

GREAT-WEST RETIREMENT SERVICES<sup>®</sup>

SECTION 401(a)

PROFIT SHARING PLAN

FOR GOVERNMENTAL EMPLOYERS

INTRODUCTION TO GREAT-WEST RETIREMENT SERVICES  
SECTION 401(a) PROFIT SHARING PLAN  
FOR GOVERNMENTAL EMPLOYERS

The attached sample Basic Plan Document may be used together with the related Adoption Agreement by eligible governmental employers and their counsel as a model in preparing a profit sharing plan document intended to satisfy § 401(a) of the Internal Revenue Code of 1986, as amended. In general, under a § 401(a) plan, which is also referred to as a “qualified plan,” an employer’s contributions to a participant’s account (and income earned on those contributions) are not subject to federal income taxation until those amounts are paid to the participant.

This sample Basic Plan Document contains provisions that may be included in a qualified governmental plan. No local, state or federal government has passed on the legal sufficiency (including the conformity with § 401(a)) of this sample Basic Plan Document. It was prepared for your convenience and is not intended to provide you with legal or accounting advice, nor should it be implemented without regard to your particular needs or any applicable laws of your state or local jurisdiction. Great-West Retirement Services, a unit of Great-West Life & Annuity Insurance Company, nor any of its affiliated companies, (collectively referred to herein as “Great-West”) assumes any liability to any person or entity with respect to the adequacy of this document for any purpose, or with respect to any tax, accounting or legal ramifications arising from its use. You and your counsel should review and, where appropriate, modify the provisions to meet your particular needs and applicable local laws. Alterations to the Adoption Agreement are permissible, but any such alteration that requires a Plan amendment must be set forth in a separate amendment attached to the front of the plan document.

Great-West is not a party to any plan which you may adopt, and Great-West has no responsibility, accountability, or liability to you, any employer, any participant or any beneficiary with regard to the operation or adequacy of this sample Basic Plan Document, any § 401(a) plan prepared from this sample Basic Plan Document or any future amendments made to this sample Basic Plan Document, including amendments to satisfy any changes in applicable law. You should consult with your legal counsel prior to adopting any plan document.

