh-Start Group" will be adjusted in accordance with one of the following methods as elected by the Employer in the Adoption Agreement. However, the Frozen Accrued Benefit of each "TRA '86 Section 401(a)(17) participant" or "OBRA '93 Section 401(a)(17) participant" will be adjusted in accordance with paragraph (9) below. For purposes of this Section, a "TRA '86 Section 401(a)(17) participant" means a Participant whose Accrued Benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1994, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1989, that exceeded $200,000. An "OBRA '93 Section 401(a)(17) participant" means a Participant whose Accrued Benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1994, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1994, that exceeded $150,000.

(i) Old compensation fraction: The Frozen Accrued Benefit of each Participant in the "Fresh-Start Group" as adjusted in paragraphs (5) through (7) above, as applicable, will be multiplied by a fraction (not less than one (1)), the numerator of which is the Participant's compensation for the current Plan Year, using the same definition and compensation formula used

in determining the Participant's Frozen Accrued Benefit, and the denominator of which is the Participant's compensation for the Plan Year ending on the latest Fresh-Start Date, determined in the same manner as the numerator.

(ii) New compensation fraction: The Frozen Accrued Benefit of each Participant in the "Fresh-Start Group" as adjusted in paragraphs (5) through (7) above, as applicable, will be multiplied by a fraction (not less than one (1)), the numerator of which is the Participant's Average Compensation for the current Plan Year, and the denominator of which is the Participant's Average Compensation as of the Fresh-Start Date, determined in the same manner as the numerator.

(iii) Reconstructed compensation fraction: The Frozen Accrued Benefit of each Participant in the "Fresh-Start Group," as adjusted in paragraphs (5) through (7) above, as applicable, will be multiplied by a fraction (not less than one (1)), the numerator of which is the Participant's Average Compensation for the current Plan Year, and the denominator of which is the Participant's "reconstructed compensation" as of the Fresh-Start Date. A Participant's "reconstructed compensation" will be equal to the Participant's Average Compensation for the Plan Year elected by the Employer in the Adoption Agreement multiplied by a fraction, the numerator of which is the Participant's compensation for the Plan Year ending on the latest Fresh-Start Date determined using the same compensation definition and compensation formula used to determine the Participant's Frozen Accrued Benefit, and the denominator of which is the Participant's Compensation for the year selected in the Adoption Agreement, determined in the same manner as the numerator.

(9) If elected by the Employer in the Adoption Agreement, the Frozen Accrued Benefit of each "TRA '86 Section 401(a)(17) participant" or "OBRA '93 Section 401(a)(17) participant" in the "Fresh-Start Group" will be adjusted in accordance with the following method:

(i) Participant who are both "TRA '86 Section 401(a)(17) participants" and "OBRA '93 Section 401(a)(17) participants":

(A) Determine the Frozen Accrued Benefit of each "TRA '86 Section 401(a)(17) participant" as of the last day of the last Plan Year beginning before January 1, 1989.

(B) Adjust the amount in (A) up through the last day of the last Plan Year beginning before the first Plan Year beginning on or after January 1, 1994, by multiplying it by the following fraction (not less than one (1)). The numerator of the fraction is the "TRA '86 Section 401(a)(17) participant's" average compensation determined for the current year (as limited by Code §401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1989. The denominator of the fraction is the Participant's average compensation for the last day of the Plan Year beginning before January 1, 1989, using the definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1989.

(C) Determine the "TRA Section 401(a)(17) participant's" Frozen Accrued Benefit as of the last day of the last Plan Year beginning before January 1, 1994.

(D) Subtract the amount determined in (B) from the amount determined in (A).

(E) Adjust the amount in (D) by multiplying it by the following fraction (not less than one (1)). The numerator of the fraction is the "TRA '86 Section 401(a)(17) participant's" average compensation determined for the current year (as limited by Code §401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1994. The denominator of the fraction is the Participant's average compensation for the last day of the last Plan Year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1994.

(F) Adjust the amount in (A) by multiplying it by the following fraction (not less than one (1)). The numerator of the fraction is the "TRA '86 Section 401(a)(17) participant's" average compensation for the current year (as limited by Code §401(a)(17)), using the same definition of compensation and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1989. The denominator of the fraction is the Participant's average compensation for the last day of the last Plan Year beginning before January 1, 1989, using the definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1989.

(G) Add the amounts determined in (E), and the greater of (F) or (B).

(ii) Participants who are "OBRA '93 Section 401(a)(17) participants" only:

(A) Determine the Frozen Accrued Benefit of each "OBRA '93 Section 401(a)(17) participant" as of the last day of the Plan Year beginning before January 1, 1994.

(B) Adjust the amount in (A) by multiplying it by the following fraction (not less than one (1)). The numerator of the fraction is the average compensation of the "OBRA '93 Section 401(a)(17) participant" determined for the current year (as limited by Code §401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1994. The denominator of the fraction is the Participant's average

compensation for the last day of the last Plan Year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last Plan Year beginning before January 1, 1994.

(g) **"Frozen projected benefit."** For purposes of Plan Sections 5.2(e) and 5.2(f), a Participant's "frozen projected benefit" (which term is only applicable if the Plan is a fully-insured Code §412(e)(3) Plan) is equal to the Participant's Frozen Accrued Benefit. However, if as of the latest Fresh-Start Date, the Participant's Accrued Benefit is determined in accordance with Code §411(b)(1)(F), the Participant's "frozen projected benefit" is the greater of (a) and (b), where (a) is equal to the Participant's "projected benefit" under the Plan on the latest Fresh-Start Date (or the date the Participant terminated service, if earlier) multiplied by a fraction, the numerator of which is the Participant's Years of Credited Service, and the denominator of which is the Participant's Years of Credited Service through the later of the Plan Year in which the Participant attains Normal Retirement Age and the current Plan Year, and (b) is equal to the amount that would be payable to the Participant at Normal Retirement Age (or current age, if later) under the insurance contract(s) assuming that the only premiums not paid under the contract(s) are those that are due for service after the latest Fresh-Start Date.

If, as of the Participant's latest Fresh-Start Date, then the amount of a Participant's "frozen projected benefit" was limited by the application of Code §415, the Participant's "frozen projected benefit" will be increased for years after the latest Fresh-Start Date to the extent permitted under Code §415(d)(1). In addition, the "frozen projected benefit" of a Participant whose "frozen projected benefit" includes top-heavy minimum benefits provided in Plan Section 5.6 will be increased to the extent necessary to comply with the average compensation requirement of Code §416(c)(1)(D)(i).

If: (1) the Plan's normal form of benefit in effect on the Participant's latest Fresh-Start Date is not the same as the normal form under the Plan after such Fresh-Start Date and/or (2) the normal retirement age for any Participant on that date was greater than the Normal Retirement Age for that Participant under the Plan after such Fresh-Start Date, then the "frozen projected benefit" will be expressed as an actuarially equivalent benefit in the normal form under the Plan after the Participant's latest Fresh-Start Date, commencing at the Participant's Normal Retirement Age under the Plan in effect after such latest Fresh-Start Date.

If the Plan provides a new optional form of benefit with respect to a Participant's "frozen projected benefit," such new optional form of benefit will be provided with respect to each Participant's entire "projected benefit," and the Participant's "projected benefit" minus the Participant's "frozen projected benefit" will be equal to at least .5% times the Participant's Years of Service after the Fresh-Start Date, up to and including the year the Participant attains Normal Retirement Age (or current age, if later).

(h) **Top-heavy minimum.** Notwithstanding the above, a Participant's Accrued Benefit derived from Employer contributions shall not be less than the minimum Accrued Benefit, if any, provided pursuant to Plan Section 5.6.

(i) **Floor-offset**. Notwithstanding the above, if elected in the Non-Standardized Pre-Approved Adoption Agreement, a Participant's Accrued Benefit shall be reduced by the Actuarial Equivalent of the portion of the Participant's account balance attributable to Employer contributions in the Plan specified in the Adoption Agreement as of the date such Accrued Benefit is calculated (plus the Actuarial Equivalent, without regard to mortality, of any prior distributions from that portion of the account balance). The amount of the offset described in the preceding sentence shall not recognize the Participant's account balance under such plan (described in the preceding sentence) that is attributable to, or made on account of, any elective deferrals to such plan (e.g., elective deferrals to a 401(k) plan as well as any matching contributions subject to Code §401(m)). Notwithstanding the preceding provisions of this paragraph, at the time the Participant's Accrued Benefit becomes payable, the Participant will be entitled to receive only the Participant's Vested Accrued Benefit offset by the Actuarial Equivalent of the portion of the Participant's account balance attributable to Employer contributions (other than amounts made on account of a Participant's elective deferrals (including, for example, matching contributions based on elective deferrals) in the plan specified in the Adoption Agreement that have become vested under the terms of that plan. Participants' Accrued Benefits, considered in conjunction with the defined contribution plan accounts subject to the offset, must satisfy the nondiscrimination requirements of Code §401(a)(4) and the Regulations thereunder.

Nondiscrimination. In addition, each Nonhighly Compensated Participant must receive an allocation in the defined contribution plan identified in the adoption agreement ("the DC plan") that is sufficient to ensure that each Nonhighly Compensated Participant has an aggregate normal allocation rate that is at least one third of the aggregate normal allocation rate of the Highly Compensated Participant with the highest such rate ("HCE rate"), or, if less, 5% of the Nonhighly Compensated Participant's Compensation, provided that the HCE rate does not exceed 25% of Compensation. If the HCE rate exceeds 25% of Compensation, then the aggregate normal allocation rate for each Nonhighly Compensated Participant's Compensation must be at least 5% increased by one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (e.g., the Nonhighly Compensated Participant's Compensation minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%). The Plan is deemed to satisfy the minimum aggregate allocation gateway requirement if the aggregate normal allocation rate for each Nonhighly Compensated Participant's Compensation is at least 7 1/2% of the Nonhighly Compensated Participant's Compensation 415 Compensation during the Principal Credit Period. In addition, the Plan is permitted to treat each Nonhighly Compensated Participant who benefits under this Plan as having an equivalent normal allocation rate equal to the average of the equivalent normal allocation rates under this Plan for all Nonhighly Compensated Participants who are benefitting under that Plan. In determining the aggregate normal accrual rate, the normal accrual rate and the equivalent normal allocation rate attributable to this Plan, and the equivalent accrual rate attributable to the DC Plan, and therefore the aggregate normal allocation rate are all determined without taking into account the imputation of permitted disparity unless both this Plan and the DC Plan satisfy the requirements of Code §410(b) and Regulation §1.401(a)(4)-1(b)(2) when each plan is tested separately and assuming that the average benefit percentage test of § 1.410(b)-5 is satisfied, and further provided that permitted disparity is taken into

account in only one of the two plans. All terms referring to "rates" used in this paragraph shall have the meaning that those same terms have under applicable regulations, e.g., a Participant's allocation rate under the DC plan is generally the sum of Employer contributions and the amount of forfeitures under that plan.

Cash Balance. If this Plan includes a Cash Balance Formula, then with respect to the portion of the Participant's Accrued Benefit attributable to the Cash Balance Formula, the benefits provided by such Cash Balance Formula under this Plan shall be no less than the amount needed to provide an Accrued Benefit (on the Annuity Starting Date) equal to the Actuarial Equivalent, at Normal Retirement Age, of 0.5% of Compensation for each Year of Credited Service under such formula. The actuarial assumptions for converting the resulting (reduced) Hypothetical Account Balance to an annuity will be the assumptions prescribed for that purpose in the Plan's definition of "Actuarial Equivalent." Furthermore, the Plan must satisfy the offset safe harbor requirements of Regulations §401(a)(4)-8(d).

(j) **Ratio Percentage Test 410(b) failsafe.** This Subsection applies if the Employer elects in the Non-Standardized Pre-Approved Adoption Agreement to have the special accrual rule apply. In such event, the Plan will provide an accrual to certain nonbenefiting Participants for any Plan Year in which the Plan otherwise would fail to satisfy the "coverage test." The Employer may modify this special accrual rule in an addendum to the Adoption Agreement. Any addendum, however, must add back Participants in a nondiscretionary and nondiscriminatory manner and may not be designed in a manner that could result in the Nonhighly Compensated Employees participating being only those with the lowest amounts of Compensation and/or the shortest periods of service and who may represent the minimum number of these Employees necessary to satisfy the "coverage test."

(1) A Plan satisfies the "coverage test" for a Plan Year if, taking into account all "includible" Employees for the entire Plan Year, the benefiting ratio of the "benefiting" ratio of the Nonhighly Compensated Employees who are "includible" is at least seventy percent (70%) of the "benefiting" ratio of the Highly Compensated Employees who are "includible." The "benefiting ratio" of the Nonhighly Compensated Employees who are "includible" is the number of "includible" Nonhighly Compensated Employees "benefiting" under the plan over the number of "includible" Employees who are Nonhighly Compensated Employees. The "benefiting" ratio of the Highly Compensated Employees who are "includible" is the number of Highly Compensated Employees "benefiting" under the Plan over the number of "includible" Highly Compensated Employees.

(2) "Includible" Employees are all Employees other than: (a) those Employees excluded from participating in the plan for the entire Plan Year by reason of the collective bargaining unit exclusion or the nonresident alien exclusion described in the Code or by reason of the age and service requirements of Article III; and (b) any Employee who incurs a separation from service during the Plan Year and fails to complete at more than 500 Hours of Service (or 3 months of service if the elapsed time method is being used) during such Plan Year.

(3) An Employee is "benefiting" under the Plan on a particular date if, under the Plan, the Employee is entitled to accrue a benefit for the Plan Year (without regard to Code §415 limitations or to any uniform benefit limitations imposed under the Plan).

In the event this Subsection applies, the Administrator will identify all Participants who are "includible" Nonhighly Compensated Employees who are not "benefiting" for the Plan Year and will provide an accrual to the minimum number of those Participants necessary to satisfy the "coverage test." To determine which Participants are eligible for the accrual, the Administrator will begin first with the "includible" Employees employed with the Employer on the last day of the Plan Year, then with the "includible" Employees who have separated from service during the Plan Year, from the latest to the earliest separation from service date, until the Plan satisfies the "coverage test." If two or more "includible" Employees have a separation from service on the same day, the Administrator will provide for an accrual for all such "includible" Employees, irrespective of whether the Plan can satisfy the "coverage test" by accruing benefits for fewer than all such "includible" Employees. An accrual under this special rule means credit for a full Year of Service (or Period of Service) for accrual purposes, or, if the Plan uses a partial accrual rule to determine Accrued Benefits, then a partial Year of Service. A partial Year of Service (or Period of Service) is a fraction, the numerator of which is the number of Hours of Service (or months of service) the Participant has completed during the relevant computation period and the denominator of which is the number of Hours of Service specified in the Adoption Agreement necessary for a full Year of Service for accrual purposes.

(k) **Frozen Plan.** If the Plan is frozen, then notwithstanding anything in the Plan to the contrary, all accruals cease as of the effective date of the Plan is frozen.

5.3 BENEFIT RESTRICTIONS UNDER CODE §436

(a) **Effective Date**

(1) **Interpretation of Provisions.** The limitations imposed by this Section shall be interpreted and administered in accordance with Code §436 and Regulations §1.436-1.

(2) **Valuation date other than first day of Plan Year.** For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code §436 will be applied in accordance with Regulations.

(b) **Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits**

(1) **In general.** If a Participant is entitled to an "unpredictable contingent event benefit" payable with respect to any event occurring during any Plan Year, then such benefit shall not be paid if the "adjusted funding target attainment percentage" for such Plan Year (A) is less than sixty percent (60%) or, (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the "adjusted funding target attainment percentage" were redetermined applying an actuarial assumption that the likelihood of occurrence of the "unpredictable contingent event" during the Plan Year is one hundred percent (100%).

(2) **Exemption.** Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations §1.436-1(f)(2)(iii).

(c) **Limitations on Plan Amendments Increasing Liability for Benefits**

(1) **In general.** No amendment to the Plan which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable shall take effect in a Plan Year if the "adjusted funding target attainment percentage" for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the "adjusted funding target attainment percentage."

(2) **Exemption if contribution is made**. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment upon payment by the Employer of the contribution described in Regulations §1.436-1(f)(2)(iv).

(3) **Exception for certain benefit increases.** The limitation set forth in Paragraph (1) does not apply to any amendment to the Plan that provides a benefit increase under a plan formula that is not based on Compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of Participants covered by the amendment. Paragraph (1) shall not apply to any other amendment permitted under Regulations §1.436-1(c)(4).

(d) **Limitations on Accelerated Benefit Distributions**

(1) **Funding percentage less than sixty percent (60%).** Notwithstanding any other provisions of the Plan, if the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date" and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a "prohibited payment." The limitation set forth in this Section (d)(1) does not apply to any payment of a benefit which under Code §411(a)(11) may be immediately distributed without the consent of the participant. In addition, if the Plan is amended to provide rollover contributions from a defined contribution plan that are used to provide additional annuity benefits, such contribution will not be accepted for a plan year described by this paragraph.

(2) **Bankruptcy.** Notwithstanding any other provisions of the Plan, a Participant or Beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%). In addition, during such period in which the Employer is a debtor, the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a "prohibited payment," except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's enrolled actuary certifies that the Plan's "adjusted funding target attainment percentage" for that Plan Year is not less than one hundred percent (100%). The limitation set forth in this Section (d)(2) does not apply to any payment of a benefit which under Code §411(a)(11) may be immediately distributed without the consent of the Participant. For Plan Years beginning on or after January 1, 2015 (or, in the case of a plan maintained pursuant to one or more collectively bargained agreement(s), January 1, 2016), the adjusted funding target attainment percentage used to apply the special restrictions during bankruptcy must be determined without taking into account the interest rate stabilization provisions of Code §430(h)(2)(C)(iv).

(3) Limited payment if funding percentage at least sixty percent (60%) but less than eighty percent (80%).

(A) **In general.** Notwithstanding any other provisions of the Plan, if the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%) (or would be less than eighty percent (80%) to the extent described in Section (c) of this Article, then a Participant or Beneficiary is not permitted to elect, and the Plan shall not pay any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," and the Plan shall not make any payment for the purchase of an irrevocable commitment

from an insurer to pay benefits or any other payment or transfer that is a "prohibited payment." The preceding sentence shall not apply if the present value (determined in accordance with Code §417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (B)(ii) below) does not exceed the lesser of:

(i) fifty percent (50%) of the present value (determined in accordance with Code §417(e)(3)) of the benefit payable in the optional form of benefit that includes the "prohibited payment"; or

(ii) one hundred percent (100%) of the PBGC maximum benefit guarantee amount (as defined in Regulations §1.436-1(d)(3)(iii)(C)).

The limitation set forth in this Section (d)(3) does not apply to any payment of a benefit which under Code §411(a)(11) may be immediately distributed without the consent of the Participant.

(B) Bifurcation if optional form unavailable.

(i) **Requirement to offer bifurcation.** If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of this Section (d)(3), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations §1.436-1(d)(3)(iii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Sections (d)(3)(A)(i) or (ii) above; or

(3) Defer commencement of the payments in accordance with any general right to defer commencement of benefits under the Plan.

(ii) **Rules relating to bifurcation.** If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations §1.436-1(d)(3)(ii)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant's or Beneficiary's benefits under the Plan in any optional form of benefit at that "annuity starting date" otherwise available under the Plan that would not have included a "prohibited payment" if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations §1.417(e)-1 are applied separately to the separate optional forms for the "unrestricted portion of the benefit" and the remainder of the benefit (the restricted portion).

