

**FIS BUSINESS SYSTEMS LLC  
NON-STANDARDIZED  
EMPLOYEE STOCK OWNERSHIP (ESOP)  
PRE-APPROVED PLAN**

SAMPLE

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SAMPLE

**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 "Account"** means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

- (a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from (1) the Employer's contributions in the case of a Plan that does not include 401(k) provisions, and (2) the Employer Nonelective Contributions in the case of a Plan that includes 401(k) provisions. In addition, Forfeitures are part of the Combined Account to the extent they are reallocated. Separate accountings shall be maintained with respect to that portion of a Participant's Account attributable to Employer contributions made pursuant to Section 12.1(a)(2) and to Employer contributions made pursuant to Section 12.1(a)(3).
- (b) "Elective Deferral Account" means the account established hereunder to which Elective Deferrals (including a separate accounting for Catch-Up Contributions) are allocated. Amounts in the Participant's Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(e). The Elective Deferral Account may consist of the sub-Accounts listed below. Unless specifically stated otherwise, any reference to a Participant's Elective Deferral Account will refer to both of these sub-Accounts.
  - (1) "Pre-Tax Elective Deferral Account" means the portion of the Elective Deferral Account attributable to Pre-Tax Elective Deferrals (i.e., Elective Deferrals that are not subject to federal income tax at the time of their deferral to the Plan).
  - (2) "Roth Elective Deferral Account" means the portion of the Elective Deferral Account attributable to Roth Elective Deferrals (i.e., that are subject to federal income tax at the time of their deferral to the Plan) which does not include amounts attributable to "in-Plan Roth rollover contributions" (as defined in Section 12.11). No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to each Participant's Roth Elective Deferral Account.
- (c) "Employer Stock Account" means the account of a Participant which is credited with the shares of Employer Stock purchased and paid for by the Trust Fund or contributed to the Trust Fund. The Administrator will keep a separate accounting of different shares of Employer Stock to the extent necessary to administer the provisions of the Plan (e.g., a separate accounting of Employer Stock acquired with the proceeds of an exempt loan).
- (d) "In-Plan Roth Rollover Account" means the account attributable to an "in-Plan Roth rollover contribution" (an IRR) that is directly rolled over within this Plan, as defined and described in Section 12.11. The amount thus contributed retains the characteristics of the source Account from which the amount of the IRR was distributed (except for the tax treatment of such amount when distributed out of the Plan).
- (e) "In-Plan Roth Transfer Account" means the account attributable an "in-Plan Roth rollover transfer" (an IRT) that is directly rolled over within this Plan, as defined and described in Section 12.11. The amount thus contributed retains the characteristics of the source Account from which the amount of the IRT was distributed (except for the tax treatment of such amount when distributed out of the Plan).
- (f) "Other Investments Account" means the account of a Participant which is credited with such Participant's share of all amounts that are not invested in Employer Stock. The Administrator will keep a separate accounting of amounts in a Participant's Other Investment Account to the extent necessary to administer the provisions of the Plan (e.g., a separate accounting of amounts in a Participant's Elective Deferral Account).
- (g) "Qualified Automatic Contribution Safe Harbor Account" means the account established hereunder to which Qualified Automatic Contribution "ADP test safe harbor contributions" are allocated. Amounts in the Qualified Automatic Contribution Safe Harbor Account are subject to the distribution restrictions of Section 12.2(e). The Administrator may maintain a separate Qualified Automatic Contribution Safe Harbor Account for matching contributions and nonelective contributions made pursuant to a QACA.
- (h) "Qualified Matching Contribution Account" means the account established hereunder to which Qualified Matching Contributions are allocated. Amounts in the Qualified Matching Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(e).
- (i) "Qualified Nonelective Contribution Account" means the account established hereunder to which Qualified Nonelective Contributions are allocated. Amounts in the Qualified Nonelective Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(e).
- (j) "Qualified Voluntary Employee Contribution Account" means the account established hereunder to which a Participant's tax-deductible qualified voluntary Employee contributions made pursuant to Section 4.9 are allocated.

(k) "Rollover Account" means the account established hereunder to which amounts transferred from a qualified plan (including this Plan) or individual retirement account in accordance with Section 4.6 are allocated.

(l) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.

(m) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.8 are allocated. Amounts recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5 shall remain subject to the limitations of Section 12.2. Therefore, a separate accounting shall be maintained with respect to that portion of the Voluntary Contribution Account attributable to after-tax voluntary Employee contributions made pursuant to Section 4.8.

**1.2 "ACP"** means the "Actual Contribution Percentage" determined pursuant to Section 12.6(d).

**1.3 "Act"** means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time and includes applicable Department of Labor (DOL) guidance.

**1.4 "ADP"** means the "Actual Deferral Percentage" determined pursuant to Section 12.4(d).

**1.5 "Administrator"** means the Employer unless another person, entity or committee 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 and 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 "Affirmative Election"** means a Salary Deferral Agreement submitted by a Participant to the Administrator in accordance with Section 12.2 that provides instructions to defer a specific amount of Compensation (including an affirmative election to defer no amount) as an Elective Deferral to the Plan. A Participant's Affirmative Election is generally effective as of the first payroll period which follows the payroll period in which the Participant made the Affirmative Election. However, a Participant may make an Affirmative Election which is effective: (a) for the first payroll period in which he or she becomes a Participant if the Participant makes an Affirmative Election within a reasonable period following the Participant's becoming eligible to make Elective Deferrals and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the effective date of the Automatic Contribution Arrangement if the Participant makes an Affirmative Election not later than the Automatic Contribution Arrangement's effective date.

**1.9 "Alternate Payee"** means an alternate payee pursuant to a qualified domestic relations order that meets the requirements of Code §414(p).

**1.10 "Anniversary Date"** means the last day of the Plan Year.

**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 "Automatic Contribution Arrangement"** means the Automatic Deferral provisions described by Section 12.2 and, if applicable, Section 12.9.

**1.13 "Automatic Deferral"** means the amount (if any) that a Participant is deemed to defer in accordance with an Automatic Contribution Arrangement. The effective date of an Employee's Automatic Deferral will be as soon as practicable after the Employee is subject to Automatic Deferrals described by the Adoption Agreement, Section 12.2(b) and/or 12.9, consistent with (a) applicable law, and (b) the objective of affording the Employee a reasonable period of time after receipt of the notice to make an Affirmative Election (and, if applicable, an investment election). All Automatic Deferrals constitute Elective Deferrals.

**1.14 "Beneficiary"** means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is, or may become, payable upon the Participant's death as identified in records maintained by the Plan, subject to the restrictions of Sections 6.2 and 6.6.

**1.15 "Catch-Up Contribution"** means an Elective Deferral made to the Plan by a Catch-Up Eligible Participant that, during any taxable year of such Participant, exceeds one of the following:

- (a) a statutory dollar limit on Elective Deferrals or "annual additions" as provided in Code §401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (without regard to Code §457(b)(3)), as applicable; or
- (b) any Plan limit on Elective Deferrals (other than a limit described in (a) above) that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on annual additions, the dollar limitation on Elective Deferrals under Code §402(g) (not counting Catch-up Contributions) and the limit imposed by the ADP test under Code §401(k)(3). Catch-up Contributions for a Participant for a taxable year may not exceed the lesser of: (1) the dollar limit on Catch-up Contributions under Code §414(v)(2)(B)(i) for the taxable year; or (2) when added to other Elective Deferrals, 100 percent of the Participant's Compensation for the taxable year.

Catch-Up Contributions for a Participant for a Participant's taxable year may not exceed the dollar limit on Catch-Up Contributions under Code §414(v) for the Participant's taxable year. The dollar limit on Catch-Up Contributions under Code §414(v)(2)(B)(i) was \$5,000 for taxable years beginning in 2006. After 2006, the \$5,000 was adjusted by the Secretary of the Treasury for cost-of-living increases under Code §414(v)(2)(C) and is \$6,000 for 2018. Any such adjustments shall be in multiples of \$500.

**1.16 "Catch-Up Eligible Participant"** means a Participant who:

- (a) is eligible to make Elective Deferrals to the Plan pursuant to Section 12.2; and
- (b) will attain age 50 or older by the end of such taxable year.

**1.17 "Code"** means the Internal Revenue Code of 1986, as it may be amended from time to time and includes applicable Internal Revenue Service (IRS) guidance.

**1.18 "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 safe harbor compensation. Compensation means wages, salaries, 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 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 to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;
    - (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; and
    - (iv) Other amounts which receive special tax benefits, or contributions made by the Employer 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 under Code §125) whether or not the contributions are actually excludable from the gross income of the Employee.



(b) **Paid during "determination period."** Compensation shall include only that Compensation which is actually paid to the Participant during the "determination period." Except as otherwise provided in this Plan, the "determination period" is the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the "determination period" shall be the Plan Year.

(c) **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). However, regardless of any election in the Adoption Agreement to the contrary, amounts described in the preceding sentence will be included in Compensation for purposes of making Elective Deferrals under this Plan. 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).

(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.

(d) **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 at the same time 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 compensation paid 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.

(e) **Compensation Dollar limitation.** For any Plan Year (or other applicable determination period) Compensation in excess of \$200,000 shall be disregarded for all purposes other than for purposes of Elective Deferrals, except that the Administrator may impose the limit for purposes of a Plan imposed limit on Elective Deferrals. The dollar amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B) and is \$275,000 for 2018. 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 \$275,000 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). In applying any Plan limitation on the amount of matching contributions or any Plan limit on Elective Deferrals which are subject to matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

(f) **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. In addition, with respect to the determination of any matching contributions, the Plan will disregard Elective Deferrals made while the Participant is not eligible for the matching contribution component of the Plan.

(g) **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.

(h) **Affiliated Employers.** Affiliated Employers are treated as one Employer for purposes of Compensation. If, however, one or more Affiliated Employers are Participating Employers and the Plan (including the Adoption Agreement or a participation agreement) allocate Employer Contributions separately among the Employees directly employed by a Participating Employer, then, in computing such allocations, Compensation paid by other Participating Employers is excluded Compensation.

**1.19 "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.

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

**1.21 "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.

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

**1.23 "Early Retirement Date"** means the date specified in the Adoption Agreement on which a 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 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 allocations of Employer contributions) as though the requirements for Early Retirement Age had been satisfied.

**1.24 "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 any provision of this Plan is retroactively effective, then provisions of this Plan generally control. However, if a provision of this Plan is different from the provision of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, then the provision of such prior plan is incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

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).

**1.25 "Elective Deferrals"** means the Employer's contributions to the Plan that are made pursuant to a Participant's salary deferral election in accordance with Section 12.2. Elective Deferrals shall be subject to the requirements of Sections 12.2(d) and 12.2(e) and shall, except as otherwise provided herein, be required to satisfy the nondiscrimination requirements of the Code §401(k) Regulations. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and, if permitted by the Plan, Roth Elective Deferrals.

**1.26 "Eligible Automatic Contribution Arrangement" (EACA)** means an Automatic Contribution Arrangement that is intended to comply as such for purposes of Code §414(w) and that therefore complies with the Automatic Deferral provisions described in the EACA provisions set forth in Section 12.2(b).

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

(a) **"Reclassified Employees."** An individual shall not be an Eligible Employee (unless otherwise elected in Appendix A to the Adoption Agreement) if such individual is a "Reclassified Employee." 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), irrespective 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."

(b) **Affiliated Employers.** Employees of an Affiliated Employer will not be treated as Eligible Employees prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

(c) **"Code §410(b)(6)(C) transactions."** Employees who became Employees as the result of a "Code §410(b)(6)(C) transaction" will, unless otherwise specified in the Adoption Agreement, 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.

(d) **Union Employees.** 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 Regulation §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 the Plan (see Section 4.1(d)). 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.

(e) **Nonresident aliens.** 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.

(f) **Part-Time/Temporary/Seasonal Employees.** 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, then such Employee will cease to be within this particular excluded class. An Eligible Employee who is no longer part of this excluded class because of this subsection will become a Participant in the Plan in accordance with the Plan's eligibility and entry date provisions that apply to other Eligible Employees.

(g) **Leased Employees.** Regardless of any election in the Adoption Agreement to the contrary, Leased Employees may not be Eligible Employees unless they are employed by the Employer, or by an Affiliated Employer of such Employer, that issues stock held by the ESOP.

(h) **Intern.** The Employer in its Adoption Agreement may elect to 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 Treas. Reg. §1.410(a)-3(e)(1).

**1.28 "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). In addition, the term "Employee" also includes a statutory employee within the meaning of Code §3508(E) (certain life insurance salespersons).

**1.29 "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.

**1.30 "Employer Stock"** means common stock issued by the Employer that is readily tradable on an established securities market. If there is no such common stock, then Employer Stock means common stock issued by the Employer that has a combination of voting power and dividend rights equal to or in excess of: (A) that class of common stock of the Employer having the greatest voting power, and (B) that class of common stock of the Employer having the greatest dividend rights. For purposes of this paragraph, "Employer" includes a corporation that is a member of the same controlled group within the meaning of Code § 409(l)(4).

**1.31 "ESOP"** means an employee stock ownership plan that meets the requirements of Code §4975(e)(7) and Regulation §54.4975-11.

**1.32 "Excess Aggregate Contributions"** means, with respect to any Plan Year, the excess of:

- (a) The aggregate "contribution percentage amounts" (as defined in Section 12.6) actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ACP, over
- (b) The maximum "contribution percentage amounts" permitted by the ACP test in Section 12.6 (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).

Such determination shall be made after first taking into account corrections of any Excess Deferrals pursuant to Section 12.2 and then taking into account adjustments of any Excess Contributions pursuant to Section 12.5.

**1.33 "Excess Compensation"** means, with respect to a Plan that is integrated with Social Security (permitted disparity), a Participant's Compensation which is in excess of the integration level elected in the Adoption Agreement. However, if Compensation is based on less than a twelve (12) month "determination period," Excess Compensation shall be determined by reducing the integration level by a fraction, the numerator of which is the number of full months in the short period and the denominator of which is twelve (12). A "determination period" is not less than twelve (12) months solely because a Participant's Compensation does not include Compensation paid during a "determination period" while the Participant was not a Participant in this component of the Plan.

**1.34 "Excess Contributions"** means, with respect to any Plan Year, the excess of:

- (a) The aggregate amount of Employer contributions actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ADP, over
- (b) The maximum amount of such contributions permitted by the ADP test in Section 12.4 (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual deferral ratios, beginning with the highest of such ratios).

In determining the amount of Excess Contributions to be distributed and/or recharacterized with respect to an affected Highly Compensated Participant as determined herein, such amount shall be reduced by any Excess Deferrals previously distributed to such affected Highly Compensated Participant for the Participant's taxable year ending with or within such Plan Year.

**1.35 "Excess Deferrals"** means, with respect to any taxable year of a Participant, either (a) those elective deferrals within the meaning of Code §§402(g) or 402A that are made during the Participant's taxable year and exceed the dollar limitation under Code §402(g) (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code §414(v)) for such year; or (b) are made during a calendar year and exceed the dollar limitation under Code §§402(g) and 402A (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code §414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer.

**1.36 "Exempt Loan"** means a "loan" that satisfies the requirements of Section 7.11. Any Exempt Loan must be primarily for the benefit of the Plan Participants. For purposes of the Plan, "loan" means a loan made to the Plan by a "disqualified person" or a loan to the Plan that is "guaranteed" by a "disqualified person." "Loan" includes a direct loan of cash, a purchase-money transaction, and an assumption of the obligation of the Plan. A "guarantee" includes an unsecured guarantee and the use of assets of a "disqualified person" as collateral for a loan, even though the use of assets may not be a guarantee under applicable state law. For these purposes, a "disqualified person" means a disqualified person as defined in Code §4975(e)(2).

**1.37 "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.

**1.38 "Fiscal Year"** means the Employer's accounting year.

**1.39 "Forfeiture"** means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan. Unless otherwise elected in the Adoption Agreement, Forfeitures occur pursuant to (a) below.

(a) A Forfeiture will occur on the earlier of:

- (1) The last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service, or
- (2) The distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For this purpose, a Participant's Vested benefit shall not include: (i) the Participant's Qualified Voluntary Employee Contribution Account, and (ii) the Participant's Rollover Account.

(b) If elected in the Adoption Agreement, a Forfeiture will occur as of the last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service.

Regardless of the preceding, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Participant is not eligible to share in the allocation of Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

**1.40 "Former Employee"** means an individual who has severed employment with the Employer or an Affiliated Employer.

**1.41 "414(s) Compensation"** means Compensation as defined in Section 1.18. However, the Employer may operationally elect to use any other definition of compensation for 414(s) Compensation provided such definition satisfies the nondiscrimination requirements of Code §414(s) and the Regulations thereunder. Solely for purposes of the definition of compensation used for ADP/ACP testing, it is permissible for the plan to set forth one definition of compensation that satisfies Code §414(s), as long as such definition is uniformly applied. For purposes of applying the ADP and ACP tests, the period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. For all other purposes, the period of determining 414(s) Compensation must be the Plan Year or another twelve (12) month period of time ending in the Plan Year. An Employer may further limit the period taken into account to that part of the determination period 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.

**1.42 "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 (and as defined in Subsections 1.18(a)(1)-(3) respectively). 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(e)(3), 402(k) and 402(h)(1)(B)) 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). In addition, Military Differential Pay is treated as 415 Compensation.

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), 415 Compensation shall also include deemed §125 compensation. Deemed §125 compensation is an amount that is excludable under §106 that is not available to a participant in cash in lieu of group health coverage under a §125 arrangement solely 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 amounts that would otherwise be included in the definition of 415 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 Limitation 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 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 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.** 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 the Participant's gross income.

(4) **Military Differential Pay.** 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 compensation paid 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 limitations set forth in Section 1.18(f) adjusted in such manner as permitted under Code §415(d).

(f) **Amendment.** 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.

**1.43 "Highly 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 1.49(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) and was \$120,000 in 2018. In applying this rule, the Employer may adopt any rounding or tie-breaking rules it desires, so long as such rules are reasonable, nondiscriminatory, and uniformly and consistently applied.

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 accordance with Regulation §1.414(q)-1T, A-4 and IRS Notice 97-45 (or any superseding guidance).

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."

**1.44 "Highly Compensated Participant"** means any Highly Compensated Employee who is eligible to participate in the component of the Plan being tested.

**1.45 "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 (b) 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).

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.

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

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

**1.48 "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 which can be purchased with the Participant's Vested interest in the Plan reduced by any outstanding loan balances pursuant to Section 7.4.

**1.49 "Key Employee"** means an Employee as defined in Code §416(i) and the Regulations thereunder. Generally, for purposes of determining top-heavy status, 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 \$175,000 as of 2018 (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.

**1.50 "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.

**1.51 "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 (unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)), 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.

**1.52 "Limitation Year"** means the "determination period" used to determine Compensation. However, the Employer may elect a different Limitation Year in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). 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. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

**1.53 "Military Differential Pay"** means, 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, 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)).

**1.54 "Nonelective Contribution"** means the Employer's contributions to the Plan other than Elective Deferrals, any Qualified Nonelective Contributions and any Qualified Matching Contributions.



**1.55 "Nonhighly Compensated Employee/Participant"** means any Employee/Participant who is not a Highly Compensated Employee. However, if pursuant to Sections 12.4 or 12.6 the prior year testing method is used to calculate the ADP or the ACP, a Nonhighly Compensated Employee/Participant shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year.

**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 Account shall be nonforfeitable (if the Participant is employed by the Employer on or after that date). If the Employer enforces a mandatory retirement age, then the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

**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 Service Crediting Method Section of the Adoption Agreement, then a "1-Year Break in Service" means a twelve (12) consecutive month period 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 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 Account balance 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 the Participant Direction Procedures.

**1.62 "Participant Direction Procedures"** means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

**1.63 "Participating Employer"** means an Employer which, with the consent of the "lead Employer" adopts the Plan. Such Employer will both, 1) agree to participate in the Plan, and 2) be a member of the same controlled group of corporations as the Employer within the meaning of Code §1563(a) (as modified by subparagraphs (B) and (C) of Code §409(1)(4) and as determined without regard to §1563(a)(4) and 1563(e)(3)(C)). 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 with an 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 Severance, 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 by treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For purposes of benefit accrual, 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, expressed in the number of whole years represented by such sum. For this purpose, fractional periods of a year will be expressed in terms of days.

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 purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in 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 Business Systems LLC Non-Standardized Employee Stock Ownership (ESOP) Pre-Approved Plan (Basic Plan Document #04 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. The Plan is an ESOP and is designed to invest primarily in Employer Stock.

**1.67 "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.

**1.68 "Pre-Retirement Survivor Annuity"** means an immediate annuity for the life of a Participant's Spouse, the payments under which must be equal to the benefit which can be provided with the percentage, as specified in the Adoption Agreement, of the Participant's Vested interest in the Plan as of the date of death. If no election is made in the Adoption Agreement, the percentage shall be equal to fifty percent (50%). Furthermore, if less than one hundred percent (100%) of the Participant's Vested interest in the Plan is used to provide the Pre-Retirement Survivor Annuity, a proportionate share of each of the Participant's Accounts subject to the Pre-Retirement Survivor Annuity shall be used to provide the Pre-Retirement Survivor Annuity.

**1.69 "Pre-Tax Elective Deferrals"** means a Participant's Elective Deferrals that are not includible in the Participant's gross income at the time deferred.

**1.70 "Qualified Automatic Contribution Arrangement" (QACA)** means an automatic contribution arrangement which meets the requirements of Section 12.9.

**1.71 "Qualified Matching Contribution" (QMAC)** means any Employer matching contributions that are made pursuant to Sections 12.1(a)(2) (if elected in the Adoption Agreement), 12.5 and 12.7 or pursuant to any other Plan provision which provides for such contributions.

**1.72 "Qualified Nonelective Contribution" (QNEC)** means the Employer's contributions to the Plan that are made pursuant to Sections 12.1(a)(4), 12.5 and 12.7 or pursuant to any other Plan provision which provides for such contributions.

**1.73 "Regulation"** 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.

**1.74 "Retirement Date"** means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant's Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

**1.75 "Roth Elective Deferrals"** means a Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals at the time of the deferral. Roth Elective Deferrals shall be subject to the requirements of Sections 12.2(d) and 12.2(e) and shall, except as otherwise provided herein, be required to satisfy the nondiscrimination requirements of Regulation §1.401(k)-1(b), the provisions of which are incorporated herein by reference. A Participant's Roth Elective Deferrals will be maintained in a separate account containing only the Participant's Roth Elective Deferrals and gains and losses attributable to those Roth Elective Deferrals. In addition, the Administrator shall, to the extent necessary for proper reporting, separately account for any "in-Plan Roth rollover contributions" (as defined in Section 12.11) that are transferred to a Participant's Roth Elective Deferral Account. The portion of a Participant's Account attributable to "in-Plan Roth rollover contributions" is not subject to the distribution restrictions of Section 12.2(e).

**1.76 "Salary Deferral Agreement"** means an agreement between a Participant and the Employer, whereby the Participant elects to reduce Compensation by a specific dollar amount or percentage and the Employer agrees to contribute such amount into the 401(k) Plan. The election may be made electronically in a manner permitted by the Employer. A Salary Deferral Agreement may require that an election be stated in specific percentage increments (not greater than one percent (1%) increments) or in specific dollar amount increments (not greater than dollar increments that could exceed one percent (1%) of Compensation).

A Salary Deferral Agreement may not be effective prior to the later of: (a) the date the Employee becomes a Participant; (b) the date the Participant agrees (including by automatic consent) to the Salary Deferral Agreement; or (c) the date the 401(k) plan is adopted by the Employer or applicable Participating Employer. A Salary Deferral Agreement is valid even though it is executed by an Employee before he or she actually becomes a Participant, so long as the Salary Deferral Agreement is not effective before the date the Employee becomes a Participant. A Salary Deferral Agreement may only apply to Compensation that becomes currently available to the Employee after the effective date of the Salary Deferral Agreement.

**1.77 "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 integration level shall be proportionately reduced based on the number of months in the Short Plan Year.

**1.78 "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 6.2(e)(1) 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). 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 other than for purposes of determining eligible hardship distribution expenses.

**1.79 "Suspense Account"** means an account under the Plan consisting of Employer Stock and other assets acquired with the proceeds of an Exempt Loan that have not been released and allocated to the Participants' Employer Stock Accounts.

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

**1.81 "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.

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

**1.83 "Top-Heavy Plan Year"** means a Plan Year during which the Plan is a Top-Heavy Plan.

**1.84 "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 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 1/2 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.

**1.85 "Total and Permanent Disability"** means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

**1.86 "Trustee"** means any person or entity that has agreed to serve as Trustee pursuant to the terms of the Trust agreement, or any successors thereto. The Employer may designate Trustees by business position or title. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured. The Employer has no reliance on the IRS opinion letter with respect to the separate Trust agreement.

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

**1.88 "Valuation Date"** means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, for purposes of the determination and allocation of earnings and losses, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants' Accounts during the Plan Year, which may include any day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, or any stock exchange used by such agent, are open for business.

**1.89 "Vested"** means the nonforfeitable portion of any Account maintained on behalf of a Participant.

**1.90 "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 (referred to as the two (2) 1-Year Breaks in Service rule).

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 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 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 and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting 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, 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, elected in the Adoption Agreement) 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.** Unless prohibited by the terms of the Trust agreement, 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) **Indemnity.** To the extent permitted by the Code and the Act, and unless otherwise specified in a separate agreement, the Employer will indemnify and hold harmless the Administrator, officers, directors, shareholders, employees, and agents of the 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 Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the 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. This indemnity provision shall continue to apply to the Employer with respect to the period the entity was maintaining this Plan, even if the Employer ceases to maintain the Plan.

## 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 or electronic 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 with respect to 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. 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.

**Expenses may be charged to Account.** 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.

## 2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to 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 Regulation §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 Section 2.10(a). 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 Regulation §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) thirty (30) months after the claimant knew or reasonably should have known of the principal facts on which the claim is based, or (2) six (6) 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 purposes 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.

(g) **Additional procedures.** The Administrator may adopt other Plan provisions or other claims procedures in addition to the provisions set forth in this Plan Section 2.10 provided such provisions or procedures are consistent with the requirements of ERISA.

### 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. The Administrator may, on a uniform and consistent basis, apply Plan provisions relating to months based on a 30-day month.

#### 3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to 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 (one (1) Year (or Period) of Service (or, with respect to contributions other than Elective Deferrals, more than one (1) year if full and immediate vesting)) 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) **Matching contributions.** With respect to the determination of any matching contributions, the Plan will disregard Elective Deferrals made while a Participant is not eligible for the matching contribution component of the Plan unless otherwise elected in the Adoption Agreement.

### 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 Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

### 3.5 REHIRED EMPLOYEES AND 1-YEAR 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 or unless 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 Breaks 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 and/or vesting.

(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 Sections 3.1 and 3.2 taking into account all service not disregarded.

(e) **One-Year Hold-Out Rule.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the "one-year hold-out" rule under Code §410(a)(5)(C) applies. Under this rule, a Participant who has severed employment 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) **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.

(4) **No restoration under two (2) 1-Year Breaks in Service rule.** The Administrator in applying this Subsection does not restore any service disregarded under the two (2) 1-Year Breaks in Service rule in Section 1.90.

(5) **No application to Elective Deferrals.** The Administrator will not apply the provisions of this Subsection with respect to eligibility to make Elective Deferrals under the Plan.

(6) **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.** If a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

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

(2) one account representing the Participant's Employer-derived Account balance in the Plan 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 forfeited account shall be reinstated only if the Participant repays the full amount which had been distributed (including amounts from Accounts that were fully Vested such as the Elective Deferral Account). The Employer, may, however, on a uniform and nondiscriminatory basis, only require the Participant to repay amounts that relate to the Account that was not fully Vested. 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 the Participant repays the distribution with after-tax amounts, such amounts are not after-tax voluntary Employee contributions subject to the ACP Test set forth in Section 12.6.

In the event the Participant repays the full amount distributed, the undistributed forfeited portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore the Participant's Account, provided, however, that if a discretionary contribution is made for such year, such contribution will first be applied to restore any such accounts and the remainder shall be allocated in accordance with the terms of the Plan. 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 such Participant will be deemed to have repaid the deemed distribution as of the date of reemployment.