# TABLE OF CONTENTS

## SECTION 401(a) PROFIT SHARING PLAN FOR GOVERNMENTAL EMPLOYERS

Page

Introduction..... i

### **SECTION 401(a) PROFIT SHARING PLAN**

I. INTRODUCTION..... 1

II. DEFINITIONS..... 1

    2.01 “Account”..... 1

    2.02 “Administrator” or “Plan Administrator”..... 1

    2.03 “Adoption Agreement”..... 1

    2.04 “Beneficiary”..... 1

    2.05 “Code”..... 1

    2.06 “Compensation”..... 1

    2.07 “Custodial Account”..... 3

    2.08 “Custodian”..... 3

    2.09 “Disability”..... 3

    2.10 “Early Retirement Age”..... 3

    2.11 “Eligibility Computation Period”..... 3

    2.12 “Employee”..... 3

    2.13 “Employer”..... 3

    2.14 “Employment Commencement Date”..... 3

    2.15 “Entry Date”..... 3

    2.16 “Hour of Service”..... 4

    2.17 “Normal Retirement Age”..... 4

    2.18 “Participant”..... 4

    2.19 “Plan”..... 4

    2.20 “Plan Year”..... 4

    2.21 “Qualified Domestic Relations Order” or “QDRO”..... 4

    2.23 “Severance from Employment”..... 4

    2.24 “Trust”..... 4

    2.25 “Trustee”..... 4

    2.26 “USERRA”..... 4

    2.27 “Vesting Computation Period”..... 5

    2.28 “Year of Service”..... 5

III. ADMINISTRATION..... 5

    3.01 Administrator..... 5

    3.02 Appointment and Termination of Administrator..... 5

    3.03 Duties of Plan Administrator..... 5

    3.04 Administrative Fees and Expenses..... 6

    3.05 Actions of Administrator..... 6

    3.06 Delegation..... 6

    3.07 Investment and Service Providers..... 6

IV. PARTICIPATION IN THE PLAN..... 6

    4.01 Eligibility..... 6

    4.02 Participation Upon Reemployment..... 7

    4.03 Change in Employment Status..... 7

    4.04 Years of Service Taken Into Account for Participation Purposes..... 7

    4.05 Beneficiary..... 7

**TABLE OF CONTENTS (Continued)**

**SECTION 401(a) PROFIT SHARING PLAN  
FOR GOVERNMENTAL EMPLOYERS**

	<u>Page</u>
4.06 Qualified Military Service.....	7
V. CONTRIBUTIONS AND FORFEITURES .....	8
5.01 Employer Contributions .....	8
5.02 Treatment of Forfeitures .....	8
5.03 Allocation of Employer Contributions .....	8
5.04 Return of Employer Contributions .....	8
5.05 Employee Contributions.....	9
5.06 Rollover Contributions .....	9
5.07 Transfer Contributions .....	9
5.08 USERRA.....	10
VI. LIMITATIONS ON ALLOCATIONS.....	10
6.01 General Limitation .....	10
6.02 Estimation of Compensation .....	11
6.03 Treatment of Excess Annual Additions.....	11
6.04 Participation in Other Individual Account Plans.....	12
6.05 Participation in Defined Benefit Plan.....	12
6.06 Definitions.....	12
VII. VESTING .....	13
7.01 Vesting .....	13
7.02 Years of Service for Vesting .....	14
VIII. HOLDING OF PLAN ASSETS; CREATION OF TRUST AND TRUST FUND.....	14
8.01 Custody of Plan Assets.....	14
8.02 Establishment of Trust .....	15
8.03 Appointment and Termination of Trustee .....	15
8.04 Acceptance .....	16
8.05 Control of Plan Assets.....	16
8.06 General Duties of the Trustee.....	16
8.07 Investment Powers of the Trustee .....	17
8.08 Trustee Fees and Expenses.....	18
8.09 Exclusive Benefit Rules .....	18
8.10 Trustee Actions .....	18
8.11 Delegation .....	18
8.12 Division of Duties and Indemnification.....	18
8.13 Purchase of Life Insurance .....	19
IX. INVESTMENTS .....	20
9.01 Investment Options .....	20
9.02 Participant Investment Direction. ....	20
9.03 Employer Investment Direction. ....	21
9.04 Participant Accounts .....	21
X. DISTRIBUTIONS .....	21
10.01 Distributions from the Plan .....	21
10.02 Conditions for Distributions.....	22
10.03 Times of Distribution. ....	22
10.04 Hardship Withdrawals.....	22
10.05 Death Benefit Distributions. ....	23
10.06 Payment Options .....	27
10.07 Default Distribution Option .....	28
10.08 Limitations on Distribution Options .....	28
10.09 Taxation of Distributions .....	28
10.10 Eligible Rollover Distributions. ....	28

**TABLE OF CONTENTS (Continued)**

**SECTION 401(a) PROFIT SHARING PLAN  
FOR GOVERNMENTAL EMPLOYERS**

	<u>Page</u>
10.11 Elections.....	29
10.12 Practices and Procedures.....	29
10.13 Required Minimum Distribution Waiver of 2009.....	29
XI. CLAIMS PROCEDURES.....	30
11.01 Application for Benefits.....	30
11.02 Review.....	30
XII. LEAVE OF ABSENCE.....	31
12.01 Paid Leave of Absence.....	31
12.02 Unpaid Leave of Absence.....	31
XIII. PARTICIPANT LOANS.....	31
13.01 Authorization of Loans.....	31
13.02 Maximum Loan Amount.....	31
13.03 Repayment of Loan.....	32
13.04 Loan Terms and Conditions.....	32
XIV. AMENDMENT OR TERMINATION OF PLAN.....	33
14.01 Termination.....	33
14.02 Amendment.....	33
14.03 Exclusive Benefit.....	33
14.04 Copies of Amendments.....	33
XV. NON-ASSIGNABILITY.....	34
15.01 Non-Assignability.....	34
15.02 Qualified Domestic Relations Orders.....	34
XVI. DISCLAIMER.....	35
XVII. INTERPRETATION.....	35
19.01 Governing Law.....	35
19.02 § 401(a).....	35
19.03 Word Usage.....	35
19.04 Headings.....	35
19.05 Entire Agreement.....	35

**SECTION 401(a) PROFIT SHARING PLAN  
FOR GOVERNMENTAL EMPLOYERS**

**I. INTRODUCTION**

In accordance with the provisions of § 401(a) of the Internal Revenue Code of 1986, as amended, the Employer named in Section A. of the Adoption Agreement hereby establishes this § 401(a) Profit Sharing Plan, hereinafter referred to as the “Plan.” The Plan is intended to be a profit sharing plan under § 401(a) of the Code and a governmental plan under § 414(d) of the Code and ERISA § 3(32) and shall be construed in a manner consistent with those provisions. Nothing contained in this Plan shall be deemed to constitute an employment agreement between any Participant and the Employer, and nothing contained herein shall be deemed to give a Participant any right to be retained in the employ of the Employer.

**II. DEFINITIONS**

2.01 “Account” shall mean the separate account or accounts established by the Plan Administrator or the Trustee on behalf of each Participant in accordance with Section 9.04.

2.02 “Administrator” or “Plan Administrator” shall mean the person, persons or entity appointed by the Employer to administer the Plan pursuant to Section 3.02, if any, but shall not include any company which issues policies, contracts, or investment media to the Plan in respect of a Participant, as such.

2.03 “Adoption Agreement” shall mean the Agreement which, together with this sample Basic Plan Document, constitutes the Plan.