(iii) **Plan alternative that anticipates election of payment that includes a "prohibited payment."** With respect to every optional form of benefit that includes a "prohibited payment" and that is not permitted to be paid under Regulations §1.436-1(d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Other Rules.

(i) **One time application.** Only one "prohibited payment" meeting the requirements of subparagraph (A) may be made with respect to any Participant during any period of consecutive Plan Years to which the limitations under Regulations §1.436-1(d) apply.

(ii) **Treatment of Beneficiaries.** For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an Alternate Payee, as defined in Code §414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then the determination of the "prohibited payment" is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an Alternate Payee and one or more other persons, then the "unrestricted amount" is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code §414(p)(1)(A)) with respect to the Participant or the Alternate Payee provides otherwise.

(iii) **Treatment of annuity purchases and plan transfers.** This paragraph (d)(3)(C)(iii) applies for purposes of applying paragraph (d)(3)(A) and determining the unrestricted portion of a payment. In the case of a prohibited payment described in Regulations §1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations §1.436-1(j)(6)(i)(C) (relating to certain plan

transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code §414(l)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations §1.436-1(d)(3)(i)(A).

(4) **Exception.** This Section (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.

(5) **Right to delay commencement.** If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a "prohibited payment" that is not permitted to be paid under Subsections (d)(1), (d)(2), or (d)(3) of this Article, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the Plan and applicable qualification requirements (such as Code §§411(a)(11) and 401(a)(9)).

(e) **Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls**

(1) **In general.** If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the "Section 436 measurement date." In addition, if the Plan is required to cease benefit accruals under this Section (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

(2) **Exemption.** Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations §1.436-1(f)(2)(v).

(3) **Temporary modification of limitation.** In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year for such percentage for such Plan Year, but only if the "adjusted funding target attainment percentage" for the preceding year is greater.

(f) **Methods to Avoid or Terminate Benefit Limitations.** See Code §§436(b)(2), (c)(2), (e)(2), and (f) and Regulations §1.436-1(f) for rules relating to Employer contributions and other methods to avoid or terminate the application of the limitations set forth in Sections (b), (c) and (d) of this Article for a Plan Year. In general, the methods an Employer may use to avoid or terminate one or more of the benefit limitations under Sections (b), (c) and (d) of this Article for a Plan Year include Employer contributions and elections to increase the amount of plan assets which are taken into account in determining the "adjusted funding target attainment percentage," making an Employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations, or providing security to the Plan.

(g) **Special Rules**

(1) **Rules of operation for periods prior to and after certification of Plan's "Adjusted Funding Target Attainment Percentage."**

(i) **In General.** Code §436(h) and Regulations §1.436-1(h) set forth a series of presumptions that apply (A) before the Plan's enrolled actuary issues a certification of the Plan's "adjusted funding target attainment percentage" for the Plan Year and (B) if the Plan's enrolled actuary does not issue a certification of the Plan's "adjusted funding target attainment percentage" for the Plan Year before the first day of the 10th month of the Plan Year (or if the Plan's enrolled actuary issues a range certification for the Plan Year pursuant to Regulations §1.436-1(h)(4)(ii) but does not issue a certification of the specific "adjusted funding target attainment percentage" for the Plan by the last day of the Plan Year). For any period during which a presumption under Code §436(h) and Regulations §1.436-1(h) applies to the Plan, the limitations under Sections (b), (c), (d) and (e) of this Article are applied to the Plan as if the "adjusted funding target attainment percentage" for the Plan Year were the presumed "adjusted funding target attainment percentage" determined under the rules of Code §436(h) and Regulations §1.436-1(h)(1), (2), or (3). These presumptions are set forth in the following Subsections.

(ii) **Presumption of Continued Underfunding Beginning First Day of Plan Year.** If a limitation under Sections (b), (c), (d) and (e) of this Article applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the "adjusted funding target attainment percentage" for the Plan for the current Plan Year, or, if earlier, the date Subsection (iii) or (iv) below applies to the Plan:

(A) The "adjusted funding target attainment percentage" of the Plan for the current Plan Year is presumed to be the "adjusted funding target attainment percentage" in effect on the last day of the preceding Plan Year; and

(B) The first day of the current Plan Year is a "Section 436 measurement date."

(iii) **Presumption of Underfunding Beginning First Day of 4th Month.** If the Plan's enrolled actuary has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year and the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year was either at least sixty percent (60%) but less than seventy percent (70%) or at least eighty percent (80%) but less than ninety percent (90%), or is described in Regulations §1.436-1(h)(2)(ii), then, commencing on the first day of the 4th month of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the "adjusted funding target attainment percentage" for the Plan for the current Plan Year, or, if earlier, the date Subsection (iv) below applies to the Plan:

(A) The "adjusted funding target attainment percentage" of the Plan for the current Plan Year is presumed to be the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year reduced by ten (10) percentage points; and

(B) The first day of the 4th month of the current Plan Year is a "Section 436 measurement date."

(iv) **Presumption of Underfunding on and after First Day of 10th Month.** If the Plan's enrolled actuary has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 10th month of the Plan Year (or if the Plan's enrolled actuary has issued a range certification for the Plan Year pursuant to Regulations §1.436-1(h)(4)(ii) but has not issued a certification of the specific "adjusted funding target attainment percentage" for the Plan by the last day of the Plan Year), then, commencing on the first day of the 10th month of the current Plan Year and continuing through the end of the Plan Year:

(A) The "adjusted funding target attainment percentage" of the Plan for the current Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the current Plan Year is a "Section 436 measurement date."

(2) New Plans, Plan Termination, Certain Frozen Plans, and Other Special Rules.

(i) The limitations in Sections (b), (c) and (e) of this Article do not apply to a new Plan for the first five (5) Plan Years of the Plan, determined under the rules of Code §436(i) and Regulations §1.436-1(a)(3)(i).

(ii) **Plan Termination.** The limitations on "prohibited payments" in Sections (b) and (d) of this Article do not apply to prohibited payments that are made to carry out the termination of the Plan in accordance with applicable law. Any other limitations under this Section do not cease to apply as a result of termination of the Plan.

(iii) **Exception to Limitations on Prohibited Payments Under Certain Frozen Plans.** The limitations on prohibited payments set forth in Sections (b) and (d) of this Article do not apply for a Plan Year if the terms of the Plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the Plan Year, provide for no benefit accruals with respect to any participants. This paragraph (iii) shall cease to apply as of the date any benefits accrue under the Plan or the date on which a Plan amendment that increases benefits takes effect.

(iv) **Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability.** During any period in which none of the presumptions under this Section (g) apply to the Plan and the Plan's enrolled actuary has not yet issued a certification of the Plan's "adjusted funding target attainment percentage" for the Plan Year, the limitations under Sections (b) and (c) of this Article shall be based on the inclusive presumed "adjusted funding target attainment percentage" for the Plan, calculated in accordance with the rules of Regulations §1.436-1(g)(2)(iii).

(3) **Special Rules under MAP-21.** The Plan may use the special rules relating to pension funding stabilization as set forth in the provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and as provided by guidance issued in Regulations or other guidance from the Internal Revenue Service, such as Notice 2012-61.

(4) **Multiple Employer Plans.** For a multiple employer plan to which Code §413(c)(4)(A) applies, including a plan for which the election described in Code §413(c)(4)(B) has been made, the rules in this Section apply separately to each Employer under the Plan, as if each such Employer maintained a separate plan. For a multiple employer plan to which Code §413(c)(4)(A) does not apply, the rules in this Section apply as if all Participants in the Plan are employed by a single Employer.

(5) **Notice Requirement.** See ERISA §101(j) for rules requiring the Plan Administrator of a single employer defined benefit pension plan to provide a written notice to Participants and Beneficiaries within 30 days after certain specified dates if the Plan has become subject to a limitation described in Subsection (b)(1), (d)(1), (d)(2) or (d)(3) of this Article.

(h) **Treatment of Plan as of Close of Prohibited or Cessation Period**

(1) Application to prohibited payments and accruals.

(A) **Resumption of prohibited payments.** If a limitation on "prohibited payments" under Section (d) of this Article applied to a Plan as of a "Section 436 measurement date," but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then the limitation does not apply to benefits with "annuity starting dates" that are on or after that later "Section 436 measurement date."

In addition, if so elected on the Adoption Agreement, after the Code "Section 436 measurement date" on which the limitation on "prohibited payments" under Section (d)(1) and (d)(3) cease to apply to the Plan, any Participant or Beneficiary who had an "annuity starting date" within the period during which that limitation applied to the Plan is permitted to make a new election (within 90 days after the "Section 436 measurement date" on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new "annuity starting date" to be changed to a single sum payment for the remaining value of the Participant or Beneficiary's benefit under the Plan, subject to the other rules in this Section and applicable requirements of Code §401(a), including spousal consent.

(B) **Resumption of benefit accruals.** If a limitation on benefit accruals under Section (e) of this Article applied to the Plan as of a "Section 436 measurement date," but that limitation no longer applies to the Plan as of a later "Section 436 measurement date," then benefit accruals shall resume prospectively and that limitation does not apply to benefit accruals that are based on service on or after that later "Section 436 measurement date," except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).

In addition, unless elected otherwise on the Adoption Agreement, benefit accruals that were not permitted to accrue because of the application of Section (e) of this Article shall be restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the Plan's enrolled actuary certifies that the "adjusted funding target attainment percentage" for the Plan Year would not be less than sixty percent (60%) taking into account any restored benefit accruals for the prior Plan Year.

(2) **Shutdown and other "unpredictable contingent event benefits."** If an "unpredictable contingent event benefit" with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitations of Section (b) of this Article, but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of Regulations §1.436-1(g)(5)(ii)(B)), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to Section (b) of this Article). If the "unpredictable contingent event benefit" does not become payable during the same Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for that benefit.

(3) **Treatment of Plan amendments that do not take effect.** If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section (c) or (e) of this Article, but is permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of Regulations §1.436-1(g)(5)(ii)(C)), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it shall be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(i) **Definitions**

(1) **Adjusted funding target attainment percentage.** The term "adjusted funding target attainment percentage" means the adjusted funding target attainment percentage as defined in Regulations §1.436-1(j)(1).

(2) **Annuity starting date.** The term "annuity starting date" means the annuity starting date as defined in Regulations §1.436-1(j)(2).

(3) **Prohibited payment.** The term "prohibited payment" means a prohibited payment as defined in Regulations §1.436-1(j)(6).

(4) **Section 436 measurement date.** The term "Section 436 measurement date" means the section 436 date as defined in Regulations §1.436-1(j)(8).

(5) **Unpredictable contingent event benefit.** The term "unpredictable contingent event benefit" means an unpredictable contingent event as defined in Regulations §1.436-1(j)(9).

5.4 EARLY RETIREMENT BENEFITS

If specified in the Adoption Agreement, a Participant may elect to retire on the Early Retirement Date. In the event that a Participant makes such an election, the Participant shall be entitled to receive an Early Retirement Benefit equal to the Vested Accrued Benefit payable at the Participant's Normal Retirement Date. However, if a Participant so elects, a distribution of an Early Retirement Benefit may be made on or after the Early Retirement Date, which Early Retirement Benefit shall be equal to the amount specified in the Adoption Agreement. Notwithstanding the preceding, if benefits are distributed in a form other than a nondecreasing life annuity, a Participant's Early Retirement Benefit shall not be less than the Actuarial Equivalent of the Participant's Accrued Benefit.

5.5 LATE RETIREMENT BENEFITS

(a) **Late retirement benefit.** In the event a Participant continues employment past the Participant's Normal Retirement Date, the retirement benefit provided shall be equal to the amount specified in the Adoption Agreement for the Late Retirement Benefit. At the close of each Plan Year prior to the actual Retirement Date, a Participant shall be entitled to a retirement benefit payable each subsequent Plan Year equal to the greater of (1) the retirement benefit determined at the close of the prior Plan Year, or (2) the Accrued Benefit determined at the close of the Plan Year, offset by the actuarial value (determined pursuant to Plan Section 1.4) of the total benefit distributions, if any, made by the close of the Plan Year. However, if pursuant to an election in the Adoption Agreement, the late retirement benefit is to be paid as though the Participant actually retired, then the offset referred to in (2) of the preceding sentence shall be applied to the total retirement benefit calculated pursuant to this Section rather than to the Accrued Benefit determined at the close of such Plan Year. To the extent that a Participant's benefit is determined by a Cash Balance Formula, the amount (if any) by which the Principal and Interest Credits for the Plan Year fall short of the overall amount required by this paragraph, an additional Interest Credit will be credited in such amount as is necessary to satisfy the requirements of this paragraph.

If a Participant continues to work beyond the date at which benefits under a Cash Balance Formula commence, and elects to commence benefits other than in the form of a lump-sum distribution, then the Participant's benefit shall be determined as follows. The initial amount of the Participant's benefit attributable to the Cash Balance Formula shall be determined as of the date of the last Principal Credit made to the Hypothetical Account Balance prior to the benefit commencement date, and the Participant's Hypothetical Account Balance shall thereafter be frozen (because such account is being paid to the Participant). If the Participant continues to perform services, then any additional Principal Credits and Interest credits under the Cash Balance Formula will be credited to a new Hypothetical Account Balance which will be used to provide additional payments to the Participant under the terms of Section 5.1(a).

(b) **414(k) account.** If this is an amendment to a Plan that previously permitted a Participant to elect to have the Present Value of Accrued Benefits segregated into a separate Section 414(k) Account, then such account shall remain in existence. No new Section 414(k) Accounts may be established under this Plan and any changes to existing Accounts shall be limited to adjustments for earnings, losses, or distributions. The Section 414(k) Account shall be charged or credited as appropriate with the net earnings, gains, losses, and expenses as well as any appreciation or depreciation in market value during each Plan Year attributable to such account. Notwithstanding any provision of this Plan to the contrary, any part of the Participant's interest which is in a Section 414(k) Account will be distributed in a manner satisfying the requirements of Code §401(a)(9) and the Regulations thereunder applicable to individual accounts.

(c) **Actuarial increases for delayed payment.** If as a result of actuarial increases to the benefit of a Participant who delays commencement of benefits beyond Normal Retirement Age the Accrued Benefit of such participant would exceed the limitations under Plan Section 6.1 for the Limitation Year, then immediately before the actuarial increase to the Participant's benefit that would cause such Participant's benefit to exceed the limitations of Plan Section 6.1, payment of benefits to such Participant will be suspended in accordance with Subsection (d) below, if applicable; otherwise, distribution of the Participant's benefit will commence.

Regardless of the preceding, if a Participant continues to work beyond the date at which benefits under a Cash Balance Formula commence, and elects to commence benefits other than in the form of a lump-sum distribution, then the Participant's benefit shall be determined as follows. The initial amount of the Participant's benefit attributable to the Cash Balance Formula shall be determined as of the date of the last Principal Credit made to the Hypothetical Account Balance prior to the benefit commencement date, and the Participant's Hypothetical Account Balance shall thereafter be frozen (because such account is being paid to the Participant). If the Participant continues to perform services, then any additional Principal Credits and Interest credits under the Cash Balance Formula will be credited to a new Hypothetical Account Balance which will be used to provide additional payments to the Participant under the terms of Section 5.1(a).

(d) **Suspension of benefits.** Regardless of Plan Section 5.5(a) above, the following provisions shall apply if the Employer elects to suspend benefits.

(1) Normal or early retirement benefits will be suspended for each calendar month during which an Employee completes at least forty (40) Hours of Service with the Employer in Act §203(a)(3)(B) service. Consequently, the amount of benefits which are paid later than Normal Retirement Age will be computed as if the Employee had been receiving benefits since Normal Retirement Age.

(2) If benefit payments have been suspended, then payments shall resume no later than the first day of the third calendar month after the calendar month in which the Employee ceases to be employed in Act §203(a)(3)(B) service. The initial payment upon

resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amount withheld during the period between the cessation of Act §203(a)(3)(B) service and the resumption of payments.

(3) No payment shall be withheld by the Plan pursuant to this Section unless the Plan notifies the Employee by personal delivery or first class mail during the first calendar month or payroll period in which the Plan withholds payments that benefits are suspended. Such notifications shall contain a description of the specific reasons why benefit payments are being suspended, a description of the Plan provision relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations may be found in Section 2530.203-3 of the Code of Federal Regulations.

In addition, the notice shall inform the Employee of the Plan's procedures for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the Plan pursuant to Act §503 and applicable regulations.

(4) The amount suspended shall be determined as follows:

(i) In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a Straight Life Annuity or a qualified Joint and Survivor Annuity, an amount equal to the portion of a monthly benefit payment derived from Employer contributions.

(ii) In the case of a benefit payable in a form other than the form described in Subsection (i) above, an amount of the Employer-provided portion of benefit payments for a calendar month in which the Employee is employed in Act §203(a)(3)(B) service, equal to the lesser of:

(A) The amount of benefits which would have been payable to the Employee if the Employee had been receiving monthly benefits under the Plan since actual retirement based on a Straight Life Annuity commencing at actual retirement age; or

(B) The actual amount paid or scheduled to be paid to the Employee for such month. Payments that are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of the above sentence.

(5) This Section does not apply to the minimum benefit to which the Participant is entitled under the top-heavy rules of Plan Section 5.6.

5.6 MINIMUM BENEFIT REQUIREMENT FOR TOP-HEAVY PLAN

(a) **Minimum benefit.** The minimum Accrued Benefit derived from Employer contributions to be provided under this Section for each Non-Key Employee and, if elected in the Adoption Agreement, each Key Employee, who is a Participant during a Top-Heavy Plan Year shall equal the product of (1) 415 Compensation averaged over the "averaging period" specified in the Adoption Agreement (not to exceed, for this purpose, five (5) years) or, if elected in the Adoption Agreement, five (5) consecutive limitation years (or actual number of limitation years, if less) which produce the highest average and (2) the lesser of (i) two percent (2%) (or any greater percentage specified in the Adoption Agreement) multiplied by Plan Years of Service or (ii) twenty percent (20%), expressed as a single life annuity.

(b) **Disregard service prior January 1, 1984.** For purposes of this Section, Years of Service for any Plan Year beginning before January 1, 1984, or for any Plan Year during which the Plan was not a Top-Heavy Plan shall be disregarded.

(c) **Disregarded compensation.** For purposes of this Section, 415 Compensation for any limitation year ending in a Plan Year which began prior to January 1, 1984, subsequent to the last limitation year during which the Plan is a Top-Heavy Plan, or in which the Participant failed to complete a Year of Service, shall be disregarded.

(d) **Disregarded service if no Key Employees or Frozen Plan.** Effective for any Plan Year beginning after December 31, 2001, for purposes of satisfying the minimum benefit requirements of Code §416(c)(1) and the Plan, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of Code §410(b)) no Key Employee or former Key Employee. Furthermore, notwithstanding anything in the Plan to the contrary, if this is a frozen plan, then no additional benefits shall accrue to any Key Employees or former Key Employees after the date the plan was frozen.

(e) **Application of annual compensation limit.** For the purposes of this Section, 415 Compensation shall be limited to the same dollar limitation set forth in Plan Section 1.16(f).