(h) **Waiver of allocation or contribution conditions.** If the Employer elects in the Adoption Agreement to waive allocations or contributions due to retirement (early or normal retirement), then a Participant shall only be entitled to one such waiver. Accordingly, if a Participant retires and allocation or contribution conditions are waived, then the Plan will not waive the allocation or contribution conditions if the Participant is rehired and then retires again.

### 3.6 ELECTION NOT TO PARTICIPATE

(a) **Option to opt-out of Plan.** An Employee may, subject to the approval of the Employer, 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)) or any other plan or arrangement of the Employer that is described in Code §219(g)(5)(A) (whether or not terminated) maintained by the Employer. Such election must be made upon inception of the Plan or such other plan or arrangement 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 coverage requirements under Code §410(b) and, if such election applies to Elective Deferrals, the Employee is not an eligible Participant for purposes of the ADP test set forth in Section 12.4 or the ACP test set forth in Section 12.6.

### 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 and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, 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. 2018-52, Rev. Proc. 2019-19, or any subsequent guidance).

## ARTICLE IV CONTRIBUTION AND ALLOCATION

### 4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

#### (a) ESOP Plan Contributions

(1) For each Plan Year, the Employer may (or will in the case of a "prevailing wage contribution" as set forth in the Nonelective Contribution Section of the Adoption Agreement (limited to the non-ESOP portion of the Plan)) contribute to the Plan such amount as elected by the Employer in the Adoption Agreement.

(2) Additionally, the Employer will contribute to the Plan the amount necessary, if any, to provide the top-heavy minimum allocations even if it exceeds current or accumulated net profit or the amount that is deductible under Code §404.

(3) Subject to the consent of the Trustee (or Insurer), the Employer may make its contribution to the Plan in the form of unencumbered property instead of cash, provided the contribution of property is not a prohibited transaction. The decision to make a contribution of property is subject to the general fiduciary rules under the Act.

(b) **Frozen Plans.** The Employer may designate that the Plan is a frozen Plan at the Contribution Types Section of the Adoption Agreement. As a frozen Plan, the Employer will not make any Employer contributions with respect to Compensation earned after the date the Plan is frozen, and if the Plan is a 401(k) Plan, no Participant will be permitted to make Elective Deferrals to the Plan for any period following such date. In addition, once a Plan is frozen, no additional Employees shall become Participants.

(c) **Union Employees.** Regardless of any provision in this Plan to the contrary, 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 shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The benefits, including but not limited to, contributions, allocations and vesting, under this Plan shall be those set forth in the Adoption Agreement. 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. The provisions of this Subsection only apply if no more than two percent (2%) of the Employees covered pursuant to the agreement are professionals as defined in Regulation §1.410(b)-9. 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 and Compensation in each respective category are treated separately for purposes of the Plan.

#### 4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. However, if pursuant to Section 12.8, the "ADP test safe harbor contribution" being made to the Plan (including a contribution being made pursuant to a QACA as described in Section 12.9) is a matching contribution that is made on a basis other than the Plan Year, then the matching contributions must be contributed to the Plan by the last day of the Plan Year quarter immediately following the Plan Year quarter to which the contributions relate. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution. To the extent permitted by the Act, Employer contributions in cash, and any earnings on such contributions, shall first be applied to pay any obligations arising from extension of credit to the Trust and payable in cash within (1) year from the date an Employer contribution is due.

**Contribution remittance:** Elective Contribution and after-tax voluntary Employee contribution remittances must be deposited with the Trust as soon as administratively feasible as of the earliest date by which such contributions can reasonably be segregated from the employer's general assets. Assets to be remitted to the Trust by the Employer under this section include amounts (other than union dues) that a Participant or Beneficiary pays to an Employer or amounts that a Participant has withheld from his or her wages by an Employer for contribution to the Plan.

For Employers with less than 100 Participants at the beginning of the Plan Year, any amount remitted to the Trust must not occur later than:

- The 7th business day following the day on which such amount is received by the Employer (in the case of amounts that a Participant or Beneficiary pays to an Employer), or
- The 7th business day following the day on which such amount would otherwise have been payable to the Participant in cash (in the case of amounts withheld by an Employer from a Participant's wages).

#### 4.3 ALLOCATION OF CONTRIBUTIONS, FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an Account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein. The Administrator shall also maintain a separate accounting of amounts that are invested in each Participant's Employer Stock Account and each Participant's Other Investment Account.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) **Allocation.** The Nonelective Contribution will be allocated in accordance with the formula as elected by the Employer in the Nonelective Contribution Section of the Adoption Agreement:

(i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method below that corresponds to the elections in the Adoption Agreement. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the provisions below.

(ii) If the Employer's contribution is fixed, the Employer shall allocate the contribution in a set percentage to each Participant. If the Employer elects to contribute a uniform dollar amount for each Participant, the pro rata allocation shall allocate that uniform dollar amount to each Participant.

(iii) If the Employer's contribution is discretionary and non-integrated, the contribution shall be allocated either in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants, in the same dollar amount to all Participants (per capita), or in the same dollar amount per Hour of Service completed by each Participant.

(iv) If the Employer's contribution is a "prevailing wage contribution", it shall be allocated to each Participant who performs services subject to the Service Contract Act, Davis-Bacon Act or similar federal, state, or municipal prevailing wage statutes. The "prevailing wage contribution" will be an amount equal to the balance of the prevailing wage defined bona fide fringe benefit amount based on the Participant's employment classification as designated on the prevailing wage determination appropriate for that classification. Notwithstanding anything in the Plan to the contrary, the "prevailing wage contribution" shall be fully Vested and is limited to the non-ESOP portion of the Plan. Furthermore, the "prevailing wage contribution" shall not be subject to any age, service or employment condition requirements set forth in the Adoption Agreement and the Employer shall make such contribution to the Plan as frequently as is required under applicable law.

(v) If the Employer's contribution is allocated according to a "grouping method," the Employer may contribute to the Plan on behalf of each of the classifications of Participants set forth in the Adoption Agreement such amount as shall be determined by the Employer. The Employer shall provide the Administrator, if other than the Employer, with written notification of the amount of the contribution to be allocated to each classification on or before the due date of the Employer's tax return for the year of allocation, through written instructions from the Employer to the Administrator. The Employer may elect to specify any number of classifications and a classification may consist of any number of Participants.

(vi) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement and Section 3.5(h) are satisfied, unless a top-heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or is employed on the last day of the Plan Year.

(c) **Gains or losses.** Except as otherwise provided in Section 4.10 with respect to Participant Directed Accounts and as provided in the Subsections below, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in accordance with such rules and procedures that are established by the Administrator and that are applied in a uniform and nondiscriminatory manner based upon the investments of the Trust Fund and the Participants' accounts to which the net income is allocated. For purposes of this Section, the term "net income" means the net of any interest, dividends, unrealized appreciation and depreciation, capital gains and losses, and investment expenses of the Trust Fund determined on each Valuation Date. However, Participants' accounts which have been segregated for investment purposes (including any Participant Directed Accounts) will only have the net income earned thereon allocated thereto. Policy dividends or credits will be allocated to the Participant's Account for whose benefit the Policy is held. Stock dividends on Employer Stock held in the Participant's Employer Stock Account shall be credited to the Participant's Employer Stock Account when paid to the Plan. If a C Corporation allows for the reinvestment of dividends of stock, that the participants be fully vested in those securities per IRC 404(k)(7) and Notice 2002-2.

(1) **ERISA recapture account.** The Administrator in its discretion may use an "ERISA Recapture Account" to pay non-settlor Plan expenses and may allocate funds in the "ERISA Recapture Account" (or excess funds therein after payment of Plan expenses) as earnings or as otherwise permitted by applicable law. The Administrator will exercise its discretion in a reasonable, uniform and nondiscriminatory manner. An "ERISA Recapture Account" is an account designated to receive amounts which a Plan service provider receives in the form of 12b-1 fees, sub-transfer agency fees, shareholder servicing fees or similar amounts (also known as "revenue sharing"), which are received by the service provider from a source other than the Plan and which the service provider may remit to the Plan.

(2) **Late trading and market timing settlement.** In the event the Plan becomes entitled to a settlement from a mutual fund or other investment relating to late trading, market timing or other activities, the Administrator will allocate the settlement proceeds to Participants and Beneficiaries in accordance with Department of Labor Field Assistance Bulletin 2006-01 or other applicable law.

(3) **Interest paid on Exempt Loans.** Earnings or losses do not include the interest paid under any installment contract for the purchase of Employer Stock by the Trust Fund or on any loan used by the Trust Fund to purchase Employer Stock, nor does it include income received by the Trust Fund with respect to Employer Stock acquired with the proceeds of an Exempt Loan; all income received by the Trust Fund from Employer Stock acquired with the proceeds of an Exempt Loan may, at the discretion of the Administrator, be used to repay such loan.

(4) **S Corporation earnings.** Notwithstanding the above, if the Employer is an S Corporation, a distribution of earnings as described in Code §1368(a) with respect to Employer Stock (whether or not the Employer Stock is allocated to the Accounts of Participants) will be used at the Administrator's discretion to make payments on any Exempt Loan used to acquire such Employer Stock. If earnings are used to make payments on the Exempt Loan, then Employer Stock shall be released from the Suspense Account and allocated to the Participant's Employer Stock Account pursuant to Section 7.11. In such case, the Employer Stock allocated to the Participant's Employer Stock Account shall have a fair market value not less than the amount of the distribution that would have otherwise been allocated to such Participant's Other Investment Account for the year.

(5) **Earnings on leveraged shares.** Income with respect to Employer Stock held in a Suspense Account is allocated as income of the Plan except to the extent, if elected by the Employer in the Adoption Agreement, that such income is used to repay that Exempt Loan. If income is allocated to a Participant's or Beneficiary's Account, then it may be distributed to that Participant or Beneficiary, if the Employer so elects in the Adoption Agreement.

In lieu of the preceding paragraph, the following provisions apply if the Employer is a C corporation and elects in the Adoption Agreement to apply these provisions. Dividends paid in cash by the Employer with respect to Employer Stock on the record date for the dividend (herein referred to as "Applicable Employer Stock"), whether or not allocated to a Participant's Account, will be used at the Trustee's discretion to make payments on an Exempt Loan, the proceeds of which were used to acquire the Employer Stock with respect to which the dividend is paid. If a dividend paid with respect to Employer Stock that is allocated to a Participant's Account is used to make payments on an Exempt Loan, then Employer Stock with a fair market value of not less than the amount of the dividend used to make payments on an Exempt Loan must be allocated to a Participant's Account for the year that such dividend would have been allocated to the Participant's Account if it were not used to make payments on an Exempt Loan.

To the extent that dividends on "Applicable Employer Stock" allocated to Participant Accounts are not used to repay an Exempt Loan, dividends will be treated under paragraph (i), (ii), or (iii), as elected by the Employer in the Adoption Agreement.

(i) **Direct Cash Payment to Participant.** Dividends with respect to "Applicable Employer Stock" allocated to a Participant's Account will be paid in cash by the Employer to that Participant.

(ii) **Cash Payment to Plan Followed by Distribution to Participant.** Dividends with respect to "Applicable Employer Stock" allocated to a Participant's Account will be paid by the Employer to the Plan and distributed in cash to that Participant not later than ninety (90) days after the close of the Plan Year in which paid.

(iii) **Participant Election.** Dividends with respect to "Applicable Employer Stock" that is allocated to a Participant's Account will be, at the election of that Participant, either (a) paid in cash to that Participant, or (b) paid to the Plan and reinvested in Employer Stock to be allocated to the Account of that Participant. If the Participant elects a cash payment, then the payments shall be made, as elected by the Employer in the Adoption Agreement, either:

(I) directly from the Employer to the Participant, or

(II) paid to the Plan and distributed in cash to that Participant not later than ninety (90) days after the close of the Plan Year in which the dividends are paid to the Plan.

If a Participant fails to make an affirmative dividend election, the default election elected by the Employer in the Adoption Agreement will apply. A Participant's election will not be valid unless the Participant is given a reasonable opportunity to:

(I) Make the election before a dividend is paid or distributed;

(II) Change a dividend election at least annually; and

(III) If there is a change in the Plan terms governing the manner in which the dividends are paid or distributed to Participants, make an election under the new Plan terms prior to the date on which the first dividend subject to the new Plan terms is paid or distributed.

(d) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) **Forfeitures.** Forfeitures must be disposed of no later than the last day of the Plan Year following the Plan Year in which the Forfeiture occurs. The Employer may direct the Administrator to use Forfeitures to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 3.5(g), to satisfy any contribution that may be required pursuant to Section 6.10, or, to pay any Plan expenses. With respect to prior Money Purchase Plan contributions, any remaining Forfeitures will be disposed of in accordance with the elections in the Adoption Agreement. With respect to all other plans, the Employer must direct the Administrator to use any remaining Forfeitures in accordance with any combination of the following methods, including a different method based on the source of such Forfeitures. Forfeitures may be:

(1) Added to any Employer discretionary contribution (e.g., matching or stock bonus) and allocated in the same manner;

(2) Used to reduce any Employer contribution (e.g., matching or stock bonus);

(3) Added to any Employer matching contribution and allocated as an additional matching contribution; or

(4) Allocated to all Participants in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.

If Forfeitures are allocated to Participants (rather than used to reduce Employer contributions) then the Employer must also direct the Administrator as to which Participants are eligible to share in such allocation. The maximum allocation conditions the Employer may require are that Participants complete one (1) Year of Service (or Period of Service) and be employed on the last day of the Plan Year in order to share in the allocation of Forfeitures for such Plan Year.

(f) **Minimum allocations required for Top-Heavy Plan Years.** Notwithstanding the foregoing, for any Top-Heavy Plan Year, the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Non-Key Employee or each Participant, if elected in the Adoption Agreement, shall be equal to at least three percent (3%) of such Employee's 415 Compensation for the Plan Year or the calendar year ending within the Plan Year (reduced by contributions and Forfeitures, if any, allocated to each such Employee in any defined contribution plan included with this Plan in a "required aggregation group" (as defined in Section 9.2(f)). However, if (1) the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Key Employee for such Top-Heavy Plan Year is less than three percent (3%) of each Key Employee's 415 Compensation and (2) this Plan is not required to be included in a "required aggregation group" (as defined in Section 9.2(f)) to enable a defined benefit plan to meet the requirements of Code §401(a)(4) or 410, the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Employee entitled to the top-heavy minimum contribution shall be equal to the largest percentage allocated to the Participant's Combined Account of any Key Employee. The minimum allocation required (to the extent required to be nonforfeitable under Code §416(b)) may not be forfeited under Code §411(a)(3)(B) or 411(a)(3)(D).

However, for each Employee who is a Participant in a Stock Bonus Plan and a Money Purchase Plan, the minimum three percent (3%) allocation specified above shall be provided in the Money Purchase Plan unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(g) **Top-heavy contribution allocation.** For purposes of the minimum allocations set forth above, the percentage allocated to the Participant's Combined Account of any Key Employee shall be equal to the ratio of the sum of the Employer's contributions and Forfeitures allocated on behalf of such Key Employee divided by the 415 Compensation for such Key Employee.

(h) **Participants eligible for top-heavy allocation.** Notwithstanding anything in this Plan to the contrary, for any Top-Heavy Plan Year, the minimum allocations set forth in this Section shall only be allocated to the Participant's Combined Account of all Non-Key Employees, and Key Employees if elected in the Adoption Agreement, who are Participants and who are employed by the Employer on the last day of the Plan Year (unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)), including Employees who have (1) failed to complete a Year of Service; (2) declined to make mandatory contributions (if required) or, in the case of a cash or deferred arrangement, Elective Deferrals to the Plan; or (3) Compensation less than a stated amount. In addition, pursuant to Code §416(i)(4), Participants 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 shall not be eligible to receive the top-heavy minimum allocations unless otherwise provided in the collective bargaining agreement.

(i) **Top-heavy allocation if DB and DC plans maintained.** Notwithstanding anything herein to the contrary, in any Plan Year in which the Employer maintains both this Plan and a non-frozen defined benefit pension plan included in a "required aggregation group" (as defined in Section 9.2(f)) which is top-heavy, the Employer will not be required (unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)) to provide Employees with both the full separate minimum defined benefit plan benefit and the full separate defined contribution plan top-heavy minimum allocations. In such case, the top-heavy minimum benefits will be provided as elected in the Adoption Agreement and, if applicable, as follows:

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

(i) The requirements of Section 9.1 will apply except that each Employee who is entitled to the Top-Heavy minimum benefit in the Stock Bonus or Money Purchase Plan and who accrues a benefit in the Defined Benefit Plan will receive a minimum allocation of five percent (5%) of such Participant's 415 Compensation from the "applicable defined contribution plan(s)."

(ii) For each Employee who is a participant only in the 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 Year of Service while a participant in such plan, in which the Plan is top-heavy, not to exceed ten (10) such years.

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

(2) If the 2% defined benefit minimum is elected in the Adoption Agreement, then for each Employee who is entitled to the Top-Heavy minimum benefit only in the 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 of 415 Compensation for each Year of Service while a participant in the plan, in which the plan is top-heavy, not to exceed ten (10) such years.

(j) **Matching contributions used to satisfy top-heavy contribution.** Unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the ACP test and other requirements of Code §401(m).

(k) **Contributions under other plans.** The Employer may provide, in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) and matching contributions with respect to which the requirements of Code §401(m)(11) apply). The Employer must specify the name of the other plan, the minimum benefit that will be provided under such other plan, and the Employees who will receive the minimum benefit under such other plan.

(l) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other 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.

(m) **410(b) ratio percentage fail-safe provisions.** Notwithstanding anything in this Section to the contrary, the provisions of this Subsection apply for any Plan Year if, in the Adoption Agreement, the Employer elected to apply the 410(b) ratio percentage fail-safe provisions and the Plan fails to satisfy the "ratio percentage test" due to a last day of the Plan Year allocation condition or an Hours of Service (or months of service) allocation condition. A plan satisfies the "ratio percentage test" if, on the last day of the Plan Year, the "benefiting ratio" of the Nonhighly Compensated Employees who are "includible" is at least 70% of the "benefiting ratio" of the Highly Compensated Employees who are "includible." The "benefiting ratio" of the Nonhighly Compensated Employees is the number of "includible" Nonhighly Compensated Employees "benefiting" under the Plan divided by the number of "includible" Employees who are Nonhighly Compensated Employees. The "benefiting ratio" of the Highly Compensated Employees is the number of Highly Compensated Employees "benefiting" under the Plan divided by the number of "includible" Highly Compensated Employees. "Includible" Employees are all Employees other than: (1) 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 (2) any Employee who incurs a separation from service during the Plan Year and fails to complete at least 501 Hours of Service (or three (3) months of service if the elapsed time method is being used) during such Plan Year.

For purposes of this Subsection, an Employee is "benefiting" under the Plan on a particular date if, under the Plan, the Employee is entitled to an Employer contribution or an allocation of Forfeitures for the Plan Year.

If this Subsection applies and the Hours of Service method is used, then the Administrator will suspend the allocation conditions and expand the group of the "includible" Nonhighly Compensated Employees who are Participants by including the minimum number of Participants eligible to share in the contribution, beginning first with the "includible" Employees employed by the Employer on the last day of the Plan Year who have completed the greatest number of Hours of Service in the Plan Year, then the "includible" Employees who have completed the greatest number of Hours of Service during the Plan Year, and continuing to suspend the allocation conditions for each "includible" Employee who completed Hours of Service, from the greatest number of Hours of Service to the least, until the Plan satisfies the "ratio percentage test" for the Plan Year. If two or more "includible" Employees have the same number of Hours of Service, then the Administrator will suspend the allocation conditions for all such "includible" Employees, irrespective of whether the Plan can satisfy the "ratio percentage test" by accruing benefits for fewer than all such "includible" Employees. If the Plan for any Plan Year suspends the allocation conditions for an "includible" Employee, then that Employee will share in the allocation for that Plan Year of the Employer contribution and Forfeitures, if any, without regard to whether the Employee has satisfied the other allocation conditions set forth in this Section.

If this Subsection applies and the elapsed time method is used, then the Administrator will suspend the allocation conditions for the "includible" Nonhighly Compensated Employees who are Participants, beginning first with the "includible" Employees employed by the Employer on the last day of the Plan Year, then the "includible" Employees who have the latest separation from service during the Plan Year, and continuing to suspend the allocation conditions for each "includible" Employee who incurred an earlier separation from service, from the latest to the earliest separation from service date, until the Plan satisfies the "ratio percentage test" for the Plan Year. If two or more "includible" Employees have a separation from service on the same day, then the Administrator will suspend the allocation conditions for all such "includible" Employees, irrespective of whether the Plan can satisfy the "ratio percentage test" by accruing benefits for fewer than all such "includible" Employees. If the Plan for any Plan Year suspends the allocation conditions for an "includible" Employee, then that Employee will share in the allocation for that Plan Year of the Employer contribution and Forfeitures, if any, without regard to whether the Employee has satisfied the other allocation conditions set forth in this Section.

Notwithstanding the foregoing, if the portion of the Plan which is not a Code §401(k) or 401(m) plan would fail to satisfy Code §410(b) if the coverage tests were applied by treating those Participants whose only allocation would otherwise be provided under the



top-heavy formula as if they were not currently benefiting under the Plan, then, for purposes of applying this Subsection (m), such Participants shall be treated as not benefiting.

#### 4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Calculation of "annual additions."**

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer," or an individual medical benefit account (as defined in Code §415(l)(2)) maintained by the "employer," or a simplified employee pension (as defined in Code §408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the Administrator shall determine the "maximum permissible amount" for each Participant for such Limitation Year on the basis of the Participant's actual 415 Compensation for such Limitation Year.

(b) **"Annual additions" if a Participant is in more than one plan.**

(1) Except as provided in Subsection (c) below, this Subsection applies if, in addition to this Plan, a Participant is covered under another "employer" maintained qualified defined contribution plan, welfare benefit fund (as defined in Code §419(e)), individual medical benefit account (as defined in Code §415(l)(2)), or simplified employee pension (as defined in Code §408(k)), which provides "annual additions," during any Limitation Year. The "annual additions" which may be credited to a Participant's Accounts under this Plan for any such Limitation Year shall not exceed the "maximum permissible amount" reduced by the "annual additions" credited to a Participant's accounts under the other plans and welfare benefit funds, individual medical benefit accounts, and simplified employee pensions for the same Limitation Year. If the "annual additions" with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the "employer" are less than the "maximum permissible amount" and the "employer" contribution that would otherwise be contributed or allocated to the Participant's accounts under this Plan would cause the "annual additions" for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the "annual additions" under all such plans and welfare benefit funds for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants. If the "annual additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical benefit accounts and simplified employee pensions in the aggregate are equal to or greater than the "maximum permissible amount," no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the "maximum permissible amount" for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(4) If, pursuant to Section 4.4(b)(2), a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code §412, regardless of the actual allocation date.

(5) If an "excess amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "excess amount" attributed to this Plan will be the product of:

- (i) the total "excess amount" allocated as of such date, times

(ii) the ratio of (A) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(c) **Coverage under another plan.** If the Participant is covered under another qualified defined contribution plan maintained by the "employer," "annual additions" which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the "employer" provides other limitations in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(d) **Time when "annual additions" credited.** An "annual addition" is credited to the Account of a Participant for a particular Limitation Year if it is allocated to the Participant's Account under the Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of any date within a Limitation Year if such allocation is dependent upon participation in the Plan as of any date subsequent to such date.

For purposes of this subparagraph, "employer" contributions are not deemed credited to a Participant's Account for a particular Limitation Year unless the contributions are actually made to the Plan no later than thirty (30) days after the end of the period described in Code §404(a)(6) applicable to the taxable year with or within which the particular Limitation Year ends. In the case of an Employer that is exempt from federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant's Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or Fiscal Year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(e) **Definitions.** For purposes of this Section, the following terms shall be defined as follows:

(1) **"Annual additions"** means the sum credited to a Participant's accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) 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 fund (as defined in Code §419(e)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (c)(6)(ii) below 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).

(i) **Restorative payments.** "Annual additions" for purposes of Code §415 and this Section shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a Fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under the Act or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under the Act are not restorative payments and generally constitute contributions that are considered "annual additions."

(ii) **Other amounts.** "Annual additions" for purposes of Code §415 and this Section shall not include: (A) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (B) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (C) Repayments of loans made to a Participant from the Plan; and (D) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(iii) **Special rules for Plans with Exempt Loans.**

(I) If an Exempt Loan has been made to the Plan, then the Employer may direct the Administrator to use either of the following alternatives:

(a) **Principal and interest method.** The amount of an Employer contribution that is considered to be an "Annual Addition" is calculated with respect to Employer contributions of both principal and interest used to repay the Exempt Loan for the Limitation Year.

(b) **Fair market value method.** The amount of an Employer contribution that is considered to be an "Annual Addition" is calculated with respect to the fair market value of shares released from the Suspense Account on account of the Exempt Loan repayment and allocated to Participants if that amount is less than the Employer contribution of both principal and interest. If that amount is more than the Employer contribution of both principal and interest, then the amount of an Employer contribution that is considered to be an "Annual Addition" is calculated with respect to Employer contributions of both principal and interest used to repay the Exempt Loan for the Limitation Year.

(II) If the Employer is a C corporation and no more than one-third of the Employer contributions that are used to repay the principal and interest due on an Exempt Loan and that are deductible under Code §404(a)(9) are allocated to the accounts of Highly Compensated Employees during the Plan Year, then "Annual Additions" do not include Forfeitures of the Employer Stock purchased with the proceeds of an Exempt Loan and also do not include Employer contributions that are used to pay interest on an Exempt Loan and are deductible under Code §404(a)(9)(B) and charged against the Participant's Account.

(2) **"Defined contribution dollar limitation"** means \$56,000 (or the amount as adjusted under Code §415(d)).

(3) **"Employer"** means, for purposes of this Section, the Employer that adopts this Plan and all Affiliated Employers, except that for purposes of this Section, the determination of whether an entity is an Affiliated Employer shall be made by applying Code §415(h).

(4) **"Excess amount"** means the excess of the Participant's "annual additions" for the Limitation Year over the "maximum permissible amount."

(5) **"Maximum permissible amount"** means, except to the extent permitted under this Plan and Code §414(v), the maximum "annual addition" that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:

(i) the "defined contribution dollar limitation," or

(ii) one hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

The 415 Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §§401(h) or 419A(f)(2)) which is otherwise treated as an "annual addition."

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the "maximum permissible amount" will not exceed the "defined contribution dollar limitation" multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

(f) **Special rules.**

(1) **Aggregation of plans.** For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the "employer" (or a "predecessor employer") under which the Participant receives "annual additions" (including voluntary employee contribution accounts in a defined benefit plan, mandatory contributions to a defined benefit plan, individual medical benefit accounts under §401(h), key employee accounts under a welfare benefit plan described in §419, and simplified employee pensions under §408(k)) of the employer or a predecessor employer, whether or not terminated, will be treated as one defined contribution plan for purposes of the limitations under § 415(c). Where the employer is a member of a controlled group of corporations or commonly controlled trades or businesses, or a member of an affiliated service group, within the meaning of §§414(b), (c) or (m) and 415(g) and (h), the plan must provide that all such employers are treated as a single employer for purposes of the plan's application of the §415 limitations. Notwithstanding the preceding, multiemployer plans are not aggregated with other multiemployer plans for purposes of §415. For purposes of this Section:

(i) A former "employer" is a "predecessor employer" with respect to a participant in a plan maintained by an "employer" if the "employer" maintains a plan under which the participant had accrued a benefit while performing services for the former "employer," but only if that benefit is provided under the plan maintained by the "employer." For this purpose, the "formerly affiliated plan" rules in Regulation §1.415(f)-1(b)(2) apply as if the "employer" and "predecessor employer" constituted a single employer under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately prior to the "cessation of affiliation" (and as if they constituted two, unrelated employers under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately after the "cessation of affiliation") and "cessation of affiliation" was the event that gives rise to the "predecessor employer" relationship, such as a transfer of benefits or plan sponsorship.

(ii) With respect to an "employer" of a Participant, a former entity that antedates the "employer" is a "predecessor employer" with respect to the 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.