2.04 “Beneficiary” shall mean the persons or entities designated by a Participant pursuant to Section 4.05.

2.05 “Code” shall mean the Internal Revenue Code of 1986, as now in effect or as hereafter amended or recodified. References herein to specific section numbers of the Code shall be deemed to include Treasury regulations and Internal Revenue Service guidance thereunder as in effect now, as amended or recodified in corresponding provisions of any future United States internal revenue law.

2.06 “Compensation” shall mean a Participant’s Code § 3401(a) compensation, Code § 415 compensation, W-2 compensation, or any other form of compensation, whichever is specified in the Adoption Agreement.

If Code § 3401(a) compensation is selected in the Adoption Agreement, Compensation shall mean a Participant’s wages as defined in Code § 3401(a) for 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 employment or the services performed (such as the exception for agriculture labor in Code § 3401(a)(2)).

If Code § 415 compensation is selected in the Adoption Agreement, Compensation shall have the meaning provided in Code § 415(c)(3) and the Treasury regulations issued thereunder. In addition, compensation that is received after severance from employment and paid by the later of 2 ½ months after severance from the Employer maintaining the Plan or the end of the calendar year in which the Employee severs employment with the Employer maintaining the Plan and is described in (a) Treasury Regulation § 1.415(c)-2(e)(3)(ii); or (b) Treasury Regulation § 1.415(c)-2(e)(3)(iii) and those amounts would have been included in the definition of Compensation if such amounts were paid prior to severance from the Employer maintaining the Plan, shall not fail to be § 415 Compensation

If W-2 compensation is selected in the Adoption Agreement, Compensation shall mean a Participant's wages as defined in Code § 3401(a) for 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 employment or the services performed and all other payments of compensation paid by the Employer to the Participant for which the Employer is required to issue statements under Code §§ 6041(d), 6051(a)(3) and 6052. W-2 compensation must be determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or the services performed (such as the exception for agriculture labor in Code § 3401(a)(2)).

Compensation shall include only the compensation that is actually paid to the Participant during the period for which compensation is determined with respect to a Plan Year. For Plan Years beginning on or after January 1, 1998, Compensation shall also include any amount which is contributed by the Employer for the period pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under Code §§ 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b).

Compensation for any Plan Year will be determined for the Plan Year or the calendar year ending with or within the Plan Year, whichever is specified in the Adoption Agreement. With respect to a Participant's first year of participation in the Plan, the Participant's Compensation for purposes of allocating Employer contributions shall be his Compensation for the period commencing (i) as of the first day of the Plan Year or calendar year, whichever is applicable, or (ii) as of the first day the Employee became a Participant, consistent with the Employer's designation in the Adoption Agreement.

The annual Compensation of each Participant taken into account under the Plan for any year shall not exceed \$200,000 (\$150,000 for years prior to 2002) as adjusted for cost-of-living increases in accordance with Code § 401(a)(17)(B). If the Plan determines Compensation based on a period of time that contains fewer than 12 calendar months, the annual Compensation limit is an amount equal to the annual Compensation limit for the calendar year in which the Compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by 12.

For Plan Years after December 31, 2008, to the extent permitted by the applicable Code provisions and Treasury regulations, Compensation shall include pay received by a Participant from the Employer while performing Qualified Military Service but only to the extent the pay

does not exceed the amounts the Participant would have received if the Participant had continued to perform services for the Employer rather than entering Qualified Military Service.

2.07 “Custodial Account” shall mean the account established with a bank, trust company or other entity that satisfies the provisions of Code § 401(f), if the Employer has elected to satisfy the trust requirement of Code § 401(a) by setting aside Plan assets in a custodial account.

2.08 “Custodian” shall mean the bank, trust company or other person authorized to hold the assets of such a custodial account in accordance with regulations issued by the Secretary of the Treasury pursuant to Code § 401(f) that is selected by the Employer to hold Plan assets, if the Employer has elected to use a custodial account pursuant to Code §§ 401(a) and 401(f).

2.09 “Disability” shall mean, as selected in the Adoption Agreement: (a) the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, within the meaning of Code § 72(m)(3); (b) an illness or injury of a potentially permanent nature, expected to last for a continuous period of not less than 12 months, certified by a physician selected by or satisfactory to the Employer which prevents the Employee from engaging in any occupation for wage or profit for which the Employee is reasonably fitted by training, education or experience; (c) an illness or injury of a potentially permanent nature, expected to last for a continuous period of not less than 12 months, certified by a physician selected by or satisfactory to the Employer which prevents the Employee from engaging in his or her occupation; or (d) an alternative definition of Disability as set forth in the Adoption Agreement.

2.10 “Early Retirement Age” shall mean the age set by the Employer in the Adoption Agreement (but not earlier than 55), which is the earliest age at which a Participant may retire and receive his or her benefits under the Plan.