If "415 Compensation" for any prior year is taken into account in determining a Participant's minimum Accrued Benefit for the current Plan Year, then "415 Compensation" for such year is subject to the applicable annual Compensation limit in effect for that prior Plan Year. For purposes of determining the minimum Accrued Benefit in a Plan Year beginning after December 31, 2001, "415 Compensation" for any prior Plan Year shall be limited to $150,000 for any Plan Year beginning in 1994, 1995, or 1996; $160,000 for any Plan Year beginning in 1997, 1998, or 1999; and $170,000 for any Plan Year beginning in 2000 or 2001. Furthermore, in determining the minimum Accrued Benefit in Plan Years beginning on or after January 1, 1989 and prior to January 1, 1994, the limit

imposed on "415 Compensation" in effect for Plan Years beginning during those years is $200,000 (or such other amount as adjusted for increases in the cost of living in accordance with Code §415(d) for Plan Years beginning on or after January 1, 1989). For Plan Years beginning prior to January 1, 1989, the $200,000 Compensation limit imposed on "415 Compensation" shall apply only for Top-Heavy Plan Years and shall not be adjusted. The preceding two paragraphs shall be applied based on the Calendar Year or Fiscal Year if Compensation is based on such period (as elected in the Adoption Agreement).

(f) **Adjustment for form of payment.** If the "Normal Retirement Benefit" is to be paid in a form other than a single life annuity, the Accrued Benefit under this Section shall be the Actuarial Equivalent of the minimum Accrued Benefit under (a) above.

(g) **Adjustment for timing of payment.** If payment of the minimum Accrued Benefit commences at a date other than Normal Retirement Date, the minimum Accrued Benefit shall be the Actuarial Equivalent of the minimum Accrued Benefit commencing at Normal Retirement Date.

(h) **Participants entitled to top-heavy accrual.** For any Top-Heavy Plan Year, the minimum benefits set forth above shall accrue to each Non-Key Employee (or, if elected in the Adoption Agreement, all Participants) who has completed a Plan Year of Service, including those Non-Key Employees who have completed a Plan Year of Service but have been excluded from participation or have accrued no benefit because (1) such Non-Key Employee's Compensation is less than a stated amount, or (2) such Non-Key Employee declined to make Employee Mandatory Contributions (if required) to the Plan or (3) such Non-Key Employee is not employed on the last day of the accrual period, or (4) such Non-Key Employee's Accrued Benefit is reduced in any way because of integration with Social Security. Such required Accrued Benefit (to the extent required to be nonforfeitable under Code §416(b)) may not be forfeited under Code §411(a)(3)(B) or Code §411(a)(3)(D).

(i) **Coordination if Participant in 2 plans.** If a Non-Key Employee participates in both a defined benefit plan and a defined contribution plan included in a "Required aggregation group" (as defined in Section 9.2(f)), the Employer is not required to provide the Non-Key Employee with both the full and separate minimum benefit and the full and separate minimum contribution. Therefore, for Non-Key Employees who are participating in this Plan and one or more defined contribution plans maintained by the Employer, the top-heavy minimum benefits will be provided as elected in the Adoption Agreement and, if applicable, as follows:

(1) If the 2% defined benefit minimum is elected in the Adoption Agreement, then for each Non-Key Employee who is a Participant only in this Plan, the Employer will provide a minimum non-integrated benefit equal to two percent (2%) of such Participant's highest five (5) consecutive year average of 415 Compensation for each Plan Year of Service, in which the Plan is top-heavy, not to exceed ten (10).

(2) If the 5% defined contribution minimum is elected in the Adoption Agreement:

(i) The requirements of Plan Section 9.1 will apply except that each Non-Key Employee who is a Participant in this Plan and a defined contribution plan will receive a minimum allocation of five percent (5%) of such Participant's 415 Compensation from the applicable defined contribution plan.

(ii) For each Non-Key Employee who is a Participant only in this defined benefit plan, the Employer will provide a minimum non-integrated benefit equal to two percent (2%) of such Participant's highest five (5) consecutive year average 415 Compensation for each Plan Year of Service, in which the Plan is top-heavy, not to exceed ten (10).

(iii) For each Non-Key Employee who is a Participant only in the defined contribution plan, the Employer will provide a minimum allocation equal to three percent (3%) of such Participant's 415 Compensation.

5.7 PAYMENT OF RETIREMENT BENEFITS

When a Participant retires, the Administrator shall take all necessary steps and execute all required documents to cause the payment to him of the retirement benefit available to the Participant under the Plan.

5.8 DISABILITY RETIREMENT BENEFITS

(a) **Disability benefit.** If a Participant becomes Totally and Permanently Disabled pursuant to Plan Section 1.93 prior to retirement or separation from service and disability benefits have been elected in the Adoption Agreement, and such condition continues for a period of six (6) consecutive months and by reason thereof such Participant's status as an Employee ceases, then said disabled Participant shall be entitled to receive a benefit equal to the amount specified in the Adoption Agreement for Disability Retirement Benefits. In the event of a Participant's Total and Permanent Disability, the Administrator shall direct the commencement of the benefits payable hereunder pursuant to the provisions of Plan Sections 5.11 and 5.13 as though the Participant had retired.

(b) **Time of determination of benefit.** The benefit payable pursuant to (a) above shall be computed as of the Anniversary Date subsequent to termination of employment.

(c) **Disability after termination of employment.** In the event of the Terminated Participant's Total and Permanent Disability subsequent to termination of employment, the Terminated Participant (or the Terminated Participant's Beneficiary) shall be entitled to receive a distribution of the Actuarial Equivalent of such Terminated Participant's Vested Accrued Benefit pursuant to the provisions of Plan Sections 5.11 and 5.13.

5.9 DEATH BENEFITS

(a) **Death prior to retirement benefits beginning.** If a Participant dies prior to commencement of a normal retirement pension, deferred Vested pension, early retirement pension or disability pension, then the Participant's Beneficiary will receive a death benefit equal to the death benefit elected by the Employer in the Adoption Agreement and the provisions set forth herein. The Administrator will reduce a Participant's death benefit by any security interest held by the Plan by reason of a Plan loan made to the Participant pursuant to Plan Section 7.2.

(b) **Purchase of life insurance.** If an insured death benefit is to be provided pursuant to the Adoption Agreement, then as soon as practicable following the Anniversary Date coinciding with or next following a Participant's satisfaction of the eligibility requirements of Plan Section 3.1, the Administrator will direct that a life insurance Contract be purchased with a face amount to be determined by the Administrator in accordance with the Adoption Agreement. Additional life insurance Contracts will be purchased and/or surrendered as soon as practicable following subsequent Anniversary Dates as are necessary in accordance with the Adoption Agreement. Pending payment to a Beneficiary of any Contract proceeds it receives from an Insurer as a result of the death of the Participant, the Trustee (or Insurer) may set aside such proceeds in a separate account solely for the benefit of the Participant's Beneficiary. Such account may be invested in federally insured interest bearing savings accounts or time deposits (or a combination of both), in other fixed income investments or, in other investments permitted pursuant to Article VII. The separate account remains a part of the Plan assets, but it alone shares in any income earned on such account, and it alone bears any expense or loss on such account.

(c) **Death after retirement.** Upon the death of a Participant subsequent to the Participant's Retirement Date, but prior to commencement of retirement benefits, the Participant's Beneficiary shall be entitled to whatever death benefit may be available under the settlement arrangements pursuant to which the Participant's benefit is made payable.

(d) **Death after benefits begin.** Upon the death of a Participant subsequent to the commencement of retirement benefits, the Participant's Beneficiary shall be entitled to whatever death benefit may be available under the settlement arrangements pursuant to which the Participant's benefit is made payable.

(e) **Death after termination of employment.** If, pursuant to the Adoption Agreement, there are death benefits provided in addition to the Qualified Pre-Retirement Survivor Annuity, then in the event of a Terminated Participant's death subsequent to termination of employment (and the above provisions of subsection (d) do not apply), the Participant's Beneficiary shall receive the Actuarial Equivalent of such Vested death benefits as of the Anniversary Date coinciding with or next following the date of death.

(f) **Insurance where non-standard mortality.** For a Participant who is found by the Insurer to be insurable only at a mortality classification other than standard, the Trustee (or Insurer)s on a uniform and nondiscriminatory basis shall either (1) purchase an insurance Contract with a face amount that can be purchased at the standard rate for coverage as provided in Plan Section 5.9(a) for such Participant if such coverage could be obtained, (2) purchase such insurance Contract and pay the additional premium attributable to the excess mortality hazards, or (3) allow the Participant the right to pay the additional premium attributable to the excess mortality hazards. If a Participant is determined to be uninsurable, or if the Participant refuses to comply with the requirements of the Insurer, no life insurance Contract shall be required to be purchased on the life of such Participant.

(g) **Dividends and interest.** If the Plan provides for investment in insurance Contracts, dividends, interest and other credits paid by the Insurer(s) shall be applied, within the taxable year of the Employer in which received or within the next taxable year succeeding, toward the next premiums due before any further Employer contributions are supplied or used to purchase additional coverage.

(h) **Insurance where non-standard mortality.** Subject to the rules of the Insurer regarding the issuance of Contracts and any selections in the Adoption Agreement, additional Contracts shall not be purchased for a Participant due to increases in Compensation unless the increase in the face value is at least $1,000 or $10 per month if based on increases in the monthly retirement benefit.

(i) **Limitation on death benefit.** Notwithstanding anything in the Plan to the contrary, if a distribution is made from the Plan due to a Participant's death prior to the Participant's Normal Retirement Date, in no event shall the total amount of such distribution (whether or not funded through Contracts) exceed the greater of:

(1) The Actuarial Equivalent of the Participant's Accrued Benefit;

(2) One hundred (100) times the anticipated monthly retirement benefit; or

(3) The sum of (i) the face amount of all Contracts on the Participant's life (if any), plus (ii) the face amount of any additional Contracts on the Participant's life that could have been purchased, computed at the time of death, plus (iii) the Theoretical Individual Level Premium Reserve. The maximum face amount of all Contracts which may be purchased on a Participant's life is

the amount which could be purchased if less than two-thirds (2/3) of the Theoretical Contribution is used to purchase life insurance Contracts, or if less than one-third (1/3) of the Theoretical Contribution is used to purchase term insurance.

(j) **Proof of death and beneficiary.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive the death benefit payable as a result of the death of a Participant as the Administrator may deem desirable. The Administrator's determination of death and the right of any person to receive payment shall be conclusive.

(k) **Beneficiary designation.** Unless otherwise elected in the manner prescribed in Plan Section 5.12, the Beneficiary of the death benefit, or if elected in the Adoption Agreement, the portion of the death benefit necessary to fund the "minimum spouse's death benefit," shall be the Participant's surviving Spouse who shall receive such benefit in the form of a Pre-Retirement Survivor Annuity.

(1) Except, however, the Participant may designate a Beneficiary other than the Spouse for the Pre-Retirement Survivor Annuity if:

(i) The Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Plan Section 5.12, and the Spouse has waived the right to be the Participant's Beneficiary,

(ii) The Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code §414(p) which provides otherwise),

(iii) The Participant has no Spouse, or

(iv) The Spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the IRS) notice of such revocation or change with the Administrator. However, the Participant's Spouse must again consent in writing (or in such other form as permitted by the IRS) to any change in Beneficiary unless the original consent acknowledged that the Spouse had the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elected to relinquish such right.

(2) A Participant may, at any time and without the waiver of consent of the Participant's Spouse, designate a Beneficiary for any death benefits that exceed the amount needed to provide the Pre-Retirement Survivor Annuity.

(3) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority (moving to each subsequent category only if there are no individuals in the prior category), unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

(i) The Participant's surviving Spouse;

(ii) The Participant's children, including adopted children, per stirpes;

(iii) The Participant's surviving parents, in equal shares; or

(iv) The Participant's estate.

(4) If a Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, then the death benefit payable to such Beneficiary will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate).

(l) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) if a Participant has designated the Spouse as a Beneficiary, then a divorce decree that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code §414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(m) **Simultaneous death of Participant and Beneficiary.** If a Participant and his or her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Administrator will presume conclusively that the Beneficiary predeceased the Participant.

(n) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(o) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

(p) **Form of payment.** The benefit payable under this Section shall be paid pursuant to the provisions of Plan Sections 5.12 and 5.13.

(q) **Death before coverage is effective.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the standard rated premium amount which was or should have been used for such purpose.

(r) **Minimum death benefit.** In no event shall the death benefit payable to a surviving Spouse be less than the Actuarial Equivalent of the "minimum spouse's death benefit."

(s) **Definition of minimum spouse's death benefit.** For the purposes of this Section, the "minimum spouse's death benefit" means a death benefit for a Vested married Participant payable in the form of a Pre-Retirement Survivor Annuity. Such annuity payments shall be equal to the amount which would be payable as a survivor annuity under the Joint and Survivor annuity provisions of the Plan if:

(1) In the case of a Participant who dies after the Earliest Retirement Age, such Participant had retired with an immediate Joint and Survivor Annuity on the day before the Participant's date of death, or

(2) In the case of a Participant who dies on or before the Earliest Retirement Age, such Participant had:

(i) Separated from service on the date of the death,

(ii) Survived to the Earliest Retirement Age,

(iii) Retired with an immediate Joint and Survivor Annuity at the Earliest Retirement Age based on the Participant's Vested Accrued Benefit on the date of death, and

(iv) Died on the day after the day on which said Participant would have attained the Earliest Retirement Age.

(t) **Waiver of benefits.** A Beneficiary may waive benefits in accordance with procedures established by the Administrator.

5.10 TERMINATION OF EMPLOYMENT BEFORE RETIREMENT

(a) **Maximum period for payments.** Payment to a Former Participant of the Vested portion of the Accrued Benefit, unless the Former Participant otherwise elects, shall begin no later than the 60th day after the close of the Plan Year in which the latest of the following events occurs: (1) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (2) the 10th anniversary of the year in which the Participant commenced participation in the Plan; or (3) the date the Participant terminates service with the Employer. If the amount of the payment cannot be ascertained by such date, or if it cannot be made because of the inability to locate the Former Participant after reasonable efforts to do so, then a payment retroactive to such date may be made no later than sixty (60) days after the earliest date on which the amount can be ascertained or the date on which the Former Participant is located (whichever is applicable).

(b) **Earlier payments of benefits.** However, if elected in the Adoption Agreement, the Administrator shall, at the election of the Participant, direct earlier payment of the entire Vested portion of the Accrued Benefit provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner consistent with Section 5.11, including but not limited to, notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed $5,000 (or such lower amount as elected in the Adoption Agreement), the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include (1) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B) and (2) if selected in the Conditions for Distributions Upon Termination of Employment Section of the Adoption Agreement, the Participant's Rollover Account. If a mandatory distribution is made pursuant to this paragraph and such distribution (including any rollovers) is greater than $1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Plan Section 5.24 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested

benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Plan Section 5.24, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied.

Upon the earlier of (1) the distribution of the Vested portion of a former Employee's Accrued Benefit, or (2) a former Employee incurring five (5) 1-Year Breaks in Service if this Plan is a traditional-formula fully-insured plan within the meaning of Code§412(e)(3), the nonvested portion of such former Employee's Accrued Benefit will be treated as a forfeiture. All forfeitures shall be used to reduce future costs of the Plan. If elected in the Adoption Agreement, for purposes of this Section, if the Participant's Vested portion of the Present Value of Accrued Benefit is zero, then the deemed cashout rule will apply and the Participant shall be deemed to have received a distribution of such Vested portion. If the former Employee is rehired, then the buyback provisions of Section 3.5(g) apply.

For purposes of this Section, a Participant's Vested portion of the Present Value of Accrued Benefit shall not include accumulated deductible Employee contributions, within the meaning of Code §72(o)(5)(B), for Plan Years beginning prior to January 1, 1989.

If Contracts have been issued under the Plan on the life of a Terminated Participant, the Administrator may: (1) surrender such Contracts to the Insurer for their cash value and such cash shall become part of the Trust Fund assets; or (2) in the event that the Vested portion of the Terminated Participant's Present Value of Accrued Benefit equals or exceeds the values of any Contracts, the Trustee (or Insurer), when so directed by the Administrator pursuant to the Terminated Participant's election, shall assign, transfer, and set over to such Terminated Participant all Contracts on the Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with Plan Section 5.11. In the event that the Vested portion of the Terminated Participant's Present Value of Accrued Benefit does not at least equal the values of the Contracts, if any, the Terminated Participant may pay over to the Trustee (or Insurer) the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee (or Insurer) may, pursuant to the Participant's election, borrow the cash values of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Present Value of Accrued Benefit and then assign the Contracts to the Terminated Participant.

(c) **Vesting schedule.** The Vested portion of any Participant's Accrued Benefit shall be a percentage of such Participant's Accrued Benefit determined on the basis of the Participant's number of Years of Service (or Periods of Service if the elapsed time method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date).

(d) **Top-Heavy vesting schedule.** For any Top-Heavy Plan Year, the minimum top-heavy vesting schedule elected by the Employer in the Adoption Agreement will automatically apply to the Plan. The minimum top-heavy vesting schedule applies to all benefits within the meaning of Code §411(a)(7) except those attributable to Employee contributions, including benefits accrued before the effective date of Code §416 and benefits accrued before the Plan became top-heavy. Further, no decrease in a Participant's Vested percentage shall occur in the event the Plan's status as top-heavy changes for any Plan Year. However, this Plan Section 5.10(d) does not apply to the Accrued Benefit of any Employee who does not have an Hour of Service after the Plan has initially become top-heavy.

If in any subsequent Plan Year, the Plan ceases to be a Top-Heavy Plan, then unless otherwise elected in the Adoption Agreement, the Administrator shall continue to use the vesting schedule in effect while the Plan was a Top-Heavy Plan for each Employee who had an Hour of Service during a Plan Year when the Plan was Top-Heavy.

(e) **Full or partial termination.** Notwithstanding the vesting schedule above, upon any full or partial termination of this Plan, an affected Participant shall become fully Vested in the Accrued Benefit as of the date of the termination or partial termination (to the extent funded as of such date) which shall not thereafter be subject to forfeiture.

(f) **Amendment to Vesting schedule.** If this is an amended or restated Plan, then notwithstanding the vesting schedule specified in the Adoption Agreement, the Vested percentage of a Participant's Accrued Benefit shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement. The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Article, or due to changes in the Plan's status as a Top-Heavy Plan. With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the Vested percentage of each Participant will be the greater of the Vested percentage under the old vesting schedule or the Vested percentage under the new vesting schedule. Furthermore, if the Plan's vesting schedule is amended (including a change in the calculation of Years of Service or Periods or Service), then unless the amendment provides otherwise, the amended schedule will only apply to those Participants who complete an Hour of Service after the effective date of the amendment.

(g) **Continuation of old schedule if 3 Years of Service.** If the Plan's vesting schedule is amended, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to a top-heavy vesting schedule, then each Participant with at least three (3) Years of Service (or Periods of Service if the elapsed time method is elected) as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such

election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment, or deemed adoption date, and shall end sixty (60) days after the latest of:

(1) The adoption date, or deemed adoption date, of the amendment,

(2) The effective date of the amendment, or

(3) The date the Participant receives written notice of the amendment from the Employer or Administrator.

(h) **Excludable service for Vesting.** In determining Years of Service or Periods of Service for purposes of vesting under the Plan, Years of Service or Periods of Service shall be excluded as elected in the Adoption Agreement.