(2) **Break-up of an affiliated employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an "employer" is taken into account for purposes of applying the Code §415 limitations to the "employer," but the "formerly affiliated plan" is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an "employer" is a plan that, immediately prior to the "cessation of affiliation," was actually maintained by one or more of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)), and immediately after the "cessation of affiliation," is not actually maintained by any of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single "employer" under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the "employer" under the employer affiliation rules of Regulation §1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(3) **Mid-year aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no "annual additions" are credited to the Participant's Account after the date on which the plans are required to be aggregated.

#### 4.5 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

Notwithstanding any provision of the Plan to the contrary, if the "annual additions" (as defined in Section 4.4) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any superseding guidance.

#### 4.6 ROLLOVERS

(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." Furthermore, any Roth Elective Deferrals that are accepted as "rollovers" in this Plan on or after January 1, 2006 shall be separately accounted for. 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. Regardless of whether new loans are permitted, if the Plan permits rollovers, the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers of loans into this Plan if the terms of such loans meet the requirements of being definite, have a reasonable rate of interest, and/or have a definite repayment period (e.g., an asset purchase acquisition whereby the acquiring Employer may choose to accept the rollover of Participant loans from a prior employer in a uniform and nondiscriminatory manner).

(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."** At such time as the conditions set forth in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount credited to the Rollover Account maintained on behalf of such Participant. 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 Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. 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 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).

(g) **Pre-Participation Rollovers.** If an Eligible Employee makes a Rollover Contribution to the Plan prior to satisfying the Plan's eligibility conditions or prior to reaching his or her Entry Date, then the Administrator will treat the Employee as a limited Participant (as described in Rev. Rul. 96-48). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Forfeitures and may not make Elective Deferrals if the Plan is a 401(k) Plan, until the Employee actually becomes a Participant in the Plan.

(h) **Investment in Employer Stock.** Amounts in Rollover Accounts may be invested in Employer Stock to the extent such Employer Stock is available. In the event a limited amount of Employer Stock is available for purchase by the Plan, priority shall be given to the purchase of Employer Stock with funds in Accounts other than the Rollover Account.

#### 4.7 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." Furthermore, for vesting purposes, the Participant's Transfer Account may be treated as a separate "Participant's 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 and Section 6.16 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. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination and such combination does not result in the impermissible elimination of any Code §411(d)(6) protected benefits.

(c) **Restrictions on Elective Deferrals.** Except as permitted by Regulations (including Regulation §1.411(d)-4), amounts attributable to elective contributions (as defined in Regulation §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 Sections 6.5 and 6.6, 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 Regulation §1.411(d)-4.
- (g) **Pre-Participation Transfers.** The Administrator has the discretion to accept a Transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the Entry Date in a uniform and nondiscriminatory manner. If the Plan accepts such a direct transfer of plan assets, then the Administrator will treat the Employee as a limited Participant pursuant to Section 4.6(g).
- (h) **Elective Transfers.** The Administrator may authorize the Trustee to (in accordance with the proper election of a Participant or Beneficiary), to enter into an agreement with the trustee of any other plan to transfer as an "Elective Transfer" to the other plan or to receive as an "Elective Transfer" into this Plan, all or a portion of the Account of the electing Participant or Beneficiary. The specific requirements for an "Elective Transfer" depend upon the type of "Elective Transfer" that is utilized to effect the transfer, as described herein.
- (1) **Definition of "Elective Transfer."** An "Elective Transfer" is a transfer made at the election of a Participant (or, as applicable, a Beneficiary) and which satisfies the requirements of this Subsection (h).
  - (2) **Code §411(d)(6)(D) transfer.** A Code §411(d)(6)(D) Transfer means a transfer under Code §411(d)(6)(D) between defined contribution plans, and which a Participant or Beneficiary elects following required statutory notice. Under this Subsection (h)(2), the Account need not be distributable at the time of transfer and Code §411(d)(6) protected benefits specifically relating to distribution methods do not carry over to the transferee plan, except, if applicable, the qualified joint and survivor annuity rules set forth in Sections 6.5 and 6.6.
  - (3) **Acquisition or employment change transfer.** An acquisition or employment change transfer means a transfer under Regulation §1.411(d)-4 Q/A-3(b), between such defined contribution plans as described therein, and which a Participant elects. Under this Subsection (h)(3), the Account need not be distributable at the time of transfer and Code §411(d)(6) protected benefits do not carry over to the transferee plan, except, if applicable, the qualified joint and survivor annuity rules set forth in Sections 6.5 and 6.6.
  - (4) **Distributable event transfer.** A distributable event transfer means a transfer under Regulation §1.411(d)-4 Q/A-3(c), between Code §401(a) plans, and which a Participant elects. Under this Subsection (h)(4), the Account must be distributable at the time of transfer, but not entirely as a lump-sum which is an eligible rollover distribution. Code §411(d)(6) protected benefits do not carry over to the transferee plan.

#### 4.8 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

- (a) **Not permitted if Plan does not include 401(k) provisions.** Except as provided in Section 4.8(b) below, this Plan will not accept after-tax voluntary Employee contributions. If this is an amendment to a Plan that had previously allowed after-tax voluntary Employee contributions, then this Plan will not accept after-tax voluntary Employee contributions for Plan Years beginning after the Plan Year in which this Plan is adopted by the Employer.
- (b) **After-tax voluntary Employee contributions allowed in 401(k) Plans.** If this ESOP includes 401(k) provisions, then if elected in the Adoption Agreement, each Participant who is eligible to make Elective Deferrals may, in accordance with nondiscriminatory procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution (other than Roth Elective Deferrals) 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 separately accounted for under the Plan.
- (c) **Full vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.
- (d) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5, 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. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event a Participant has received a hardship distribution under the safe harbor hardship provisions of the Code §401(k) Regulations from any plan maintained by the Employer, then the Participant shall be barred from making any after-tax voluntary Employee contributions for a period of six (6) months after receipt of the hardship distribution. Any prior elections to make after-tax

voluntary Employee contributions will become void upon the receipt of the hardship distribution that triggers the suspension period of this paragraph.

(e) **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 Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

(f) **Prior mandatory contributions.** To the extent a Participant has previously made mandatory Employee contributions under prior provisions of this Plan, such contributions will be treated as after-tax voluntary Employee contributions, except that the provisions of Subsection (d) above permitting a distribution at any time shall not apply to mandatory Employee contributions.

#### 4.9 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **Maintenance of existing QVEC Accounts.** If this is an amendment to a Plan that previously permitted deductible voluntary Employee contributions, then each Participant who made "qualified voluntary Employee contributions" 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 QVEC Account.** A Participant may, upon written request delivered to the Administrator, make withdrawals from such Participant's Qualified Voluntary Employee Contribution Account. Any distribution shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, 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.

#### 4.10 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted by the Administrator and the terms of the Trust, Participants may direct the Trustee (or Insurer) as to the investment of all or a portion of their individual Account balances in accordance with the Plan's procedures. Participants may direct the Trustee (or Insurer), in writing (or in such other form which is acceptable to the Trustee (or 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 investment direction of such Participant will be considered a Participant Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, 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 Discretionary 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 Discretionary 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, 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) or force majeure. 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.

#### 4.11 QUALIFIED MILITARY SERVICE

(a) **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).

(b) **Qualified reservist distribution defined.** If elected in the Adoption Agreement, a Participant may elect to receive a "qualified reservist distribution." A "qualified reservist distribution" is any distribution to an individual who is ordered or called to active duty, if: (1) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (2) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (3) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

(c) **Benefit accrual.** If the Employer elects in the Adoption Agreement to apply this Subsection, then for benefit accrual purposes, the Plan treats an individual who becomes Totally and Permanently disabled or dies while performing "qualified military service" (as defined in Code §414(u)) with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), on the day preceding Total and Permanent Disability and terminated employment on the actual date of Total and Permanent Disability.

The Plan will determine the amount of after-tax voluntary Employee contributions and Elective Deferrals of an individual treated as reemployed under this Section for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual after-tax voluntary Employee contributions or Elective Deferrals for the lesser of: (1) the 12-month period of service with the Employer immediately prior to "qualified military service" (as defined in Code §414(u)); or (2) the actual length of continuous service with the Employer.

(d) **Death benefits.** 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 (unless otherwise elected in the Adoption Agreement) relating to the period of "qualified military service" but including vesting credit for such period and any other ancillary life insurance or other survivor benefits) 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.

(e) **Military Differential Pay.** The following applies with respect to Military Differential Pay: (1) an individual receiving Military Differential Pay is treated as an Employee of the Employer making the payment; (2) the Military Differential Pay is treated as 415 Compensation (and Compensation unless otherwise elected in the Adoption Agreement); and (3) 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 Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any Elective Deferrals, and if applicable, any matching contributions, attributable to Military Differential Pay.

Subsection (c)(3) above 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 Military Differential Pay 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)).

(f) **Deemed Severance.** Notwithstanding Subsection (c)(1) above, if elected in the Adoption Agreement, a Participant who performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than thirty (30) days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution of Elective Deferrals on account of this deemed severance, then the individual may not make an Elective Deferral or after-tax voluntary Employee contribution during the six (6) month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a "qualified reservist distribution" as defined in Subsection (a) above), then the other Plan provision will control and the six (6) month suspension will not apply.



**4.12 TRANSFER OF ASSETS FROM TERMINATED EMPLOYER DEFINED BENEFIT PENSION PLAN**

(a) **Transferred DB Assets.** The Employer may transfer an amount to this Plan from the Employer's terminated defined benefit plan in accordance with Code §4980(d)(2)(B). The amounts transferred into this Plan shall be held in a "transferred assets suspension account." Amounts released from the "transferred assets suspension account" pursuant to the provisions of this Section shall be allocated in the same manner and to the same Participants that Employer Nonelective Contributions are allocated, as described in Section 4.3. If the Plan does not provide for Nonelective Contributions, then the amounts released from the "transferred assets suspension account" pursuant to the provisions of this Section shall be allocated to each Participant eligible to share in allocations in the same ratio as such Participant's Compensation bears to the total Compensation of all Participants eligible to share in allocations. The Employer may, however, designate some or all of the allocated amounts as Qualified Non-Elective Contributions. Amounts transferred to the Plan pursuant to this Section may not, however, be used to offset any matching contributions permitted under the Plan.

The Employer will determine, in its discretion, the amount to be released from the "transferred suspension account." However, the minimum amount that shall be released from the "transferred assets suspension account" for any Plan Year is the percentage of the account based on the following table:

Years Since Transfer	Percentage of Suspense Account
0	14.2857%
1	16.6667%
2	20.0000%
3	25.0000%
4	33.3333%
5	50.0000%
6	100.0000%

(b) **Earnings.** The amount in the "transferred suspension account" shall be credited with earnings and losses as of each Valuation Date in accordance with Section 4.3, except that Participants may not direct the investment of amounts in the "transferred suspension account." Amounts released from the account prior to the last day of a Plan Year shall not share in such earnings or losses.

(c) **Annual additions.** Notwithstanding anything in the Plan to the contrary, amounts in the "transferred suspension account" shall not be treated as "annual additions" pursuant to Section 4.4 until such amounts are released and allocated to Participants.

(d) **Plan termination.** If upon the termination of the Plan any amount credited to the "transferred suspension account" remains unallocated, then such amount shall be allocated as provided above to the Accounts of Participants as of such date of Plan termination, but limited as to each Participant to avoid allocating exceeding the limitations of Code §415 as set forth in Section 4.4. Any amount that cannot be allocated to a Participant under the preceding sentence shall be reallocated to remaining Participants, but only to the extent that no Participant receives an amount that exceeds the limitations of Code §415 as set forth in Section 4.4. The reallocation process will continue until all amounts in the "transferred suspension account" have been reallocated. If all Participants have received the maximum "annual addition" permitted pursuant to Section 4.4, then any remaining amounts shall revert to the Employer.

**ARTICLE V  
VALUATIONS**

**5.1 VALUATION OF THE TRUST FUND**

The Administrator shall direct the Trustee (or Insurer), as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee (or Insurer) shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all expenses for which the Trustee (or Insurer) has not yet been paid by the Employer or the Trust Fund. The Trustee (or Insurer), when determining the net worth of the assets, may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

**5.2 METHOD OF VALUATION**

Except as otherwise provided in the Trust agreement, in determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee (or Insurer) to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee, the Administrator (if the Trustee is a directed Trustee), or Insurer may appraise such assets itself (assuming it has the appropriate

expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

Regardless of the preceding, Employer Stock that is not readily tradeable on an established securities market shall be valued by an independent appraiser who meets requirements similar to the requirements of the regulations prescribed under Code §170(a)(1). Valuations of Employer Stock must be made in good faith and based on all relevant factors for determining the fair market value of securities. In the case of a transaction between the Plan and a disqualified person within the meaning of Code §4975(e)(2), Employer Stock will be valued as of the date of the transaction.

## ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS

### 6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the severance of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without severance of employment with the Employer (subject to Sections 6.11 and 12.2(e)), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant (unless a distribution is mandatory under the other terms of the Plan), of the Participant's entire Vested interest in the Plan in accordance with Section 6.5. If elected by the Participant, distribution of the Participant's benefit shall commence not later than one (1) year after the close of the Plan Year in which the Participant severs employment on or after the Normal Retirement Age. If the Plan permits periodic payments, then such payments must be substantially equal periodic payments that may not exceed more than five (5) years, unless otherwise permitted by the Plan and elected by the Participant.

### 6.2 DETERMINATION OF BENEFITS UPON DEATH

- (a) **100% vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.
- (b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary. If elected by the Beneficiary, distribution of the Participant's benefit shall commence not later than one (1) year after the close of the Plan Year in which such Participant's death occurs. If the Plan permits periodic payments, then such payments must be substantially equal periodic payments that may not exceed more than five (5) years, unless otherwise permitted by the Plan and elected by the Beneficiary.
- (c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- (d) **Beneficiary designation.** Unless otherwise elected in the manner prescribed in Section 6.6, the Beneficiary of the Pre-Retirement Survivor Annuity shall be the Participant's surviving Spouse. Except, however, the Participant may designate a Beneficiary other than the Spouse for the Pre-Retirement Survivor Annuity if:
  - (1) the Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the Spouse has waived the right to be the Participant's Beneficiary,
  - (2) 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),
  - (3) the Participant has no Spouse, or
  - (4) 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.

(e) **Beneficiary if no Beneficiary elected by Participant.** A Participant may, at any time, designate a Beneficiary for death benefits, if any, payable under the Plan that are in excess of the Pre-Retirement Survivor Annuity without the waiver or consent of the Participant's Spouse. In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

- (1) The Participant's surviving Spouse;
- (2) The Participant's issue, per stirpes;
- (3) The Participant's surviving parents, in equal shares; or
- (4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate). For purposes of these provisions, and with respect to any Beneficiary designations, adopted children shall be treated as children.

(f) **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.

(g) **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.

(h) **Slayer statute.** The Administrator may apply slayer statutes, or similar rules which prohibit inheritance by a person who murders someone from whom he or she stands to inherit, under applicable state laws.

(i) **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.

(j) **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.

### 6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Participant's entire Vested interest in the Plan will be distributable and may be distributed in accordance with the provisions of Sections 6.5 and 6.7. If elected by the Participant, distribution of the Participant's benefit shall commence not later than one (1) year after the close of the Plan Year in which the Participant severs employment on or after the Normal Retirement Age. If the Plan permits periodic payments, then such payments must be substantially equal periodic payments that may not exceed more than five (5) years, unless otherwise permitted by the Plan and elected by the Participant.

### 6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on severance of employment.** If a Participant's employment with the Employer and any Affiliated Employer is severed for any reason other than death, Total and Permanent Disability, or attainment of the Participant's Retirement Date, then such Participant shall be entitled to such benefits as are provided herein. If elected by the Participant, distribution of the Participant's benefit shall commence not later than the year after the close of the Plan Year in which the Participant severs employment. If the Plan permits periodic payments, then such payments must be substantially equal periodic payments that may not exceed more than five (5) years, unless otherwise permitted by the Plan and elected by the Participant.

If a portion of a Participant's Account is forfeited, Employer Stock allocated to the Participant's Employer Stock Account must be forfeited only after the Participant's Other Investments Account has been depleted. If interest in more than one class of Employer Stock has been allocated to a Participant's Account, the Participant must be treated as forfeiting the same proportion of each such class.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant 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 which is consistent with and satisfies the provisions of Section 6.5, including but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Administrator may direct the Trustee (or Insurer), when agreed to by the Terminated Participant, to assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value 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), pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

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 Severance 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 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 Section 6.15 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 Section 6.15, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. The Administrator may establish a uniform and nondiscriminatory procedure as to whether a Participant who fails to make an Affirmative Election with respect to a mandatory distribution of \$1,000 or less is treated as having made a "direct rollover" election. For purposes of determining whether the \$1,000 threshold set forth in this paragraph is met, the mandatory distribution includes amounts in a Participant's Rollover Account. For purposes of determining whether the \$5,000 threshold in this paragraph is met, a Participant's Rollover Account is taken into account unless otherwise elected in the Adoption Agreement. Furthermore, for purposes of applying the \$1,000 threshold, the Administrator may apply this paragraph by treating a Participant's Roth Elective Deferral Account separately from the Participant's other Accounts.

(b) **Vesting schedule.** The Vested portion of any Participant's Account shall be a percentage of such Participant's Account 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).

(c) **Top-heavy vesting schedule.** For any Top-Heavy Plan Year, the minimum top-heavy vesting schedule elected by the Employer in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) 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 Subsection does not apply to the Account balances of any Employee who does not have an Hour of Service after the Plan has initially become top-heavy and the Vested percentage of such Employee's Participant's Account shall be determined without regard to this Section 6.4(c). Furthermore, pursuant to Code §416(i)(4), Participants 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 will not be subject to this Subsection unless otherwise provided in the collective bargaining agreement.

If in any subsequent Plan Year the Plan ceases to be a Top-Heavy Plan, then unless a specific Plan amendment is made to provide otherwise, the Administrator will continue to use the vesting schedule in effect while the Plan was a Top-Heavy Plan.

(d) **100% vesting on partial or full Plan termination.** Upon the complete discontinuance of the Employer's contributions to the Plan or upon any full or partial termination of the Plan, all amounts then credited to the Account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) **No reduction in Vested percentage due to change in 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 Account 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. Furthermore, if the Plan's vesting schedule is amended (including a change in the calculation of Years of Service or Periods of Service), then the amended schedule will only apply to those Participants who complete an Hour of Service after the effective date of the amendment.

(f) **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.

(g) **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. For this purpose, a predecessor plan is described in Regulation §1.411(a)-5(b)(3).

## 6.5 DISTRIBUTION OF BENEFITS

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

(1) Subject to the provisions of Section 6.13, if applicable, 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 Insurer used to provide the annuity does not offer a joint and seventy-five percent (75%) survivor 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 and Section 6.6, 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, in accordance with Regulation §1.417(a)(3)-1, 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 qualified Joint and Survivor Annuity and the "qualified optional survivor annuity" that is payable in lieu of the qualified 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) 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 distribution 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 any amount to which the Participant or Beneficiary is entitled under the Plan 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, provided that if a distribution of property is permitted, it shall be limited to property that is specifically allocated and identifiable with respect to such Participant.
- (2) Partial withdrawals.
- (3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the joint life expectancy of the Participant and the Participant's designated Beneficiary). Once payments have begun, a Participant may elect to accelerate the payments (reduce the term and increase payments).
- (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 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).

Unless the Participant elects in writing (or such other form as permitted by the Internal Revenue Service) a longer distribution period, distributions to a Participant or the Participant's Beneficiary attributable to Employer Stock shall be in substantially equal monthly, quarterly, semiannual, or annual installments over a period not longer than five (5) years. In the case, however, of a Participant with an Account balance attributable to Employer Stock in excess of \$1,105,000 (the 2018 adjusted threshold), the five (5) year period shall be extended one (1) additional year (but not more than five (5) additional years) for each \$220,000 (the 2018 adjusted threshold) or fraction thereof by which such balance exceeds \$1,105,000 (the 2018 adjusted threshold). The dollar limits shall be adjusted at the same time and in the same manner as provided in Code Section 415(d).

(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 may only 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 6.5(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 Severance 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 that would satisfy the notice requirements of Code §417;

(2) The Participant must be informed of the right, if any, to defer receipt of the distribution, and a description of the consequences of failing to defer any distribution. 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 Section 6.8;

(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.

(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 Section 6.8.

(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) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Plan Section 6.8(a)(4).

(h) **Distribution from partially Vested Account.** If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account, and the Participant may increase the Vested percentage in such Account, then at any relevant time the Participant's Vested portion of the Account will be equal to an amount ("X") determined by the formula:  $X = P (AB \text{ plus } D) \text{ minus } D$ . For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the Account balance at the relevant time, D is the amount of distribution, and the relevant time is the time at which, under the Plan, the Vested percentage in the Account cannot increase.

(i) **Qualified optional survivor annuity.**

(1) **Right to elect "qualified optional survivor annuity."** Notwithstanding the preceding, effective with respect to Plan Years beginning after December 31, 2007 and prior to the date this Plan is adopted, the Plan satisfied the "qualified optional survivor annuity" provisions set forth in this Subsection. A Participant who elected to waive the qualified Joint and Survivor Annuity form of benefit was entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the Joint and Survivor Annuity explains the terms and conditions of the "qualified optional survivor annuity."

(2) **Definition of "qualified optional survivor annuity."**

(i) **General.** For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

(A) For the life of the Participant with a survivor annuity for the life of the Participant's Spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's Spouse, and

(B) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(ii) **Applicable percentage.** For purposes of this Subsection, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified Joint and Survivor Annuity bears to the annuity payable during the joint lives of the Participant and the Participant's Spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%); otherwise, the "applicable percentage" is fifty percent (50%).

(j) **Source of distribution.** If the Administrator does not set forth a distribution source order from which a partial distribution should occur (e.g., pro rata from all Account sources) in the distribution form or some other administrative procedure, then the Participant or Beneficiary may elect the Account source(s) from which the distribution should occur. This Subsection (j) does not apply to the extent that a Participant or Beneficiary is required under the Plan terms to receive a distribution only from one or more specific Account(s) source or where the Plan terms specifically provide other alternative rules.

(k) **Annuities are not available or elected by Participant.** Section 6.13 applies to a Participant to the extent elected in the Adoption Agreement.

**6.6 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. 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. Any distribution to the Participant's Spouse shall be subject to the rules specified in Section 6.8.

(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 Section 6.5(a)(2). Further, the Spouse's consent must acknowledge the specific non-Spouse Beneficiary. Notwithstanding the foregoing, the non-Spouse 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 Section 6.5(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. 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 (or the death benefit if the Plan does not provide a 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 Section 6.5(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 Section 6.8 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.

(1) One lump-sum payment in cash or in property that is allocated to the Accounts of the Participant at the time of the distribution.

(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 Section 6.8.

(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 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 Contribution Account shall be in the same proportion that the Participant's Voluntary 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 Section 6.8(a)(4).

## 6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, 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 as soon as practicable. Such distribution or series of payments must be requested no later than the time required by Code §409(o). A Plan meets such requirements if the Participant and, if applicable pursuant to Code §401(a)(1) and

§417, with the consent of the Participant's spouse, elects the distribution of the Participant's account balance in the plan will commence not later than, (i) 1 year after the close of the Plan Year in which the Participant separates from service by reason of the attainment of Normal Retirement Age under the plan, disability, or death, (ii) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan, or (iii) the 5th plan year following the plan year in which the Participant otherwise separates from service, except that this clause shall not apply if the Participant is reemployed by the Employer before distribution is required to begin under this clause. The failure of a Participant and, if applicable, the Participant's Spouse, to request a distribution shall be deemed to be an election to defer the commencement of payment of any benefit until the time otherwise permitted under the Plan. For purposes of Code §409(o), the account balance of a Participant shall not include any Employer securities acquired with the proceeds of the loan described in Code §404(a)(9) until the close of the plan year in which such loan is repaid in full.

## 6.8 REQUIRED MINIMUM DISTRIBUTIONS

### (a) General rules

- (1) **Effective Date.** Subject to the Joint and Survivor Annuity requirements set forth in Plan Section 6.5, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan.
- (2) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).
- (3) **Limits on distribution periods.** As of the first "distribution calendar year," distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they 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."
- (4) **TEFRA Section 242(b)(2) elections.**
  - (i) Notwithstanding the other provisions of this Section, other than the Spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) 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 the 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 Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

**(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 either the lifetime method or the five-year method and if the Beneficiary makes no election, the five-year method shall apply):

(i) **Lifetime method (Spouse).** 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) **Lifetime method (non-Spouse).** If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(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) **Five-year method.** If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death or if otherwise elected pursuant to the Adoption Agreement with respect to a "designated Beneficiary," the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) **Death of Spouse.** 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, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.8(b)(2) and Section 6.8(b)(3), unless Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date." If Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i). If distributions under an annuity purchased from an insurance company 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 Section 6.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms 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 Sections 6.8(c) and 6.8(d) and only in a form of distribution provided in Section 6.5 or 6.6, as applicable. 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.

**(c) Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following:

(i) the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(ii) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the "Participant's account balance" by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year."

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," the remaining "life expectancy" of the surviving Spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining "life expectancy" of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** Except as provided in Sections 6.8(b)(2) and 6.8(b)(3), if the Participant dies before the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as provided in Section 6.8(d)(1).

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

(iii) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i), this Section 6.8(d)(2) will apply as if the surviving Spouse were the Participant.

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

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under Code §401(a)(9) and Regulation §1.401(a)(9)-4.

(2) "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 under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.

(4) "Participant's account balance" means the Participant's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(a) **Reduction for QLACs.** A Participant's account balance is reduced by any QLACs (as defined below). This paragraph applies only to QLACs purchased on or after July 2, 2014.

(b) **Definition of QLAC.** A QLAC is qualifying longevity annuity contract as defined in A-17 of Regulation §1.401(a)(9)-6. Pursuant to such Regulation, a QLAC is an annuity contract that is purchased from an insurance company for a Participant and that, in accordance with the rules of application of paragraph (c) below, satisfies each of the following requirements:

(1) The premiums paid with respect to the contract on a date do not exceed the lesser of the following amounts, determined in accordance with the provisions of paragraph (b) of A-17 of Regulation §1.401(a)(9)-6.

(a) An amount equal to the excess of \$125,000 (as adjusted under paragraph (d)(2) of A-17 of Regulation §1.401(a)(9)-6), over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the Participant under the Plan, or any other plan, annuity, or account described in Code §401(a), 403(a), 403(b), or 408 or eligible governmental plan under §457(b).

(b) An amount equal to the excess of 25% of the Participant's account balance under the Plan (including the value of any QLAC held under the Plan for the Participant) as of that date, over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the Participant under the Plan.

(2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the eighty-fifth (85<sup>th</sup>) anniversary of the Employee's birth;

(3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of paragraph (c) of A-17 of Regulation §1.401(a)(9)-6 (other than the requirement that annuity payments commence on or before the required beginning date (RBD));

(4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6;

(5) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (c) of A-17 of Regulation §1.401(a)(9)-6;

(6) Except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6, when the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(7) The contract is not a variable contract under Code §817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

(c) **Rules of application relating to premiums.**

(1) **Reliance on representations.** For purposes of the limitation on premiums described in paragraphs (b)(1) and (2) above, unless the Administrator has actual knowledge to the contrary, the Administrator may rely on an Employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in such paragraphs, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the Employer or an entity that is treated as a single employer with the Employer under Code §414(b), (c), (m), or (o).

(2) **Consequences of excess premiums.** If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b)(1)(a) above, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the Participant's account in accordance with paragraph (d)(1)(ii)(B) of A-17 of Regulation §1.401(a)(9)-6. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under paragraph (a) above as of the date on which the contract ceases to be a QLAC.

If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the Participant's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (b)(1)(a) above at any time, and the value of the contract will not be included in the employee's account balance under paragraph (a) above. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the Participant's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the Participant's account balance for that calendar year must be increased to reflect that excess premium in the same manner as a Participant's account balance is increased under Regulation §1.401(a)(9)-7, A-2 to reflect a rollover received after the last valuation date.