2.11 “Eligibility Computation Period” shall mean the period for determining Years of Service for purposes of eligibility. The initial Eligibility Computation Period is the 12-consecutive month period beginning on the Employment Commencement Date. In the event an Employee fails to become a Participant within the initial Eligibility Computation Period, the Eligibility Computation Period shall mean the Plan Year, beginning with the Plan Year in which occurs the first anniversary of the Employee’s Employment Commencement Date.

2.12 “Employee” shall mean those individuals specified in the Adoption Agreement.

2.13 “Employer” shall mean the sponsor of the Plan as named in the Adoption Agreement. The Employer must be the government of a state or political subdivision of a state or an agency or instrumentality of a state or political subdivision of a state, which is eligible to maintain a governmental plan within the meaning of Code § 414(d) and ERISA § 3(32).

2.14 “Employment Commencement Date” shall mean the Employee’s date of hire or rehire, as applicable, with respect to which an Employee is first credited with an Hour of Service.

2.15 “Entry Date” shall mean the entry date(s) specified in the Adoption Agreement.



2.16 “Hour of Service” shall generally mean an hour for which an Employee is paid or entitled to be paid, and the basis for determining Hours of Service shall be specified in the Adoption Agreement.

2.17 “Normal Retirement Age” shall mean the normal retirement age specified in the Adoption Agreement.

2.18 “Participant” shall mean any Employee who becomes a Participant pursuant to Section 4.01. Except for purposes of Articles IV, XII, and XIII the term “Participant” shall include former Participants. The Administrator, if he or she is otherwise eligible, may participate in the Plan.

2.19 “Plan” shall mean the Plan named in the Adoption Agreement and consisting of the Adoption Agreement and this sample Basic Plan Document.

2.20 “Plan Year” shall mean the calendar year or other 12-consecutive-month period as specified in the Adoption Agreement.

2.21 “Qualified Domestic Relations Order” or “QDRO” shall have the meaning specified in Section 15.02.

2.22 “Qualified Military Service” shall mean any service in the uniformed service (as defined in Chapter 43 of Title 38 of the United States Code as in effect as of December 12, 1994) by any individual if such individual is entitled to reemployment rights under such Chapter with respect to such service.

2.23 “Severance from Employment” shall mean severance of the Participant’s employment with the Employer. A Participant shall be deemed to have severed his employment with the Employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the Participant by the Employer.

2.24 “Trust” shall mean the trust created under Article VIII of the Plan if the Employer or certain employees are named as Trustee(s) in the Adoption Agreement. Alternatively, “Trust” shall mean a trust created by a separate written agreement between the Employer and the Trustee if a bank or trust company is named as Trustee in the Adoption Agreement. The Trust shall consist of all Plan assets held by the Trustee named in the Adoption Agreement.

2.25 “Trustee” shall mean the Employer or such other person, persons or entity selected by the Employer who agrees to act as Trustee hereunder if elected in the Adoption Agreement. This term (except as used in Article VIII) also refers to the person holding the assets of any custodial account or holding any annuity contract described in Section 8.01.

2.26 “USERRA” shall mean the Uniformed Services Employment and Re-employment Rights Act of 1994, as amended.

2.27 “Vesting Computation Period” shall mean, as designated by the Employer in the Adoption Agreement, the Plan Year or the 12-consecutive-month period beginning on an Employee’s Employment Commencement Date and each anniversary thereof.

2.28 “Year of Service” shall mean a Year of Service as designated by the Employer in the Adoption Agreement.

### **III. ADMINISTRATION**

3.01 Administrator. The Employer shall be the Administrator unless another person or persons is appointed by the Employer in the Adoption Agreement as set forth in Section 3.02.

3.02 Appointment and Termination of Administrator. The Administrator may be named in the Adoption Agreement by the Employer and may be a Participant. The Administrator shall remain in office at the will of the Employer and may be removed from office at any time by the Employer, with or without cause. Such removal shall be effective upon delivery of written notice to the Administrator or at such later time as may be designated in such notice; provided that any such notice of removal shall take effect no later than 60 days after the delivery thereof, unless such 60 day period shall be waived. The Administrator may resign at any time upon giving written notice to the Employer or at such later time as may be designated in the notice of resignation; provided that (a) any such notice of resignation shall take effect no later than 60 days after the delivery thereof, unless such 60 day period shall be waived, and (b) upon such resignation or removal the Employer shall have the power and the duty to designate and appoint a successor Administrator (which may be the Employer), and the actual appointment of a successor Administrator is a condition that must be fulfilled before the resignation or removal of the Administrator shall become effective. Upon appointment, the successor Administrator shall have all the rights, powers, privileges, liabilities and duties of the predecessor Administrator. The Administrator so resigned or removed shall take any and all action necessary to vest the rights, powers, privileges, liabilities and duties of the Administrator in the successor.