(i) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

5.11 DISTRIBUTION OF BENEFITS

(a) **Qualified Joint and Survivor Annuity.**

(1) Unless otherwise elected as provided below, a Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all Plan benefits in the form of a Joint and Survivor Annuity. The Joint and Survivor Annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the Spouse during the Spouse's lifetime at a rate equal to either fifty percent (50%), seventy-five percent (75%) (or, sixty-six and two-thirds percent (66 2/3%) if the qualified Joint and Survivor Annuity is greater than a joint and seventy-five percent (75%) annuity and the Insurer used to provide the annuity does not offer a joint and seventy-five percent (75%) annuity), or one hundred percent (100%) of the rate at which such benefits were payable to the Participant. Unless otherwise elected in the Adoption Agreement, a joint and fifty percent (50%) survivor annuity shall be considered the designated qualified Joint and Survivor Annuity and the normal form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect an alternative Joint and Survivor Annuity, which alternative shall be equal in value to the designated qualified Joint and Survivor Annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the Joint and Survivor Annuity by a married Participant, but without fulfilling the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(2) Any election to waive the Joint and Survivor Annuity must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and be consented to in writing (or in such other form as permitted by the IRS) by the Participant's "spouse." If the "spouse" is legally incompetent to give consent, the "spouse's" legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the "spouse" expressly permits designations by the Participant without the requirement of further consent by the "spouse"). Such "spouse's" consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no "spouse," the "spouse" cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's "spouse" may be revoked by the Participant in writing (or in such other form as permitted by the IRS) without the consent of the "spouse" at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a Joint and Survivor Annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former "spouse's" waiver shall not be binding on a new "spouse."

(3) The election period to waive the Joint and Survivor Annuity shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

(4) For purposes of this Section, "spouse" or "surviving spouse" means the Spouse or surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or surviving Spouse and a current spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a qualified domestic relations order as described in Code §414(p).

(5) With regard to the election, except as otherwise provided herein, the Administrator shall provide to the Participant no less than thirty (30) days and no more than one hundred eighty (180) days before the Annuity Starting Date a written (or such other form as permitted by the IRS) explanation of:

(i) The terms and conditions of the Joint and Survivor Annuity,

(ii) The Participant's right to make and the effect of an election to waive the Joint and Survivor Annuity,

(iii) The right of the Participant's "spouse" to consent to any election to waive the Joint and Survivor Annuity, and

(iv) The right of the Participant to revoke such election, and the effect of such revocation.

(6) Notwithstanding the above, if the Participant elects (with spousal consent if applicable) to waive the requirement that the explanation be provided at least thirty (30) days before the Annuity Starting Date, the election period shall be extended to the thirtieth (30th) day after the date on which such explanation is provided to the Participant, unless the thirty (30) day period is waived pursuant to the following provisions.

Any distribution provided for in this Section may commence less than thirty (30) days after the notice required by Code §417(a)(3) is given provided the following requirements are satisfied:

(i) The Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the Joint and Survivor Annuity and to elect (with spousal consent) a form of distribution other than a Joint and Survivor Annuity;

(ii) The Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant;

(iii) The Annuity Starting Date is after the time that the explanation of the Joint and Survivor Annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and

(iv) Distribution in accordance with the affirmative election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant.

(b) **Alternative forms of distributions.** In the event a married Participant duly elects pursuant to paragraph (a)(2) above not to receive the benefit in the form of a Joint and Survivor Annuity, or if such Participant is not married, in the form of a life annuity, the Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary of an amount which is the Actuarial Equivalent of the Accrued Benefit in one or more of the following methods which are permitted pursuant to the Adoption Agreement.

(1) One lump-sum payment in cash or in property.

(2) Partial withdrawals.

(3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(c) **Consent to distributions.** Benefits may not be paid without the Participant's and the Participant's "spouse's" consent if the Present Value of the Participant's Joint and Survivor Annuity derived from Employer and Employee contributions exceeds $5,000 and the benefit is "immediately distributable." However, spousal consent is not required if the distribution will be made in the form of a qualified Joint and Survivor Annuity and the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or "surviving spouse") before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62.

Notwithstanding the foregoing, if the value of the Participant's benefit derived from Employer and Employee contributions does not exceed $5,000, then the Administrator will distribute such benefit in a lump-sum. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant and the Participant's spouse consent in writing (or in such other form as permitted by the IRS) to such distribution. Any consent required under this paragraph must be obtained not more than one hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Section 5.11(a)(2).

For purposes of this Subsection, the Participant's benefit derived from Employer and Employee contributions shall not include: (1) the Participant's Qualified Voluntary Employee Contribution Account, and (2) if selected in the Conditions for Distributions Upon Termination of Employment Section of the Adoption Agreement, the Participant's Rollover Account.

(d) **Obtaining consent.** The following rules will apply with respect to the consent requirements set forth in Subsection (c):

(1) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan as provided in Regulations §1.417(a)-3;

(2) The Participant must be notified of the right to defer receipt of the distribution, and for notices provided in Plan Years beginning after December 31, 2006, such notification must also include the consequences of failing to defer any distributions. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions that are required under Plan Section 5.13;

(3) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than one hundred eighty (180) days before the Annuity Starting Date;

(4) Written (or such other form as permitted by the IRS) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than one hundred eighty (180) days before the Annuity Starting Date; and

(5) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

Any such distribution may commence less than thirty (30) days after the notice required under Regulations §1.411(a)-11(c) is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively elects a distribution.

(e) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Plan Section 5.13.

(f) **Annuity Contracts.** All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or spouse shall comply with all of the requirements of this Plan.

(g) **Explicit Bifurcation.** When elected on the Adoption Agreement, and as limited by any elections made on the AA, if a Participant elects to divide his or her Accrued Benefit between an amount that is subject to IRC §417(e) and an amount that is not subject to IRC §417(e), the amount of the distribution payable with respect to each specified portion of the Accrued Benefit is determined in accordance with the method for calculating the amount of a distribution payable in the optional form elected for that portion as if that portion were the Participant's entire Accrued Benefit.

5.12 DISTRIBUTION OF BENEFITS UPON DEATH

(a) **Qualified Pre-Retirement Survivor Annuity (QPSA).** Unless otherwise elected as provided below, a Vested Participant who dies before the Annuity Starting Date and who has a "surviving spouse" shall have the Pre-Retirement Survivor Annuity paid to the "surviving spouse." Except as otherwise elected in the Adoption Agreement, the Participant's "spouse" may direct that payment of the Pre-Retirement Survivor Annuity commence within a reasonable period after the Participant's death. If the "spouse" does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the "spouse" may elect a later commencement date. The annuity will be actuarially adjusted (using Actuarial Equivalent) if the annuity begins before or after the later of Normal Retirement Age or age 62. Any distribution to the Participant's "spouse" shall be subject to the rules specified in Plan Section 5.12(g).

(b) **Election to waive QPSA.** Any election to waive the Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and shall require the spouse's irrevocable consent in the same manner provided for in Plan Section 5.11(a)(2). Further, the spouse's consent must acknowledge the specific nonspouse Beneficiary. Notwithstanding the foregoing, the nonspouse Beneficiary need not be

acknowledged, provided the consent of the spouse acknowledges that the spouse has the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elects to relinquish such right.

(c) **Time to waive QPSA.** The election period to waive the Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains age 35 and end on the date of the Participant's death. An earlier waiver (with spousal consent) may be made provided a written (or such other form as permitted by the IRS) explanation of the Pre-Retirement Survivor Annuity is given to the Participant and such waiver becomes invalid at the beginning of the Plan Year in which the Participant turns age 35. In the event a Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

(d) **QPSA notice.** With regard to the election, the Administrator shall provide each Participant within the applicable election period, with respect to such Participant (and consistent with Regulations), a written (or such other form as permitted by the IRS) explanation of the Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Plan Section 5.11(a)(5). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:

(1) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35;

(2) A reasonable period after the individual becomes a Participant;

(3) A reasonable period ending after the Plan no longer fully subsidizes the cost of the Pre-Retirement Survivor Annuity with respect to the Participant; or

(4) A reasonable period ending after Code §401(a)(11) applies to the Participant.

For purposes of applying this Subsection, a reasonable period ending after the enumerated events described in (2), (3) and (4) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

(e) **Pre-REA.** The Pre-Retirement Survivor Annuity provided for in this Section shall apply only to Participants who are credited with an Hour of Service on or after August 23, 1984. Former Participants who are not credited with an Hour of Service on or after August 23, 1984, shall be provided with rights to the Pre-Retirement Survivor Annuity in accordance with Section 303(e)(2) of the Retirement Equity Act of 1984.

(f) **Consent.** If the value of the Pre-Retirement Survivor Annuity derived from Employer and Employee contributions does not exceed $5,000 the Administrator shall direct the distribution of such amount to the Participant's "spouse" in a single lump-sum as soon as practicable. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the "spouse" consents in writing (or in such other form as permitted by the IRS). If the value exceeds $5,000, an immediate distribution of the entire amount may be made to the "surviving spouse," provided such "surviving spouse" consents in writing (or in such other form as permitted by the IRS) to such distribution. Any consent required under this paragraph must be obtained not more than one hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Plan Section 5.11(a)(2).

(g) **Alternative forms of distribution.** Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Plan Section 5.13 and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant in the event there is an election to waive the Pre-Retirement Survivor Annuity, and for any death benefits in excess of the Pre-Retirement Survivor Annuity. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution. Furthermore, if the total death benefit does not exceed $5,000, then benefits will only be paid as lump-sum.

(1) One lump-sum payment in cash or in property.

(2) Partial withdrawals.

(3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.

(4) In the form of an annuity over the life expectancy of the Beneficiary.

(5) If death benefits in excess of the Pre-Retirement Survivor Annuity are to be paid to the "surviving spouse," such benefits may be paid pursuant to (1), (2) or (3) above, or used to purchase an annuity so as to increase the payments made pursuant to the Pre-Retirement Survivor Annuity.

(h) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Plan Section 5.13.

(i) **Payment to a child.** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the "surviving spouse" if the amount becomes payable to the "surviving spouse" when the child reaches the age of majority.

(j) **Voluntary Employee Contribution Account.** In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's "spouse," the portion of the distribution attributable to the Participant's Voluntary Employee Contribution Account shall be in the same proportion that the Participant's Voluntary Employee Contribution Account bears to the Participant's total interest in the Plan.

(k) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Plan Section 5.13(a)(4).

5.13 MINIMUM DISTRIBUTION REQUIREMENTS

(a) **General Rules.**

(1) **Effective date.** The provisions of this Section are effective January 1, 2004; however, except as otherwise provided herein, the provisions of this Section will first apply for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006.

(2) **Requirements of Regulations incorporated.** All distributions required under this Section shall be determined and made in accordance with Code §401(a)(9), including the incidental death benefit requirement in Code §401(a)(9)(G), and the Regulations thereunder.

(3) **Precedence.** Subject to the joint and survivor annuity requirements of the Plan, the requirements of this Section shall take precedence over any inconsistent provisions of the Plan.

(4) **TEFRA §242(b)(2) elections.**

(i) Notwithstanding the other provisions of this Section, other than the spouse's right of consent afforded under the Plan, a distribution may be made on behalf of any Participant, including a "Five (5) Percent Owner," who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

(A) The distribution by the Plan is one which would not have disqualified such plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(B) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the plan is being distributed or, if the Participant is deceased, by a beneficiary of such Participant.

(C) Such designation was in writing, was signed by the Participant or beneficiary, and was made before January 1, 1984.

(D) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority.

(ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.

(iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulations §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(5) **Limits on distribution periods.** To the extent otherwise permitted under the terms of the Plan, as of the first "Distribution Calendar Year," distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:

(i) the life of the Participant;

(ii) the joint lives of the Participant and a "Designated Beneficiary";

(iii) a period certain not extending beyond the "Life Expectancy" of the Participant; or

(iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "Designated Beneficiary."

(b) **Time and Manner of Distribution.**

(1) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "Required Beginning Date."

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows as elected in the Distributions Upon Death Section of the Adoption Agreement (or if no election is made, then the Beneficiary may elect which provision shall apply):

(i) **Life expectancy rule, Spouse is Beneficiary.** If the Participant's surviving Spouse is the Participant's sole "Designated Beneficiary," then, except as otherwise provided herein, distributions 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 70 1/2, if later.

(ii) **Life expectancy rule, Spouse is not Beneficiary.** If the Participant's surviving spouse is not the Participant's sole "Designated Beneficiary," then, except as provided in Plan Section 5.13(b)(3) below, distributions to the "Designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) **5-Year rule.** If the Participant dies before distributions begin and there is a "Designated Beneficiary," then the Participant's entire interest will be distributed to the "Designated Beneficiary" by December 31st of the calendar year containing the fifth anniversary of the Participant's death. If the Participant's surviving spouse is the Participant's sole "Designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, then this Section will apply as if the surviving spouse were the Participant.

(iv) **Participant or "Designated Beneficiary" election.** If elected in the Adoption Agreement, Participants or "Designated Beneficiaries" may elect on an individual basis whether the 5-year rule or the life expectancy rule above applies to distributions after the death of a Participant who has a "Designated Beneficiary." The election must be made no later than the earlier of September 30th of the calendar year in which distribution would be required to begin under the applicable Sections above, or by September 30th of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, "surviving spouse's") death under the 5-year rule. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with Subsections (b)(2)(i) or (e) as applicable.

(v) **No "Designated Beneficiary," 5-year rule.** If there is no "Designated Beneficiary" as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(vi) **Surviving Spouse dies before distributions begin.** If the Participant's surviving spouse is the Participant's sole "Designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, then this Subsection (b)(2), other than Subsection (b)(2)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Subsection (b)(2) and Subsection (e), distributions are considered to begin on the Participant's "Required Beginning Date" (or, if Subsection (b)(2)(vi) applies, the date distributions are required to begin to the surviving spouse under Subsection (b)(2)(i)). If annuity payments irrevocably commence to the Participant before the Participant's "Required Beginning Date" (or to the Participant's surviving spouse before the date distributions are required to begin to the "surviving spouse" under Subsection (b)(2)(i)), then the date distributions are considered to begin is the date distributions actually commence.

(3) **Form of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "Required Beginning Date," as of the first "Distribution Calendar Year" distributions will be made in accordance with Subsections (c), (d), and (e). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Regulations thereunder. Any part of the Participant's interest which is in a Section 414(k) Account will be distributed in a manner satisfying the requirements of Code §401(a)(9) and the Regulations thereunder applicable to individual accounts. If annuity payments have begun (whether paid over an Employees' life, joint lives, or a period certain) in accordance with Subsections (c), (d), or (e) and if elected in the Adoption Agreement, a Participant may elect to increase payments only in accordance with the limited circumstances set forth in Regulations §1.401(a)(9)-6, Q&A-13 & Q&A 14.

(c) **Determination of amount to be distributed each year.**

(1) **General annuity requirements.** A Participant who is required to begin payments as a result of attaining his or her "Required Beginning Date," whose interest has not been distributed in the form of an annuity purchased from an insurance company or in a single sum before such date, may receive such payments in the form of annuity payments under the Plan. Payments under such annuity must satisfy the following requirements:

(i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Subsections (d) or (e);

(iii) Once payments have begun over a period certain, then unless otherwise elected in the Adoption Agreement, the period certain will not be changed even if the period certain is shorter than the maximum period. If so elected in the Adoption Agreement, a Participant may elect a change in the period certain with associated modifications in the annuity payments provided the following conditions are satisfied:

(A) If, in a stream of annuity payments that otherwise satisfies Code §401(a)(9), a Participant elects to change the annuity payment period and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy Code §401(a)(9) provided the conditions set forth in Subsection (B) below are satisfied, and one of the following applies:

1. The modification occurs at the time that the Participant retires or in connection with a Plan termination;

2. The annuity payments prior to modification are annuity payments paid over a period certain without life contingencies; or

3. The annuity payments after modification are paid under a qualified Joint and Survivor Annuity over the joint lives of the Participant and a "Designated Beneficiary," the Participant's spouse is the sole "Designated Beneficiary," and the modification occurs in connection with the Participant becoming married to such spouse.

(B) In order to modify a stream of annuity payments in accordance with this Subsection, all of the following conditions must be satisfied:

1. The future payments under the modified stream satisfy Code §401(a)(9) and this Section (determined by treating the date of the change as a new Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

2. For purposes of Code §§415 and 417, the modification is treated as a new Annuity Starting Date;

3. After taking into account the modification, the annuity stream satisfies Code §415 (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and

4. The end point of the period certain, if any, for any modified payment period is not later than the end point available under Code §401(a)(9) to the Participant at the original Annuity Starting Date.

(iv) Payments will either be nonincreasing or increase only to the extent permitted by one of the following conditions:

(A) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that for a 12-month period ending in the year during which the increase occurs or the prior year;

(B) By a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an "Eligible Cost-of-Living Index" since the Annuity Starting Date, or if later, the date of the most recent percentage increase. In cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(C) To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Subsection (d) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code §414(p);

(D) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death;

(E) To pay increased benefits that result from a Plan amendment or other increase in the Participant's Accrued Benefit under the Plan;

(F) By a constant percentage, applied not less frequently than annually, at a rate that is less than five percent (5%) per year;

(G) To provide a final payment upon the death of the Participant that does not exceed the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code §411(a)(7)) calculated as of the Annuity Starting Date using the "applicable interest rate" and the applicable mortality table under Code §417(e) (or, if greater, the total amount of Employee Contributions) over the total of payments before the death of the Participant; or

(H) As a result of dividend or other payments that result from "Actuarial Gains," provided:

1. Actuarial gain is measured not less frequently than annually;

2. The resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured);

3. The "Actuarial Gain" taken into account is limited to "Actuarial Gain" from investment experience;

4. The assumed interest rate used to calculate such "Actuarial Gains" is not less than three percent (3%); and

5. The annuity payments are not also being increased by a constant percentage as described in Subsection (F) above.

(2) **Amount required to be distributed by "Required Beginning Date."**

(i) In the case of a Participant whose interest in the Plan is being distributed as an annuity pursuant to Subsection (1) above, the amount that must be distributed on or before the Participant's "Required Beginning Date" (or, if the Participant dies before distributions begin, the date distributions are required to begin under Subsections (b)(2)(i) or (b)(2)(ii) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first "Distribution Calendar Year" will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's "Required Beginning Date."

(ii) In the case of a single sum distribution of a Participant's entire accrued benefit during a "Distribution Calendar Year," the amount that is the required minimum distribution for the "Distribution Calendar Year" (and thus not eligible for rollover under Code §402(c)) is determined under this paragraph. The portion of the single sum distribution that is a required minimum distribution is determined by treating the single sum distribution as a distribution from an individual account Plan and treating the amount of the single sum distribution as the Participant's account balance as of the end of the relevant valuation calendar year. If the single sum distribution is being made in the calendar year containing the "Required Beginning Date" and the required minimum distribution for the Participant's first "Distribution Calendar Year" has not been distributed,

the portion of the single sum distribution that represents the required minimum distribution for the Participant's first and second "Distribution Calendar Year" is not eligible for rollover.

(3) **Additional accruals after first Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first "Distribution Calendar Year" will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues. Notwithstanding the preceding, the Plan will not fail to satisfy the requirements of this paragraph and Code §401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under this paragraph.

(4) **Death after distributions begin.** If a Participant dies after distribution of the Participant's interest begins in the form of an annuity meeting the requirements of this Section, then the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced. If the distribution is another form of payment, then the remaining interest must be distributed at least as rapidly as the method of distribution being used as of the date of the Participant's death.

(d) **Requirements for annuity distributions that commence during Participant's lifetime.**

(1) **Joint life annuities where the Beneficiary is the Participant's spouse.** If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the Participant and the Participant's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the periodic annuity payment payable to the survivor does not at any time on and after the Participant's "Required Beginning Date" exceed the annuity payable to the Participant. In the case of an annuity that provides for increasing payments, the requirement of this Paragraph will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the Participant and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and the Participant's spouse and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the "Designated Beneficiary" after the expiration of the period certain.