(3) **Application of 25-percent limit.** For purposes of the 25% limit under paragraph (b)(1)(b) above, a Participant's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

(d) **Dollar and age limitations subject to adjustments.** In the case of calendar years beginning on or after January 1, 2015, the \$125,000 amount under paragraph (b)(1)(a) will be adjusted at the same time and in the same manner as the limits are adjusted under Code §415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this paragraph that is not a multiple of \$10,000 will be rounded to the next lowest multiple of \$10,000. The maximum age set forth in paragraph (b)(2) may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents.

If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(1)(a) or the age limitation in paragraph (b)(2), any subsequent adjustment that is made pursuant to this paragraph (d) will not cause the contract to become a QLAC.

(5) "Required beginning date" means, except as otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires, except that benefit distributions to a "5-percent owner" must commence by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

(6) "5-percent owner" means a Participant who is a 5-percent owner as defined in Code §416 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 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

## 6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

If, in the opinion of the Administrator, a Participant or Beneficiary entitled to a distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age in the case of a minor, then the Administrator shall direct the distribution to the Participant's or Beneficiary's valid power of attorney, court appointed guardian, or any other person authorized under state law to receive the benefit (including a custodian under a Uniform Transfers or Gifts to Minors Act), upon furnishing evidence of such status satisfactory to the Administrator. The Administrator and the Trustee (or Insurer) do not have any liability with respect to payments so made and neither the Administrator nor the Trustee (or Insurer) has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

## 6.10 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 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). Before treating any Participant as being missing, the Administrator must conduct a

reasonable and diligent search for the Participant, using one or more of search methods the Plan Administrator determines are appropriate under the circumstances, such as the methods suggested by DOL Field Assistance Bulletin 2014-01. Such search methods include:

- (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail;
- (2) check with the administrator of 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 one or more free internet search tools;
- (5) attempt contact via email or telephone, or
- (6) use proprietary internet search tools, commercial locator services, credit reporting agencies, information brokers, or other search methods. Regarding search methods (2) and (3) above, if the Plan Administrator encounters privacy concerns, the Plan Administrator 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 Administrator.

In addition, 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, be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b), or use the PBGC Missing Participant Program, or any successor program, 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 and prior to the time the Plan has been terminated, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Section 6.15(b)(1) 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.

#### 6.11 IN-SERVICE DISTRIBUTION

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the Accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. The Plan may, however, make a partial distribution pursuant to this Section regardless of whether partial distributions are otherwise permitted pursuant to the Adoption Agreement. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts. The Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions on in-service distributions made pursuant to this Section.

#### 6.12 DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** For amounts other than Money Purchase Pension Plan contributions (except to the extent Section 12.10 applies), if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to an amount necessary to satisfy the Participant's immediate and heavy financial need, determined in accordance with the remaining provisions of this Section. Distribution of Elective Deferrals (and any earnings credited to a participant's Elective Deferral and Qualified Matching and Qualified Nonelective accounts as of the later of December 31, 1988, and or the end of the last Plan Year ending before July 1, 1989) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Such distributions may also be made from those Accounts from which such distribution are authorized by the remaining provisions of this Section. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

- (1) Expenses for (or necessary to obtain) medical care (as defined in Code §213(d));
- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

- (3) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));
- (4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B));
- (5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
- (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(d) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

#### 6.13 SPECIAL RULE IF NO ANNUITIES ARE PROVIDED

(a) The provisions of this Section apply to a Participant to the extent elected in the Adoption Agreement. However, unless otherwise permitted pursuant to Regulation §1.411(d)-4, this Section shall not apply with respect to amounts that are transferred directly or indirectly (i.e., other than by a rollover) to this Plan from a defined benefit plan, money purchase pension plan, target benefit plan, or stock bonus or profit sharing plan which is subject to the survivor annuity requirements of Code §§401(a)(11) and 417.

(b) If an election is made to not offer life annuities as a form of distribution, then a Participant shall be prohibited from electing benefits in the form of a life annuity and the Joint and Survivor Annuity provisions of Section 6.5 shall not apply.

(c) If an election is made to offer life annuities as a form of distribution but not as the normal form of distribution, then the Joint and Survivor Annuity provisions of Section 6.5 shall not apply if a Participant does not elect an annuity form of distribution. Furthermore, Subsection (e) shall not apply if a Participant elects an annuity form of distribution.

(d) Notwithstanding anything in Sections 6.2 and 6.6 to the contrary, upon the death of a Participant, the automatic form of distribution will be a lump-sum rather than a Qualified Pre-Retirement Survivor Annuity. Furthermore, the Participant's Spouse will be the Beneficiary of the Participant's entire Vested interest in the Plan unless an election is made to waive the Spouse as Beneficiary. The other provisions in Section 6.2 shall be applied by treating the death benefit in this Subsection as though it is a Pre-Retirement Survivor Annuity.

(e) Except to the extent otherwise provided in this Section, the provisions of Sections 6.2 and 6.5 regarding spousal consent shall be inoperative with respect to this Plan.

(f) If a distribution is one to which Code §§401(a)(11) and 417 do not apply, such distribution may commence less than thirty (30) days after the notice required under Regulation §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 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.

#### 6.14 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All benefits 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, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and



Other Permitted Elections), 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 domestic relations order or "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.

## 6.15 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. Furthermore, the Administrator may apply this Section by treating a Participant's Roth Elective Deferral Account separately from the Participant's other Accounts.

(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: (a) 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; (b) any distribution to the extent such distribution is required under Code §401(a)(9); (c) any hardship distribution; (d) 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); (e) any loans that are treated as deemed distributions under Code §72(p) which are not also an offset distribution; (f) dividends paid on employer securities described in Code §404(k); (g) the costs of life insurance coverage (P.S. 58 costs); (h) prohibited allocations treated as deemed distributions under Code §409(p); and (i) permissible withdrawals from a EACA described in Code §414(w); (k) any other distributions described in Regulation §1.402(c)-2; and (j) any other distribution reasonably expected to total less than \$200 during a year. For purposes of the \$200 rule, a distribution from a designated Roth account and a distribution from other accounts under the Plan may be treated as made under separate plans.

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 Roth individual account or annuity described in Code §408A (a "Roth IRA"), or
- (iii) a qualified defined contribution plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred (and earnings 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 a "traditional IRA," a "Roth IRA," 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 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), and for distributions made after December 18, 2015, a SIMPLE IRA to the extent permitted under Code §408(p)(1)(B), that accepts the "distributee's" "eligible rollover distribution." 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 an Alternate Payee. If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. A "direct rollover" of a distribution from a Roth Elective Deferral Account (other than an "in-Plan Roth rollover contribution" (as defined in Section 12.11)) will only be made to another Roth Elective Deferral Account under an applicable retirement plan described in Code §402A(e)(1) or to a Roth IRA described in Code §408A, and only to the extent that the rollover is permitted under the rules of Code §402(c). In the case of a "distributee" who is a non-Spouse designated Beneficiary, (i) the "direct rollover" may be made only to a traditional or Roth individual retirement account or an annuity described in Code §408(b) ("IRA") that is established on behalf of the designated non-Spouse Beneficiary and that will be treated as an inherited

IRA pursuant to the provisions of Code §402(c)(11), and (ii) the determination of any required minimum distribution required under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

(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 thirty (30) – one-hundred eighty (180) day timeframe applicable to the Participant consent notice as set forth in Section 6.5(d)(3). 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.** 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. 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."

## 6.16 RESTRICTIONS ON DISTRIBUTION OF ASSETS TRANSFERRED FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code §414(I), to this Plan from a money purchase pension plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution). Notwithstanding anything in the Plan to the contrary, a Participant may not obtain an in-service distribution with respect to such transferred amounts prior to the earlier of the Participant's Normal Retirement Age or attainment of age 62.

## 6.17 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs established by the IRS or the Department of Labor.

## 6.18 UNCASHED CHECKS

Subject to the provisions of Section 6.10, the Plan Administrator operationally may dispose of an uncashed distribution from the Plan to a lost Participant at the time and in the manner described in this Section). Prior to doing so, the Plan Administrator must make reasonable and diligent efforts to contact the lost Participant, including using such search methods the Plan Administrator determines are appropriate under the circumstances. At the discretion of the Administrator, Plan distributions that remain uncashed, and which the Administrator chooses not to reinvest in the Plan may be: (1) voluntarily remitted to a State unclaimed property department, but no sooner than the appropriate state dormancy period has expired; or (2) deposited for the benefit of the lost Participant either to a: (a) bank account, or (b) individual retirement account if the original distribution was an eligible rollover distribution.

For purposes of this Section, a distribution is "uncashed" if it remains uncashed by the "cash-by" date on the check or in an accompanying notice, e.g., a date prescribed by the bank or the Plan. This "cash-by" date must be at least forty-five (45) days after the check is issued. If there is no prescribed "cash-by" date, then the amount is considered uncashed if it is not cashed by the check's stale date.

## 6.19 RIGHT TO DEMAND DISTRIBUTION OF EMPLOYER SECURITIES

(a) **C Corporations.** If the Employer is a C Corporation, then distributions will be made in cash, other property and/or stock, as elected by the Employer in the Adoption Agreement. If, however, the Employer elects in the Adoption Agreement that distributions will be made in cash (or property other than Employer Stock), then Participants have the right to demand that their benefits be distributed in the form of Employer Stock.

(b) **S Corporations and exception for certain C Corporations.** If the Employer is an S Corporation, or if the Employer is a C Corporation whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in Code §401(a), then the Employer may elect in the Adoption Agreement that a Participant who is entitled to a distribution will either receive the distribution in cash, or in Employer Stock subject to a requirement that the Employer Stock must be sold to the Employer ("Mandatory Put") under a fair valuation method that meets the requirements of Section 5.2.

(c) **Mandatory Put.** If the Employer elects the "Mandatory Put" option in the Adoption Agreement, and if Employer Stock is distributed as part of an "installment distribution," then payment will be made to the Participant within thirty (30) days of the date the Participant sells the Employer Stock to the Employer or Plan. If the Employer elects the "Mandatory Put" option in the Adoption Agreement, and if Employer Stock is distributed as part of a "total distribution," then payments will commence within thirty (30) days after of the date the Participant sells the Employer Stock to the Employer or Plan. As elected by Employer in the Adoption Agreement, payment may be made in a single payment or in substantially equal, periodic payments (not less frequently than annually) over a period not exceeding five (5) years, with adequate security provided and interest payable at a reasonable rate on the unpaid amounts. For purposes of this Section, a "total distribution" is a distribution, within one (1) taxable year, of the balance to the credit of the Participant's Account, and any other distribution is an "installment distribution."

(d) **Distribution procedure.** If a Participant or Beneficiary demands that benefits be distributed in Employer Stock in accordance with the preceding provisions, then the distribution will be made in whole shares or other units of Employer Stock. Any balance in a Participant's Other Investments Account will be applied to acquire for distribution the maximum number of whole shares or other units of Employer Stock at the then fair market value. Any fractional unit value unexpended will be distributed in cash. If Employer Stock is not available for purchase by the Trustee, then the Trustee shall hold such balance until Employer Stock is acquired and then make such distribution.

(e) **More than one class of Employer Stock.** If Employer Stock acquired with the proceeds of an Exempt Loan is available for distribution and consists of more than one class, a Participant or the Participant's Beneficiary must receive substantially the same proportion of each such class.

## 6.20 PUT OPTION

(a) **General rule.** If elected in the Adoption Agreement, then the Employer, or the Plan, will purchase Employer Stock (that was not acquired with the proceeds of an Exempt Loan except as provided in Subsection (b) below) that has been distributed to a Participant or Beneficiary if the Participant or Beneficiary offers the Employer Stock for sale to the Employer or the Plan (put option) during one of the two (2) put option periods below. A fair valuation method that meets the requirements of Section 5.2 will be used to determine the amount to be paid to the Participant or Beneficiary. The rights and protections required under Reg. section 54.4975-7(b)(4), relating to put, call or other options and to buy-sell or similar arrangements and Reg. section 54.4975-7(b)(10), (11) & (12), relating to put options are non-terminable, even if any loan pursuant to this Section 6.20 is repaid or the plan ceases to be an ESOP.

(b) **Exception.** Employer Stock which is acquired with the proceeds of an Exempt Loan and which is not publicly traded (within the meaning of Code §409(h)(1)(B)) when distributed, or if it is subject to a trading limitation when distributed, must be subject to the put option set forth in this Section. For purposes of this paragraph, a "trading limitation" on an Employer Stock is a restriction under any Federal or State securities law or any regulation thereunder, or an agreement (not prohibited by Section 7.11(d)) affecting the Employer Stock which would make the Employer Stock not as freely tradeable as stock not subject to such restriction.

(c) **Exercising the put option.** The put option must be exercisable only by a Participant, by the Participant's donees, or by a person (including an estate or its distributee) to whom the Employer Stock passes by reason of a Participant's death. For purposes of this paragraph, Participant means a Participant or Former Participant and the beneficiaries of the Participant or Former Participant under the Plan. The put option must permit a Participant to put the Employer Stock to the Employer. Under no circumstances may the put option bind the Plan. However, it shall grant the Plan an option to assume the rights and obligations of the Employer at the time that the put option is exercised. If it is known at the time a loan is made that Federal or State law will be violated by the Employer honoring such put option, the put option must permit the Employer Stock to be put, in a manner consistent with such law, to a third party (e.g., an affiliate of the Employer or a shareholder other than the Plan) that has substantial net worth at the time the loan is made and whose net worth is reasonably expected to remain substantial. The put option is exercised by the holder notifying the Employer in writing that the put option is being exercised; the notice shall state the name and address of the holder and the number of shares to be sold. The price at which a put option must be exercisable is the value of the Employer Stock determined in accordance with Section 5.2.

(d) **Put option periods.** The first put option is the period of sixty (60) days beginning on the date following the date the Employer Stock is distributed to the Participant. The second put option period is a period of sixty (60) days commencing on the first day of the fifth month of the Plan Year next following the date the Employer Stock was distributed to the Participant (or such other sixty (60) day period as provided in Regulations). The period during which a put option is exercisable does not include any time when a distributee is unable to exercise it because the party bound by the put option is prohibited from honoring it by applicable Federal or State law. Furthermore, in the case of Employer Stock that is publicly traded without restrictions when distributed but ceases to be so traded within either of the sixty (60) day periods described herein, the Employer must notify each holder of such Employer Stock in writing on or before the tenth day after the date the Employer Stock ceases to be so traded that for the remainder of the applicable sixty (60) day period the Employer Stock is subject to the put option. The number of days between the tenth day and the date on which notice is actually given, if later than the tenth day, must be added to the duration of the put option period. The notice must inform distributees of the term of the put options that they are to hold. The terms must satisfy the requirements of this paragraph.

(e) **Payment upon exercise of put option.** If the Employer Stock is distributed as part of an "installment distribution," then payment will be made within thirty (30) days of the date the Participant offers to sell the Employer Stock to the Employer or Plan. If the Employer Stock is distributed as part of a "total distribution," payment will commence within 30 (thirty) days after the date that the

Participant offers to sell the Employer Stock to the Employer or Plan. As selected by the Employer in the Adoption Agreement, payment on a "total distribution" may be made in a single payment or in substantially equal, periodic payments (not less frequently than annually) over a period not exceeding five (5) years, with adequate security provided and interest payable at a reasonable rate on the unpaid amounts. Payment under a put option must not be restricted by the provisions of a loan or any other arrangement, including the terms of the Employer articles of incorporation, unless so required by applicable state law.

(f) **Prohibited put options.** An arrangement involving the Plan that creates a put option must not provide for the issuance of put options other than as provided under this Section. The Plan (and the Trust Fund) must not otherwise obligate itself to acquire Employer Stock from a particular holder thereof at an indefinite time determined upon the happening of an event such as the death of the holder.

#### 6.21 RIGHT OF FIRST REFUSAL UPON SALE

(a) **Right of first refusal.** If selected in the Adoption Agreement, all shares of Employer Stock or just Employer Stock acquired with the proceeds of an Exempt Loan (except as provided below) are subject to a right of first refusal as described in this Section. If any holder of Employer Stock subject to a right of first refusal desires to sell some or all of such shares to a third party, the seller shall give written notice of such desire to the Employer and the Administrator, which notice shall contain the number of shares offered for sale, the proposed terms of the sale and the names and addresses of both the seller and third party. The selling price and other terms under the right must not be less favorable to the seller than the greater of a good faith determination of the fair market value of the security as determined under Section 5.2 or the purchase price and other terms offered by a buyer, other than the Employer or the Plan, making a good faith offer to purchase the shares of Employer Stock.

(b) **Plan and/or Employer.** The right of first refusal must be in favor of the Employer, the Plan, or both in any order of priority. If the right of first refusal is in favor of both the Employer and the Plan, then unless otherwise agreed to or stated in the Employer Stock certificates, the Plan shall have priority to acquire the shares pursuant to the right of first refusal.

(c) **Selling price.** The selling price and other terms under the right must not be less favorable to the seller than the greater of a good faith determination of the fair market value of the security as determined under Section 5.2 or the purchase price and other terms offered by a buyer, other than the Employer or the Plan, making a good faith offer to purchase the shares of Employer Stock.

(d) **Lapse.** The right of refusal must lapse no later than (14) calendar days after the holder of the Employer Stock gives written notice to the holder of the right of first refusal that an offer by a third party to purchase the Employer Stock has been received. If the right of refusal is in favor of both the Employer and Plan, then the fourteen (14) day period will run concurrently against the Plan and the Employer.

(e) **After lapse.** If the Plan and the Employer do not exercise their right of first refusal within the required fourteen (14) day period provided above, the seller shall have the right, at any time following the expiration of such fourteen (14) day period, to dispose of the offered shares to the third party; provided, however, that (i) no disposition shall be made to the third party on terms more favorable to the third party than those set forth in the written notice delivered by the seller above, and (ii) if such disposition shall not be made to a third party on the terms offered to the Employer and the Plan, the offered shares shall again be subject to the right of first refusal set forth above.

(f) **Closing of exercise.** If the Employer or Plan, as applicable, exercise of the right of first refusal under this Section, then the closing of the transaction shall take place at such place agreed upon between the Employer (or if applicable, Administrator) and the seller, but not later than ten (10) days after the Employer or the Plan have notified the seller of the exercise of the right of first refusal. At such closing, the seller shall deliver certificates representing the offered shares duly endorsed in blank for transfer, or with stock powers attached duly executed in blank with all required transfer tax stamps attached or provided for, and the Employer or the Plan shall deliver the purchase price, to the seller.

(g) **Exception for Employer Stock acquired by Exempt Loan.** Notwithstanding the foregoing, Employer Stock acquired with the proceeds of an Exempt Loan shall only be subject to the right of first refusal provided for in paragraph (a) of this Section so long as the Employer Stock is not publicly traded. The term "publicly traded" refers to a securities exchange registered under Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) or that is quoted on a system sponsored by a national securities association registered under Section 15A(b) of the Securities Exchange Act (15 U.S.C. 780). In addition, in the case of Employer Stock which was acquired with the proceeds of an Exempt Loan, the selling price and other terms under the right must not be less favorable to the seller than the greater of the value of the security determined under Section 5.2, or the purchase price and other terms offered by a buyer (other than the Employer or the Trust Fund), making a good faith offer to purchase the security.

(h) **Legend on shares.** The certificates for distributed shares which are subject to the right of first refusal shall contain an appropriate legend which grants the right of first refusal to the Employer and/or Plan.

**ARTICLE VII  
INVESTMENT AND EXEMPT LOAN PROVISIONS**

**7.1 CONFLICT WITH PLAN**

In the event of any conflicts between the provisions of this Plan and the Trust agreement, the provisions of this Plan control.

**7.2 POWERS AND DUTIES OF CUSTODIAN**

Subject to the terms of the 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. Any reference in the Plan to a Trustee also is a reference to a Custodian unless the Employer has appointed a Custodian separate from the Trustee or the context of the Plan indicates otherwise.

**7.3 LIFE INSURANCE**

(a) **Permitted insurance.** To the extent not prohibited under the terms of the Trust agreement, the Trustee (or Insurer), in accordance with nondiscriminatory operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of amounts other than those attributable to Money Purchase Pension Plan contributions, on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than \$1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of amounts other than those attributable to Money Purchase Pension Plan contributions, to the portion of the Participant's Account, other than the Participant's Elective Deferral Account, Qualified Matching Account and Qualified Nonelective Contribution Account, that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** Subject to the survivor annuity requirements of Sections 6.5 and 6.6 (if applicable), the Administrator must direct the Trustee (or Insurer) to distribute the Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the Participant's actual retirement date.

(c) **Limitations on purchase.** Notwithstanding anything herein above to the contrary, amounts credited to a Participant's Qualified Voluntary Employee Contribution Account pursuant to Section 4.9, shall not be applied to the purchase of life insurance Contracts. Furthermore, no life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) **Proceeds payable to Plan.** The Trustee (or Insurer) must be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee (or Insurer); however, the Trustee (or Insurer) shall be required to pay over all proceeds of the Contract to the Participant's "designated Beneficiary" in accordance with the distribution provisions of Article VI as directed by the Administrator. A Participant's Spouse will be the "designated Beneficiary" pursuant to Section 6.2, unless a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee (or Insurer) shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code §401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

(e) **No responsibility for act of Insurer.** The Employer, the Administrator and the Trustee shall not be responsible for the validity of the provisions under a Contract issued hereunder or for the failure or refusal by the Insurer to provide benefits under such Contract. The Employer, Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the Contract or which renders the Contract invalid or unenforceable in whole or in part.

## 7.4 LOANS TO PARTICIPANTS

(a) **Permitted loans.** To the extent not prohibited under the terms of the Trust agreement, 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. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan. 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.

(b) **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 in a manner consistent with Section 6.5(a), provided the spousal consent requirements of such Section apply to the Plan. 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. 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 Account balance 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 Account balance 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 Account balance (determined without regard to the preceding sentence) is payable to the surviving Spouse, then the Account balance shall be adjusted by first reducing the Vested Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse.

(c) **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 such default.

(d) **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. Notwithstanding anything in the Plan's loan policy to the contrary, if a loan is accelerated due to a Participant's termination of employment, then the Plan may direct that the loan note be transferred or directly rolled over to another plan that will accept the transfer or rollover of the note.

(e) **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.

## 7.5 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.

## 7.6 PLAN-TO-PLAN TRANSFERS

Notwithstanding any other provision contained in this Plan and to the extent not prohibited under the terms of the Trust agreement, the Administrator may direct the Trustee to transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus 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 allocates the funds in each account to a transferee account that preserves all the required features and restrictions applicable to such account 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.

## 7.7 EMPLOYER SECURITIES AND REAL PROPERTY

The Plan is designed to invest primarily in Employer Stock, subject to any divestment rights of Participants. To the extent not prohibited by the terms of the Trust agreement, the Plan permits the Trustee to acquire and hold "qualifying employer real property," as defined in the Act.

Notwithstanding the preceding, if the Plan does not permit Participants to direct the investment of their Elective Deferral Accounts, then the Trust Fund shall only be permitted to acquire or hold "qualifying employer securities" and "qualifying employer real property" to the extent permitted under Act §407.

## 7.8 DIVESTMENT OF EMPLOYER SECURITIES (401(a)(35))

- (a) **Application of Section.** This Section only applies to a Plan that is an "applicable defined contribution plan." Except as provided herein or in Regulations, an "applicable defined contribution plan" means a defined contribution plan that holds employer securities (within the meaning of Regulation §1.401(a)(35)-1(f)(3)) that are publicly traded (within the meaning of Regulation §1.401(a)(35)-1(f)(5)). An "applicable defined contribution plan" does not include a one-participant plan, as defined in Code §401(a)(35)(E)(iv) or an employee stock ownership plan ("ESOP") as defined in Code §4975(e)(7) if: (1) the ESOP holds no contributions (or related earnings) that are (or were ever) subject to Code §§401(k) or 401(m); and (2) the ESOP is a separate plan, for purposes of Code §414(l), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers. Except as provided in Regulation §1.401(a)(35)-1(f)(2)(iv) or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), the Plan is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a "publicly traded Employer security."
- (b) **Rule applicable to Elective Deferrals, Employee contributions and rollovers.** If any portion of an "applicable individual's" account attributable to Elective Deferrals, after-tax voluntary Employee contributions or rollover contributions is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Subsection (c). For purposes of this Section, an "applicable individual" means: (1) a Participant; (2) an Alternate Payee who has an account under the Plan; or (3) a Beneficiary of a deceased Participant.
- (c) **Rule applicable to Employer contributions.** If any portion of an "applicable individual's" account attributable to Employer contributions (other than Elective Deferrals) is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Subsection (d) below.

- (1) **Definition of "Applicable individual."** For purposes of this Subsection, an "applicable individual" means: (i) a Participant who has completed at least three (3) Years of Service; (ii) an Alternate Payee who has an account under the Plan with respect to a Participant who has completed at least three (3) Years of Service; or (iii) a Beneficiary of a deceased Participant. For this purpose, a Participant completes three (3) Years of Service on the last day of the vesting computation period provided for under the Plan that constitutes the completion of the third year of service under Code §411(a)(5). However, if the Plan uses the elapsed time method of crediting service for vesting purposes (or the Plan provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), a Participant completes three (3) years of service on the day immediately preceding the third anniversary of the Participant's date of hire.

(2) **Definition of "publicly traded Employer security."** For purposes of this Section, a "publicly traded Employer security" means a security which is traded on a national securities exchange that is registered under Section 6 of the Securities Exchange Act of 1935 or which is traded on a foreign national securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority and the security is deemed by the securities and Exchange commission as having a "ready market" under SEC Rule 14c3-1 (17 CFR 240.15c3). In addition, if the Employer, or any member of a controlled group of corporations (as described in Regulation §1.401(a)(35)-1(f)(2)(iv)(A)) which includes the Employer, has issued a class of stock which is a publicly traded employer security, and the Plan hold employer securities which are not publicly traded Employer securities, then the Plan shall be treated as holding publicly traded Employer securities.

(d) **Investment options.** For purposes of this Section, other investment options must include not less than three (3) investment options, other than Employer securities, to which the individual who the right to divest under Subsections (c) or (d) may direct the proceeds from the divestment of Employer securities. Each of the three (3) investment options must be diversified and have materially different risk and return characteristics. For this purpose, investment options that constitute a broad range of investment alternatives within the meaning of Department of Labor Regulation §2550.404c-1(b)(3) are treated as being diversified and having materially different risk and return characteristics.

(e) **Restrictions or conditions on investments in Employer securities.** The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Furthermore, except as permitted by Regulation §1.401(a)(35)-1(e), the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets.

## 7.9 DIVERSIFICATION RIGHTS OF QUALIFIED PARTICIPANTS (401(a)(28)(B))

(a) **Application of Section.** This Section only applies to a Plan that is not subject to Section 7.8. If this Section applies, then the Plan may, but is not required to, apply these provisions to Employer Securities acquired before January 1, 1987.

(b) **"Qualified Participant" election.** Each "Qualified Participant" may elect within ninety (90) days (or longer if elected in the Adoption Agreement) after the close of each Plan Year during the "Qualified Election Period" to direct diversify the "Diversification Shares" in accordance with one (or more) of the following methods as elected in the Adoption Agreement. The "Diversification Shares" that are diversified pursuant to this Section cannot be reinvested in Employer Stock, other than at the Participant's election.

(1) **Distribution.** If a distribution is permitted pursuant to the Adoption Agreement, then a "Qualified Participant" may elect (as permitted under the election made in the Adoption Agreement), either a distribution of the "Diversification Shares" or an amount equal to the value of such shares (as permitted under the election made in the Adoption Agreement). If the Participant elects a distribution, then the distribution must be made within ninety (90) days after the close of the Plan Year to which such election applies. If the distribution includes Employer Stock, then the provisions of Section 6.20 (Put Option) apply.

(2) **Alternative Investment.** If an alternative investment is permitted pursuant to the Adoption Agreement, then a "Qualified Participant" may elect to have an amount equal to the value of the "Diversification Shares" invested in at least three (3) alternative options available under the Plan. Each of these investment options must be diversified and have materially different risk and return characteristics. The Plan must invest the value of the "Diversification Shares" in accordance with the direction of the "Qualified Participant" within ninety (90) days after the close of the Plan Year to which such election applies.