3.03 Duties of Plan Administrator. Subject to any applicable laws and any approvals required by the Employer, the Plan Administrator shall have full power and authority to adopt rules, regulations and procedures for the administration of the Plan and to interpret, alter, amend or revoke any rules, regulations or procedures so adopted. The Plan Administrator’s duties shall include:

- (a) appointing the Plan’s attorney, accountant, actuary, custodian or any other party needed to administer the Plan or the Plan assets;
- (b) directing the Trustee with respect to payments from the Plan assets held in Trust;
- (c) communicating with Employees regarding their participation and benefits under the Plan, including the administration of all claims procedures;
- (d) filing any returns and reports with the Internal Revenue Service or any other governmental agency;

- (e) reviewing and approving any financial reports, investment reviews, or other reports prepared by any party appointed under paragraph (a);
- (f) establishing a funding policy and investment objectives consistent with the purposes of the Plan; and
- (g) construing and resolving any question of Plan interpretation. The Plan Administrator's interpretation of Plan provisions including eligibility and benefits under the Plan is final.

3.04 Administrative Fees and Expenses. All reasonable costs, charges and expenses incurred by the Plan Administrator in connection with the administration of the Plan (including fees for legal services rendered to the Plan Administrator) may be paid by the Employer, but if not paid by the Employer when due shall be paid from Plan assets. Such reasonable compensation to the Administrator as may be agreed upon from time to time between the Employer and Plan Administrator may be paid by the Employer, but if not paid by the Employer when due shall be paid from Plan assets. Notwithstanding the foregoing, no compensation other than reimbursement for expenses shall be paid to a Plan Administrator who is the Employer or a full-time Employee of the Employer. In the event any part of the assets in the Plan becomes subject to tax, all taxes incurred shall be paid from the Plan assets unless the Plan Administrator advises the Trustee not to pay such tax.

3.05 Actions of Administrator. Every action taken by the Plan Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him, her or it. The Plan Administrator shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Plan Administrator shall not be liable for Employer contributions or for other amounts payable under the Plan.

3.06 Delegation. Subject to any applicable laws and any approvals required by the Employer, the Plan Administrator may delegate any or all of his, her or its powers and duties hereunder to another person, persons or entity, and may pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

3.07 Investment and Service Providers. Any company which issues policies, contracts, or investment media to the Employer or in respect of a Participant is not a party to this Plan, and such company shall have no responsibility, accountability, or liability to the Employer, the Administrator, any Participant or any Beneficiary with regard to the operation or adequacy of this Plan, including any future amendments made thereto.

#### **IV. PARTICIPATION IN THE PLAN**

4.01 Eligibility. Each Employee shall become a Participant on the Entry Date coinciding with or next following his satisfaction of the participation requirements designated by the Employer in the Adoption Agreement.

4.02 Participation Upon Reemployment. A former Participant or former Employee who satisfied the eligibility requirements of Section 4.01 prior to his termination of employment shall become a Participant immediately upon the date of his reemployment. Any other Employee who is reemployed shall become a Participant on the Entry Date coinciding with or next following satisfaction of the eligibility conditions of Section 4.01, or if later, the date of reemployment.

4.03 Change in Employment Status. In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate, such Employee will participate immediately upon returning to an eligible class of Employees. In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

4.04 Years of Service Taken Into Account for Participation Purposes. All Years of Service with the Employer are counted toward eligibility. Years of Service with a predecessor employer are counted only if selected in the Adoption Agreement.

4.05 Beneficiary. Each Participant may designate, in a manner authorized by the Administrator, a Beneficiary or Beneficiaries to receive any amounts which may be distributed in the event of the death of the Participant prior to the complete distribution of benefits. A Participant may change the designation of Beneficiaries at any time by filing with the Administrator a written notice on a form approved by the Administrator. If no such designation is in effect on the Participant's death, the Beneficiary shall be the Participant's surviving spouse, if any, and then his estate.

4.06 Qualified Military Service. A Reemployed Veteran's period of Qualified Military Service shall be taken into account in determining Years of Service under Section 7.02 of the Plan. "Reemployed Veteran" means any Employee who terminated employment with the Employer, subsequently had the right to be reemployed by the Employer under Chapter 43 of Title 38 of the United States Code and became reemployed by the Employer under that Chapter as an Employee.

## **V. CONTRIBUTIONS AND FORFEITURES**

5.01 Employer Contributions. The Employer shall contribute to the Plan for each Plan Year the amount determined pursuant to the contribution option selected by the Employer in the Adoption Agreement; provided, however, that the Employer shall not make a contribution to the Plan for any Plan Year to the extent such contribution would exceed the limitations of Section 6.01.

If any Employee who should be included as a Participant for any Plan Year is erroneously omitted and discovery of such omission is not made until after a contribution for the Plan Year has been made pursuant to this Section 5.01, the Employer shall, subject to applicable IRS guidance, make a subsequent contribution so that the omitted Employee receives the total amount which such Employee would have received had he or she not been omitted.