(2) **Joint life annuities where the Beneficiary is not the Participant's spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a Beneficiary other than the Participant's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the Participant's "Required Beginning Date" will satisfy the conditions of this Paragraph. The periodic annuity payment payable to the survivor must not at any time on and after the Participant's "Required Beginning Date" exceed the applicable percentage of the annuity payment payable to the Participant using the table set forth in Regulations §1.401(a)(9)-6 Q&A-2(c)(2). The applicable percentage is based on the adjusted Participant/beneficiary age difference. The adjusted Participant/beneficiary age difference is determined by first calculating the excess of the age of the Participant over the age of the beneficiary based on their ages on their birthdays in a calendar year. If the Participant is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the Participant is younger than age 70 on the Participant's birthday in the calendar year that contains the Annuity Starting Date. In the case of an annuity that provides for increasing payments, the requirement of this Paragraph will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the Participant and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the "Designated Beneficiary" after the expiration of the period certain.

(3) **Period certain annuities**. Unless the Participant's spouse is the sole "Designated Beneficiary" and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Regulations §1.401(a)(9)-9 Q&A-2 for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Regulations §1.401(a)(9)-9 Q&A-2 plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's spouse is the Participant's sole "Designated Beneficiary" and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Subsection (d)(3), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Regulations §1.401(a)(9)-9 Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the Annuity Starting Date.

(e) **Requirements for minimum distributions where Participant dies before date distributions begin.** If a Participant dies before the date distribution of his or her interest begins, then distributions will be made in accordance with the following rules, subject to the elections made in the Adoption Agreement.

(1) **Participant survived by "Designated Beneficiary" and life expectancy rule.** If there is a "Designated Beneficiary," then the Participant's entire interest will be distributed, beginning no later than the time described in Subsections (b)(2)(i) or (b)(2)(ii), over the life of the "Designated Beneficiary" or over a period certain not exceeding:

(i) Unless the Annuity Starting Date is before the first "Distribution Calendar Year," the "Life Expectancy" of the "Designated Beneficiary" determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(ii) If the Annuity Starting Date is before the first "Distribution Calendar Year," the "Life Expectancy" of the "Designated Beneficiary" determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

(2) **Participant survived by Designated Beneficiary and 5-year rule.** If there is a "Designated Beneficiary," then the Participant's entire interest will be distributed to the "Designated Beneficiary" by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(3) **No "Designated Beneficiary."** If the Participant dies before the date distributions begin and there is no "Designated Beneficiary" as of September 30th of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(4) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole "Designated Beneficiary," and the surviving spouse dies before distributions to the surviving spouse begin, this Subsection (e) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Subsection (b)(2)(i).

(f) **Definitions.**

(1) **Actuarial Gain.** "Actuarial Gain" means the difference between the amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial Gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the Actuarial Gain is determined.

(2) **Designated Beneficiary.** "Designated Beneficiary" means the individual who is designated as the beneficiary under Section 5.9 and is the designated beneficiary under Code §401(a)(9) and Regulations §1.401(a)(9)-4.

(3) **Distribution Calendar Year.** "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's "Required Beginning Date." For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 5.13(b).

(4) **Eligible Cost-of-Living Index.** An "Eligible Cost-of-Living Index" means an index described below:

(i) A consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (such as urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (such as a given metropolitan area or state); or

(ii) A percentage adjustment based on a cost-of-living index described in Subsection (i) above, or a fixed percentage, if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an Eligible Cost-of-Living Index, provided it does not exceed the sum of: (A) The cost-of-living index for that year, and (B) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this Subsection (ii)).

(5) **"Five (5) Percent Owner."** A Participant is treated as a "Five (5) Percent Owner" for purposes of this Section if the Participant is a five (5) percent owner as defined in Code §416(i)(1)(B)(i) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a "Five (5) Percent Owner" under this Section, they must continue to be distributed, even if the Participant ceases to be a "Five (5) Percent Owner" in a subsequent year.

(6) **Life Expectancy.** "Life Expectancy" means the life expectancy as computed by use of the Single Life Table in Regulations §1.401(a)(9)-9 Q&A-1.

(7) **"Required Beginning Date."** Except as otherwise elected in the Adoption Agreement, "Required Beginning Date" means the April 1st of the calendar year following the later of:

(i) the calendar year in which the Participant attains age 70 1/2, or

(ii) if the Participant is not a "Five (5) Percent Owner" at any time during the Plan Year ending with or within the calendar year in which the Participant attains age 70 1/2, then the calendar year in which the Participant retires.

Except with respect to a "Five (5) Percent Owner," a Participant's Accrued Benefit will be actuarially increased to take into account the period after age 70 1/2 in which the Participant does not receive any benefits under the Plan. The actuarial increase will begin on April 1 following the calendar year in which the Employee attains age 70 1/2 (January 1, 1997 in the case of an Employee who attains age 70 1/2 prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy Code §401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the Actuarial Equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the Actuarial Equivalent of additional benefits accrued after that date, reduced by the Actuarial Equivalent of any distributions made after that date. The actuarial increase under this section is not in addition to the actuarial increase required for that same period under Code §411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under this section will be provided even during the period during which an employee is in Act §203(a)(3)(B) service. For purposes of Code §411(b)(1)(H), the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of Normal Retirement Age. Accordingly, to the extent permitted under Code §411(b)(1)(H), the actuarial increase required under this provision will reduce the benefit accrual otherwise required under Code §411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

(g) **Effective date of application of Regulations and transitional rules.**

(1) **Effective date.** The provisions of this Section will apply with respect to distributions under the Plan made for calendar years beginning on or after January 1, 2006, unless otherwise elected in the Adoption Agreement.

5.14 RETROACTIVE ANNUITY STARTING DATES

(a) **Election in Adoption Agreement.** Notwithstanding anything in the Plan to the contrary, if elected in the Adoption Agreement, then effective as of the date specified, a Participant may elect a "retroactive annuity starting date" in accordance with the following provisions.

(b) **Definition of "retroactive annuity starting date."** For purposes of this Section, a "retroactive annuity starting date" is an Annuity Starting Date affirmatively elected by a Participant that occurs on or before the date the written explanation required by Code §417(a)(3) is provided to the Participant. If a Participant elects a "retroactive annuity starting date," then future periodic payments with respect to the Participant must be the same as the future periodic payments, if any, that would have been paid with respect to the Participant had payments actually commenced on the "retroactive annuity starting date." The Participant must receive a make-up payment to reflect any missed payment or payments for the period from the "retroactive annuity starting date" to the date of the actual make-up payment (with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment). Thus, the benefit determined as of the "retroactive annuity starting date" must satisfy the requirements of Code §417(e)(3), if applicable, and Code §415 with the "applicable interest rate" and applicable mortality table determined as of that date. Similarly, a Participant is not permitted to elect a "retroactive annuity starting date" that precedes the date upon which the Participant could have otherwise started receiving benefits (e.g., in the case of an ongoing plan, the earlier of the Participant's termination of employment or the Participant's Normal Retirement Age) under the terms of the Plan in effect as of the "retroactive annuity starting date." The Plan does not fail to treat a Participant as having elected a "retroactive annuity starting date" as described in this paragraph merely because the distributions are adjusted to the extent necessary to satisfy the requirements of paragraphs (d)(1) or (d)(2) of this Section relating to Code §§415 and 417(e)(3).

(c) **Limitations on election of "retroactive annuity starting date."** The following limitations apply:

(1) The Participant's spouse (including an Alternate Payee who is treated as a spouse under a qualified domestic relation order as described in Code §414(p)), determined as if the date distributions commence were the Participant's Annuity Starting Date, must consent to the distribution in a manner that would satisfy the requirements of Plan Section 5.11. The spousal consent requirement of this paragraph does not apply if the amount of such spouse's survivor annuity payments under the "retroactive annuity starting date" election is no less than the amount that the survivor payments to such spouse would have been under an optional form of benefit that would satisfy the requirements to be a qualified Joint and Survivor Annuity (QJSA) and that has an Annuity Starting date after the date the explanation required by Section 5.11 was provided.

(2) If the Participant's spouse as of the "retroactive annuity starting date" would not be the Participant's spouse determined as if the date distributions commence was the Participant's Annuity Starting Date, then consent of that former spouse is not needed to

waive the QJSA with respect to the "retroactive annuity starting date," unless otherwise provided under a qualified domestic relations order (as defined in Code §414(p)).

(3) A distribution payable pursuant to a "retroactive annuity starting date" election is treated as excepted from the present value requirements of Regulations §1.417(e)-1(d) under paragraph (d)(6) of such Regulations §1.417(e)-1(d)(6) if the distribution form would have been described in paragraph (d)(6) of such Regulations §1.417(e)-1(d)(6) had the distribution actually commenced on the "retroactive annuity starting date." Similarly, annuity payments that otherwise satisfy the requirements of a QJSA under Code §417(b) will not fail to be treated as a QJSA for purposes of Code §415(b)(2)(B) merely because a "retroactive annuity starting date" is elected and a make-up payment is made. Also, for purposes of Code §72(t)(2)(A)(iv), a distribution that would otherwise be one of a series of substantially equal periodic payments will be treated as one of a series of substantially equal periodic payments notwithstanding the distribution of a make-up payment provided for in paragraph (b) of this Section.

(d) **Requirements applicable to "retroactive annuity starting dates."** A distribution is permitted to have a "retroactive annuity starting date" with respect to a Participant's benefit only if the following requirements are met:

(1) The distribution (including appropriate interest adjustments) provided based on the "retroactive annuity starting date" would satisfy the requirements of Code §415 if the date the distribution commences is substituted for the Annuity Starting Date for all purposes, including for purposes of determining the "applicable interest rate" and the applicable mortality table. However, in the case of a form of benefit that would have been excepted from the present value requirements of Regulations §1.417(e)-1(d) under such Regulations §1.417(e)-1(d)(6) if the distribution had actually commenced on the "retroactive annuity starting date," the requirement to apply Code §415 as of the date distribution commences set forth in this paragraph does not apply if the date distribution commences is twelve months or less from the "retroactive annuity starting date."

(2) In the case of a form of benefit that would have been subject to Code §417(e)(3) and Regulations §1.417(e)-1(d) if distributions had commenced as of the "retroactive annuity starting date," the distribution is no less than the benefit produced by applying the "applicable interest rate" and the applicable mortality table determined as of the date the distribution commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the "retroactive annuity starting date."

(e) **Timing of notice and consent requirements in the case of "retroactive annuity starting dates."** In the case of a "retroactive annuity starting date," the date of the first actual payment of benefits based on the "retroactive annuity starting date" is substituted for the Annuity Starting Date for purposes of satisfying the timing requirements for giving consent and providing an explanation of the QJSA provided in Regulations §1.417(e)-1(b)(3)(i) and (ii), except that the substitution does not apply for purposes of Regulations §1.417(e)-1(b)(3)(iii). Thus, the written explanation required by Code §417(a)(3)(A) must generally be provided no less than 30 days and no more than 180 days before the date of the first payment of benefits and the election to receive the distribution must be made after the written explanation is provided and on or before the date of the first payment. Similarly, the written explanation may also be provided less than 30 days prior to the first payment of benefits if the requirements of Regulations §1.417(e)-1(b)(3)(ii) would be satisfied if the date of the first payment is substituted for the Annuity Starting Date.

(f) **Administrative delay.** A plan will not fail to satisfy the 180-day timing requirements of Regulations §1.417(e)-1(b)(3)(iii) and (vi) merely because, due solely to administrative delay, a distribution commences more than 180 days after the written explanation of the QJSA is provided to the Participant.

5.15 TIME OF DISTRIBUTION

Except as limited by Sections 5.11 and 5.12, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin no later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is "immediately distributable" (within the meaning of Plan Section 5.11(c)), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

5.16 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor individual, to a parent of such individual, or to the custodian for such individual under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said individual resides. Such a payment to the guardian, custodian or parent of a minor or incompetent Beneficiary shall fully discharge the Trustee (or Insurer), Employer, and Plan from further liability on account thereof.

5.17 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a forfeiture pursuant to the Plan. Notwithstanding the foregoing, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed $1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a forfeiture, or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the forfeiture, such benefit shall be restored. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Plan Section 5.24(b) may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

The Plan Administrator shall endeavor to ascertain the whereabouts of such Participant or Beneficiary by the following means: (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail; (2) check with other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts; (3) identify and contact the Participant's designated Beneficiary; (4) use free Internet search tools; and (5) use a commercial locator service, credit reporting agencies, other Internet tools or other search method. Regarding search methods (2) and (3) above, if the Plan encounters privacy concerns, the Plan may request that the Employer or other plan fiduciary (under (2)), or the designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan. The purpose of this Section is to reflect DOL Guidance regarding locating missing or unresponsive Participants as of the date the Plan was written, which have changed over time. The Plan Administrator should use the search methods which applied and were available at the time of the search.

5.18 EFFECT OF SOCIAL SECURITY ACT

Benefits being paid to a Participant or Beneficiary under the terms of this Plan may not be decreased by reason of any post-separation Social Security benefit increases or by the increase of the Social Security wage base under Title II of the Social Security Act. Benefits to which a Former Participant has a Vested interest may not be decreased by reason of an increase in a benefit level or wage base under Title II of the Social Security Act.

5.19 OVERALL PERMITTED DISPARITY LIMIT

(a) **Limits when more than one plan.** For any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension maintained by the Employer that provides for permitted disparity (or imputes permitted disparity), the benefit for all Participants under this Plan, if this Plan is an offset plan, will be equal to the gross benefit percentage minus the offset percentage, times the Participant's total Average Compensation. If this Plan is an excess plan (unit or flat benefit), the benefit for each Participant under this Plan will be equal to the base benefit percentage times the Participant's Average Compensation.

(b) **Fresh-Start Date.** If this Section is applicable, this Plan will have a Fresh-Start Date on the last day of the Plan Year preceding the Plan Year in which this paragraph is first applicable. In addition, if in any subsequent Plan Year this Plan no longer benefits any Participant who also benefits under another qualified plan or simplified employee pension maintained by the Employer that provides for permitted disparity (or imputes permitted disparity), this Plan will have a Fresh-Start Date on the last day of the Plan Year preceding the Plan Year in which this paragraph is no longer applicable. For purposes of determining the Participant's overall permitted disparity limit, all years ending in the same calendar year are treated as the same year.

5.20 CUMULATIVE DISPARITY ADJUSTMENT

(a) **Excess benefit plan.** For an excess benefit Plan, if the Participant has earned a year of Credited Service in one or more other qualified plans or simplified employee pensions maintained by the Employer, and the number of the Participant's cumulative disparity years exceeds thirty-five (35), the Participant's benefit will be further adjusted as provided below. A Participant's cumulative disparity years consist of the sum of: (1) the total years of Credited Service a Participant is projected to have earned under this Plan by the end of the Plan Year containing the Participant's Normal Retirement Age, and subsequent years of Credited Service, if any, (the total not to exceed 35), and (2) the number of years credited to the Participant for purposes of the benefit formula or the accrued method under the Plan during which the Participant earned a year of Credited Service under one or more other qualified plans or simplified employee pensions (whether or not terminated) ever maintained by the Employer (other than years counted in (1)), and not including any years of Credited Service earned by the Participant under such other qualified plans or simplified employee pensions after the Participant has earned thirty-five (35) years of Credited Service under this Plan. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

If this cumulative disparity adjustment is applicable, the Participant's benefit will be increased as follows:

(1) Subtract the Participant's base benefit percentage from the Participant's excess benefit percentage (after modification in accordance with the Adoption Agreement.

(2) Divide the result in (1) by the Participant's years of Credited Service under the Plan projected to the later of Normal Retirement Age or current age, not to exceed thirty-five (35) years of Credited Service.

(3) Multiply the result in (2) by the number of years by which the Participant's cumulative disparity years exceed thirty-five (35).

(4) Add the result in (3) to the Participant's base benefit percentage determined prior to this cumulative disparity adjustment.

(b) **Offset plan.** For an offset Plan, if the Participant has earned a year of Credited Service in one or more other qualified plans or simplified employee pensions (whether or not terminated) ever maintained by the Employer, and the number of the Participant's cumulative permitted disparity years exceeds thirty-five (35), the offset percentage will be further adjusted as provided below. A Participant's cumulative permitted disparity years consist of the sum of: (1) the total years of Credited Service a Participant is projected to have earned under this Plan by the end of the Plan Year containing the Participant's Normal Retirement Age and subsequent years of Credited Service, if any, (the total not to exceed 35), and (2) the number of years during which the Participant earned a year of Credited Service under one or more other qualified plans or simplified employee pensions maintained by the Employer (other than years counted in (1), and not including any years of Credited Service earned by the Participant under such other qualified plans or simplified employee pensions after the Participant has earned thirty-five (35) years of Credited Service under this Plan. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(c) **Additional limits for offset plan.** If this cumulative disparity adjustment for an offset plan is applicable, the offset percentage will be further adjusted as follows:

(1) Divide the offset percentage (after modification in accordance with the Adoption Agreement) by the Participant's years of Credited Service under this Plan projected to the later of Normal Retirement Age or current age, not to exceed thirty-five (35) years of Credited Service.

(2) Multiply the result in (1) by the number of years by which the Participant's cumulative permitted disparity years exceed thirty-five (35).

(3) Subtract the result in (2) from the offset percentage determined prior to this cumulative permitted disparity adjustment.

5.21 ADJUSTMENTS FOR BENEFITS COMMENCING AT AGES OTHER THAN SOCIAL SECURITY RETIREMENT AGE

(a) **Benefit payable prior to Social Security Retirement Age.** Except as provided in (d) below, if a benefit payable to an Employee under an integrated plan commences at an age before the Employee's Social Security Retirement Age (including a benefit payable at the Normal Retirement Age under the Plan), the maximum excess or offset allowance shall be reduced (if necessary) in accordance with Subsection (c).

(b) **Adjustment to table.** If benefit payments commence in a month other than the month in which the Participant attains the age specified in the table below, the annual factor will be determined by straight line interpolation in the applicable table below. However, if benefit payments begin before the first day of the month in which the Participant attains age 55, the annual factor will be the Actuarial Equivalent (using the mortality and interest rate specified in the Adoption Agreement) of the annual factor contained in the applicable table below for a benefit commencing in the month in which the Participant attains age 55.

(c) **Adjustment factors.** Table I provides the adjustments in the 0.75-percent factor in the maximum excess or offset allowance applicable to benefits commencing on or after age 55 and on or before age 70 to an Employee who has a Social Security Retirement Age of 65, 66, or 67. Table II is a simplified table for a plan that uses a single disparity factor of 0.65 percent for all Employees at age 65. For a fully-insured plan described by Code §412(e)(3), the 0.75%/26.25% factor shall be multiplied by a factor of .8 (i.e., using 80% of such values). If the Plan is a fully-insured plan described by Code §412(e)(3), the . 0.75%/26.25% factor shall be multiplied by a factor of .8 (i.e., using 80% of such values).