(3) **Transfer to another plan.** If a transfer to another plan is permitted pursuant to the Adoption Agreement, then a "Qualified Participant" may elect to have an amount equal to the value of the "Diversification Shares" transferred to another qualified defined contribution plan of the Employer that offers at least three (3) investment options (each of which must be diversified and have materially different risk and return characteristics). This transfer must be made within ninety (90) days after the close of the Plan Year to which such election applies and must comply with applicable qualification requirements, including Code §§ 414(l), 411(d)(6) and 401(a)(11).

(c) **De Minis Exception.** Notwithstanding the above, this Section does not apply if the fair market value of the Employer Stock allocated to the Participant's Account is less than \$500 as of the Plan Valuation Date immediately preceding the first day on which a "Qualified Participant" would otherwise be eligible to make a diversification election pursuant to this Section. For purposes of determining whether the fair market value exceeds \$500, Employer Stock held in accounts of all employee stock ownership plans (as defined in Code §4975(e)(7)) and tax credit employee stock ownership plans (as defined in Code §409(a)) maintained by the Employer or any Affiliated Employer shall be considered as held by the Plan.

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

(1) **"Diversification Shares."** "Diversification Shares" means, with respect to a Plan Year, twenty-five percent (25%) of the total number of shares of Employer Stock acquired by or contributed to the Plan (after December 31, 1986 if elected in the Adoption Agreement) that have ever been allocated to such "Qualified Participant's" Employer Stock Account (reduced by the number of shares of Employer Stock previously diversified pursuant to a prior election). In the case of the election year in which the last election can be made by the Participant, the preceding sentence shall be applied by substituting "fifty percent" (50%) for "twenty-five percent (25%)." The "Diversification Shares" that are diversified pursuant to this Section cannot be reinvested in



Employer Stock, other than at the Participant's election.

(2) **"Qualified Participant."** "Qualified Participant" means any Participant who has completed at least ten (10) years of participation in the Plan and has attained age 55. Years of participation are measured from the date on which the individual becomes a Participant in the Plan (whether or not the Plan was an ESOP) or a predecessor plan until the date on which the Participant ceases to be entitled to any benefit under the Plan. For this purpose, a predecessor plan includes any ESOP maintained by the Employer or a predecessor employer within the meaning of Regulation §1.415(f)-1(c), and any plan that has been merged into, consolidated with, or transferred assets to the Plan in accordance with Code §414(I).

(3) **"Qualified Election Period."** "Qualified Election Period" means the six-Plan-Year period beginning with the first Plan Year in which a Participant first became a "Qualified Participant."

## 7.10 CODE §1042 TRANSACTIONS

(a) **Prohibited allocations.** This Section only applies if the Employer is a C Corporation. If the Employer is a C Corporation, then no portion of the Trust Fund attributable to (or allocable in lieu of) "Employer Stock" acquired by the Plan in a sale to which Code §1042 applies may accrue or be allocated directly or indirectly under any plan maintained by the Employer meeting the requirements of Code §401(a) (1) during the "Nonallocation Period," for the benefit of any "Nonallocation Participant," or (2) for the benefit of a "25% shareholder."

(b) **Definitions.** The following definitions apply for purposes of this Section.

(1) **"Employer Stock."** "Employer Stock" means employer securities (as defined in Code §409(I)) which are issued by a domestic C corporation that has no stock outstanding that is readily tradable on an established securities market, and were not received by the taxpayer in a distribution from a plan described in Code §401(a), or a transfer pursuant to an option or other right to acquire stock to which Code §§ 83, 422, or 423 applied (or to which Code §§ 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

(2) **"Section 1042 Sale."** "Section 1042 Sale" means a sale of "Employer Stock" to the Plan in a transaction to which Code §1042 (pertains to the nonrecognition of gain) applies.

(3) **"Nonallocation Period."** "Nonallocation Period" means the period beginning on the date of the "Section 1042 Sale" and ending on the later of the date that is ten (10) years after the date of the "Section 1042 Sale," or the date of the Plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with the "Section 1042 Sale."

(4) **"Nonallocation Participant."** "Nonallocation Participant" means any Participant who makes an election under Code §1042(a) with respect to "Employer Stock" and any Participant who is related to such Participant within the meaning of Code §267(b). "Nonallocation Participant" does not include any participant who is a lineal descendant of a Participant who makes an election under Code §1042 if the aggregate amount allocated for the benefit of all such lineal descendants during the "Nonallocation Period" does not exceed more than 5 percent (5%) of the "Employer Stock" (or amounts allocated in lieu thereof) held by the ESOP that is attributable to a "Section 1042 Sale" by any person related to such descendants (within the meaning of Code §267(c)(4)).

(5) **"25% Shareholder."** "25% Shareholder" means a Participant who owns more than 25 percent (25%) of any class of outstanding stock of the Employer or any corporation that is a member of the same controlled group of corporations (within the meaning of Code §409(I)(4)) as the Employer. "25-percent Shareholder" also means a Participant who owns more than 25 percent (25%) of the total value of any class of outstanding stock of the Employer or any corporation that is a member of the same controlled group of corporations (within the meaning of Code §409(I)(4)) as the Employer. The rules of Code §318(a), without regard to the employee trust exception in §318(a)(2)(B)(i), are used to calculate the ownership percentage. This definition is applicable at any time during either the 1-year period ending on the date of sale of such stock to the Plan, or on the date as of which "Employer Stock" is allocated to Participants.

## 7.11 LEVERAGED ESOP PROVISIONS (EXEMPT LOANS)

(a) **Leveraging.** The Trustee may incur an Exempt Loan only if it meets the requirements of this section, provided the proceeds of an Exempt Loan are used within a reasonable time after receipt only for any or all of the following purposes: (1) To acquire Employer Stock; (2) To repay such loan; and/or (3) To repay a prior Exempt Loan.

(b) **Requirements.** Except for the put option described in Code §409(h), no security acquired with the proceeds of an Exempt Loan may be subject to a put, call or other option, or buy-sell or other arrangement while held by and when distributed from the Plan, whether or not the Plan continues to operate as an ESOP. All loans to the Trust which are made or guaranteed by a disqualified person (as defined in Code §4975(e)(2)) must satisfy all requirements applicable to Exempt Loans, including but not limited to the following:

(1) The loan must be at a reasonable rate of interest;

- (2) The terms of an Exempt Loan must be at least as favorable to the Plan as the terms of a comparable loan resulting from an arm's length negotiation between independent parties;
  - (3) If Employer Stock is released from the Suspense Account based on principal payments only, then the amount of interest paid shall not exceed the amount of each payment which would be treated as interest under standard loan amortization tables;
  - (4) Any collateral pledged to the creditor by the Plan shall consist only of the Employer Stock purchased with the borrowed funds;
  - (5) Under the terms of the loan, any pledge of Employer Stock shall provide for the release of shares so pledged on a pro-rata basis pursuant to the methods set forth herein;
  - (6) Under the terms of the loan, the creditor shall have no recourse against the Plan except with respect to such collateral, earnings attributable to such collateral, Employer contributions (other than contributions of Employer Stock) that are made to meet its obligations under the Exempt Loan, and earnings attributable to such contributions;
  - (7) The loan must be for a specific term and may not be payable at the demand of any person, except in the case of default;
  - (8) In the event of default upon an Exempt Loan, the value of the Trust Fund transferred in satisfaction of the Exempt Loan shall not exceed the amount of default. If the lender is a disqualified person, an Exempt Loan shall provide for a transfer of Trust Funds upon default only upon and to the extent of the failure of the Plan to meet the payment schedule of the Exempt Loan;
  - (9) If Employer Stock is released from the Suspense Account based on principal payments only, then the term of the loan (including the sum of the expired duration of the loan, any renewal period, any extension period, and the duration of any new loan) shall not exceed ten (10) years;
  - (10) If Employer Stock is released from the Suspense Account based on principal payments only, then the loan must provide for annual payments of principal and interest at a cumulative rate that is not less rapid at any time than level annual payments of such amounts for ten (10) years;
  - (11) In the event of default upon an Exempt Loan, the value of the Trust Fund transferred in satisfaction of the Exempt Loan shall not exceed the amount of default. If the lender is a disqualified person, an Exempt Loan shall provide for a transfer of Trust Funds upon default only upon and to the extent of the failure of the Plan to meet the payment schedule of the Exempt Loan; and
  - (12) Exempt Loan payments during a Plan Year must not exceed an amount equal to: (A) the sum, for all Plan Years, of all contributions and cash dividends paid by the Employer to the Plan with respect to such Exempt Loan and earnings on such Employer contributions and cash dividends, less (B) the sum of the Exempt Loan payments in all preceding Plan Years. A separate accounting shall be maintained for such Employer contributions, cash dividends and earnings until the Exempt Loan is repaid.
- (c) **Methods for releasing shares from Suspense Account.** Employer Stock acquired by the Plan with the proceeds of an Exempt Loan shall only be allocated to each Participant's Employer Stock Account upon release from the Suspense Account as provided in this Section. Shares will be released from the Suspense Account in accordance with either the Principal and Interest Payment Release Method or the Principal Payment Release Method as described in this Section and in accordance with the election made by the Employer in the Adoption Agreement.
- (1) **Principal and Interest Payment Release Method.** For each Plan Year during the duration of the Exempt Loan, the number of shares of Employer Stock released from the Suspense Account will equal the number of shares of Employer Stock held in the Suspense Account immediately before the release for the current Plan Year multiplied by a fraction. The numerator is the amount of the principal and interest paid on the Exempt Loan for that Plan Year, and the denominator is the sum of the numerator plus the total payments of principal and interest to be paid for all future Plan Years. The apply for purposes of this provision:
    - (i) The number of future years under the Exempt Loan must be definitely ascertainable and must be determined without taking into account any possible extensions or renewal periods;
    - (ii) If the interest rate under the Exempt Loan is variable, the interest to be paid in future years must be computed by using the interest rate applicable as of the end of the Plan Year; and
    - (iii) If collateral includes more than one class of securities, the number of securities of each class to be released for a Plan Year must be determined by applying the same fraction to each class.
  - (2) **Principal Payment Release Method.** Shares of Employer Stock are released from the Suspense Account solely with reference to principal payments in the fraction described in (1) above. However, this Principal Payment Release Method cannot be used unless the following conditions are met: (a) The Exempt Loan must provide for annual payments of principal and interest at a cumulative rate that is not less rapid at any time than level annual payments of such amounts for ten (10) years; (b) interest

included in any payment is disregarded only to the extent that it would be determined to be interest under standard loan amortization tables; and (c) the Principal Payment Release Method cannot be used beginning from the time that, by reason of a renewal, extension, or refinancing, the sum of the expired duration of the Exempt Loan, the renewal period, the extension period, and the duration of a new Exempt Loan exceeds ten (10) years.

(d) **Forfeitures.** Employer Stock allocated to a Participant's Employer Stock Account pursuant to this Section must be forfeited only after other assets.

(e) **Protections and rights.** Except for the put option described in Section 6.20, no share of Employer Stock acquired with the proceeds of an Exempt Loan may be subject to a put, call, or other option, or buy-sell or similar arrangement when held by and when distributed from the Plan, whether or not the Plan is then an ESOP. The protections and rights granted in this Section are nonterminable and such protections and rights shall continue to exist under the terms of this Plan, regardless of whether or not the Plan continues to be an ESOP or whether the Exempt Loan is repaid.

## 7.12 VOTING EMPLOYER STOCK

(a) **"Registration-type class of securities."** If Employer Stock is a "registration-type class of securities," then each Participant or Beneficiary is entitled to direct the Plan as to the manner in which shares of Employer Stock that are entitled to vote, and are allocated to his or her Account, are to be voted.

(b) **"Non-registration-type class of securities."** If Employer Stock is not a "registration-type class of securities," then each Participant or Beneficiary is entitled to direct the Plan as to the manner in which voting rights under the shares of Employer Stock allocated to his or her Account are to be exercised with respect to any corporate matter that involves the voting of the shares of Employer Stock with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of a trade or business. If, however, if the by-laws of the Employer require the Plan to vote an issue in a manner that reflects a one-man, one-vote philosophy, then each Participant or Beneficiary shall be entitled to cast one vote on an issue and the Trustee shall vote the shares held by the Plan in proportion to the results of the votes cast on the issue by the Participants and Beneficiaries.

(c) **Failure to provide directions.** If the Trustee does not timely receive voting directions from a Participant or Beneficiary with respect to any Employer Stock allocated to that Participant's or Beneficiary's Employer Stock Account, then unless specifically provided in the Trust Agreement, the Trustee shall consider the failure or refusal as an exercise of the Participant's or Beneficiary's rights and a directive to the Trustee not to vote said Employer Stock.

(d) **Other Plan assets.** Unless otherwise provided in the Trust Agreement and the Adoption Agreement, the Trustee shall vote all Employer Stock held by it as part of the Plan assets at such time and in such manner as the Administrator shall direct. Provided, however, that if any agreement entered into by the Trust provides for voting of any shares of Employer Stock pledged as security for any obligation of the Plan, then such shares of Employer Stock shall be voted in accordance with such agreement. If the Administrator has the voting rights and fails or refuses to give the Trustee timely instructions as to how to vote any Employer Stock, then unless specifically provided in the Trust Agreement, the Trustee shall consider the failure or refusal as an exercise of the Administrator's rights and a directive to the Trustee not to vote said Employer Stock.

(e) **Definition.** For purposes of this Section the term "registration-type class of securities" means Employer Stock that is either: (A) a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934; or (B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such Section 12.

## 7.13 PROHIBITED ALLOCATIONS FOR S CORPORATIONS

(a) **Prohibited allocations.** No portion of the Trust Fund attributable to (or allocable in lieu of) Employer Stock in an S Corporation may, during a "nonallocation year," accrue (or be allocated directly or indirectly under any plan maintained by the Employer meeting the requirements of Code §401(a)) for the benefit of any "disqualified person."

(b) **"Nonallocation year."** For purposes of this Section:

(1) The term "nonallocation year" means any Plan Year if, at any time during such Plan Year, (i) the Plan holds Employer Stock consisting of stock in an S Corporation, and (ii) "disqualified persons" own at least fifty percent (50%) of the number of shares of stock in the S Corporation.

(2) Attribution rules. For purposes of Subsection (b)(1),

(i) the rules of Code §318(a) shall apply for purposes of determining ownership, except that: (A) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in subsection (c)(4), and (B) paragraph (4) thereof shall not apply; and

(ii) notwithstanding the employee trust exception in Code §318(a)(2)(B)(i), an individual shall be treated as owning "deemed-owned shares" of the individual.

Solely for purposes of applying Subsection (c)(5) below, this Subsection (b)(2) shall be applied after the attribution rules of Subsection (c)(5) have been applied.

(c) **Other Definitions.** For purposes of this Section, the following definitions apply.

(1) **"Disqualified person."** The term "disqualified person" means any person if,

(i) the aggregate number of "deemed-owned shares" of such person and the members of such person's family is at least twenty percent (20%) of the number of "deemed-owned shares" of stock in the S Corporation, or

(ii) in the case of a person not described in Subsection (c)(1)(i), the number of "deemed-owned shares" of such person is at least ten percent (10%) of the number of "deemed-owned shares" of stock in such corporation.

(2) **Treatment of family members.** In the case of a "disqualified person," any member of such person's family with "deemed-owned shares" shall be treated as a "disqualified person" if not otherwise treated as a "disqualified person" under subsection (c)(1).

(3) **Deemed-owned shares:**

(i) The term "deemed-owned shares" means Employer Stock that is stock in the S corporation allocated to a person's ESOP account. Deemed-owned Shares also includes a person's share of the stock in such S Corporation that is held by the ESOP but that has not been allocated to the accounts of Participants or Beneficiaries. A person's share of such unallocated S Corporation stock is determined in the same proportion as the shares released and allocated from the Suspense Account under Sections 7.11 and 4.4 of the Plan for the most recently ended Plan Year for which there were shares released and allocated from the Suspense Account. If there has been no such prior release and allocation from the Suspense Account, a person's share of such unallocated S Corporation stock is determined in proportion to a reasonable estimate of the shares that would be released and allocated in the first year of an Exempt Loan repayment.

(ii) **Person's share of unallocated stock.** For purposes of Subsection (c)(3)(i)(B), a person's share of unallocated S Corporation stock held by the Plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all Participants in the same proportions as the most recent stock allocation under the Plan.

(4) **Member of family.** For purposes of this subsection (c), the term member of the family means, with respect to any individual,

(i) the spouse of the individual,

(ii) an ancestor or lineal descendent of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendent of the brother or sister, and

(iv) the spouse of any individual described in Subsection (c)(4)(ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this Subsection (c)(4).

(5) **Treatment of synthetic equity.** For purposes of Subsections (b) and (c), in the case of a person who owns "synthetic equity" in the S Corporation, except to the extent provided in Regulations, the shares of stock in such corporation on which such "synthetic equity" is based shall be treated as outstanding stock in such corporation and "deemed-owned shares" of such person if such treatment of "synthetic equity" of one (1) or more such persons results in,

(i) the treatment of any person as a "disqualified person," or

(ii) the treatment of any year as a "nonallocation year."

For purposes of this Subsection (c)(5), "synthetic equity" shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of Code §318(a). If, without regard to this Subsection (c)(5), a person is treated as a "disqualified person" or a year is treated as a "nonallocation year," then this Subsection (c)(5) shall not be construed to result in the person or year not being so treated. The term "synthetic equity" means any right described in the following categories and is treated as owned by the person who has any of these rights. The Nonallocation Year Attribution Rules apply for purposes of determining ownership.

Category 1. S Corporation stock and payments based on the value of S Corporation stock: Synthetic Equity in this category is a right to acquire or receive stock of the S Corporation, including a stock option, warrant, restricted stock, deferred issuance stock right, stock appreciation right payable in stock, or similar interests or rights. Synthetic Equity in this category is also a right to a future payment (payable in cash or any other form other than stock of the S Corporation) from an S Corporation that is based on the value of the stock of the S Corporation, such as stock appreciation. Synthetic equity does not include certain rights of first refusal as described in §1.409(p)-1(f)(2)(i)(B) of the Treasury Regulations.

Category 2. Related Entity: Synthetic Equity in this category is a right to acquire stock or other similar interests in a Related Entity, but only to the extent of the S Corporation's ownership. A Related Entity is any entity in which the S corporation holds an interest and that is a partnership, a trust, an eligible entity that is disregarded as an entity that is separate from its owner under § 301.7701-3 of the Treasury Regulations, or a qualified subchapter S subsidiary under Code §1361(b)(3).

Category 3. Certain assets, certain fringe benefits and Nonqualified Deferred Compensation: Synthetic Equity in this category is a right to acquire assets of an S Corporation or a Related Entity (but only to the extent of the S Corporation's ownership of such entity) other than either rights to acquire goods, services, or property at fair market value in the ordinary course of business, or fringe benefits excluded from gross income under Code § 132. Synthetic Equity also includes "Nonqualified Deferred Compensation", which is nonqualified deferred compensation as described in § 1.409(p)1(f)(2)(iv) of the Treasury Regulations with respect to an S Corporation or Related Entity, and which includes any remuneration for services under a plan, method, or arrangement deferring the receipt of compensation to a date that is after the 15th day of the 3rd calendar month after the end of the entity's taxable year in which the related services are rendered. However, Synthetic Equity does not include benefits under a plan that is an eligible retirement plan within the meaning of Code §402(c)(8)(B).

"Synthetic Equity Shares" are shares of Synthetic Equity, the number of which is determined as described below, without regard to lapse restrictions as described in §1.83-3(i) of the Treasury Regulations. S Corporation stock and payments based on the value of S Corporation stock: The person who is entitled to Synthetic Equity that is determined by reference to S Corporation stock (see the rights listed in Synthetic Equity Category 1) is treated as owning the number of shares of stock deliverable pursuant to such Synthetic Equity. If such Synthetic Equity is a right to purchase or receive S Corporation shares, the corresponding number of Synthetic Equity Shares is determined without regard to any amount required to be paid in exchange for the S Corporation shares. If such Synthetic Equity is a right to payment in cash or other non-S Corporation stock property, the number of Synthetic Equity Shares treated as owned is equal to the number of shares of stock having a fair market value equal to the cash or other non-S Corporation stock property.

Shares in a Related Entity: The person who is entitled to Synthetic Equity that is determined by reference to shares of stock (or similar interests) in a Related Entity (see the rights listed in Synthetic Equity Category 2) is treated as owning shares of stock of the S corporation with the same aggregate value as the number of shares of stock (or similar interests) of the Related Entity.

Adjustment of number of Synthetic Equity Shares if ESOP owns less than 100 percent of the S Corporation: The number of Synthetic Equity Shares otherwise determined under this Plan section is decreased ratably to the extent that shares of the S Corporation are owned by a person who is not an ESOP and who is subject to Federal income taxes.

(d) **Prohibited allocation.** For purposes of this Section and Code §409(p) and the Regulations thereunder, a prohibited allocation means an "impermissible accrual" or an "impermissible allocation."

(1) "Impermissible accrual" means with respect to a Nonallocation Year, all Employer Stock consisting of shares in the S corporation and all other Plan assets attributable to S corporation shares held in a Disqualified Person's Plan account are an Impermissible Accrual for the benefit of that Disqualified Person, regardless of whether such Impermissible Accrual is attributable to contributions in the current year or prior years. Plan assets attributable to S corporation stock held in a Disqualified Person's Plan account include distributions made on such S corporation stock within the meaning of Code §1368, proceeds from the sale of such S corporation stock, and earnings on such distributions or proceeds.

Notwithstanding anything herein to the contrary, if Employer Stock is stock in an S corporation, no portion of the assets of the Plan attributable to (or allocable in lieu of) Employer Stock may, during a Nonallocation Year, accrue as described above ("Impermissible Accrual"), or be allocated as described below ("Impermissible Allocation") directly or indirectly under the Plan or any other qualified plan of the Employer for the benefit of any Disqualified Person.

(2) "Impermissible allocation" means with respect to a "nonallocation year," the extent that a contribution or other annual addition (within the meaning of Code §415(c)(2)) is made with respect to the account of a "disqualified person," or the "disqualified person" otherwise accrues additional benefits, directly or indirectly under the Plan or any other plan of the Employer qualified under Code §401(a) (including a release and allocation of assets from a suspense account, as described at Regulation §54.4975-11(c) and (d)) that, for the "nonallocation year," would have been added to the account of the "disqualified person" under the Plan and invested in Employer Stock owned by the Plan but for a provision in the Plan that precludes such addition to the account of the "disqualified person," and investment in Employer Stock during a "nonallocation year."

(e) **Code §409(p) transfers.** The Administrator may use the following provisions to effect Code §409(p) transfers.

(1) **Non-ESOP Portion.** Assets held under the Plan in accordance with this Section are held under a portion of the Plan that is not an employee stock ownership plan (ESOP), within the meaning of Code §4975(e)(7). Amounts held in the portion of the Plan that is not an ESOP (the Non-ESOP portion) shall be held in accounts that are separate from the accounts for the amounts held in the remainder of the Plan (the ESOP portion). The statements provided to Participants and Beneficiaries to show their interest in the Plan shall separately identify the amounts held in each such portion. Except as specifically set forth in this Section, all the terms of the Plan apply to any amount held under the Non-ESOP portion of the Plan in the same manner and to the same extent as to any other amount held under the Plan.

(2) **Transfers from ESOP to Non-ESOP Portion of Plan.**

(i) If the Administrator determines that a future event would cause a "nonallocation year" to occur (referred herein as a "nonallocation event"), the Administrator will reduce account balances of "disqualified persons" by transferring as described below the number of shares of Employer Stock necessary to prevent a "nonallocation year," as selected in the Adoption Agreement. The amounts shall be transferred from the ESOP portion of the Plan to the Non-ESOP portion of the Plan as provided in this Subsection (2)(i). Actions that may cause a "nonallocation event," include, but are not limited to, a contribution to the Plan in the form of shares of Employer Stock, a distribution from the Plan in the form of shares of Employer Stock, a change of investment within a Plan account of a "disqualified person" that alters the number of shares of Employer Stock held in the account of the "disqualified person," or the issuance by the Employer of "synthetic equity" as defined by Code §409(p)(6)(C) and Regulation §1.409(p)-1(f). A "nonallocation event" occurs only if (A) the total number of shares of Employer Stock that, held in the ESOP account of those Participants who are or who would be "disqualified persons" after taking into account the Participant's "synthetic equity" and the "nonallocation event," exceeds (B) forty-nine and nine-tenths percent (49.9%) of the total number of shares of Employer Stock outstanding after taking the "nonallocation event" into account (causing a "nonallocation year" to occur as described in this Section). No transfer under this Section shall be greater than the amount the Administrator reasonably determines or estimates to be the excess, if any, of (A) over (B). Before the "nonallocation event" occurs, the Administrator shall determine the extent to which a transfer is required to be made and shall take steps to ensure that all action necessary to implement the transfer are taken before the "nonallocation event" occurs.

(ii) Shares will be transferred from the ESOP accounts of Participants under whichever of the following methods results in the fewest shares being transferred.

(A) The number of shares transferred shall be charged against the accounts of Participants who are "disqualified persons" (i) by first reducing the ESOP account of the Participant who is a "disqualified person" whose account has the largest number of shares (with the addition of "synthetic equity" shares) and (ii) thereafter by reducing the ESOP accounts of each succeeding Participant who is a "disqualified person" who has the largest number of shares in his or her their account (with the addition of "synthetic equity" shares). Immediately following the transfer, the number of transferred shares charged against any Participant's Account in the ESOP portion of the Plan shall be credited to an account established for that Participant in the Non-ESOP portion of the Plan.

(B) The number of shares transferred shall be charged against the accounts of Participants who are "disqualified persons" by first reducing the account of the Participant with the fewest shares (including "synthetic equity") who is a "disqualified person" and who is a Highly Compensated Employee to cause the Participant not to be a "disqualified person," and thereafter reducing the account of each other Participant who is a "disqualified person" and a Highly Compensated Employee, in order of who has the fewest ESOP shares (including "synthetic equity"). A transfer under this (b)(ii) only applies to the extent that the transfer results in fewer shares being transferred than in a transfer under (b)(i).

If two or more Participants have the same number of shares, the account of the Participant with the most Years of Service for eligibility purposes shall be reduced first. Furthermore, Beneficiaries are treated as Participants for purposes of this Section.

(3) **Income Taxes.** If the Trust owes income taxes as a result of unrelated business taxable income under Code §512(e) with respect to shares of Employer Stock held in the Non-ESOP portion of the Plan, the income tax payments made by the Trustee shall be charged against the accounts of each Participant or Beneficiary who has an account in the Non-ESOP portion of the Plan in proportion to the ratio of the shares of Employer Stock in such Participant's or Beneficiary's account in the non-ESOP portion of the Plan to the total shares of Employer Stock in the non-ESOP portion of the Plan. The Employer shall purchase shares of Employer Stock from the Trustee with cash (based on the fair market value of the shares so purchased) from each such account to the extent necessary for the Trustee to make the income tax payments.

(f) **Triennial election.** Pursuant to Code §409(p) and the Regulations thereunder, a year is a "nonallocation year" if the thresholds in Regulation §1.409(p)-1(c) are met at any time during that year. However, for purposes of Regulation §1.409(p)-1(f)(4)(iii), the number of shares of S Corporation stock treated as owned by a person who is entitled to synthetic equity will be determined annually on the "determination date." The number of shares of synthetic equity to which Regulation §1.409(p)-1(f)(4)(iii) applies that are treated as owned by that person for any period from a given "determination date" through the date immediately preceding the next

following "determination date" is the number of shares treated as owned on the given "determination date." The "determination date" is the date specified in the Adoption Agreement. If the Employer elects in the Adoption Agreement to apply the triennial election, then the number of shares of synthetic equity with respect to grants of synthetic equity to which Regulation §1.409(p)-1(f)(4) applies is fixed for a specified period from the "determination date," through the day before a "determination date" that is the third anniversary of the identified "determination date."

The number of shares of synthetic equity to which Regulation §1.409(p)-1(f)(4)(iii) applies will be re-determined as set forth above, based on the S Corporation share value on a "determination date" that is not later than the third anniversary of the identified "determination date" and the aggregate present value of the synthetic equity to which Regulation §1.409(p)-1(f)(4)(iii) applies (including all grants made during the three-year period) on that "determination date." However, additional accruals, allocations, or grants (to which Regulation §1.409(p)-1(f)(4)(iii) applies) that are made during such three-year period are taken into account on each "determination date" during that period, based on the number of synthetic equity shares resulting from the additional accrual, allocation, or grant (determined as of the "determination date" on or next following the date of the accrual, allocation, or grant).