If any person who should not have been included as a Participant for any Plan Year is erroneously included, discovery of such incorrect inclusion is not discovered until after a contribution on behalf of such person has been made for the Plan Year pursuant to this Section 5.01, and such incorrect inclusion is not a mistake of fact, then the amount contributed on behalf of such person shall, subject to applicable IRS guidance, constitute a forfeiture. Such forfeiture shall be used to reduce contributions otherwise due from the Employer.

5.02 Treatment of Forfeitures. As designated by the Employer in the Adoption Agreement, forfeitures arising under the Plan shall be reallocated to Participants in accordance with Section 5.03 as an additional Employer contribution, used to offset plan expenses or used to reduce Employer contributions for the next Plan Year. A forfeiture occurs at the earlier of the time the Participant receives or is deemed to receive distribution of his vested Employer Contribution Account balance following the Participant's Severance from Employment or the last day of the Plan Year in which his Severance from Employment occurs. If a Participant's vested Employer Contribution Account balance is zero at the time of his or her Severance from Employment, the Participant shall be deemed to have received a distribution of the entire Account balance.

5.03 Allocation of Employer Contributions. Employer contributions shall be allocated to the appropriate Account of eligible Participants as designated by the Employer in the Adoption Agreement. Employer contributions shall be allocated to eligible Participants in the ratio that each such Participant's Compensation bears to the Compensation of all Participants, or in such other manner as designated by the Employer in the Adoption Agreement.

5.04 Return of Employer Contributions. Contributions to and income of the Plan shall not be diverted to or used for any purpose other than the exclusive benefit of the Participants or their Beneficiaries. Notwithstanding the preceding sentence, contributions made by an Employer may be returned to such Employer if the contribution was made by the Employer because of a mistake of fact and is returned to the Employer within one year of the contribution or if the contribution is conditioned on the initial qualification of the Plan and the contribution is returned to the Employer within one year after the date of an adverse determination, but only if the application for the initial qualification is made on or before or such date as the Secretary of the

Treasury may prescribe for the filing of an initial request for determination letter by a governmental plan.

5.05 Employee Contributions. If so elected in the Adoption Agreement, (a) each Participant shall contribute to the Plan the percentage of Compensation mandated in the Adoption Agreement, and/or (b) each Participant may make after-tax contributions; provided, however, that a Participant shall not make a contribution to the Plan for any Plan Year to the extent such contribution would exceed the limitations of Section 6.01.

Employee contributions shall be credited to appropriate Account(s) established for the Participant and shall be distributed to such Participant or his Beneficiary at such time and in such form as shall be selected in accordance with Article X. A Participant's Mandatory Contribution Account and After-tax Contribution Account shall be nonforfeitable at all times.

All mandatory amounts designated as employee contributions under this Section, shall be paid by the Employer for all Employees ("picked up by the Employer") in order to be treated as Employer contributions under Code § 414(h)(2).

5.06 Rollover Contributions. If authorized by the Employer in the Adoption Agreement, the Plan Administrator, in its sole discretion, may direct the Trustee to accept a rollover contribution on behalf of a Participant or an Employee who may become a Participant. A rollover contribution for purposes of this Section 5.06 is an eligible rollover distribution (as defined in Code § 402(f)(2)) to a Participant from (i) a plan qualified under Code § 401(a); (ii) an annuity qualified under Code § 403(a); (iii) an individual retirement account or annuity described in Code §§ 408(a) or 408(b); or (iv) for Plan Years beginning on or after January 1, 2002, a tax-sheltered annuity described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) maintained by an eligible employer described in Code § 457(e)(1)(A), that is either paid directly from such plan or contributed to the Plan by the Participant within 60 days of such Participant's receipt of such distribution from the distributing plan. Prior to accepting any rollover contributions, the Plan Administrator may require that the Participant establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of Treasury Regulation § 1.401(a)(31)-1 or as otherwise provided in the Code. The Plan Administrator shall separately account for the portion of any rollover contribution which is includible in gross income and the portion which is not so includible.

Rollover contributions shall be credited to a Rollover Contribution Account established for the Participant or Employee, and such Account shall be nonforfeitable at all times. A Participant's Rollover Contribution Account shall be distributed to such Participant or his Beneficiary at such time and in such form as shall be selected in accordance with Article X.

Notwithstanding any other provisions of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs, will be treated as eligible rollover distributions.

5.07 Transfer Contributions. If authorized by the Employer in the Adoption Agreement, the Plan Administrator, in its sole discretion, may direct the Trustee to accept a

direct transfer of amounts from the trustee of another plan qualified under Code § 401(a) on behalf of a Participant or Employee.