TABLE I

Age at which Social Security Retirement Age benefits commence	Annual factor in maximum excess or offset allowance (percent)		
	67	**66**	**65**
67	0.750		
66	0.700	0.750	
65	0.650	0.700	0.750
64	0.600	0.650	0.700
63	0.550	0.600	0.650
62	0.500	0.550	0.600
61	0.475	0.500	0.550
60	0.450	0.475	0.500
59	0.425	0.450	0.475
58	0.400	0.425	0.450
57	0.375	0.400	0.425
56	0.344	0.375	0.400
55	0.316	0.344	0.375

TABLE II
Simplified Table

Age at which benefits commence	Annual factor in maximum excess or offset allowance (percent)
65	0.650
64	0.607
63	0.563
62	0.520
61	0.477
60	0.433
59	0.412
58	0.390
57	0.368
56	0.347
55	0.325

(d) **Treatment of disability benefit.** A disability benefit, other than a qualified disability benefit, commencing before a Participant's Social Security Retirement Age will be treated as a benefit subject to the limitations of this Section. A disability benefit is a qualified disability benefit only if the benefit: (i) is payable under the Plan solely on account of a Participant's disability, as determined by the Social Security Administration, (ii) terminates no later than the Participant's Normal Retirement Age, (iii) is not in excess of the amount of the benefit that would be payable if the Participant had separated from service at Normal Retirement Age, and (iv) upon attainment of Early or Normal Retirement Age, the Participant receives a benefit that satisfies the accrual and vesting rules of Code §411 (and the Regulations thereunder) without taking into account the disability benefits made up to that age.

5.22 QUALIFIED DOMESTIC RELATIONS ORDERS

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any Alternate Payee under a "qualified domestic relations order." Furthermore, a distribution to an Alternate Payee shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not reached the "earliest retirement age." For the purposes of this Section, "qualified domestic relations order" and "earliest retirement age" shall have the meanings set forth under Code §414(p).

A domestic relations order that otherwise satisfies the requirements for a "qualified domestic relations order" will not fail to be a "qualified domestic relations order": (i) solely because the order is issued after, or revises, another "qualified domestic relations order"; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death.

5.23 LIMITATION OF BENEFITS ON TERMINATION

(a) **Restrictions applicable to "Restricted Employee."** Benefits distributed to any "Restricted Employee" are restricted such that the payments are no greater than an amount equal to the payment that would be made on behalf of such individual under a Straight Life Annuity that is the Actuarial Equivalent of the sum of the individual's Accrued Benefit, the individual's other benefits under the Plan (other than a Social Security supplement within the meaning of Regulations §1.411(a)-7(c)(4)(ii)), and the amount the individual is entitled to receive under a Social Security supplement. However, the limitation of this Section shall not apply if:

(1) after payment of the benefit to an individual described above, the value of Plan assets equals or exceeds one-hundred ten percent (110%) of the Plan's funding target as defined in Code §430(d)(1) (as determined also in the context of Section 5.3);

(2) the value of the benefits for an individual described above is less than one percent (1%) of Plan's funding target (as defined above) before distribution; or

(3) the value of the benefits payable under the Plan to an individual described above does not exceed $5,000.

(b) **Definition of Restricted Employee.** For purposes of this Section, "Restricted Employee" means any Highly Compensated Employee or former Highly Compensated Employee. However, a Highly Compensated Employee or former Highly Compensated Employee need not be treated as a "Restricted Employee" in the current year if the Highly Compensated Employee or former Highly Compensated Employee is not one of the twenty-five (25) (or larger number chosen by the Employer) nonexcludable Employees and former Employees of the Employer with the largest amount of compensation in the current or any prior year

(c) **Benefit.** For purposes of this Section, benefit includes loans in excess of the amount set forth in Code §72(p)(2)(A), any periodic income, any withdrawal values payable to a living Participant, and any death benefits not provided for by insurance on the individual's life.

(d) **Payment permitted if security provided.** A "Restricted Employee's" otherwise restricted benefit may be distributed in full to the affected individual if, prior to receipt of the restricted amount, the individual enters into a written agreement with the Administrator to secure repayment to the Plan of the restricted amount. The restricted amount is the excess of the amounts distributed to the individual (accumulated with reasonable interest) over the amounts that could have been distributed to the individual under the Straight Life Annuity described above (accumulated with reasonable interest). The individual may secure repayment of the restricted amount upon distribution by:

(1) entering into an agreement for promptly depositing in escrow with an acceptable depositary, property having a fair market value equal to at least one-hundred twenty-five percent (125%) of the restricted amount;

(2) providing a bank letter of credit in an amount equal to at least one-hundred percent (100%) of the restricted amount; or

(3) posting a bond equal to at least one-hundred percent (100%) of the restricted amount. The bond must be furnished by an insurance company, bonding company or other surety for federal bonds.

(e) **Escrow.** The escrow arrangement in (d)(1) above may permit an individual to withdraw from escrow amounts in excess of one-hundred twenty-five percent (125%) of the restricted amount. If the market value of the property in an escrow account falls below one-hundred ten percent (110%) of the remaining restricted amount, the individual must deposit additional property to bring the value of the property held by the depositary up to one-hundred twenty-five percent (125%) percent of the restricted amount. The escrow arrangement may provide that the individual has the right to receive any income from the property placed in escrow, subject to the individual's obligation to deposit additional property, as set forth in the preceding sentence.

(f) **Limitation on bond or letter of credit.** A surety or bank may release any liability on a bond or letter of credit in excess of one-hundred percent (100%) percent of the restricted amount.

(g) **Restrictions no longer apply.** If the Administrator certifies to the depositary, surety or bank that the individual (or the individual's estate) is no longer obligated to repay any restricted amount, a depositary may deliver to the individual any property held under an escrow arrangement, and a surety or bank may release any liability on an individual's bond or letter of credit.

5.24 DIRECT ROLLOVERS

(a) **Right to direct rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least $500.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) **Eligible rollover distribution.** An "eligible rollover distribution" means any distribution described in Code §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the distributee, except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code §401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any hardship distribution described in Code §401(k)(2)(B)(i)(IV); and any other distribution reasonably expected to total less than $200 during a year.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to:

(i) A traditional individual retirement account or annuity described in Code §408(a) or (b)(a "traditional IRA")

(ii) A qualified trust or to an annuity contract described in Code §403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan.** An "eligible retirement plan" is an individual retirement account described in Code §408(a), for distributions made after December 31, 2007, to a Roth individual account or annuity described in Code §408A (a "Roth IRA") an individual retirement annuity described in Code §408(b), (other than an endowment contract), a qualified defined contribution or defined benefit plan described in Code §401(a), that accepts the "distributee's" eligible rollover distribution," an annuity plan described in Code §403(a), an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code §403(b), that accepts the "distributee's" "eligible rollover distribution." However, in the case of an "eligible rollover distribution" to the surviving spouse, an "eligible retirement plan" is an individual retirement account or individual retirement annuity. The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee.

Notwithstanding the above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax voluntary contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code §408(a) or (b), or (2) to a "Roth IRA," or (3) to a qualified defined contribution or defined benefit plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(3) **Distributee.** A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the Alternate Payee, are distributees with regard to the interest of the spouse or former spouse.

(4) **Direct rollover.** A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided within the same 30 – 180 (90 for Plan Years beginning before January 1, 2007) day timeframe applicable to the Participant consent notice. The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than $200.

(d) **Non-Spouse Beneficiary rollover right.** For distributions after December 31, 2009, a non-Spouse Beneficiary who is a "designated Beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion an "eligible rollover distribution" to an IRA the Beneficiary establishes for purposes of receiving the distribution.

(1) **Trust Beneficiary.** If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a "designated Beneficiary."

(2) **Required minimum distributions not eligible for rollover.** A non-spouse Beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her "Required Beginning Date" and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulations §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution.

5.25 FULLY INSURED PLANS

If this Plan is intended to be a Code §412(e)(3) Plan (with or without a Top-Heavy sidefund trust) or a nontrusteed plan funded only with insurance Contracts, then no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer (or Trustee, if any) and the Insurer provides that:

(a) no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than providing retirement annuities for the exclusive benefit of Employees or their beneficiaries;

(b) any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution;

(c) any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits with respect to Contracts under the Plan shall be applied by the Insurer toward each premium next due for Contracts under the Plan before any further contributions made by the Employer are so applied by the Insurer, and not later than the due date for such premiums;

(d) any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits in excess of Plan benefits with respect to Contracts distributed to provide plan benefits, will be applied as provided in (c);

(e) if upon the cessation of benefit accruals or upon Plan termination, all benefits provided under the Plan with respect to service before cessation of accruals or termination have been purchased, any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits with respect to Contracts under the Plan will revert to the Employer; and

(f) where credits are applied by the Insurer before Employer contributions are made that are sufficient in addition to the credits to pay each premium next due, such credits will be applied proportionately toward each premium next due so that the same percentage of each premium next due is paid.

In addition to the above requirements, the Plan must, by its terms, satisfy the design based safe harbor requirements of Regulations §1.401(a)(4)-3(b)(5).

5.26 PROVISIONS REGARDING MILITARY SERVICE

(a) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

(b) **Benefit accrual.** If the Employer elects to apply this Section 5.26(b), then effective as of the date specified in the Adoption Agreement, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

Determination of benefits. The Plan will determine the amount of employee contributions of an individual treated as reemployed under this Section 5.26(b) for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

(c) **USERRA.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code §414(u)(4).

(d) **Other provisions.** This Section does not contain every provision related to military service (e.g., the definition of "415 Compensation" automatically includes a portion ("regular pay") of post-severance compensation.

5.27 PRE-RETIREMENT (IN-SERVICE) DISTRIBUTIONS

When so specified and to the extent specified at Question 44 on the Adoption Agreement, a Participant who is an Employee and has attained the conditions set forth on the Adoption Agreement (i.e., Normal Retirement Age and/or a stated age of 62 or higher), may elect to commence receiving benefit distributions in accordance with Section 5.11.

ARTICLE VI
CODE §415 LIMITATIONS

6.1 GENERAL PROVISIONS

(a) **Effective date.** The limitations of this Article apply to Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

(b) **Annual Benefit.** The "Annual Benefit" otherwise payable to a Participant under the Plan at any time shall not exceed the "Maximum Permissible Benefit." If the benefit the Participant would otherwise accrue in a Limitation Year would produce an "Annual Benefit" in excess of the "Maximum Permissible Benefit," then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the "Maximum Permissible Benefit."

(c) **Adjustment if in two defined benefit plans.** If the Participant is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a "Predecessor Employer", the sum of the Participant's "Annual Benefits" from all such plans may not exceed the "Maximum Permissible Benefit." Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the "Maximum Permissible Benefit" applicable at that age, the Employer shall select in the Adoption Agreement the method by which the plans will limit a Participant's benefit accrual.

(d) **Grandfather of limits prior to July 1, 2007.** The application of the provisions of this Article shall not cause the "Maximum Permissible Benefit" for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer or a "Predecessor Employer" as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Code §415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Regulations §1.415(a)-1(g)(4).

(e) **Other rules applicable.** The limitations of this Article shall be determined and applied taking into account the rules in Plan Section 6.3.

6.2 DEFINITIONS

(a) **Annual Benefit.** "Annual Benefit" means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the "Annual Benefit" shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new Annuity Starting Date has occurred shall be made without regard to Regulations §1.401(a)-20, Q&A 10(d), and with regard to Regulations §1.415(b)1(b)(1)(iii)(B) and (C). No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified Joint and Survivor Annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code §415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the "Annual Benefit" shall take into account Social Security supplements described in Code §411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations §1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (1) or (2) below.

(1) **Benefit forms not subject to Code §417(e)(3).** The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Subsection (1) if the form of the Participant's benefit is either (1) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified Pre-retirement Survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11)).

(i) **Limitation Years beginning before July 1, 2007.** For Limitation Years beginning before July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Plan Section 1.4 and the mortality table (or other tabular factor) specified in Plan Section 1.4 for adjusting benefits in the same form; and (II) a 5 percent interest rate assumption and the applicable mortality table defined in Plan Section 1.4 for that Annuity Starting Date.

(ii) **Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the greater of (1) the annual amount of the Straight Life Annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and (2) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in Plan Section 1.4 for that Annuity Starting Date.

(2) **Benefit forms subject to Code §417(e)(3).** The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph if the form of the Participant's benefit is other than a benefit form described in Plan Section 6.2(a)(1) above. In this case, the actuarially equivalent Straight Life Annuity shall be determined as follows:

(i) **Annuity Starting Date in Plan Years beginning after 2005.** If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent Straight Life Annuity is equal to the greatest of (I) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in Plan Section 1.4 for adjusting benefits in the same form; (II) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Plan Section 1.4; and (III) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the "applicable interest rate" defined in Plan Section 1.4 and the "applicable mortality table" defined in Plan Section 1.4, divided by 1.05.

(ii) **Annuity Starting Date in Plan Years beginning in 2004 or 2005.** If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Plan Section 1.4 and the mortality table (or other tabular factor) specified in Plan Section 1.4 for adjusting benefits in the same form; and (II) a 5.5 percent interest rate assumption and the applicable mortality table defined in Plan Section 1.4.

If the Pension Funding Equity Act of 2004 ("PFEA") transition rule is elected in the Adoption Agreement and the Annuity Starting Date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, then the application of this Plan Section 6.2(a)(2)(ii) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Article, except that the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

(A) The interest rate specified in Plan Section 1.4 and the mortality table (or other tabular factor) specified in Plan Section 1.4 for adjusting benefits in the same form;

(B) The "applicable interest rate" defined in Plan Section 1.4 and the applicable mortality table defined in Plan Section 1.4; and

(C) The "applicable interest rate" defined in Plan Section 1.4 (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table defined in Plan Section 1.4.

(b) **Defined Benefit Compensation Limitation.** "Defined Benefit Compensation Limitation" means 100 percent of a Participant's "High Three-Year Average Compensation," payable in the form of a Straight Life Annuity. If elected by the Employer in the Adoption Agreement, in the case of a Participant who has had a severance from employment with the Employer, the "Defined Benefit Compensation Limitation" applicable to the Participant in any Limitation Year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the Participant in the prior Limitation Year by the annual adjustment factor under Code §415(d) that is published in the Internal Revenue Bulletin. The adjusted compensation limit shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

In the case of a Participant who is rehired after a "Severance from Employment," the "Defined Benefit Compensation Limitation" is the greater of 100 percent of the Participant's "High Three-Year Average Compensation," as determined prior to the severance from employment, as adjusted pursuant to the preceding paragraph, if applicable; or 100 percent of the Participant's "High Three-Year Average Compensation," as determined after the "Severance from Employment."

(c) **Defined Benefit Dollar Limitation.** "Defined Benefit Dollar Limitation" means, effective for Limitation Years ending after December 31, 2001, $160,000, automatically adjusted under Code §415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Employer shall elect in the Adoption Agreement whether the automatic annual adjustment of the "Defined Benefit Dollar Limitation" under Code 415(d) shall apply to Participants who have had a separation from employment.

(d) **Employer.** "Employer" means, for purposes of this Article, the Employer that adopts this plan, and all members of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h)), all commonly controlled trades or businesses (as defined in Code §414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code §415(h)), or affiliated service groups (as defined in Code §414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code §414(o).

(e) **Formerly Affiliated Plan of the Employer.** "Formerly Affiliated Plan of the Employer" means a plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the Employer, such as the sale of a member controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

(f) **High Three-Year Average Compensation.** "High Three-Year Average Compensation" means the average 415 Compensation for the three consecutive "Years of Service" (or, if the Participant has less than three consecutive "Years of Service," the Participant's longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produces the highest average. A "Year of Service" with the Employer is, for purposes of this Subsection, the 12-consecutive month period defined in the Adoption Agreement which is used to determine 415 Compensation under the Plan.

In the case of a Participant who is rehired by the Employer after a "Severance from Employment," the Participant's "High Three-Year Average Compensation" shall be calculated by excluding all years for which the Participant performs no services for and receives no 415 Compensation from the Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A Participant's 415 Compensation for a Year of Service shall not include 415 Compensation in excess of the limitation under Code §401(a)(17) that is in effect for the calendar year in which such year of service begins.

(g) **Maximum Permissible Benefit.** "Maximum Permissible Benefit" means the lesser of the "Defined Benefit Dollar Limitation" or the "Defined Benefit Compensation Limitation" (both adjusted where required, as provided below). However, the "Defined Benefit Compensation Limitation" shall not apply to a Plan maintained by an organization described in Code §3121(w)(3)(A) (i.e., a church) except with respect to "highly compensated benefits." For this purpose, "highly compensated benefits" means any benefits accrued for an Employee in any year on or after the first year in which such Employee is a Highly Compensated Employee of the organization described in Code §3121(w)(3)(A). For purposes of applying the "Defined Benefit Compensation Limitation" to "highly compensated benefits," all benefits of the Employee otherwise taken into account (without regard to the preceding sentence) shall be taken into account.

(1) Adjustment for Less Than 10 Years of Participation or Service: If the Participant has less than ten (10) "Years of Participation" in the Plan, the "Defined Benefit Dollar Limitation" shall be multiplied by a fraction -- (i) the numerator of which is the number of "Years of Participation" (or part thereof, but not less than one year) in the Plan, and (ii) the denominator of which is ten (10). In the case of a Participant who has less than ten Years of Service with the Employer, the "Defined Benefit Compensation Limitation" shall be multiplied by a fraction, (i) the numerator of which is the number of Years (or part thereof, but not less than one year) of Service with the Employer, and (ii) the denominator of which is ten (10).

(2) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in Limitation Years ending after December 31, 2001, the "Defined Benefit Dollar Limitation" shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the "Defined Benefit Dollar Limitation" shall be adjusted under Plan Section 6.2(g)(2)(i), as modified by Plan Section 6.2(g)(2)(iii). If the Annuity Starting Date is after age 65, the "Defined Benefit Dollar Limitation" shall be adjusted under Plan Section 6.2(g)(2)(ii), as modified by Plan Section 6.2(g)(2)(iii).

(i) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62:

(A) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for

the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.2(g)(1) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Plan Section 1.4 and the mortality table (or other tabular factor) specified in Plan Section 1.4; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Plan Section 1.4.

(B) Limitation Years Beginning on or After July 1, 2007.

1. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.2(g)(1) for years of participation less than ten (10), if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in Plan Section 1.4 (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

2. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the lesser of the limitation determined under Plan Section 6.2(g)(2)(i)(B)1. and the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.2(g)(1) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this Section.

(ii) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement After Age 65:

(A) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.2(g)(1) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Plan Section 1.4 and the mortality table (or other tabular factor) specified in Plan Section 1.4; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Plan Section 1.4.

(B) Limitation Years Beginning on or after July 1, 2007.

1. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.2(g)(1) for years of participation less than ten (10), if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in Plan Section 1.4 (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

2. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Participant's Annuity Starting Date is the lesser of the limitation determined under Plan Section 6.2(g)(2)(ii)(B)1. and the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.2(g)(1) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing Straight Life

Annuity under the Plan at the participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this Plan Section 6.2(g)(2), in adjusting the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date under Plan Sections 6.9(g)(2)(i)(A), 6.9(g)(2)(i)(B)1, 6.9(g)(2)(ii)(A), and 6.9(g)(2)(ii)(B)1, no adjustment shall be made to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code §417(c) upon the Participant's death.

(3) Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the "Maximum Permissible Benefit" if:

(i) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed $10,000 multiplied by a fraction – (I) the numerator of which is the Participant's number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the Employer, and (II) the denominator of which is ten (10); and

(ii) the Employer (or a "Predecessor Employer") has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code §401(h), and accounts for postretirement medical benefits established under Code §419A(d)(1) are not considered a separate defined contribution plan).