The Employer may only amend the Plan to a new subsequent "determination date" in accordance with the provisions set forth in Regulation §1.409(p)-1(f)(4)(iii)(C).

This Subsection only applies with respect to grants of synthetic equity to which Regulation §1.409(p)-1(f)(4)(iii) applies. In addition, this Subsection applies only if the fair market value of a share of the S Corporation securities on any "determination date" is not unrepresentative of the value of the S Corporation securities throughout the rest of the Plan Year and only if the terms of the Plan include provisions conforming to Regulation §1.409(p)-1(f)(4)(iii)(C)(1) which are consistently used by the Plan for all persons. In addition, Regulation §1.409(p)-1(f)(4)(iii)(C)(1) applies only if the terms of the Plan include provisions conforming to Regulation §1.409(p)-1(f)(4)(iii)(C)(1) which are consistently used by the Plan for all persons.

#### 7.14 REBALANCING AND RESHUFFLING

(a) **"Rebalancing."** "Rebalancing" is the mandatory transfer of Employer Stock into and out of Participant Accounts, usually on an annual basis, designed to result in all Participant accounts having the same proportion of Employer Stock. If elected in the Adoption Agreement, the Administrator shall rebalance the Accounts of Participants in accordance with this Section and the elections made in the Adoption Agreement. Within a reasonable period of time after the rebalancing period, the Administrator shall reallocate amounts in a Participant's Employer Stock Account and Other Investment Account so that after the rebalancing, the percentage of the aggregate Accounts, excluding Rollover Accounts, invested in Employer Stock is equal to the percentage amount specified in the Adoption Agreement.

(b) **"Reshuffling."** "Reshuffling" is the mandatory transfer of Employer Stock into or out of Plan Accounts for administrative purposes, such as distributions, diversifications, or segregation upon a Participant's termination of employment and is usually completed on an annual basis. Reshuffling can only be applied to terminated Employees for purposes of segregation of Employer Stock to active (non-terminated) Participant Accounts. If elected in the Adoption Agreement, the Administrator shall reshuffle the Accounts of Participants in accordance with this Section. Segregation under the shuffling process will occur at the end of the Plan Year in which a Participant has terminated employment for Participants who have terminated for reasons other than death, disability or retirement. All shares will be eligible to be reshuffled and any reshuffling will occur as soon as practical after the end of the Plan Year unless the Employer chooses a different date in the Adoption Agreement, utilizing the value of the Employer Stock at its most recent valuation. Any transfers under this Section will occur pro rata, based on the amount of Employer Stock in the Account of each non-terminating Participant.

(c) **Diversification rights still apply.** Any rebalancing or reshuffling made pursuant to this Section may not result in Employer Stock that a Participant has elected to diversify pursuant to Section 7.8 or 7.9 from being mandatorily returned to the Participant's Accounts.

### 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. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.

(b) **Permissible amendments.** The Employer may amend the Plan to accomplish any of the following items without affecting reliance on the opinion letter: (1) change the choice of options in the Adoption Agreement, (2) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments where the IRS has provided that their adoption will not cause the Plan to be treated as an individually designed plan, (3) add a list of any "Section 411(d)(6) protected benefits" which must be preserved, (4) adjust the limitations under Code §§415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual

cost-of-living increases, and (5) change the pre-approved plan Provider's name. "Provider" pursuant to this Section 8 means the entity that contracts with the mass submitter to provide the Basic Plan Document and Adoption Agreement for use by the Employer or, in the alternative, the mass submitter that provides such documents directly to its clients. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Code §412(c), will no longer participate in this pre-approved plan and this Plan will be considered to be an individually designed plan for purposes of reliance. A Plan amendment does not include an amendment or substitution of the Trust.

(c) **Provider amendments.** The Employer (and every Participating Employer) expressly delegates authority to the Provider, the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this preapproved plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the preapproved plan as amended qualifies under Code §401(a) (unless a ruling or determination is not required by the IRS). The Provider will amend the Plan Documents from time to time in accordance with this Section 8.1(c). 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 any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(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 Regulation §§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. The preceding shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

## 8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. The Employer has no obligation or liability whatsoever to maintain the Plan for any specific length of time and may terminate the Plan or discontinue contributions under the Plan at any time without liability hereunder for any such discontinuance. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan, all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5, except that no Participant or spousal consent is required. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of "Section 411(d)(6) protected benefits" as described in Section 8.1(e). In addition, to the extent Section 6.13 (Special Rule If No Annuities Provided) could apply to all or a portion of the assets, then, subject to Section 12.2, the Administrator will direct the distribution of assets to Participants in a lump-sum distribution. Such distribution will be made as soon as reasonable after the Plan termination, regardless of: (1) the amount of the Participant's Vested Account balance; (2) the Participant's age; and (3) whether the Participant consents to the distribution. Furthermore, to the extent a distribution is required to be made pursuant to this Section and the Participant does not consent to such distribution, then the Administrator may make a direct distribution to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b).

(c) **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.



### 8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to, any other plan provided 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 6.4 of the Plan and the special minimum allocation requirements of Code §416(c) pursuant to Section 4.3(f) of the Plan. Except as otherwise provided in the Plan, the minimum allocation shall be an Employer Nonelective Contribution and, if no vesting schedule has been selected in the Adoption Agreement or the selection is invalid, shall be subject to the 6 Year Graded vesting schedule described in the Adoption Agreement.

Notwithstanding the above, the Top-Heavy Plan Year requirements of this Article and Code §416 shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) or §401(k)(13) and matching contributions meet the requirements of Code §401(m)(11) or §401(m)(12).

### 9.2 DETERMINATION OF TOP-HEAVY STATUS

(a) **Definition of Top-Heavy Plan.** This Plan shall be a Top-Heavy Plan 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 contribution plans (including any simplified employee pension plan (as defined in Code §408(k))) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the "determination date" has or has had accrued benefits, 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 account balances of all Key Employees as of the "determination date" (including any part of any Account balance 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 Total and Permanent Disability), and the denominator of which is the sum of all Account balances (including any part of any Account balance 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 Total and Permanent Disability), both computed in accordance with Code §416 and the Regulations thereunder.

Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the "determination date," but which is required to be taken into account on that date under Code §416 and the Regulations thereunder.

- (2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the "determination date" has or has had any accrued benefits, 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 account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the "present value" of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the "determination date," and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all participants, determined in accordance with (1) above, and the "present value" of accrued benefits under the defined benefit plan or plans for all participants as of the "determination date," all determined in accordance with Code §416 and the Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit 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 Total and Permanent Disability).

(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 Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(f) **Required aggregation group.** "Required aggregation group" means: (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 or any Affiliated 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.

(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 PARTICIPANT'S RIGHTS

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.

### 10.3 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 Section 7.4. 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 Section 2.10.

(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).

#### 10.4 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 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.

(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.

**10.5 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; 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.

**10.6 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.

**10.7 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 or their Beneficiaries.

(b) **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.

(c) **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.

**10.8 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.

**10.9 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.

**10.10 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, including those referenced in Section 6.9, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

**10.11 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.

## 10.12 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), and (d) any Investment Manager appointed hereunder. The Employer may, however, modify the preceding sentence to add or remove named Fiduciaries. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan, trust agreement, or similar agreement (as applicable) 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.

## 10.13 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 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 pre-approved plan and will be considered an individually designed plan.

## 10.14 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11, 6.12 and 12.10, only upon death, Total and Permanent Disability, normal or early retirement, severance of employment, or termination of the Plan.

## 10.15 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. Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Regulation §1.401(a)-21.

## 10.16 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. If the Plan is a 401(k) Plan, to correct an operational error, the Administrator may require the Trustee (or Insurer) to distribute from the Plan Elective Deferrals or Vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code §415, Code §402(g), or a failure of the ADP or ACP tests. Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

## 10.17 NONTRUSTEED PLANS

If the Plan is funded solely with Contracts, then notwithstanding Sections 10.7 and 10.13, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that 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 the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual Contracts that provide a Participant's benefit under the Plan, such individual Contracts shall constitute the Participant's Account balance. If this Plan is funded by group Contracts, under the group annuity or group insurance Contract, premiums or other consideration received by the Insurer must be allocated to Participants' Accounts under the Plan.

## ARTICLE XI PARTICIPATING EMPLOYERS

### 11.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer, an Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer in accordance with Section 1.63 of Article I. Such adoption will be evidenced by a properly executed document containing said intent and will of such Participating Employer (a participation agreement).

### 11.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) **Permissible variations of participation agreement.** The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the Employer shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the Employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the Employer's Adoption Agreement. To the extent that the participation agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the Employer. If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer.").

(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) **Payment of expenses.** Unless the Employer otherwise directs, 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 severance 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 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

If elected by a Participating Employer in its participation agreement, then to the extent permitted under Code §411(d)(6), effective with respect to Plan Years beginning in and after the Plan Year in which the provisions of this Plan are adopted, any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share in the contribution and Forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed. Alternatively (if so elected), any contribution or

Forfeiture subject to allocation during each Plan Year shall be allocated among all Participants of all Participating Employers in accordance with the provisions of this Plan. However, if a Participating Employer is not an Affiliated Employer then any contributions made by such Participating Employer will only be allocated among the Participants eligible to share in the contribution and Forfeiture allocation of the Participating Employer.

On the basis of the 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 accounts and credits of the Employees 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 the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

#### 11.6 AMENDMENT

Any Participating Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. Any such amendment is effective and binding upon existing Participating Employers.

#### 11.7 DISCONTINUANCE OF PARTICIPATION

A Participating 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 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.

#### 11.8 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.

#### 11.9 PARTICIPATING EMPLOYER CONTRIBUTION FOR AFFILIATE

If any Participating Employer is prevented in whole or in part from making a contribution which it would otherwise have made under the Plan by reason of having no current or accumulated earnings or profits, or because such earnings or profits are less than the contribution which it would otherwise have made, then, pursuant to Code §404(a)(3)(B), so much of the contribution which such Participating Employer was so prevented from making may be made, for the benefit of the participating employees of such Participating Employer, by other Participating Employers who are members of the same affiliated group within the meaning of Code §1504 to the extent of their current or accumulated earnings or profits, except that such contribution by each such other Participating Employer shall be limited to the proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution to the Plan made without regard to this paragraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the Participating Employers remaining after adjustment for all contributions made to the Plan without regard to this paragraph.

A Participating Employer on behalf of whose employees a contribution is made under this paragraph shall not be required to reimburse the contributing Participating Employers.

### ARTICLE XII CASH OR DEFERRED PROVISIONS

Except as specifically provided elsewhere in this Plan, the provisions of this Article shall apply if this ESOP includes 401(k) provisions regardless of any provisions in the Plan to the contrary.

#### 12.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **Permitted contributions.** For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

- (1) The amount of the total salary deferral elections of all Participants made pursuant to Section 12.2(a), which amount shall be deemed Elective Deferrals, plus
- (2) If elected in the Adoption Agreement, a matching contribution equal to the percentage, if any, specified in the Adoption Agreement of the Elective Deferrals of each Participant eligible to share in the allocations of the matching contribution, which

amount shall be deemed an Employer matching contribution or Qualified Matching Contribution as elected in the Adoption Agreement, plus

(3) If elected in the Adoption Agreement, a discretionary amount determined each year by the Employer, which amount if any, shall be deemed an Employer Nonelective Contribution, or a "prevailing wage contribution" as set forth in the Adoption Agreement (limited to the non-ESOP portion of the Plan), which amount shall be an Employer Nonelective Contribution or a Qualified Nonelective Contribution as elected in the Adoption Agreement, plus

(4) A Qualified Nonelective Contribution in a discretionary amount, subject to the provisions of Section 12.12.

(5) Regardless of any provision in the Plan to the contrary, 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 shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The contributions and allocations under this Plan shall be those set forth in the collective bargaining agreement and enumerated in the Adoption Agreement. 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. The provisions of this Subsection only apply if no more than two percent (2%) of the Employees covered pursuant to the agreement are professionals as defined in Regulation §1.410(b)-9.

(b) **Timing and form of contributions.** Notwithstanding the foregoing, if the Employer is not a tax-exempt entity, then the Employer's contributions for any Fiscal Year may generally not exceed the maximum amount allowable as a deduction to the Employer under the provisions of Code §404. However, to the extent necessary to provide the top-heavy minimum allocations, the Employer shall make a contribution even if it exceeds current or accumulated net profit or the amount that is deductible under Code §404. Subject to the consent of the Trustee (or Insurer), the Employer may make its contribution to the Plan in the form of property, provided such contribution does not constitute a prohibited transaction under the Code or the Act. The decision to make a contribution of property is subject to the general fiduciary rules under the Act.

## 12.2 PARTICIPANT'S SALARY DEFERRAL ELECTION

(a) **Salary deferral elections.** Each Participant may elect to defer a portion of Compensation which would have been received in the Plan Year, but for the salary deferral election, subject to the limitations of this Section and the Adoption Agreement. A salary deferral election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election, or if later, the later of the date the Employer adopts this cash or deferred arrangement or the date such arrangement first became effective. Any elections made pursuant to this Section, including a modification or termination of an election, shall become effective as soon as is administratively feasible following the receipt of such election by the Administrator. Furthermore, if the Employer elects in the Adoption Agreement to apply the Automatic Contribution Arrangement provisions, then in the event a Participant fails to make an Affirmative Election, such Participant shall be deemed to have made a salary deferral election in accordance with the provisions selected in the Adoption Agreement and such other procedures that the Administrator may establish and apply in a uniform and nondiscriminatory basis.

Regardless of the definition of Compensation selected in the Adoption Agreement, the Administrator may adopt a uniform policy for purposes of determining the amount of a Participant's Elective Deferrals by excluding "non-cash Compensation." For purposes of this Section, "non-cash Compensation" means tips, fringe benefits, and other items of Compensation not regularly paid in cash or cash equivalents, or for which the Employer does not or may not have the ability to withhold Elective Deferrals in cash for the purpose of transmitting the Elective Deferrals to the Plan pursuant to the Participant's Salary Deferral Agreement. Additionally, the Employer may, on a uniform and nondiscriminatory basis, permit different salary deferral elections for different items of Compensation (e.g., a separate salary deferral election for bonuses), and may exclude for purposes of calculating Elective Deferrals one or more items of irregular pay (e.g., bonuses or car allowances).

If elected in the Adoption Agreement, effective as of the date specified in the Adoption Agreement, a Participant may make a salary deferral election to have Roth Elective Deferrals contributed to the Plan. Roth Elective Deferrals are includible in the Participant's gross income at the time deferred and must be irrevocably designated as Roth Elective Deferrals by the Participant in the Salary Deferral Agreement (or if applicable, in the Automatic Deferral provisions of the Plan).

The amount by which Compensation is reduced shall be that Participant's Elective Deferrals and shall be treated as an Employer contribution and allocated to that Participant's Elective Deferral Account. If the Plan permits Roth Elective Deferral contributions, then a Participant's Pre-Tax Elective Deferrals shall be allocated to the Participant's Pre-Tax Elective Deferral Account and a Participant's Roth Elective Deferrals shall be allocated to the Participant's Roth Elective Deferral Account. Except in the case of an "in-Plan Roth Rollover Contribution" made pursuant to Section 12.11, Elective Deferrals contributed to the Plan as one type, either Roth Elective Deferrals or Pre-Tax Elective Deferrals, may not later be reclassified as the other type.

Notwithstanding anything in the Plan to the contrary, Participants may not make Elective Deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code §401(a)(17). Furthermore, for purposes of this Section, the annual dollar limitation of Code §401(a)(17) (\$200,000 as adjusted) shall not apply except that the Administrator may elect to apply such limit as part of the salary deferral election procedures established



hereunder. In applying any Plan limit(s) on Elective Deferrals which are subject to matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may prorate the Compensation limit.

Once made, a Participant's election to reduce Compensation shall remain in effect until modified or terminated. The Administrator shall establish procedures setting forth the conditions on modifications of an election. However, Participants must be permitted to modify elections at least once each Plan Year. Furthermore, terminations may be made at any time.

(b) **Eligible Automatic Contribution Arrangement (EACA).** If elected in the Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as an Eligible Automatic Contribution Arrangement (EACA) and the following provisions will apply:

(1) **Participants subject to EACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the EACA Automatic Deferral on the "EACA Effective Date" thereof which may include some or all current Participants or may be limited to those Employees who become Participants after the EACA Effective Date. The "EACA Effective Date" means the date on which the EACA goes into effect, either as to the overall Plan or as to an individual Participant as the context requires. An EACA becomes effective as to the Plan as of the date the Employer elects in the Adoption Agreement. A Participant's "EACA Effective Date" is as soon as practicable after the Participant is subject to Automatic Deferrals under the EACA, consistent with: (i) applicable law; and (ii) the objective of affording the Participant a reasonable period of time after receipt of the EACA notice to make an Affirmative Election (and, if applicable, an investment election).

(2) **Uniformity.** The Automatic Deferral percentage must be a uniform percentage of Compensation. However, the Plan does not violate the uniform Automatic Deferral percentage requirement merely because the Plan applies any of the following provisions:

(i) **Years of participation.** The Automatic Deferral percentage varies based on the number of Plan Years (or portions) the Participant has participated in the Plan while the Plan has applied EACA provisions;

(ii) **No reduction from prior percentage.** The Plan does not reduce a deferral percentage that, immediately prior to the EACA's effective date was higher (for any Participant) than the Automatic Deferral percentage;

(iii) **Applying statutory limits.** The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code §401(a)(17), 402(g) (determined without regard to Age 50 Catch-Up Deferrals), or 415;

(iv) **No Automatic Deferrals during hardship suspension.** The Plan does not apply the Automatic Deferral during a period of suspension, under the Plan's hardship distribution provisions, of Participant's right to make Elective Deferrals to the Plan following a hardship distribution; or

(v) **Disaggregated groups.** The Plan applies different default percentages to different groups if the groups can be disaggregated under Regulation §1.401(k)-1(b)(4).

(3) **EACA notice.** The Administrator annually will provide a notice to each Participant covered by the EACA provisions (including, if elected in the Adoption Agreement, Participants who made an Affirmative Election) within a reasonable period of time prior to each Plan Year the Employer maintains the Plan as an EACA ("EACA Plan Year").

(i) **Deemed reasonable notice/new Participant.** The Administrator is deemed to provide timely notice if the Administrator provides the EACA notice at least thirty (30) days and not more than ninety (90) days prior to the beginning of the EACA Plan Year.

(ii) **Mid-year notice/new Participant or Plan.** If: (A) an Employee becomes eligible to make Elective Deferrals in the Plan during an EACA Plan Year but after the Administrator has provided the annual EACA notice for that Plan Year; or (B) the Employer adopts mid-year a new Plan as an EACA, the Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Elective Deferrals. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(iii) **Content.** The EACA notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant in accordance with applicable law.

(4) **EACA permissible withdrawal.** If elected in the Adoption Agreement, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Subsection. Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

(i) **Amount.** If a Participant elects a permissible withdrawal under this Subsection, then the Plan must make a distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for allocable gains and losses to the date of the distribution). The Plan may separately account for Automatic Deferrals, in which case the entire account will be distributed. If the Plan does not separately account for the Automatic Deferrals, then the Plan must determine earnings or losses in a manner similar to the refund of Excess Contributions.

(ii) **Fees.** Notwithstanding the above, the Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section than applies to other distributions. The Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

(iii) **Timing.** The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than ninety (90) days, or such shorter period as specified in the Adoption Agreement, after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. For this purpose, EACAs under the Plan are aggregated, except that the mandatory disaggregation rules of Code §410(b) apply. In addition, a Participant's withdrawal right is not restricted due to the Participant making an Affirmative Election during the ninety (90) day period (or shorter period as specified in the Adoption Agreement).

(iv) **Rehired Employees.** For purposes of paragraph (iii) above, an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA will be treated as having not had such contributions for any prior Plan Year as well.

(v) **Effective date of the withdrawal election.** The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of (A) the pay date of the second payroll period beginning after the election is made, or (B) the first pay date that occurs at least thirty (30) days after the election is made. The election will also be deemed to be an Affirmative Election to have no Elective Deferrals made to the Plan.

(vi) **Related matching contributions.** The Administrator will not take any Elective Deferrals withdrawn pursuant to this Section into account in computing and allocating matching contributions. If the Employer has already allocated matching contributions to the Participant's Account with respect to Elective Deferrals being withdrawn pursuant to this Subsection (4), then such matching contributions, as adjusted for gains and losses, must be forfeited.

(vii) **Treatment of withdrawals.** With regard to Elective Deferrals withdrawn pursuant to this Subsection, (A) the Administrator will disregard such Elective Deferrals in the Actual Deferral Percentage Test (if applicable); (B) the Administrator will disregard such Elective Deferrals for purposes of the limitation on Elective Deferrals under Code §402(g); (C) such Elective Deferrals are not subject to the consent requirements of Code §401(a)(11) or 417. The Administrator will disregard any matching contributions forfeited under paragraph (vi) above in the ACP Test (if applicable).

(viii) **Effect of Affirmative Election.** A Participant's Affirmative Election continues in effect until the Participant subsequently revokes or modifies his or her Salary Deferral Agreement, or the Affirmative Election no longer applies (e.g., due to re-enrollment). A Participant who has an Affirmative Election in effect is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes the Affirmative Election, unless the Participant is subject to the EACA. In addition, a Participant who is subject to the EACA provisions who revokes his or her Affirmative Election, will be deemed to have made an Affirmative Election to have no Elective Deferrals made to the Plan.

(c) **Catch-Up Contributions.** If selected in the Adoption Agreement, all Employees who are eligible to make Elective Deferrals under this Plan and who have attained age 50 before the close of the taxable year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the dollar limitations of, Code §414(v)(2)(B)(i) for the taxable year. The limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code §414(v)(2)(C). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §§402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code §401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such Catch-Up Contributions (but Catch-Up Contributions made in prior years are counted in determining whether the Plan is a Top-Heavy Plan). If selected in the Adoption Agreement, Catch-Up Contributions shall not be treated as Elective Deferrals for purposes of applying any Employer matching contributions. Such option cannot be selected if the Plan elects to follow the safe harbor provisions of Section 12.8.

(d) **Full vesting.** The balance in each Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account shall be fully Vested at all times and, except as otherwise provided herein, shall not be subject to Forfeiture for any reason.

(e) **Distribution restrictions.** Amounts held in a Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account may only be distributable as provided in (4) below or as provided under the other provisions of this Plan, but in no event prior to the earlier of the following events or any other events permitted by the Code or Regulations:

- (1) the Participant's severance of employment (regardless of when the severance of employment occurred), Total and Permanent Disability, or death;
- (2) the Participant's attainment of age 59 1/2;
- (3) the proven financial hardship of the Participant, subject to the limitations of Section 12.10(d) (or, Section 6.12);
- (4) the termination of the Plan without the existence at the time of Plan termination of another defined contribution plan or the establishment of a successor defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution plan does not include an employee stock ownership plan (as defined in Code §4975(e)(7) or 409(a)), a simplified employee pension plan (as defined in Code §408(k)), a SIMPLE individual retirement account plan (as defined in Code §408(p)), a plan or contract that satisfies the requirements of Code §403(b), or a plan that is described in Code §457(b) or (f). A distribution that is made because of this paragraph (4) must be made in a lump-sum;
- (5) the Participant's call to active duty, because of the Participant's status as a member of a reserve component, for a period of at least 180 days or for an indefinite period, i.e., a "qualified reservist distribution" within the meaning of Section 4.11; or
- (6) a Participant's service in the uniformed services while on active duty for a period of at least 30 days, i.e., a "deemed distribution" within the meaning of Section 4.11.

(f) **Code §402(g) dollar limit.** A Participant's Elective Deferrals made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan during any calendar year shall not exceed the dollar limitation imposed by Code §402(g), as in effect at the beginning of such calendar year, except to the extent permitted under Section 12.2(c) and Code §414(v), if applicable. The limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code §402(g)(4). For this purpose, "elective deferrals" means, with respect to a calendar year, the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code §401(k), any salary reduction simplified employee pension (as defined in Code §408(k)(6)), any SIMPLE IRA plan described in Code §408(p), any eligible deferred compensation plan under Code §457, any plans described under Code §501(c)(18), and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code §403(b) pursuant to a salary deferral agreement.

(g) **Excess Deferrals.** If a Participant has Excess Deferrals for a taxable year, the Participant may, not later than March 1st following the close of such taxable year, notify the Administrator in writing of such excess and request that the Participant's Elective Deferrals under this Plan be reduced by an amount specified by the Participant. In such event, the Administrator shall direct the distribution of such excess amount (and any "income" allocable to such excess amount) to the Participant not later than the first April 15th following the close of the Participant's taxable year. Any distribution of less than the entire amount of Excess Deferrals and "income" shall be treated as a pro rata distribution of Excess Deferrals and "income." The amount distributed shall not exceed the Participant's Elective Deferrals under the Plan for the taxable year. Any distribution on or before the last day of the Participant's taxable year must satisfy each of the following conditions:

- (1) the Participant shall designate the distribution as Excess Deferrals;
- (2) the distribution must be made after the date on which the Plan received the Excess Deferrals; and
- (3) the Plan must designate the distribution as a distribution of Excess Deferrals.

Regardless of the preceding, if a Participant has Excess Deferrals solely from Elective Deferrals made under this Plan or any other plan maintained by the Employer, a Participant will be deemed to have notified the Administrator of such excess amount and the Administrator shall direct the distribution of such Excess Deferrals in a manner consistent with the provisions of this Subsection.

For the purpose of this Subsection, "income" means the amount of income or loss allocable to a Participant's Excess Deferrals, which amount shall be allocated in the same manner as income or losses are allocated pursuant to Section 4.3(c). The Administrator may not distribute "income" allocable to Excess Deferrals for the period between the end of the Participant's taxable year in which the Excess Deferral occurred and the date of the distribution (the "gap period").

Notwithstanding the above, for any years in which a Participant makes both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the distribution of any Excess Deferrals for such year shall be made, as operationally determined by the Administrator, from the Participant's Pre-Tax Elective Deferral Account or Participant's Roth Elective Deferral Account. Matching contributions which relate to Excess Elective Deferrals (regardless of whether such Excess Elective Deferrals are Pre-Tax Elective Deferrals or Roth Elective Deferrals) shall be treated as a Forfeiture.

Any distribution of Excess Deferrals made pursuant to this Subsection shall be made first from unmatched Elective Deferrals (regardless of whether they are attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals) and, thereafter, from Elective Deferrals which are matched. Matching contributions which relate to Excess Deferrals that are distributed pursuant to this Section 12.2(g) shall be treated as a Forfeiture to the extent required pursuant to Code §401(a)(4) and the Regulations thereunder.

(h) **Coordination with ADP test.** Notwithstanding the preceding, a Participant's Excess Deferrals shall be reduced, but not below zero, by any distribution and/or recharacterization of Excess Deferrals pursuant to Section 12.5(b) for the Plan Year beginning with or within the taxable year of the Participant.

(i) **Suspension due to hardship or deemed severance.** In the event a Participant has received a hardship distribution pursuant to Regulation §1.401(k)-1(d)(3) from any other plan maintained by the Employer or from the Participant's Elective Deferral Account pursuant to Section 12.10, or has received a distribution on account of deemed severance on account of qualified military service from this Plan or any other plan maintained by the Employer, then such Participant shall not be permitted to elect to have Elective Deferrals contributed to the Plan in accordance with the rules set forth herein for such distributions.

(j) **Distributable based on other terms of Plan.** At Normal Retirement Date, or such other date when the Participant shall be entitled to receive benefits, the fair market value of the Participant's Elective Deferral Account shall be used to provide benefits to the Participant or the Participant's Beneficiary.

(k) **Adjustment due to anticipated failure of ADP test.** If during a Plan Year, it is projected that the aggregate amount of Elective Deferrals to be allocated to all Highly Compensated Participants under this Plan would cause the Plan to fail the tests set forth in Section 12.4, then the Administrator may automatically reduce the Elective Deferrals of affected Highly Compensated Participants, beginning with the Highly Compensated Participant who has the highest actual deferral ratio until it is anticipated the Plan will pass the tests or until the actual deferral ratio equals the actual deferral ratio of the Highly Compensated Participant having the next highest actual deferral ratio. This process may continue until it is anticipated that the Plan will satisfy one of the tests set forth in Section 12.4. Alternatively, the Employer may specify a maximum percentage of Compensation that may be deferred by Highly Compensated Participants (and any such limitation shall be a Plan-imposed limit for purposes of determining Catch-up Contributions).