Direct transfers shall be credited to a Transfer Contribution Account established for the Participant or Employee, and such Account shall be nonforfeitable at all times. A Participant's Transfer Contribution Account shall be distributed to such Participant or his Beneficiary at such time and in such form as shall be selected in accordance with Article X.

5.08 USERRA. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to Qualified Military Service shall be provided in accordance with Code § 414(u). During the period that begins on a Reemployed Veteran's date of reemployment and continues for the lesser of three times the duration of the period of his Qualified Military Service or five years, a Reemployed Veteran may make mandatory Employee contributions, After-tax Contributions or other contributions equal to the maximum contributions of each type that he would have been required or permitted to make under the Plan had the Reemployed Veteran been an eligible Participant during the period of Qualified Military Service, less any such contributions of the same type actually made during such period. If the Employer has elected in the Adoption Agreement to make pick-up or Employer contributions with respect to mandatory contributions or to make Matching Contributions with respect to After-tax Contributions or contributions to or deferrals under any other plan, then the Employer shall make such Employer contributions or Matching Contributions on behalf of any Reemployed Veteran with respect to any mandatory contributions or After-tax Contributions made under this Section 5.08 or such other contributions or deferrals made under the other plan following his reemployment.

Earnings or forfeitures shall not be required to be credited with respect to contributions made under this Section 5.08 for any period before such contributions are actually made to the Plan. For purposes of applying the limitations on each type of contribution under the Plan and annual additions under Section 6.01, the limitations for the year to which a contribution under this Section 5.08 relates (rather than the year in which such contribution is actually made) shall apply. For purposes of this Section 5.08 and applying the limitations of Section 6.01, a Reemployed Veteran will be treated as having received Compensation for a Plan Year during which the Reemployed Veteran performed Qualified Military Service equal to the (i) Compensation the Reemployed Veteran would have received during such period if he had remained actively employed, determined based on the rate of pay he would have received from the Employer but for the period of Qualified Military Service, or (ii) if the Compensation the Reemployed Veteran would have received during such period is not reasonably certain, the Reemployed Veteran's average Compensation for the 12-month period (or other period if his period of employment is shorter than 12 months) immediately before he commenced his Qualified Military Service.

## **VI. LIMITATIONS ON ALLOCATIONS**

6.01 General Limitation. The amount of annual additions which may be credited to the Participant's Account (a) for any limitation year beginning prior to 2002 shall not exceed the lesser of \$30,000 (as adjusted under Code §415(d)) or 25% of such Participant's Compensation for the limitation year, or (b) for any limitation year beginning in 2002 or later shall not exceed

the lesser of \$40,000 (as adjusted under Code § 415(d)) or 100% of such Participant's Compensation for the limitation year. The percentage of Compensation limit shall not apply to any contribution for medical benefits (within the meaning of Code § 401(h) or Code § 419(A)(f)(2) after separation from service) which is otherwise treated as an annual addition under Code § 415(l)(1) or Code § 419A(d)(2).

If the Employer contribution that would otherwise be contributed or allocated to the Participant's Account would cause the annual additions for the limitation year to exceed the limitations of the preceding sentence, the amount contributed or allocated shall be reduced so that the annual additions for the limitation year shall equal the applicable limitation.

If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive-month period, the maximum permissible amount will not exceed the dollar limitation specified above multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

6.02 Estimation of Compensation. Prior to determining the Participant's actual Compensation for the limitation year, the Employer may determine the applicable limitation of Section 6.01 for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the limitation year, uniformly determined for all Participants similarly situated; provided, however, that as soon as is administratively feasible after the end of the limitation year, the applicable limitation for the limitation year shall be determined on the basis of the Participant's actual Compensation for the limitation year.

6.03 Treatment of Excess Annual Additions. If pursuant to Section 6.02, as a result of the allocation of forfeitures, or in other circumstances determined by the Commissioner of Internal Revenue to justify application of these rules, an amount in excess of the limitation of Section 6.01 is allocated to such Participant, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

- (a) Subject to applicable IRS guidance, the excess shall be disposed of as follows:
  - (i) Any after-tax contributions or elective deferrals (plus attributable earnings) to the extent they would reduce the excess amount will be distributed to the Participant;
  - (ii) If the Participant is covered by the Plan at the end of the limitation year, the excess amount in the Participant's Account shall be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next limitation year and succeeding limitation years if necessary;
- (b) If after the application of subsection (a) an excess amount still exists and the Participant is not covered by the Plan at the end of a limitation year, the excess



amount shall be held unallocated in a suspense account. The suspense account shall be applied to reduce future Employer contributions for all remaining Participants in the next limitation year and succeeding limitation years if necessary.

If a suspense account is in existence at any time during a limitation year pursuant to this Section, it shall not participate in the allocation of the Plan's investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account must be allocated and reallocated to Participants' accounts before any Employer contributions may be made to the Plan for that limitation year.