(h) **Predecessor Employer.** "Predecessor Employer" means, if the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for a former employer, the former employer is a "Predecessor Employer" with respect to the Participant in the plan. A former entity that antedates the Employer is also a "Predecessor Employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(i) **Severance from Employment.** "Severance from Employment" means an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An Employee does not have a severance from employment if, in connection with a change of employment, the Employee's new employer maintains the plan with respect to the Employee.

(j) **Year of Participation.** For purposes of Plan Section 6.2(g)(1), a Participant shall be credited with a "Year of Participation" (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the participant is credited with at least the number of Hours of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a "year of participation" credited to the Participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of Code §415(c)(3)(C)(i) for an accrual computation period shall receive a "Year of Participation" with respect to that period.

In addition, for a Participant to receive a "Year of Participation" (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event shall more than one "Year of Participation" be credited for any 12-month period.

(k) **Year of Service.** For purposes of Plan Section 6.2(g)(1), a Participant shall be credited with a "Year of Service" (computed to fractional parts of a year) for each accrual computation period for which the Participant is credited with at least the number of Hours of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, taking into account only service with the Employer or a "Predecessor Employer."

6.3 OTHER RULES

(a) **Benefits under terminated plans.** If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan Participants and a Participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets

for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated plan.

(b) **Benefits transferred from the Plan.** If a participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Regulations §1.411(d)-4, Q&A-3(c), the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Regulations §§1.411(d)-4, Q&A-3(c), then the transferred benefits are treated by the Employer's Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the Plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Regulations §§1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

(c) **Formerly affiliated plans of the Employer.** A formerly affiliated plan of an Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the Plan and had purchased annuities to provide benefits.

(d) **Plans of a "Predecessor Employer".** If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a "Predecessor Employer, then the Participant's benefits under a plan maintained by the "Predecessor Employer" shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the "Predecessor Employer" shall be treated as if it had terminated immediately prior to the event giving rise to the "Predecessor Employer" relationship with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the "Predecessor Employer" shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the "Predecessor Employer".

(e) **Special rules.** The limitations of this Article shall be determined and applied taking into account the rules in Regulations §§1.415(f)-1(d), (e) and (h).

(f) **Aggregation with Multiemployer Plans.**

(1) If the Employer maintains a multiemployer plan, as defined in Code §§414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the Employer shall be treated as benefits provided under a plan maintained by the Employer for purposes of this Section and Plan Section 6.2.

(2) Effective for Limitation Years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Plan Sections 6.2(b) and 6.2(g)(1) to a plan which is not a multiemployer plan.

6.4 LIMITATIONS ON EMPLOYEE CONTRIBUTIONS

(a) **Maximum "Annual Additions."** If this Plan permits after-tax voluntary Employee contributions or requires mandatory Employee contributions, then the maximum "Annual Additions" that may be made an Employee for any Limitation Year shall equal the lesser of:

(1) $40,000 adjusted annually as provided in Code §415(d) pursuant to the Regulations, or

(2) one-hundred percent (100%) of the Participant's 415 Compensation for such Limitation Year.

The percentage limitation in paragraph (2) above shall not apply to: (1) any contribution for medical benefits (within the meaning of Code §419A(f)(2)) after separation from service which is otherwise treated as an annual addition, or (2) any amount otherwise treated as an annual addition under Code §415(l)(1).

For any short Limitation Year, the dollar limitation in paragraph (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short Limitation Year and the denominator of which is twelve (12).

For the purpose of this Section, any Employee Contributions made under this Plan shall be aggregated with all annual additions under all qualified defined contribution plans (regardless of whether such plan has terminated) maintained by the Employer during a Limitation Year.

(b) **Definition of "Annual Additions."** "Annual Additions" means, for purposes of applying the limitations of Code §415, the amounts contributed by an Employee for any Limitation Year of (1) Employer contributions to any defined contribution plan maintained by the Employer, (2) Employee contributions to any plan maintained by the Employer (such as any Voluntary or

Mandatory Employee Contributions to this Plan), (3) forfeitures under any defined contribution plan maintained by the Employer, (4) amounts allocated to an individual medical account, as defined in Code §415(l)(2) which is part of a pension or annuity plan maintained by the Employer, (5) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit plan (as defined in Code §419(e)) maintained by the Employer and (6) allocations under a simplified employee pension plan maintained by the Employer.

Annual Additions do not include the transfers of funds from one plan to another. In addition, the following are not Annual Additions for the purposes of this definition: (1) rollover contributions as defined in Code §§402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16); (2) repayments of loans made to a Participant from the Plan; (3) repayment of distributions received by an Employee pursuant to Code §411(a)(7)(B) (cash-outs); (4) repayment of distributions received by an Employee pursuant to Code §411(a)(3)(D) (mandatory contributions); and (5) employee contributions to a simplified employee pension excludable from gross income under Code §408(k)(6).

ARTICLE VII
TRUST FUND TRANSACTIONS

7.1 SEPARATE TRUST AGREEMENT

(a) **Conflict with Plan.** The Trust Agreement shall be set forth in a separate written Agreement, provided that its terms do not state that such separate trust agreement controls in the event of a conflict between its terms and that of the Plan. In the event of any conflicts between the provisions of this Plan and any separate Trust agreement, the provisions of this Plan document control.

(b) **Custodians.** Subject to the terms of the separate Trust agreement, the Employer may appoint a Custodian of the Plan assets. The duties of the Custodian are those set forth in the agreement with the Custodian.

7.2 LOANS TO PARTICIPANTS

(a) **Permitted Loans.** To the extent not prohibited under the terms of the Trust agreement, and if specified in the Adoption Agreement, the Trustee (or the Administrator, if the responsibility for making loans has been delegated to the Administrator) may, in the Administrator's sole discretion, make loans to Participants or Beneficiaries. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Participants; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time. Notwithstanding the preceding, if this Plan is a fully insured Code §§412(e)(3) Plan, no loans shall be made under this Plan.

(b) **Limitation on amount of loan.** No Participant loan shall exceed the Present Value of the Participant's Accrued Benefit. In addition, if the Participant is a "Restricted Employee" under the pre-termination restrictions in Plan Section 5.23, the total of all the "Restricted Employee's" outstanding loans may not exceed the amount that such "Restricted Employee" would be entitled to under the pre-termination restrictions.

(c) **Prohibited assignment or pledge.** An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a loan under this Section.

(d) **Spousal consent.** If the Vested interest of a Participant is used to secure any loan made pursuant to this Section, then the written (or such other form as permitted by the IRS) consent of the Participant's spouse shall be required. The consent must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent must be obtained within the one hundred eighty (180) day period prior to the date the loan is made. A new consent shall be required if the Vested interest of a Participant is used for renegotiation, extension, renewal or other revision of the loan Any security interest held by the Plan by reason of an outstanding loan to the Participant or Former Participant shall be taken into account in determining the amount of the death benefit or Pre-Retirement Survivor Annuity. However, unless the loan program established pursuant to this Section provides otherwise, no spousal consent shall be required under this paragraph if the total interest subject to the security is not in excess of $5,000. If a valid spousal consent has been obtained in accordance with this Subsection, then, notwithstanding any other provision of this Plan, the portion of the Participant's Vested Accrued Benefit used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Accrued Benefit payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's Vested Accrued Benefit (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Accrued Benefit shall be adjusted by first reducing the Vested Accrued Benefit by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

(e) **Loan program.** The Administrator shall be authorized to establish a participant loan program to provide for loans under the Plan. The loan program shall be established in accordance with Department of Labor regulation §2550.408(b)-1(d)(2) providing for loans by the Plan to parties-in-interest under said Plan, such as Participants or Beneficiaries. In order for the Administrator to implement such

loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

(1) the identity of the person or positions authorized to administer the Participant loan program;

(2) a procedure for applying for loans;

(3) the basis on which loans will be approved or denied;

(4) limitations, if any, on the types and amounts of loans offered;

(5) the procedure under the program for determining a reasonable rate of interest;

(6) the types of collateral which may secure a Participant loan; and

(7) the events constituting default and the steps that will be taken to preserve Plan assets in the event of a default.

(f) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(g) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

7.3 AUDIT

(a) **Duty to engage accountant.** If an audit of the Plan's records shall be required by the Act and the regulations thereunder for any Plan Year, the Administrator shall engage on behalf of all Participants an independent qualified public accountant for that purpose. Such accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Administrator and the Trustee a report of the audit setting forth the accountant's opinion as to whether any statements, schedules or lists, that are required by Act §103 or the Secretary of Labor to be filed with the Plan's annual report, are presented fairly in conformity with generally accepted accounting principles applied consistently.

(b) **Payment of fees.** All auditing and accounting fees shall be an expense of and may, at the election of the Employer, be paid from the Trust Fund.

(c) **Information to be provided to Administrator.** If some or all of the information necessary to enable the Administrator to comply with Act §103 is maintained by a bank, insurance company, or similar institution, regulated, supervised, and subject to periodic examination by a state or federal agency, then it shall transmit and certify the accuracy of that information to the Administrator as provided in Act §103(b) within one hundred twenty (120) days after the end of the Plan Year or such other date as may be prescribed under regulations of the Secretary of Labor.

7.4 OUTGOING TRANSFERS

(a) **Plan-to-Plan Transfers to another plan.** To the extent not prohibited under the terms of the Trust agreement, the Trustee at the direction of the Administrator shall transfer the interest, if any, of a Participant's Accrued Benefit to another trust forming part of a defined benefit plan that meets the requirements of Code §401(a), provided that the trust to which such transfers are made permits the transfer to be made and further provided that the terms of the transferee plan properly preserves all the required features and restrictions applicable to such Accrued Benefit under this Plan.. However, the transfer of amounts from this Plan to a nonqualified foreign trust is treated as a distribution and the transfer of assets and liabilities from this Plan to a plan that satisfies Section 1165 of the Puerto Rico Code is also treated as distribution from the transferor plan.

7.5 LIFE INSURANCE

(a) **Life insurance.** To the extent not prohibited under the terms of the Trust agreement, if life insurance policies have been issued under the Plan to insure the death benefits provided hereunder, the Trustee, at the direction of the Administrator, shall apply for, own, and pay premiums on such life insurance policies.

(b) **Contract conversion upon distributable event.** Upon a distributable event, life insurance policies shall, at the direction of the Administrator, be surrendered to the Trust Fund for their cash value or transferred to the Former Participant under the terms of this Plan. The Administrator must distribute the Contracts to the Participant or convert the entire value of life insurance policies at retirement into cash or provide for a periodic income (under the terms of this Plan) so that no portion of such value may be used to continue life insurance protection beyond retirement.

(c) **Qualified Voluntary Employee Contributions**. Notwithstanding anything hereinabove to the contrary, amounts credited to a Participant's Qualified Voluntary Employee Contribution Account shall not be applied to the purchase of life insurance contracts.

ARTICLE VIII
AMENDMENT, TERMINATION AND MERGERS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. Any such amendment shall become effective as provided therein upon its execution, and unless otherwise provided in the amendment, shall only apply to those Participants who have an Hour of Service after the effective date of the amendment. The Trustee (or Insurer) shall not be required to execute any such amendment.

(b) **Permissible amendments.** The Employer may make the following amendments without affecting reliance on this Non-Standardized Pre-Approved plan: (1) change the choice of options in the Adoption Agreement; (2) add any appendix to the Adoption Agreement that is specifically permitted pursuant to the terms of the Plan (e.g., Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)); (3) specify or change the effective date of a provision as permitted under the Plan; (4) add overriding language in the Adoption Agreement when such language is necessary to satisfy Code §415 or Code §416 because of the required aggregation of multiple plans; (5) amend administrative provisions of the Plan such as provisions relating to investments, plan claims procedures, and Employer contact information provided the amended provisions are not in conflict with any other provision of the Plan and do not cause the Plan to fail to qualify under §401; (6) adopt sample or model plan amendments published by the Internal Revenue Service which provide that their adoption will not result in the Employer losing reliance on the Opinion Letter; (7) amend to adjust for limitations provided under Code §§415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual cost of living increases, other than to add automatic cost-of-living adjustments to the Plan; (8) make interim amendments or discretionary amendments that are related to a change in qualification requirements, and (9) make amendments necessary pursuant to resolving a compliance deficiency pursuant to a closing agreement under the Employee Plans Compliance Resolution System. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Code §412(d), will generally have no reliance on the Opinion Letter.

(c) **Provider amendments.** The Employer (and every Participating Employer) expressly delegates authority to the provider the right to amend the Plan (1) to conform the Plan to any changes to the Code, and other IRS Guidance (including adoption of model, sample or other required good faith amendments that specifically provide that their adoption will not cause such plan to be individually designed); or (2) to make corrections to prior approved plans that may be applied to all employers who adopted the Plan. For purposes of this Section, the mass submitter shall be recognized as the agent of the provider. If the provider does not adopt any amendment made by the mass submitter, it will no longer be identical to, or a minor modifier of, the mass submitter plan.

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer. The Employer is also precluded from amending the plan to discontinue or decrease the allocation of Employer contributions or Forfeitures solely because of the Participant's attainment of any age.

(e) **Anti-cutback restrictions.** No Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" which results in a further restriction on such benefits (even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in Code §§411(a)(3) – (11)) unless such "Section 411(d)(6) protected benefits" are preserved in operation with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. Notwithstanding the preceding, "Section 411(d)(6) protected benefits" may be eliminated or reduced to the extent permitted by Code §412(d)(2) or Regulations (including Regulations §§1.411(d)-3 and 1.411(d)-4) or other IRS guidance. For purposes of this Subsection, a plan amendment which has the effect of decreasing a Participant's "Section 411(d)(6) protected benefits" with respect to benefits attributable to service before the amendment shall be treated as reducing a "Section 411(d)(6) protected benefit." "Section 411(d)(6) protected benefits" are benefits described in Code §411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit.

For purposes of this Section, a Plan amendment that raised the Normal Retirement Age under the Plan to comply with Regulations §1.401(a)-1(b)(2) will not be treated as an amendment that decreases a Participant's Accrued Benefit merely because the amendment eliminated a right the Participant may have had to receive a distribution prior to severance from employment on attainment of the Normal Retirement Age under the prior Plan terms. The preceding sentence applies only in the case of a Plan amendment that was adopted after May 22, 2007 and on or before the last day of the applicable remedial amendment period under Regulations §1.401(b)–1 with respect to the requirements of Regulations §§1.401(a)–1(b)(2) and (3). A Participant who became or would have become eligible for payment of benefits at the Normal Retirement Age under the prior Plan terms, and who had severed from employment with the Employer maintaining the Plan, continues to be eligible for payment at the same age and in at least the same amount as under the prior Plan terms with respect to benefits accrued prior to the applicable amendment date.

Notwithstanding the above, nothing in this Section precludes the Employer, in cases where the employer is switching from an individually designed plan (i.e., a plan that has no reliance on an Opinion Letter or Advisory Letter) or from one Pre-approved Plan to another, from attaching to the Plan a list of the Code Section §411(d)(6) protected benefits that must be preserved. Such a list would not be considered an amendment to the plan.)

8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right to terminate the Plan at any time. Upon any termination (full or partial), all amounts shall be allocated in accordance with the provisions hereof and the Accrued Benefit, to the extent funded as of such date, of each affected Participant shall become fully Vested and shall not thereafter be subject to forfeiture. However, Participants who were not fully Vested at the time they received a complete distribution of their Vested benefits prior to the date of termination, shall not become entitled to any additional Vested benefits on account of Plan termination. The preceding sentence does not apply to Participants affected by a partial termination by operation of law.

(b) **Abandoned plan.** If the Employer, in accordance with DOL guidance, abandons the Plan, then the Trustee (or Insurer) or other party permitted to take action as a qualified terminal administrator (QTA), may terminate the Plan in accordance with applicable DOL and IRS regulations and other guidance.

(c) **Distribution if covered by PBGC.** If this Plan is covered by the Pension Benefit Guaranty Corporation (PBGC), then the termination of the Plan shall comply with the requirements and rules as may be promulgated by the PBGC under authority of Title IV of the Act, including any rules relating to time periods or deadlines for providing notice or for making a necessary filing. In the case of a distress termination (as set forth in Act §4041), upon approval by the PBGC that the Plan is sufficient for "benefit liabilities" or for "guaranteed benefits," or in the case of a standard termination (as set forth in Act §4041), a letter of non-compliance has not been issued within the sixty (60) day period (as extended) following the receipt by the PBGC of the follow-up notice, the Administrator shall allocate the assets of the Plan among Participants and Beneficiaries pursuant to Act §4044(a). As soon as practicable thereafter, the assets of the Trust Fund shall be distributed to the Participants and Beneficiaries, in cash, in kind, or through the purchase of irrevocable commitments from the Insurer, in a manner consistent with Section 5.11. However, if all liabilities with respect to Participants and Beneficiaries under the Plan have been satisfied and there remains a balance in the Trust Fund due to erroneous actuarial computation, such balance, if any, shall, if elected in the Adoption Agreement, be returned to the Employer. However, the foregoing provision permitting a return of excess assets to the Employer shall not be treated as effective until the end of the fifth calendar year following the date such a provision was first adopted and continuously remained in effect unless the Plan has always provided for a return of assets. In the event the provision is not treated as effective, or if elected in the Adoption Agreement, excess assets shall be reallocated to the Participants on the basis of their Present Value of Accrued Benefit, or if this is an integrated Plan, in a nondiscriminatory manner. The portion of the excess attributable to Employee Mandatory Contributions will be paid to the Participants who made these contributions. In the case of a distress termination in which the PBGC is unable to determine that the Plan is sufficient for guaranteed benefits, the assets of the Plan shall only be distributed in accordance with proceedings instituted by the PBGC.

(d) **Distribution if not covered by PBGC.** If this Plan is exempt from coverage under the PBGC, then upon full termination of the Plan, the Employer shall direct the distribution of the assets in the Plan to the Participants in a manner which is consistent with Section 5.11. In such case, the Trustee (or Insurer) shall distribute the assets to the remaining Participants in the Plan and to Retired Participants in cash, in property or through the purchase of irrevocable deferred commitments from the Insurer, subject to provision for expenses of administration or liquidation. In the event the value of Plan assets is less than the Present Value of all Accrued Benefits upon full termination of the Plan, then the assets will be distributed in the following order:

(1) Assets attributable to Employee Mandatory Contributions will be paid to the Participants who made such contributions; and

(2) Any remaining assets will be distributed to each Participant in the same proportion that the Present Value of each such Participant's Accrued Benefit as of the date of distribution bears to the Present Value of all Accrued Benefits as of such date.

If all liabilities with respect to Participants and Beneficiaries under the Plan have been satisfied and there remains a balance in the Plan due to erroneous actuarial computation after such allocation shall, if elected in the Adoption Agreement, be returned to the Employer. However, the foregoing provision permitting a return of excess assets to the Employer shall not be treated as effective until the end of the fifth calendar year following the date such a provision was first adopted and continuously remained in effect unless the Plan has always provided for a return of assets. In the event the provision is not treated as effective, or if elected in the Adoption Agreement, excess assets shall be reallocated to the Participants on the basis of their Present Value of Accrued Benefit, or if this is an integrated Plan, in a nondiscriminatory manner.

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

Before this Plan can be merged or consolidated with any other qualified plan or its assets or liabilities transferred to any other qualified plan, the Administrator must secure (and file with the Secretary of Treasury at least thirty (30) days beforehand) a certification from a government-enrolled actuary that the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the

Plan had terminated immediately before the transfer, merger or consolidation, and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411(d)(6) protected benefits" as described in Section 8.1(e).