(l) **Procedures must be established.** The Employer and the Administrator shall establish procedures necessary to implement the salary deferral elections provided for herein. Such procedures may contain limits on salary deferral elections such as limiting elections to whole percentages of Compensation or to equal dollar amounts per pay period that an election is in effect. The Employer may elect to impose a limit on Elective Deferrals in the Adoption Agreement, as amended from time to time and accompanied by providing timely notice to the Participants. Any such limit change made during a Plan Year applies only prospectively and applies until the Administrator changes or revokes the limit.

(1) **Automatic contribution arrangements.** Unless otherwise provided in Subsection (b) above or any elections in the Adoption Agreement, the procedures may provide for a reasonable period time for a Participant to election out of the automatic contribution arrangement or the Automatic Deferral and/or Automatic Escalation of Affirmative Election provisions. The Employer may also provide for the re-enrollment of all or some Participants (such as requiring re-enrollment for just those Participants who have an Affirmative Election below a certain percentage or amount). Furthermore, the Plan has a reasonable period of time to implement an Automatic Deferral or an Automatic Escalation after a Participant is first subject to the Automatic Deferral and/or Automatic Escalation of Affirmative Election provisions. Such Automatic Escalation cannot be more frequently than annually. If this Section applies to a Participant, then each year on the Change Date specified in the Adoption Agreement, the Participant's affirmative deferral election will expire. If the Participant fails to complete a new affirmative election subsequent to the Change Date, the Participant becomes subject to the adjusted deferral percentage determined under Election 27 of the Adoption Agreement. Each year, the Participant can always complete a new affirmative election and designate a new deferral percentage.

(2) **Rehired Participants.** Unless otherwise provided in Subsection (b) above, any elections in the Adoption Agreement, the Salary Deferral Agreement, or the Plan's procedures, the termination of a Participant's employment with the Employer automatically revokes the Participant's Salary Deferral Agreement with regard to periods after the Participant is rehired. The Plan is permitted to establish procedures whereby termination of employment for a short period of time will not revoke an Affirmative Election or be treated as a termination of employment for purposes of the Plan's Automatic Contribution Arrangement and/or Automatic Escalation of Affirmative Election provisions.

### 12.3 ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

(a) **Separate accounting.** The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) **Contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate contributions as follows:

- (1) With respect to Elective Deferrals made pursuant to Section 12.1(a)(1), to each Participant's Elective Deferral Account in an amount equal to each such Participant's Elective Deferrals for the year.
- (2) With respect to the Employer matching contribution made pursuant to Section 12.1(a)(2), to each Participant's Account, or Participant's Qualified Matching Contribution Account, as elected in the Adoption Agreement, in accordance with Section 12.1(a)(2) and Section 12.12.

Except, however, in order to be entitled to receive any Employer matching contribution, a Participant must satisfy the conditions for sharing in the Employer matching contribution as set forth in the Adoption Agreement.

- (3) With respect to the Employer Nonelective Contribution made pursuant to Section 12.1(a)(3), to each Participant's Account in accordance with the provisions of Section 4.3(b).
- (4) With respect to the Employer Qualified Nonelective Contribution made pursuant to Section 12.1(a)(4), to each Participant's Qualified Nonelective Contribution Account in the amount specified by the Employer.

(c) **Elective Deferrals not taken into account Top-Heavy minimums.** Notwithstanding anything in the Plan to the contrary, in determining whether a Non-Key Employee (and Key Employee if elected in the Adoption Agreement) has received the required minimum allocation pursuant to Section 4.3(f) such Non-Key Employee's (and Key Employee's) Elective Deferrals shall not be taken into account. In addition, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the ACP test and other requirements of Code §401(m).

(d) **Elective Deferrals not conditioned on service during a year.** Notwithstanding anything herein to the contrary, Participants who terminated employment during the Plan Year shall share in the Elective Deferral contributions made by the Employer for the year of termination without regard to the Hours of Service credited.

(e) **Conditions for sharing in contributions/allocations.** Notwithstanding anything herein to the contrary (other than Sections 3.5(h), 4.3(f) and 12.3(f)), Participants shall only share in the allocations of the Employer matching contribution made pursuant to Section 12.1(a)(2), the Employer Nonelective Contributions made pursuant to Section 12.1(a)(3), the Employer Qualified Nonelective Contribution made pursuant to Section 12.1(a)(4), and Forfeitures as provided in the Adoption Agreement. If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than 500 Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or is employed on the last day of the Plan Year.

(f) **Code §410(b) fail-safe.** Notwithstanding anything in this Section to the contrary, if, in the Adoption Agreement, the Employer elected to apply the 410(b) ratio percentage fail-safe provisions, then the provisions of Section 4.3(m) shall apply. Furthermore, if the Plan includes Employer matching contributions subject to ACP testing, then Section 4.3(m) shall be applied separately to the Code §401(m) portion of the Plan.

#### 12.4 ACTUAL DEFERRAL PERCENTAGE TESTS

(a) **ADP test.** Except as otherwise provided herein, this Subsection applies if the prior year testing method is elected in the Adoption Agreement. The "Actual Deferral Percentage" (hereinafter ADP) for a Plan Year for Participants who are Highly Compensated Employees (hereinafter "HCEs") for each Plan Year and the prior year's ADP for Participants who were Nonhighly Compensated Employees (hereinafter "NHCEs") for the prior Plan Year must satisfy one of the following tests:

- (1) The ADP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ADP for Participants who were "NHCEs" for the prior Plan Year multiplied by 1.25; or
- (2) The ADP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ADP for Participants who were "NHCEs" for the prior Plan Year multiplied by 2.0, provided that the ADP for Participants who are "HCEs" does not exceed the prior year's ADP 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 Regulation §1.401(k)-2(c)(2)) in which the Plan permits any Participant to make Elective Deferrals, the ADP for the prior year's "NHCEs" shall be the greater of three percent (3%) or the current Plan Year's ADP 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 Regulation §1.401(k)-2(c)(2).

(b) **Current year testing method.** Notwithstanding the foregoing, if the current year testing method is elected in the Adoption Agreement, or if no election is made in the Adoption Agreement, and for any Plan Year for which the Employer has either reserved the right to make a nonelective "ADP test safe harbor contribution" pursuant to Section 12.8 or amended the Plan to make an "ADP test safe harbor contribution," the ADP tests in (a)(1) and (a)(2) above shall be applied by comparing the current Plan Year's ADP for Participants who are "HCEs" with the current Plan Year's ADP (rather than the prior Plan Year's ADP) 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 ADP.** For the purposes of this Section and Section 12.5, ADP means, for a specific group of Participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) the amount of Employer contributions actually paid over to the Plan on behalf of such Participant for the Plan Year to (2) the Participant's 414(s) Compensation for such Plan Year. Employer contributions on behalf of any Participant shall only include: (1) any Elective Deferrals made pursuant to the Participant's salary deferral election (including Excess Deferrals of "HCEs"), but excluding (i) Excess Deferrals of "NHCEs" that arise solely from Elective Deferrals made under the plan or plans of this Employer and (ii) Elective Deferrals that are taken into account in the ACP tests set forth in Section 12.6 (provided the ADP test is satisfied both with and without exclusion of these Elective Deferrals); and (2) except as provided in Subsections (f) and (g), at the election of the Employer, all or a portion of any Qualified Nonelective Contributions and Qualified Matching Contributions that are not used to satisfy the ACP test.

The actual deferral ratio for each Participant and the ADP for each group shall be calculated to the nearest one-hundredth of one percent. Furthermore, Elective Deferrals allocated to each Highly Compensated Participant's Elective Deferral Account shall not be reduced by Excess Deferrals to the extent such excess amounts are made under this Plan or any other plan maintained by the Employer.

(e) **Participants taken into account.** For purposes of this Section and Section 12.5, a Highly Compensated Participant and a Nonhighly Compensated Participant shall include any Employee eligible to make salary deferrals pursuant to Section 12.2 for the Plan Year. Such Participants who fail to make Elective Deferrals shall be treated for ADP purposes as Participants on whose behalf no Elective Deferrals are made. If a Participant has no 414(s) Compensation for the Plan Year, then such Participant is disregarded for purposes of calculating the ADP test.

(f) **Contributions taken into account.** For purposes of determining the ADP and the amount of Excess Contributions pursuant to Section 12.5, only Qualified Nonelective Contributions and Qualified Matching Contributions contributed to the Plan prior to the end of the twelve (12) month period immediately following the Plan Year to which the contributions relate shall be considered. A Participant's Elective Deferrals are only taken into account for purposes of determining the ADP for a Plan Year if allocated to the Participant's Elective Deferral Account as of a date within that Plan Year and are only made with respect to Compensation that would have either been received by the Participant in the Plan Year (but for the salary deferral election) or is attributable to services performed by the Participant in the Plan Year and would have been paid within two and one-half (2 1/2) months after the close of the Plan Year (but for the salary deferral election).

(g) **Targeted contributions.** Notwithstanding the preceding, Qualified Nonelective Contributions cannot be taken into account in determining the ADP for a Plan Year for an "NHCE" to the extent such contributions exceed the product of that "NHCE's" 414(s) Compensation and the greater of five percent (5%) or two (2) times the Plan's "representative contribution rate." Any Qualified Nonelective Contribution taken into account under an ACP test under Regulation §1.401(m)-2(a)(6) (including the determination of the "representative contribution rate" for purposes of Regulation §1.401(m)-2(a)(6)(v)(B)), is not permitted to be taken into account for purposes of this paragraph (including the determination of the "representative contribution rate" under this Section). For purposes of this Subsection:

(1) The Plan's "representative contribution rate" is the lowest "applicable contribution rate" of any eligible "NHCE" among a group of eligible "NHCEs" that consists of half of all eligible "NHCEs" for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible "NHCE" in the group of all eligible "NHCEs" for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and

(2) The "applicable contribution rate" for an eligible "NHCE" is the sum of the Qualified Matching Contributions taken into account under Subsection (d) for the eligible "NHCE" for the Plan Year and the Qualified Nonelective Contributions made for the eligible "NHCE" for the Plan Year, divided by the eligible "NHCE's" 414(s) Compensation for the same period.

Notwithstanding the above, Qualified Nonelective Contributions that are made in connection with an Employer's obligation to pay prevailing wages (limited to the non-ESOP portion of the Plan) under the Davis-Bacon Act (46 Stat. 1494), Public Law 71-798, Service Contract Act of 1965 (79 Stat. 1965), Public Law 89-286, or similar legislation can be taken into account for a Plan Year for an "NHCE" to the extent such contributions do not exceed 10 percent (10%) of that "NHCE's" 414(s) Compensation.

Qualified Matching Contributions may only be used to calculate the ADP to the extent that such Qualified Matching Contributions are matching contributions that are not precluded from being taken into account under the ACP test for the Plan Year under the rules of Regulation §1.401(m)-2(a)(5)(ii).

Qualified Nonelective Contributions and Qualified Matching Contributions cannot be taken into account to determine the ADP to the extent such contributions are taken into account for purposes of satisfying any other ADP test, any ACP test, or the requirements of Regulation §1.401(k)-3, 1.401(m)-3 or 1.401(k)-4. Thus, for example, matching contributions that are made pursuant to Regulation §1.401(k)-3(c) cannot be taken into account under the ADP test. Similarly, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation §1.401(k)-2(c), Qualified Nonelective Contributions that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year as Qualified Nonelective Contributions used to correct or lessen the degree of an ADP testing failure may only be made utilizing the current year testing method.

(h) **Aggregation with other plans.** In the event this Plan satisfies the requirements of Code §§401(a)(4), 401(k), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ADP 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 Regulation §1.401(k)-2(c)(4), then any adjustments to the "NHCEs" ADP 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(k) only if they have the same Plan Year and use the same ADP testing method.

(i) **ADP if multiple plans.** The ADP for any Participant who is an "HCE" for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Nonelective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test) allocated to such Participant's accounts under two (2) or more arrangements described in Code §401(k), that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Nonelective Contributions or Qualified Matching Contributions, or both) were made under a single arrangement for purposes of determining such "HCE's" actual deferral ratio. If an "HCE" participates in two or more arrangements described in Code §401(k) of the Employer that have different plan years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code §401(k).

(j) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 12.5 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(k)-6. Furthermore, the provisions of Code §401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees 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(b) 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 ADP of the "NHCEs" for a Plan Year, there are no eligible "NHCEs," then the Plan is deemed to satisfy the ADP test for the Plan Year.

(l) **Prohibited aggregation.** Except as otherwise permitted by Regulations, this ESOP may not be combined with any other Plan for purposes of this Section and Code §§ 401(a)(4), 410(b) and 401(m).

## 12.5 ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TESTS

(a) **Authority to correct.** In the event the Plan does not satisfy one of the tests set forth in Section 12.4, the Administrator shall adjust Excess Contributions or, if the current year testing method is being used, the Employer shall make contributions pursuant to the options set forth below or any combination thereof.

(b) **Corrective distribution and/or recharacterization.** On or before the close of the following Plan Year (or with respect to recharacterization as after-tax voluntary Employee contributions, on or before the fifteenth day of the third month following the end of each Plan Year), the Highly Compensated Participant allocated the largest amount of Elective Deferrals shall have a portion of such Elective Deferrals (and "income" allocable to such amounts) distributed (and/or, at the Participant's election, recharacterized as an after-tax voluntary Employee contribution pursuant to Section 4.8) until the total amount of Excess Contributions has been distributed, or until the amount of the Participant's Elective Deferrals equals the Elective Deferrals of the Highly Compensated Participant having the next largest amount of Elective Deferrals allocated. This process shall continue until the total amount of Excess Contributions has been distributed. However, in the event the Plan permits Catch-Up Contributions, then any "HCE" who is eligible to make Catch-Up Contributions pursuant to Section 12.2(c) shall have any amount that would have otherwise been distributed pursuant to this Section

recharacterized as a Catch-Up Contribution (up to the maximum catch-up dollar limitation). Any distribution and/or recharacterization of Excess Contributions shall be made in the following order:

- (1) With respect to the distribution of Excess Contributions, such distribution:
  - (i) shall be made first from unmatched Elective Deferrals used in the ADP and, thereafter, simultaneously from such Elective Deferrals which are matched and matching contributions which relate to such Elective Deferrals (if the matching contributions are used in the ADP). Matching contributions which are not used in the ADP but which relate to Elective Deferrals that are distributed pursuant to this Subsection shall be forfeited unless the related matching contributions are distributed as Excess Aggregate Contributions pursuant to Section 12.7;
  - (ii) shall be made, as operationally determined by the Administrator, from the Participant's Pre-Tax Elective Deferral Account or the Participant's Roth Elective Deferral Account, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the Plan Year;
  - (iii) shall be adjusted for "income"; and
  - (iv) shall be designated by the Employer as a distribution of Excess Contributions (and "income").
- (2) With respect to the recharacterization of Excess Contributions as after-tax voluntary Employee contributions pursuant to (a) above, such recharacterized amounts:
  - (i) shall be deemed to have occurred on the date on which the last of those Highly Compensated Participants with Excess Contributions to be recharacterized is notified of the recharacterization and the tax consequences of such recharacterization;
  - (ii) shall not exceed the amount of Elective Deferrals on behalf of any Highly Compensated Participant for any Plan Year;
  - (iii) shall be treated as after-tax voluntary Employee contributions for purposes of Code §401(a)(4) and Regulation §1.401(k)-1(b). However, for purposes of Sections 4.3(f) and 9.2 (top-heavy rules), recharacterized Excess Contributions continue to be treated as Employer contributions that are Elective Deferrals. Excess Contributions (and "income" attributable to such amounts) recharacterized as after-tax voluntary Employee contributions shall continue to be nonforfeitable and subject to the same distribution rules provided for in Section 12.2(d); and
  - (iv) are not permitted if the amount recharacterized plus after-tax voluntary Employee contributions actually made by such Highly Compensated Participant exceed the maximum amount of after-tax voluntary Employee contributions (determined prior to application of Section 12.6) that such Highly Compensated Participant is permitted to make under the Plan in the absence of recharacterization.
- (3) Any distribution and/or recharacterization of less than the entire amount of Excess Contributions shall be treated as a pro rata distribution and/or recharacterization of Excess Contributions and "income."
- (4) For the purpose of this Section, "income" means the income or losses allocable to Excess 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. The Administrator will not calculate and distribute "income" for the period between the end of the Plan Year in which the Excess Contribution and prior to the date of the distribution (the "gap period").
  - (i) **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.
  - (ii) **Alternative method of allocating Plan Year income.** The Administrator may allocate "income" to Excess Contributions for the Plan Year by multiplying the "income" for the Plan Year allocable to the Elective Deferrals and other amounts taken into account under this Section (including contributions made for the Plan Year), by a fraction, the numerator of which is the Excess Contributions for the Employee for the Plan Year, and the denominator of which is the sum of the:
    - (A) Account balance attributable to Elective Deferrals and other contributions taken into account under this Section as of the beginning of the Plan Year, and
    - (B) Any additional amount of such contributions made for the Plan Year.



(iii) **Safe harbor method of allocating gap period income.** The Administrator may use the safe harbor method in this paragraph to determine "income" on Excess Contributions for the "gap period." Under this safe harbor method, "income" on Excess Contributions for the "gap period" is equal to ten percent (10%) of the "income" allocable to Excess Contributions for the Plan Year that would be determined under paragraph (ii) above, multiplied by the number of calendar months that have elapsed since the end of the Plan Year. For purposes of calculating the number of calendar months that have elapsed under the safe harbor method, a corrective distribution that is made on or before the fifteenth day of a month is treated as made on the last day of the preceding month and a distribution made after the fifteenth day of a month is treated as made on the last day of the month.

(iv) **Alternative method for allocating Plan Year and gap period income.** The Administrator may determine the allocable gain or loss for the aggregate of the Plan Year and the "gap period" by applying the alternative method provided by paragraph (ii) above to this aggregate period. This is accomplished by substituting the "income" for the Plan Year and the "gap period" for the "income" for the Plan Year and by substituting the contributions taken into account under this Section for the Plan Year and the "gap period" for the contributions taken into account under this Section for the Plan Year in determining the fraction that is multiplied by that "income."

(5) Excess Contributions shall be treated as Employer contributions for purposes of Code §§404 and 415 even if distributed from the Plan.

(c) **Corrective contributions.** Notwithstanding the above, if the current year testing method is used, then within twelve (12) months after the end of the Plan Year, any corrective contribution must be determined in accordance with the formula stated at Question 41 on the Adoption Agreement. If the prior year testing method is used, then a Qualified Nonelective Contribution and a Qualified Matching Contribution may not be made to correct the tests set forth in Section 12.4. The Employer shall provide the Administrator with written notification of the amount of the contribution being made. The term "Non-Highly Compensated Employee" shall mean, for this purpose, a Non-Highly Compensated Employee taken into account for purposes of the (current-year) ADP Test.

(1) A Qualified Nonelective Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ADP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ADP test set forth in Section 12.4 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ADP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.4 is satisfied.

(2) A Qualified Matching Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ADP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ADP test set forth in Section 12.4 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ADP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.4 is satisfied.

(d) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section 12.5 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(k)-6. Furthermore, the provisions of Code §401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees 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(b) provided such date is applied on a consistent and uniform basis to all Participants.

(e) **Excise tax after 2 1/2 months (or 6 months).** Any Excess Contributions (and "income") which are distributed after 2 1/2 months, or 6 months with respect to a Plan Year in which the EACA requirements of Section 12.2 are met, after the end of the Plan Year are subject to a ten percent (10%) Employer excise tax imposed by Code §4979.

## 12.6 ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) **ACP test.** Except as otherwise provided herein, this Subsection applies if the prior year testing method is elected in the Adoption Agreement. 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 Regulation §1.401(m)-2(c)(2)) in which the Plan permits any Participant to make "Employee contributions", provides for "matching contributions", or both, the ACP for the prior year's "NHCEs" shall be the greater of three percent (3%) or 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 Regulation §1.401(m)-2(c)(2).

(b) **Current year testing method.** Notwithstanding the preceding, if the current year testing method is elected in the Adoption Agreement or if no election is made in the Adoption Agreement, and for any Plan Year for which the Employer has either reserved the right to make a nonelective "ADP test safe harbor contribution" pursuant to Section 12.8 or amended the Plan to make an "ADP test safe harbor contribution," 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 and Section 12.7, 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 sum of (1) after-tax voluntary Employee contributions, (2) Employer "matching contributions" made pursuant to Section 12.1(a)(2) (including Qualified Matching Contributions to the extent such Qualified Matching Contributions are not used to satisfy the tests set forth in Section 12.4), (3) Excess Contributions recharacterized as nondeductible voluntary Employee contributions pursuant to Section 12.5, and (4) Qualified Nonelective Contributions, to the extent the Qualified Nonelective Contributions are not used to satisfy the tests set forth in Section 12.4 and do not exceed the limitations of the targeted contribution limitation of Section 12.4(g). However, "contribution percentage amounts" shall not include "matching contributions" that are forfeited either to correct Excess Aggregate Contributions or due to Code §401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions. In addition, "contribution percentage amounts" may include Elective Deferrals provided the ADP test in Section 12.4 is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test.

(f) **Participants taken into account.** For purposes of this Section and Section 12.7, a Highly Compensated Participant and a Nonhighly Compensated Participant shall include any Employee eligible to have "matching contributions" made pursuant to Section 12.1(a)(2) (whether or not a salary deferral election was made or suspended pursuant to the Plan) allocated to such Participant's Account for the Plan Year or to make after-tax voluntary Employee contributions pursuant to Section 4.8 (whether or not after-tax voluntary Employee contributions are made) allocated to the Participant's Account for the Plan Year.

(g) **Allocations taken into account.** 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. "Matching contributions" and Qualified Nonelective Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the date after the close of the Plan Year. Excess Contributions recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5(b)(2) are taken into account in the ACP for the Plan Year in which the contribution would have been received in cash if there had not been a salary deferral election. A "matching contribution" will be taken into account in the ACP for a Plan Year only if (1) it is made on account of the Participant's nondeductible voluntary "employee contributions" or on account of a Participant's Elective Deferrals under a plan maintained by the Employer for that Plan Year and (2) it is allocated to the Participant's Account as of any date within that Plan Year.

(h) **Definition of "matching contribution" and "employee contribution."** For purposes of this Section and Section 12.7, "matching contribution" means an Employer contribution made to the Plan, or to a contract described in Code §403(b), on behalf of a

Participant on account of a nondeductible voluntary "employee contribution" made by such Participant, or on account of a Participant's elective deferrals under a plan maintained by the Employer. "Employee contribution" means any contribution (other than Roth Elective Deferrals) 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) **Targeted matching contributions.** Notwithstanding the preceding, a "matching contribution" with respect to an Elective Deferral for a year is not taken into account in determining the ACP for "NHCEs" to the extent it exceeds the greatest of:

- (1) five percent (5%) of the Participant's 414(s) Compensation for the year;
- (2) the Employee's Elective Deferrals for the year; or
- (3) the product of two (2) times the Plan's "representative matching rate" and the Participant's Elective Deferrals for the year.

For purposes of this Subsection, the Plan's "representative matching rate" is the lowest "matching rate" for any eligible "NHCE" among a group of "NHCEs" that consists of half of all eligible "NHCEs" in the Plan for the Plan Year who make Elective Deferrals for the Plan Year (or, if greater, the lowest "matching rate" for all eligible "NHCEs" in the Plan who are employed by the Employer on the last day of the Plan Year and who make Elective Deferrals for the Plan Year).

For purposes of this Subsection, the "matching rate" for an Employee generally is the "matching contributions" made for such Employee divided by the Employee's Elective Deferrals for the year. If the "matching rate" is not the same for all levels of Elective Deferrals for an Employee, the Employee's "matching rate" is determined assuming that an Employee's Elective Deferrals are equal to six percent (6%) of 414(s) Compensation.

If the Plan provides a match with respect to the sum of the Employee's after-tax voluntary Employee contributions and Elective Deferrals, then for purposes of this Subsection, that sum is substituted for the amount of the Employee's Elective Deferrals and Employees who make either after-tax voluntary Employee contributions or Elective Deferrals are taken into account in determining the Plan's "representative matching rate." Similarly, if the Plan provides a match with respect to the Employee's after-tax voluntary Employee contributions, but not Elective Deferrals, then for purposes of this Subsection, the Employee's after-tax voluntary Employee contributions are substituted for the amount of the Employee's Elective Deferrals and Employees who make after-tax voluntary Employee contributions are taken into account in determining the Plan's "representative matching rate."

(j) **Aggregation with other plans.** In the event that 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 sections of the Code 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 Regulation §1.401(m)-2(c)(4), then any adjustments to the "NHCEs" 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.

(k) **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).

(l) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 12.7 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(m)-5. Furthermore, the provisions of Code §401(m)(5)(C) may be used to exclude from consideration all Nonhighly Compensated Employees 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.

(m) **"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.

(n) **Prohibited aggregation.** Except as otherwise permitted by Regulations, this ESOP may not be combined with any other Plan for purposes of this Section and Code §§ 401(a)(4), 410(b) and 401(m).

## 12.7 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) **Authority to correct.** In the event the Plan does not satisfy one of the tests set forth in Section 12.6, the Administrator shall adjust Excess Aggregate Contributions or, if the current year testing method is used, the Employer shall make contributions pursuant to the options set forth below or any combination thereof.

(b) **Corrective distribution or Forfeiture.** 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 or, if non-Vested, Forfeited (including "income" allocable to such Forfeitures) 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 or forfeited. Any distribution and/or Forfeiture of "contribution percentage amounts" shall be made in the following order:

- (1) Employer "matching contributions" distributed and/or forfeited pursuant to Section 12.5(b)(1);
- (2) After-tax voluntary Employee contributions including Excess Contributions recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5(b)(2);
- (3) Unmatched Elective Deferrals used in the ACP and, thereafter, simultaneously from such Elective Deferrals used in the ACP which are matched and "matching contributions" which relate to such Elective Deferrals (if the "matching contributions" are used in the ACP). "Matching contributions" which are not used in the ACP but which relate to Elective Deferrals that are distributed to Highly Compensated Participants pursuant to this Subsection shall be forfeited unless the related "matching contributions" are distributed as Excess Aggregate Contributions pursuant to this Subsection;
- (4) To the extent Elective Deferrals are distributed pursuant to the preceding paragraph, then the distribution shall be made, as operationally determined by the Administrator, from the Participant's Pre-Tax Elective Deferral Account or the Participant's Roth Elective Deferral Account, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the Plan Year, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the Plan Year; and
- (5) Remaining Employer "matching contributions."

(c) **Source of corrective distribution or Forfeiture.** Any distribution or Forfeiture of less than the entire amount of Excess Aggregate Contributions (and "income") shall be treated as a pro rata distribution of Excess Aggregate Contributions and "income." Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and "income"). Forfeitures of Excess Aggregate Contributions shall be treated in accordance with Section 4.3. However, no such Forfeiture may be allocated to a Highly Compensated Participant whose contributions are reduced pursuant to this Section.

(d) **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 in Section 12.5(b)(4) with respect to the calculation of "income" for Excess Contributions (applied by substituting Excess Contributions with Excess Aggregate Contributions and by substituting amounts taken into account under the ACP test for amounts taken into account under the ADP test in Section 12.4). However, the Administrator will not calculate and distribute "income" for the period between the end of the Plan Year in which the Excess Aggregate Contribution and prior to the date of the distribution (the "gap period").

(e) **Treatment of excess amounts.** Excess Aggregate Contributions attributable to amounts other than nondeductible voluntary Employee contributions, including forfeited "matching contributions," shall be treated as Employer contributions for purposes of Code §§404 and 415 even if distributed from the Plan.

(f) **Ordering of tests.** The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions, if any, to be treated as nondeductible voluntary Employee contributions due to recharacterization for the Plan Year of any other qualified cash or deferred arrangement (as defined in Code §401(k)) maintained by the Employer that ends with or within the Plan Year or which are treated as after-tax voluntary Employee contributions due to recharacterization pursuant to Section 12.5.

(g) **Corrective contributions.** Notwithstanding the above, if the current year testing method is being used, then within twelve (12) months after the end of the Plan Year, any corrective contribution must be determined in accordance with the formula stated at Question 41 on the Adoption Agreement. If the prior year testing method is used, then a Qualified Nonelective Contribution or an Employer "matching contribution" may not be made to correct the tests set forth in Section 12.6. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and to which provision it relates. The term "Non-Highly Compensated Employee" shall mean, for this purpose, a Non-Highly Compensated Employee taken into account for purposes of the (current-year) ACP Test.

- (1) A Qualified Nonelective Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ACP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the

Qualified Nonelective Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ACP test set forth in Section 12.7 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ACP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.7 is satisfied.

(2) A Qualified Matching Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ACP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ACP test set forth in Section 12.7 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ACP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.7 is satisfied.

(3) A Matching Contribution (not a QMAC), if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ACP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ACP test set forth in Section 12.7 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ACP test pursuant to Section 12.7(i) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.7 is satisfied.

(g) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section 12.7 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(k)-6. Furthermore, the provisions of Code §401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees 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(b) provided such date is applied on a consistent and uniform basis to all Participants.

(h) **Excise tax after 2 1/2 months (or 6 months).** Any Excess Aggregate Contributions (and "income") which are distributed after 2 1/2 months, or 6 months with respect to a Plan Year in which the EACA requirements of Section 12.2(b) are met, after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code §4979.

## 12.8 401(k) ADP TEST SAFE HARBOR PROVISIONS

(a) **Election of "ADP test safe harbor."** The provisions of this Section will apply if the Employer has elected, in the 401(k) ADP Test Safe Harbor Provisions Section of the Adoption Agreement, to use the "ADP test safe harbor" or "ACP test safe harbor." If the Employer has elected to use the "ADP test safe harbor" for a Plan Year, then the provisions relating to the ADP test described in Section 12.4 and in Code §401(k)(3) do not apply for such Plan Year to the group of Participants subject to the "ADP test safe harbor" provisions. In addition, if the Employer has also elected to use the "ACP test safe harbor" for a Plan Year, then the provisions relating to the ACP test described in Section 12.6 and in Code §401(m)(2) do not apply for such Plan Year to the group of Participants subject to the "ACP test safe harbor" provisions. Furthermore, to the extent any other provision of the Plan is inconsistent with the provisions of this Section, the provisions of this Section will govern. In accordance with Regulation §1.401(k)-1(e)(7) and Regulation §1.401(m)-1(c)(2), it is impermissible for the Employer to use the ADP test or the ACP test for a Plan Year in which it is intended for the Plan, through its written terms, to use the "ADP test safe harbor" or "ACP test safe harbor" and the Employer fails to satisfy the requirements of such safe harbors for the Plan Year.

(b) **Definitions.** For purposes of this Section and Section 12.9, the following definitions apply:

- (1) "ACP test safe harbor" means the method described in Subsection (d) below for satisfying the ACP test of Code §401(m)(2).
- (2) "ACP test safe harbor matching contributions" means "matching contributions" described in Subsection (d)(1).
- (3) "ADP test safe harbor" means the method described in Subsection (c) for satisfying the ADP test of Code §401(k)(3).
- (4) "ADP test safe harbor contributions" means the contributions made pursuant to Subsection (c)(1) below.
- (5) "Compensation" means Compensation as defined in Section 1.18, except, for purposes of this Section, no dollar limit, other than the limit imposed by Code §401(a)(17), applies to the Compensation of a Nonhighly Compensated Employee.

(6) "Eligible Participant" means a Participant who is eligible to make Elective Deferrals under the Plan for any part of the Plan Year (or who would be eligible to make Elective Deferrals but for a suspension due to a hardship distribution described in Section 12.10 or to statutory limitations, such as Code §§402(g) and 415) and who is not excluded as an "eligible Participant" in the 401(k) ADP Test Safe Harbor Provisions Section of the Adoption Agreement.

(7) "Matching contributions" means contributions made by the Employer on account of an "eligible Participant's" Elective Deferrals.

(c) **Satisfying ADP safe harbor.** The provisions of this Subsection apply for purposes of satisfying the "ADP test safe harbor."

(1) The "ADP test safe harbor contribution" is the contribution, elected by the Employer in the 401(k) ADP Test Safe Harbor Provisions Section of the Adoption Agreement, to be used to satisfy the "ADP test safe harbor." However, if no contribution is elected in the Adoption Agreement, the Employer will contribute to the Plan for the Plan Year a "basic matching contribution" on behalf of each Eligible Employee. The "basic matching contribution" is equal to (i) one hundred percent (100%) of the amount of an "eligible Participant's" Elective Deferrals that do not exceed three percent (3%) of the Participant's "Compensation" for the Plan Year, plus (ii) fifty percent (50%) of the amount of the Participant's Elective Deferrals that exceed three percent (3%) of the Participant's "Compensation" but do not exceed five percent (5%) of the Participant's "Compensation." However, if the contribution is being made pursuant to a QACA as described in Section 12.9, then the "basic matching contribution" is equal to (i) one hundred percent (100%) of the amount of an "eligible Participant's" Elective Deferrals that do not exceed one percent (1%) of the Participant's "Compensation" for the Plan Year, plus (ii) fifty percent (50%) of the amount of the Participant's Elective Deferrals that exceed one percent (1%) of the Participant's "Compensation" but do not exceed six percent (6%) of the Participant's "Compensation." If pursuant to this Section, the "ADP test safe harbor contribution" being made to the Plan (including a contribution being made pursuant to a QACA as described in Section 12.9) is a matching contribution that is made on a basis other than the Plan Year, then the matching contributions must be contributed to the Plan by the last day of the Plan Year quarter immediately following the Plan Year quarter to which the contributions relate.

(2) Except as provided in Subsection (e) below, for purposes of the Plan, a "basic matching contribution" or an "enhanced matching contribution" will be treated as a Qualified Matching Contribution and a nonelective "ADP test safe harbor contribution" will be treated as a Qualified Nonelective Contribution. Accordingly, "ADP test safe harbor contributions" will be fully Vested and subject to the distribution restrictions set forth in Section 12.2(e) other than on account of a hardship (i.e., may generally not be distributed earlier than severance of employment, death, Total and Permanent Disability, an event described in Code §401(k)(10), or, in case of amounts not attributable to Money Purchase Pension Plan contributions, the attainment of age 59 1/2.). In addition, such contributions must satisfy the "ADP test safe harbor" without regard to permitted disparity under Code §401(l). An "enhanced matching contribution" is a matching contribution that, at rate of Elective Deferrals, is at least equal to what the matching contribution would be if under the "basic matching contribution."

(3) Notwithstanding the requirement that the Employer make the "ADP test safe harbor contribution" to this Plan, if the Employer so elects in the Adoption Agreement, the "ADP test safe harbor contribution" will be made to the defined contribution plan indicated in the Adoption Agreement. However, such contributions will be made to this Plan unless (i) each Employee eligible under this Plan is also eligible under the other plan, and (ii) the other plan has the same Plan Year as this Plan.

(4) Within a reasonable period before the beginning of the Plan Year (or, in the year an Eligible Employee becomes a Participant, within a reasonable period before the Employee becomes eligible), the Employer will provide each "eligible Participant" a comprehensive notice of the Participant's rights and obligations under the Plan, written in a manner calculated to be understood by the average Participant. The determination of whether a notice satisfies the timing requirement of this paragraph is based on all of the relevant facts and circumstances. However, the timing requirement of the notice is deemed to be satisfied if at least thirty (30) days, but not more than ninety (90) days, before the beginning of the Plan Year, the Employer will provide each "eligible Participant" a comprehensive notice of the Participant's rights and obligations under the Plan, written in a manner calculated to be understood by the average Participant. However, if an Employee becomes eligible after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice must be provided no more than ninety (90) days before the Employee becomes eligible but not later than the date the Employee becomes eligible.

(5) In addition to any other election periods provided under the Plan, each "eligible Participant" may make or modify a salary deferral election during the thirty (30) day period immediately following receipt of the notice described in Subsection (4) above. Furthermore, if the "ADP test safe harbor contribution" is a "matching contribution" each Eligible Employee must be permitted to elect sufficient Elective Deferrals to receive the maximum amount of "matching contributions" available to the Participant under the Plan.

(d) **Application of "ACP test safe harbor."** The provisions of this Subsection apply if the Employer has elected to satisfy the "ACP test safe harbor."

(1) In addition to the "ADP test safe harbor contributions," the Employer will make any "matching contributions" in accordance with elections made in the Adoption Agreement. Such additional "matching contributions" will be considered "ACP test safe harbor matching contributions." "Matching contributions" are taken into account for a Plan Year purposes of the "ACP test safe

harbor" in accordance with the allocation and timing rules of Regulation §1.401(m)-2(a), which provides that a matching contribution will be taken into account for a Plan Year only if (1) it is made on account of the Participant's nondeductible voluntary "employee contributions" or elective deferrals under a plan maintained by the Employer for that Plan Year and (2) it is allocated to the Participant's account as of any date within that Plan Year, and (3) it is actually paid to the plan no later than twelve (12) months after the close of the Plan Year.

(2) Notwithstanding any election in the Adoption Agreement to the contrary, (1) an "eligible Participant's" Elective Deferrals in excess of six percent (6%) of "Compensation" may not be taken into account in applying "ACP test safe harbor matching contributions," (2) In addition, any portion of an "ACP test safe harbor matching contribution" attributable to a discretionary "matching contribution" may not exceed four percent (4%) of an "eligible Participant's" "Compensation," (3) the rate of match may not increase as the rate of Elective Deferrals increases; and (4) any Participant who is a Highly Compensated Employee may not receive a rate of match that is greater than any Non-Highly Compensated Participant deferring the same amount (as a percentage of Compensation).

(e) **Application of ACP test.** The Plan is required to satisfy the ACP test of Code §401(m)(2), using the current year testing method, if the Plan permits after-tax voluntary Employee contributions or if matching contributions that do not satisfy the "ACP test safe harbor" may be made to the Plan. In such event, only "ADP test safe harbor contributions" or "ACP test safe harbor contributions" that exceed the amount needed to satisfy the "ADP test safe harbor" or "ACP test safe harbor" (if the Employer has elected to use the "ACP test safe harbor") may be treated as Qualified Nonelective Contributions or Qualified Matching Contributions in applying the ACP test. In addition, in applying the ACP test, elective contributions may not be treated as "matching contributions" under Code §401(m)(3). Furthermore, in applying the ACP test, the Employer may operationally elect to disregard with respect to all "eligible Participants" (1) all "matching contributions" if the Plan satisfies the "ACP test safe harbor" and (2) "matching contributions" that do not exceed four percent (4%) (3 1/2% if a QACA) of each Participant's "Compensation" if the Plan satisfies the "ADP test safe harbor" using "matching contributions" (the "basic matching contribution" or the "enhanced matching contribution") and the "ACP test safe harbor" is not satisfied.

(f) **Modification of top-heavy rules.** The top-heavy requirements of Code §416 and the Plan shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) and "matching contributions" with respect to which the requirements of Code §401(m)(11) are met.

(g) **Plan Year requirement.** Except as provided in Regulation §1.401(k)-3(e), the Plan will fail to satisfy the requirements of Code §401(k)(12) and this Section for a Plan Year unless such provisions remain in effect for an entire twelve (12) month Plan Year.

(h) **Discretionary safe harbor nonelective contribution.** If the Employer has elected in the Adoption Agreement to either not use the 401(k) safe harbor provisions of this Section or to utilize the "maybe" election with respect to the nonelective "ADP test safe harbor contribution," then the Employer may elect to utilize the "ADP test safe harbor" provisions for a Plan Year after the Plan Year has commenced in accordance with the provisions of this Subsection. In order to utilize this Subsection, the Employer must provide a notice in accordance with Section 12.8(c)(4) above, except that the notice must provide that the Employer may provide the nonelective "ADP test safe harbor contribution" and that a supplemental notice will be provided at least thirty (30) days prior to the last day of the Plan Year if the Employer decides to make the nonelective "ADP test safe harbor contribution". In order to implement the 401(k) safe harbor provisions of this Section for the Plan Year, the Employer must (1) amend the Adoption Agreement to provide for the nonelective "ADP test safe harbor contribution" and, (2) provide a supplemental notice to Participants indicating its intention to provide such nonelective "ADP test safe harbor contribution". The supplemental notice indicating the Employer's intention to make the nonelective "ADP test safe harbor contribution" must be provided no later than thirty (30) days prior to the last day of the Plan Year for the Plan in order for the provisions of this Section to apply.

(i) **Elimination of safe harbor contributions or matching contributions.** The Employer may amend the Plan during a Plan Year to reduce or eliminate "ADP test safe harbor contributions" or matching contributions for such Plan Year subject to the following provisions.

(1) An amendment may be made during a Plan Year to reduce or eliminate prospectively any or all "ADP test safe harbor contributions" provided a supplemental notice is given to all "eligible Participants" explaining the consequences and effective date of the amendment, and that such "eligible Participants" have a reasonable opportunity (including a reasonable period) to change their Elective Deferral (and if applicable, their Voluntary Employee Contribution) elections. An amendment reducing or eliminating an "ADP test safe harbor contribution" must be effective no later than the later of: (i) thirty (30) days after "eligible Participants" are given the supplemental notice or (ii) the date the amendment is adopted. If the Employer amends the Plan to reduce or eliminate the "ADP test safe harbor contributions," then except as provided in Code §§401(k) and 401(m) and the Regulations thereunder, the Plan is subject to the ADP test set forth in Section 12.4 and the ACP test set forth in Section 12.6 for the entire Plan Year using current year testing and the Employer must also satisfy the provisions of this Section 12.8 until the amendment becomes effective.

(2) Notwithstanding the preceding, an amendment may be made during a Plan Year to eliminate a nonelective "ADP test safe harbor contribution" for such Plan Year only in accordance with the provisions of Regulation §1.401(k)-3(g) and, if applicable, Regulation §1.401(m)-3(h).

(3) If the Employer eliminates a matching contribution that is not an "ADP test safe harbor contribution," then the "ADP test safe harbor" provisions of this Section continue to apply (i.e., the provisions relating to the ADP test described in Section 12.4 and in Code §401(k)(3) do not apply for such Plan Year to the group of Participants subject to the "ADP test safe harbor" provisions).

(j) **Mid-year amendments.** Notwithstanding anything in this Section to the contrary, effective for mid-year amendments adopted after January 28, 2016, the Employer may amend the Plan effective on a date other than the first day of the Plan Year, or with a retroactive effective date, so long as the amendment complies with IRS Notice 2016-16 and other IRS Guidance. For permissible mid-year Plan changes impacting a Plan's required safe harbor notice content, a notice will be provided to all Eligible Employees pursuant to IRS Notice 2016-16 or any later IRS Guidance.

Each employee required to be provided an updated safe harbor notice pursuant to Notice 2016-16 must be given a reasonable opportunity (including a reasonable period after receipt of the updated notice) before the effective date of the mid-year change to change the employee's cash or deferred election (and/or any after-tax employee contribution election). For this purpose, a 30-day election period is deemed to be a reasonable period to make or change a cash or deferred election. If it is not practicable for the election opportunity to be provided before the effective date of the change (for example, in the case of a mid-year change to increase matching contributions retroactively for the entire plan year), an employee is treated as having a reasonable opportunity to make or change an election if the election opportunity begins as soon as practicable after the date the updated notice is provided to the employee, but not later than 30 days after the date the change is adopted.

## 12.9 QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT

(a) **Qualified Automatic Contribution Arrangement (QACA).** If elected in the Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as a Qualified Automatic Contribution Arrangement (QACA) and the provisions of this Section will apply. Except as otherwise provided in this Section, the Plan's "ADP test safe harbor" and "ACP test safe harbor" provisions set forth in Section 12.8 apply. The Employer will contribute on behalf of the Participants specified in the Adoption Agreement, "ADP test safe harbor contributions," as elected in the Adoption Agreement.

(b) **Participants subject to the QACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the QACA Automatic Deferral on the "QACA Effective Date" thereof which may include some or all current Participants or may be limited to those Employees who become Participants after the "QACA Effective Date." The "QACA Effective Date" means the date on which the QACA goes into effect, either as to the overall Plan or as to an individual Participant as the context requires. A QACA becomes effective as to the Plan as of the date the Employer elects in the Adoption Agreement. A Participant's "QACA Effective Date" is as soon as practicable after the Participant is subject to Automatic Deferrals under the QACA, consistent with: (A) applicable law; and (B) the objective of affording the Participant a reasonable period of time after receipt of the QACA notice to make an Affirmative Election (and, if applicable, an investment election).

(c) **QACA Automatic Deferral amount.** Except as provided in Subsection (d) below (relating to uniformity requirements), the Plan must apply to all Participants subject to the QACA, a uniform Automatic Deferral amount, as a percentage of each Participant's Compensation, which does not exceed ten percent (10%), and which is at least the following minimum amount:

- (1) **Initial period.** 3% for the period that begins when the Participant first has contributions made pursuant to a default election under the QACA and ends on the last day of the following Plan Year;
- (2) **Third Plan Year.** 4% for the third Plan Year of the Participant's participation in the QACA;
- (3) **Fourth Plan Year.** 5% for the fourth Plan Year of the Participant's participation in the QACA; and
- (4) **Fifth and later Plan Years.** 6% for the fifth Plan Year of the Participant's participation in the QACA and for each subsequent Plan Year.

For purposes of the above, the Plan will treat an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the QACA as not having made such contributions for any prior Plan Year.

(d) **Uniformity.** The "Automatic Deferral Percentage" must be a uniform percentage of Compensation. The "Automatic Deferral Percentage" is the percentage of Automatic Deferral which the Employer elects in the Adoption Agreement (including any scheduled increase to the "Automatic Deferral Percentage"). However, the Plan does not violate the uniform "Automatic Deferral Percentage" merely because:

- (1) **Years of participation.** The "Automatic Deferral Percentage" varies based on the number of Plan Years the Participant has participated in the Plan while the Plan has applied the QACA provisions;
- (2) **No reduction from prior default percentage.** The Plan does not reduce an "Automatic Deferral Percentage" that, immediately prior to the QACA's effective date was higher (for any Participant) than the "Automatic Deferral Percentage."



(3) **Applying statutory limits.** The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code §§401(a)(17), 402(g) (determined without regard to Catch-Up Contributions), or 415;

(4) **No Automatic Deferrals during hardship suspension.** The Plan does not apply the Automatic Deferral during a period of suspension, under the Plan's hardship distribution provisions, of Participant's right to make Elective Deferrals to the Plan following a hardship distribution; or

(5) **Disaggregated groups.** The Plan applies different default percentages to different groups if the groups can be disaggregated under Regulation §1.401(k)-1(b)(4).

(e) **Safe harbor notice.** The Plan's safe harbor notice provisions apply as set forth in Section 12.8, except the Employer must provide the initial QACA safe harbor notice sufficiently early so that an Employee has a reasonable period after receiving the notice and before the first Automatic Deferral to make an Affirmative Election. In addition, the notice must state: (1) the Automatic Deferral amount that will apply in absence of the Employee's Affirmative Election; (2) the Employee's right to elect not to have any Automatic Deferral amount made on the Employee's behalf or to elect to make Elective Deferrals in a different amount or percentage of Compensation; and (iii) how the Plan will invest the Automatic Deferrals. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice nonetheless will be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date. For this purpose, the Administrator is deemed to provide timely notice if the Administrator provides the notice at least thirty (30) days and not more than ninety (90) days prior to the beginning of the QACA Plan Year.

(f) **Distributions.** A Participant's Account balance attributable to QACA "ADP test safe harbor contributions" is subject to the distribution restrictions set forth in Section 12.2(e) other than on account of a hardship (i.e., may generally not be distributed earlier than severance of employment, death, Total and Permanent Disability, an event described in Code §401(k)(10), or, in case of in case of amounts not attributable to Money Purchase Pension Plan contributions, the attainment of age 59 1/2).

(g) **Vesting.** A Participant's Account balance attributable to QACA "ADP test safe harbor contributions" is Vested in accordance with the vesting schedule, if any, elected in the Adoption Agreement.

(h) **Compensation.** Compensation for purposes of determining the "Automatic Deferral Percentage" has the same meaning as Compensation with regard to Elective Deferrals.

(i) **Modification of top-heavy rules.** The top-heavy requirements of Code §416 and the Plan shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(13) and "matching contributions" with respect to which the requirements of Code §401(m)(12) is met.

## 12.10 DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** If elected in the Adoption Agreement, the Administrator, at the election of a Participant, shall direct the Trustee (or Insurer) to distribute to the Participant in any one Plan Year up to an amount necessary to satisfy the Participant's immediate and heavy financial need, determined in accordance with the remaining provisions of this Section. Distribution of Elective Deferrals (and any earnings credited to a participant's Elective Deferral and Qualified Matching and Qualified Nonelective accounts as of the later of December 31, 1988, and or the end of the last Plan Year ending before July 1, 1989) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Except for when the provisions of Section 6.12 apply, hardship distributions are subject to the spousal consent requirements contained in the provisions of this Plan which reflect the requirements of Code §§ 401(a)(11) and 417. Such distributions may also be made from those Accounts from which such distribution are authorized by the remaining provisions of this Section. For purposes of this Section, a Participant shall include an Employee (or if elected in the Adoption Agreement, a former employee) who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. A withdrawal under this Section shall be authorized only if the distribution is for one of the following or any other item permitted under Regulation §1.401(k)-1(d)(3)(iii)(B) or any other federally enacted legislation (the Administrator operationally and in a nondiscriminatory manner may limit the deemed immediate and heavy financial need events to only certain of the events specified below):

- (1) expenses for (or necessary to obtain) medical care (as defined in Code §213(d));
- (2) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));

- (4) payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §152(b)(1), (b)(2), and (d)(1)(B));
- (5) payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
- (6) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:

- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state, or local taxes or penalties reasonably anticipated to result from the distribution);
- (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer (to the extent the loan would not increase the hardship); and
- (3) The Plan, and all other plans maintained by the Employer, provide that the Participant's Elective Deferrals and nondeductible voluntary Employee contributions will be suspended for at least six (6) months after receipt of the hardship distribution.

(d) **Limitation on Account withdrawals.** Notwithstanding the above, distributions from the Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account pursuant to this Section shall be limited solely to the Participant's Elective Deferrals and any income attributable thereto credited to the Participant's Elective Deferral Account as of December 31, 1988.

(e) **Other limits and conditions.** Hardship distributions shall be made from an Account only to the extent that such Account has become Vested at the time of such distribution. If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(f) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

#### 12.11 IN-PLAN ROTH ROLLOVER CONTRIBUTIONS/TRANSFERS

(a) **Right to elect In-Plan Roth Rollover Contribution/Transfer.** If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant may elect an "in-Plan Roth rollover contribution" (hereinafter referred to as an IRR) and/or an "in-Plan Roth transfer" (hereinafter referred to as an IRT) in accordance with the provisions of the Plan, this Section and the elections made in the Adoption Agreement. IRRs and IRTs will be subject to the Plan rules related to designated Roth accounts. Participants shall be fully Vested in the portion of their Accounts attributable to IRRs and IRTs.

(b) **Parties eligible to elect.** The Employer in its Adoption Agreement can limit to Employees the right to elect to make IRRs or IRTs. If the Employer does not make this election, then for purposes of eligibility for an IRR, the Plan will treat a Participant's surviving spouse Beneficiary or alternate payee spouse or alternate payee former spouse as a Participant. A non-spouse Beneficiary may not make an In-Plan Roth Rollover.

(c) **Partially Vested accounts.** IRRs and IRTs are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts unless the Employer elects otherwise in its Adoption Agreement. If a distribution is made to a Participant who has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account, then at any relevant time Section 6.5(h) will apply to determine the Participant's Vested portion of the Account.

- (d) **Amount limitation.** The Employer in its Adoption Agreement may specify a minimum amount which will be accepted as an IRR or IRT.
- (e) **Policy.** The Administrator may adopt a policy setting for reasonable, nondiscriminatory procedures and administrative rules relating to In-Plan Roth Rollover Contributions. Such a policy can prescribe administrative forms and limit the maximum number of such rollovers a Participant may make during a Plan Year.
- (f) **Form and source of IRRs and IRTs.**
- (1) **Direct Rollover.** An IRR and an IRT may be made only by a direct rollover.
  - (2) **Account source.** A Participant may make an IRR or IRT from any account (other than a Designated Roth Account) unless the Employer otherwise elects in its Adoption Agreement.
  - (3) **Cash or in-kind.** The Administrator may permit an IRR or IRT either by converting to cash any non-cash investments prior to rolling over the Participant's distribution election amount to the In-Plan Roth Rollover Account or In-Plan Roth Transfer Account, or by rolling over the Participant's current investments to the respective Accounts. A Plan loan so transferred (if such transfer is permitted) without changing the repayment schedule is not treated as a new loan.
  - (4) **No rollover or distribution treatment.** Notwithstanding any other Plan provision, an IRR or an IRT is not a rollover contribution for purposes of the Plan. Accordingly, the Plan will take into account the amounts attributable to an "in-Plan Roth rollover contribution" in determining whether a Participant's Vested Account balance exceeds \$5,000 for purposes of Code §411(a)(11). In addition, an "in-Plan Roth rollover contribution" is not a distribution for purposes of Code §§401(a)(11) (relating to spousal consent) and 3405(c) (relating to mandatory income tax withholding). Furthermore, it is not a distribution for purposes of applying any limitations that a Plan may impose with respect to the number of in-service distributions permitted by the Plan.
  - (5) **Eligibility and amount of IRR.** A Participant must be eligible for a distribution in order to roll over a distribution to an In-Plan Roth Rollover Contribution Account in accordance with this Section. A Participant may not make an IRR with regard to an amount which is not an "eligible rollover distribution" as defined in Section 6.15. If specified in the Adoption Agreement, a Participant may take an in-service distribution only for purposes of electing an IRR to an In-Plan Roth Rollover Contribution Account. If elected in the Adoption Agreement, a portion of the amount that is eligible to be rolled over to an In-Plan Roth Rollover Contribution Account may be distributed solely for the purpose of federal or state income tax withholding for the Participant's anticipated tax obligations regarding the amount includible in the Participant's gross income by reason of the In-Plan Roth Rollover Contribution (and the amount withheld for income taxes). The Administrator may limit the amount of the 100% withholding distribution to the amount the Administrator reasonably determines is sufficient to satisfy the Participant's federal and/or state income tax liability relating to the Plan distribution.
- (g) **Withdrawal of IRRs and IRTs.** A Participant may withdraw amounts from the Participant's In-Plan Roth Rollover Contribution Account or In-Plan Roth Transfer Account only when the Participant is eligible for a distribution from the Plan account that is the source of the IRR or IRT. This Section does not expand (except, if elected, for distributions for withholding) or eliminate any distribution rights on amounts that a Participant elects to treat as an IRR or IRT.
- (h) **Definitions.**
- (1) **In-Plan Roth Rollover Contribution ("IRR").** An "in-Plan Roth rollover contribution" (IRR) means a rollover contribution to the Plan that consists of a distribution from a Participant's Plan account, other than a designated Roth account, that the Participant rolls over to the Participant's designated In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4).
  - (2) **In-Plan Roth Rollover Transfer ("IRT").** An "in-Plan Roth rollover transfer" (IRT) means a rollover contribution to the Plan that consists of a distribution from a Participant's Plan account, other than a designated Roth account, that the Participant rolls over to the Participant's designated In-Plan Roth Transfer Account in the Plan, in accordance with Code §402(c)(4).

## 12.12 INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS

For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to allocate a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants

who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" contribution is made to the Plan for the Plan Year.

Solely for purposes of this Section, a matching contribution is to be considered as being a "Flexible Discretionary Match" contribution unless the Employer has provided a definitely determinable allocation formula for the matching contribution on the Adoption Agreement. In order to be definitely determinable, then the components of the allocation formula described in the preceding sentence must be specified on the Adoption Agreement and cannot themselves be discretionary. Thus, regardless of whether the contribution formula for the matching contribution is fixed or discretionary, the provisions of the preceding paragraph apply unless the amount to be allocated to the Participant for the Plan Year can be determined without any discretion on the part of the Employer.

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