ARTICLE IX
TOP-HEAVY PROVISIONS

9.1 TOP-HEAVY PLAN REQUIREMENTS

Notwithstanding anything in this Plan to the contrary, for any Top-Heavy Plan Year, the Plan shall provide the special vesting requirements of Code §416(b) pursuant to Section 5.10 of the Plan and the special minimum benefit requirements of Code §416(c) pursuant to Plan Section 5.6.

9.2 DETERMINATION OF TOP-HEAVY STATUS

(a) **Definition of Top-Heavy Plan.** This Plan shall be a Top-Heavy Plan for any plan year beginning after December 31, 1983, if any of the following conditions exists:

(1) If the "top-heavy ratio" for this Plan exceeds sixty percent (60%) and this Plan is not part of any "required aggregation group" or "permissive aggregation group";

(2) If this Plan is a part of a "required aggregation group" but not part of a "permissive aggregation group" and the "top-heavy ratio" for the group of plans exceeds sixty percent (60%); or

(3) If this Plan is a part of a "required aggregation group" and part of a "permissive aggregation group" and the "top-heavy ratio" for the "permissive aggregation group" exceeds sixty percent (60%).

(b) **Top-heavy ratio.** "Top-heavy ratio" means, with respect to a "determination date":

(1) If the Employer maintains one or more defined benefit plans and has not maintained any defined contribution plans (including any simplified employee pension plan (as defined in Code §408(k)) during the 5-year period ending on the "determination date" has or has had account balances, the top-heavy ratio for this plan alone or for the "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of the Present Value of Accrued Benefits of all Key Employees as of the "determination date" (including any part of any Accrued Benefit distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of the Present Value of Accrued Benefits (including any part of any Accrued Benefit distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), both computed in accordance with Code §416 and the Regulations thereunder.

(2) If the Employer maintains this Plan and one or more defined contribution plans (including any simplified employee pension plan) which during the 5-year period ending on the "determination date," has or has had any account balances, then the top-heavy ratio for any "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all Key Employees, determined in accordance with (1) above, and sum of account balances under the aggregated defined contribution plan or plans for all Key Employees as of the "determination date," and the denominator of which is the sum of the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all participants, determined in accordance with (1) above, and the account balances under the aggregated defined contribution plan or plans for all participants as of the "determination date," all determined in accordance with Code §416 and the Regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the 1-year period ending on the "determination date" (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002).

(3) For purposes of (1) and (2) above, the value of account balances and the Present Value of Accrued Benefits will be determined as of the most recent "valuation date" that falls within or ends with the 12-month period ending on the "determination date," except as provided in Code §416 and the Regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and Accrued Benefits of a participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the plan at any time during the 1-year period ending on the "determination date" will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code §416 and the Regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and Accrued Benefits will be calculated with reference to the "determination dates" that fall within the same calendar year.

The Accrued Benefit of a Participant other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code §411(b)(1)(C).

(c) **Determination date.** "Determination date" means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" means the last day of that Plan Year.

(d) **Permissive aggregation group.** "Permissive aggregation group" means the "required aggregation group" of plans plus any other plan or plans of the Employer or any Affiliated Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code §§401(a)(4) and 410.

(e) **Present value.** "Present value" means the present value based only on the interest and mortality rates specified in the Adoption Agreement.

(f) **Required aggregation group.** "Required aggregation group" means, effective for Plan Years beginning after December 31, 2001: (1) each qualified plan of the Employer or any Affiliated Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the determination date or any of the four preceding Plan Years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Code §§401(a)(4) or 410.

(g) **Valuation Date.** "Valuation date" means the date elected by the Employer in the Adoption Agreement as of which account balances or Accrued Benefits are valued for purposes of calculating the "top-heavy ratio."

ARTICLE X
MISCELLANEOUS

10.1 EMPLOYER ADOPTIONS

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Trustee (or Insurer), and it shall provide such additional information as the Trustee (or Insurer) may require.

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

10.2 DISCONTINUANCE OF PARTICIPATION

Any adopting Employer shall be permitted to discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Terminating Employer to such new Trustee (or Insurer) as shall have been designated by such Employer, in the event that it has established a separate pension plan for its Employees. If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Terminating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Terminating Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of such Terminating Employer.

10.3 PARTICIPANT'S RIGHTS

(a) **Not a contract.** This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

(b) **Source of benefits.** A Participant shall have no recourse toward satisfaction of benefits provide under this Plan other than to Plan assets or to the extent applicable, the Pension Benefit Guarantee Corporation.

10.4 ALIENATION

(a) **General rule.** Subject to the exceptions provided below and as otherwise permitted by the Code and the Act, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Plan Section 7.2. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Plan Sections 2.10 and 2.11.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code §414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) **Exception for certain debts to Plan.** Notwithstanding any provision of this Section to the contrary, an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code §§401(a)(13)(C) and (D).

10.5 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION

(a) **Applicable law.** This Plan shall be construed and enforced according to the Code, the Act and the laws of the state or commonwealth in which the Employer's (or if there is a corporate Trustee, the Trustee's, or if the Plan is fully insured, the Insurer's) principal office is located (unless otherwise designated in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)), other than its laws respecting choice of law, to the extent not pre-empted by federal law.

(b) **Administrator's discretion/nondiscriminatory administration.** The Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Administrator makes under the Plan is final and binding upon any affected person. The Administrator must exercise all of its Plan powers and discretion, and perform all of its duties in a uniform and nondiscriminatory manner.

(c) **Communications.** All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Administrator (or, as applicable, the Trustee or Insurer) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.

(d) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator, Trustee and Insurer are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(e) **Plan terms binding.** The Plan is binding upon all parties, including but not limited to, the Employer, Trustee, Insurer, Administrator, Participants and Beneficiaries.

(f) **Parties to litigation.** Except as otherwise provided by applicable law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust or any Fiduciary. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon all parties, including the Employer, the Administrator, Trustee, Insurer, Participants and Beneficiaries.

(g) **Fiduciaries not insurers.** The Trustee, Administrator and the Employer in no way guarantee the Plan assets from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Plan. The liability of the Employer, the Administrator and the Trustee to make any distribution from the Trust at any time and all times is limited to the then available assets of the Trust.

(h) **Construction/severability.** The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with the Act and other applicable law. To the extent permissible under applicable law, any provision

which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

Meaning of "cash". Absent a more specific provision in the Plan to the contrary, an Employer may, on a uniform and consistent basis, treat the distribution of a Contract as being a cash distribution.

Meaning of "amendment". Any restatement of an Employer's Plan is an amendment for purposes of the Plan.

(i) **Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

(j) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

10.6 GENDER, NUMBER, AND TENSE

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

10.7 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

10.8 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Retired Participants, or their Beneficiaries.

(b) **Refunds or credits on contracts.** If Plan benefits are provided through the distribution of annuity or insurance contracts, any refunds or credits in excess of plan benefits (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) will be paid to the Trust Fund.

(c) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact pursuant to Act §403(c)(2)(A), the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

(d) **Contribution conditioned on deductibility.** Except as specifically stated in the Plan, any contribution made by the Employer to the Plan (if the Employer is not tax-exempt) is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following a final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a court of competent jurisdiction, demand repayment of such disallowed contribution and the Trustee (or Insurer) shall return such contribution within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

10.9 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

10.10 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

10.11 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

10.12 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

10.13 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The "named Fiduciaries" of this Plan are (a) the Employer, (b) the Administrator, (c) the Trustee (if the Trustee has discretionary authority as elected in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee), and (d) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under the Plan; and shall have the sole authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's "funding policy and method"; and to amend the elective provisions of the Adoption Agreement or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. If the Trustee has discretionary authority, it shall have the sole responsibility of management of the assets held under the Trust, except those assets, the management of which has been assigned to an Investment Manager or Administrator, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

10.14 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan or an amendment to the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code §§401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this Non-Standardized Pre-Approved plan and will be considered an individually designed plan.

10.15 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall (be subject to the elections made by the Employer in the Adoption Agreement) be paid only upon death, Total and Permanent Disability, normal, early, or late retirement, separation from service, severance of employment, or upon Plan Termination.

10.16 ELECTRONIC MEDIA

The Administrator may use any electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent

permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law.

10.17 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under the Act. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or plan official in undertaking correction of a fiduciary breach, including correction under the DOL Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC.

ARTICLE XI
PARTICIPATING EMPLOYERS

11.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee (or Insurer) and if permitted by an election on the Adoption Agreement, any Affiliated Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer. Subject to the provisions of Section 11.6 in the event a Participating Employer is not an Affiliated Employer, then this Plan will be a Multiple Employer Plan in accordance with Section 12.1, and must be operated as such in order to have reliance on the Opinion Letter. Alternatively, the Employer which first established the Plan and is currently maintaining the Plan on behalf of its additional Adopting Employers may elect on the Adoption Agreement to allow only Affiliated Employers to participate in the Plan.

11.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) **Provisions may not vary.** Except as otherwise permitted by the Employer, each Participating Employer shall be required to select the same Adoption Agreement provisions as those selected by the Employer other than the Fiscal Year, and such other items that must, by necessity, vary among employers.

(b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.

(c) **Transfers of Participants.** The transfer of any Participant from or to an Employer participating in this Plan, whether an Employee of the Employer or a Participating Employer, shall not affect such Participant's rights under the Plan, and the Participant's Present Value of Accrued Benefit as well as accumulated service time with the transferor or predecessor and length of participation in the Plan, shall continue to be taken into account.

(d) **Separate accounting.** On the basis of information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the Accrued Benefits of the Participants of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in any event of Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

(e) **Allocation of Accrued Benefit.** In the event of termination of employment of any transferred Employee, any portion of the Accrued Benefit of such Employee which has not been Vested under the provisions of this Plan shall be allocated by the Trustee (or Insurer) at the direction of the Administrator to the respective equities of the Participating Employers for whom such Employee has rendered service in the proportion that each Participating Employer has contributed toward the benefits of such Employee. The amount so allocated shall be retained by the Trustee (or Insurer) and shall be used to reduce the contribution by the respective Participating Employer, for the next succeeding year or years.

(f) **Payment of expenses.** Any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

11.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated

irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

11.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

11.5 AMENDMENT

If this Plan is amended pursuant to Section 8.1, then only the Employer need execute such Plan amendment. The Employer, however, will provide at least 30 days advance notice to a Participating Employer before any discretionary amendment becomes effective with respect to such Participating Employer. A Participating Employer may agree to waive the advance notice to a shorter period.

11.6 DISCONTINUANCE OF PARTICIPATION

(a) **Discontinuance in General.** Any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new Trustee (or Insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any "Section 411(d)(6) protected benefits" as described in Plan Section 8.1(e). If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the employees of such Participating Employer.

(b) **Participating Employer no longer an Affiliated Employer.** If the Adoption Agreement limits participation in the Plan to only Affiliated Employers, then if a Participating Employer is no longer an Affiliated Employer because of an acquisition or disposition of stock or assets, a merger, or similar transaction, the Participating Employer will cease to participate in the Plan as soon as administratively feasible so as to prevent this Plan from becoming a multiple employer plan. If a Participating Employer ceases to be an Affiliated Employer under the preceding provisions, then the following procedures may be followed to discontinue the Participating Employer's participation in the Plan.

(c) **Manner of discontinuing participation.** If the Adoption Agreement limits participation in the Plan to only Affiliated Employers, then to document the cessation of participation by a former Participating Employer, the former Participating Employer will discontinue its participation in one of the following ways: (1) the former Participating Employer adopts a resolution that formally terminates active participation in the Plan as of a specified date, or (2) the former Participating Employer re-executes the Participation Agreement indicating cessation of participation, and in either case, the former Participating Employer also provides any notices to its Employees that are required by law. Discontinuance of participation means that no further benefits accrue after the effective date of such discontinuance with respect to employment with the former Related Employer. The portion of the Plan attributable to the former Participating Employer may continue as a separate plan, under which benefits may continue to accrue, through the adoption by the former Participating Employer of a successor plan (which may be created through the execution of a separate Agreement by the former Participating Employer) or by spin-off of that portion of the Plan followed by a merger or transfer into another existing plan, as specified in a merger or transfer agreement. The facts and circumstances or each situation must be evaluated to accurately determine whether the rules of this Section have been met.

(d) **Multiple employer plan.** If the Adoption Agreement limits participation in the Plan to only Affiliated Employers, then after a Participating Employer becomes a former Participating Employer, its Employees continue to accrue benefits under this Plan, the Plan will be treated as a multiple employer plan only to the extent required by law. So long as the discontinuance procedures of this Section are satisfied, such treatment as a multiple employer plan will not affect reliance on the favorable IRS letter issued to the provider. For example, if the Participating Employer ceases participation prior to, or concurrently with, the transaction causing such Employer to cease being an Affiliated Employer, it is intended that the Plan not be treated as a multiple employer plan. The facts and circumstances or each situation must be evaluated to accurately determine whether the rules of this Section have been met.

11.7 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

ARTICLE XII
MULTIPLE EMPLOYER PROVISIONS

12.1 ELECTION AND OVERRIDING EFFECT

Non-Affiliated Employers Adopting the Plan. If an Employer that is not an Affiliated Employer adopts this Plan, then the provisions of this Article shall (1) apply to each such Participating Employer as of the Effective Date specified in its participation agreement and (2) supersede any contrary provisions in the Plan. If this Article applies, then the Plan shall be a multiple employer plan as described in Code §413(c). In this case, the Employer and each Participating Employer that is not an Affiliated Employer acknowledge that the Plan is a multiple employer plan subject to the rules of Code §413(c) and any annual reporting requirements for multiple employer plans. The participation agreement must identify the Participating Employer as such and provide for the Participating Employer's signature.

12.2 PROVISIONS APPLIED SEPARATELY (OR JOINTLY) FOR PARTICIPATING NON-AFFILIATED EMPLOYERS

(a) **Separate status.** The Plan Administrator will apply the definition of Compensation and perform the tests listed in this Section, separately for each Participating Employer other than an Affiliated Employer of such Participating Employer. For this purpose, the Employees of each Participating Employer (and its Affiliated Employers), and their benefits, shall be treated as though they were in separate plan. Any correction action, such as additional contributions or corrective distributions, shall only affect the Employees of the Participating Employer (and its Affiliated Employers, if any). The tests subject to this separate treatment are:

(1) The ACP Test.

(2) Nondiscrimination testing as described in Code §401(a)(4) and the applicable Regulations.

(3) Coverage testing as described in Code §410(b) and the Regulations.

(4) Status as a Highly Compensated Employee.

(b) **Joint status.** The Code §415 limitations, including the related Compensation definition, shall be performed for the plan as whole, without regard to employment by a particular Participating Employer.

12.3 TOP-HEAVY APPLIED SEPARATELY FOR PARTICIPATING NON-AFFILIATED EMPLOYERS

The Plan will apply the Top-Heavy Plan provisions separately to each Participating Employer other than an Affiliated Employer of such Participating Employer. For purposes of applying this Article to a Participating Employer, the Participating Employer and any entity which is an Affiliated Employer to that Participating Employer shall be the "Employer" for purposes of Section 9.1, and the terms "Key Employee" and "Non-Key Employee" shall refer only to the Employees of that Participating Employer and/or its Affiliated Employers.

12.4 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers and their Affiliated Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service and has not had a severance from employment.

12.5 REQUIRED BEGINNING DATE

If a Participant is a five percent (5%) owner" as defined in Section 1.41(b) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's required beginning date under Section 5.13 shall be the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2.

12.6 COOPERATION AND INDEMNIFICATION

(a) **Cooperation.** Each Participating Employer agrees to timely provide all information the Administrator deems necessary to ensure the Plan is operated in accordance with the requirements of the Code and the Act and will cooperate fully with the signatory Employer, the Plan, the Plan fiduciaries, and other proper representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(b) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Administrator, the signatory Employer and its subsidiaries; officers, directors, shareholders, employees, and agents of the signatory Employer; the Plan; the Trustees, Fiduciaries, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees or DOL fiduciary breach sanctions and penalties) arising out of or relating to the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional

or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan.

12.7 INVOLUNTARY TERMINATION

The signatory Employer shall have the power to terminate the participation of any Participating Employer (hereafter the terminated employer") in this Plan. If and when the signatory Employer wishes to exercise this power, the following shall occur:

(a) **Notice.** The signatory Employer shall give the terminated employer a notice of the signatory employer's intent to terminate the terminated employer's status as a Participating Employer of the Plan. The signatory Employer will provide such notice not less than thirty (30) days prior to the date of termination unless the signatory Employer determines that the interest of Plan Participants requires earlier termination.

(b) **Spin-off.** The signatory Employer shall establish a new defined benefit plan, using the provisions of this Plan with any modifications contained in the terminated employer's participation agreement, as a guide to establish a new defined benefit plan (hereinafter the "spin-off plan"). The signatory Employer will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 7.4 the Plan assets attributable to the Employees of the terminated employer to the spin-off plan. The terminated employer shall be the administrator of the spin-off plan. The trustee of the spin-off plan shall be the person or entity designated by the terminated employer, or, in the absence of any such designation, the chief executive officer of the terminated employer. If state law prohibits the terminated employer from serving as trustee, the trustee is the president of a corporate terminated employer, the managing partner of a partnership terminated employer, the managing member of a limited liability company terminated employer, the sole proprietor of a proprietorship terminated employer, or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing. However, the signatory Employer shall have the option to designate an appropriate financial institution as Trustee instead if necessary to protect the interest of the Participants. The signatory Employer shall have the authority to charge the terminated employer or the Plan a reasonable fee to pay the expenses of establishing the spin-off plan.

(c) **Transfer.** The terminated employer, in lieu of creation of the spin-off plan under (b) above, has the option to elect a transfer alternative in accordance with this Subsection (c). If the terminated employer selects this option, the Administrator shall transfer (in accordance with the rules of Code §414(l) and the provisions of Section 7.4 the Plan assets attributable to the Employees of the terminated employer to a qualified plan the terminated employer maintains. To exercise this option, the terminated employer must deliver to the signatory Employer or Administrator in writing the name and other relevant information of the transferee plan and must provide such assurances that the Administrator shall reasonably require to demonstrate that the transferee plan is a qualified plan.

(d) **Participants.** The Employees of the terminated employer shall cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the terminated employer, effective as of the date of termination. To the extent that these Employees have accrued but unpaid contributions as of the date of termination, the terminated employer shall pay such amounts to the Plan or the spin-off plan no later than thirty (30) days after the date of termination, unless the terminated employer effectively selects the Transfer option under Subsection (c) above.

(e) **Consent.** By its signature on the participation agreement, the terminated employer specifically consents to the provisions of this Article and agrees to perform its responsibilities with regard to the spin-off plan, if necessary.

12.8 VOLUNTARY TERMINATION

A Participating Employer (hereafter "withdrawing employer") may voluntarily withdraw from participation in this Plan at any time. If and when a withdrawing employer wishes to withdraw, the following shall occur:

(a) **Notice.** The withdrawing employer shall inform the signatory Employer and the Administrator of its intention to withdraw from the Plan. The Withdrawing Employer must give the notice not less than thirty (30) days prior to the effective date of its withdrawal.

(b) **Procedure.** The withdrawing employer and the signatory Employer shall agree upon procedures for the orderly withdrawal of the withdrawing employer from the plan. Such procedures may include any of the optional spin-off or transfer options described in the preceding Section.

(c) **Costs.** The withdrawing employer shall bear all reasonable costs associated with withdrawal and transfer under this Section.

(d) **Participants.** The Employees of the withdrawing employer shall cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the withdrawing employer, effective as of the effective date of withdrawal.