6.04 Participation in Other Individual Account Plans. This Section applies if, in addition to this Plan, the Participant is covered under a qualified defined contribution plan maintained by the Employer, a welfare benefit fund as defined in Code § 419(e) maintained by the Employer, an individual medical account as defined in Code § 415(1)(2) maintained by the Employer, or a simplified employee pension maintained by the Employer that provides an annual addition as defined in Section 6.06 during any limitation year. The annual additions which may be credited to a Participant's Account under this Plan for any such limitation year shall not exceed the limitation of Section 6.01 reduced by the annual additions credited to a Participant's account under such other plans and welfare benefits funds 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 limitation of Section 6.01 and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed or allocated shall be reduced so that the annual additions under all such plans and funds for the limitation year shall equal the limitation of Section 6.01. If the annual additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the limitation of Section 6.01, no amount shall be contributed or allocated to the Participant's Account under this Plan for the limitation year.

6.05 Participation in Defined Benefit Plan. For limitation years beginning before December 31, 1999, if selected in the Adoption Agreement, with respect to a Participant who also participates in a defined benefit plan maintained by the Employer, annual additions to this plan will be limited as necessary to comply with Code § 415(e).

6.06 Definitions. The following definitions shall apply for purposes of this Article VI only:

- (a) Annual additions: The sum of the following amounts credited to a Participant's Account for the limitation year:
  - (i) Employer contributions;
  - (ii) Employee contributions;
  - (iii) Forfeitures;

- (iv) Amounts allocated to an individual medical account, as defined in Code § 415(1)(2), which is part of a pension or annuity plan maintained by the Employer; and
- (v) amounts 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.

For this purpose, any excess amount applied in a limitation year to reduce Employer contributions shall be considered an annual addition for such limitation year.

- (b) Compensation. Compensation shall mean Code § 415 compensation as defined in Section 2.05.
- (c) Employer. For purposes of this Article, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code § 414(b) as modified by Code § 415(h)), all commonly controlled trades or businesses (as defined in Code § 414(c) as modified by Code § 415(h) or affiliated service groups (as defined in Code § 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code § 414(o).
- (d) Excess Amount. The excess of the Participant's annual additions for the limitation year in excess of the limitations of Section 6.01.
- (e) Limitation Year. The calendar year. All qualified plans maintained by the Employer shall use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made. If the Plan is terminated effective as of a date other than the last day of the limitation year, the Plan is treated for purposes of this definition as if the Plan was amended to change its limitation year resulting in a short limitation year ending on the date of termination.

## **VII. VESTING**

7.01 Vesting. Each Participant shall acquire a vested interest in his Employer Contribution Account in accordance with the vesting schedule selected by the Employer in the Adoption Agreement, provided, however, that a Participant shall be fully vested in his Employer Contribution Account upon attaining Early Retirement Age (if employed by the Employer on such date), Normal Retirement Age (if employed by the Employer on such date), if his employment terminates as a result of death, disability or as provided in Section 14.01. If a Participant's employment terminates prior to his Early Retirement Age, if any, or, if none, Normal Retirement Age for any reason other than death or disability, then he shall be entitled to receive the vested percentage of his Employer Contribution Account balance (and the remaining

balance shall be forfeited) derived from Employer contributions determined based on Years of Service with the Employer and the vesting schedule selected by the Employer in the Adoption Agreement.

7.02 Years of Service for Vesting. For purposes of determining a Participant's vested interest (a) all Years of Service shall be credited to the Participant without regard to any breaks in service, and (b) the determination of whether a Participant has completed a Year of Service for vesting purposes shall be made with reference to the Vesting Computation Period. Notwithstanding the foregoing, a Reemployed Veteran's period of Qualified Military Service shall be taken into account in determining Years of Service under the Plan.

## **VIII. HOLDING OF PLAN ASSETS; CREATION OF TRUST AND TRUST FUND**

8.01 Custody of Plan Assets. All contributions under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held for the exclusive benefit of Participants and their Beneficiaries. The trust requirement of Code § 401(a) shall be satisfied in the manner specified in the Adoption Agreement. Depending upon the choices made in the Adoption Agreement, Plan assets shall be set aside as follows:

- (a) If elected in Box D. 1 of the Adoption Agreement, Plan assets shall be set aside in trust pursuant to this Article VIII with the Employer or certain employees of (or holders of certain positions with) the Employer named as Trustee. The Trustee shall be named in the Adoption Agreement and shall accept such appointment by executing same. All contributions to the Plan shall be transferred to the Trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.
- (b) If elected in Box D. 2 of the Adoption Agreement, Plan assets will be set aside in trust pursuant to a separate written trust agreement entered into between the Employer and the bank or trust company named as Trustee, and the provisions of Sections 8.02 through 8.13 shall not apply to the Plan. The bank or trust company named in the Adoption Agreement shall be the Trustee and shall accept such appointment by executing the same. Any Trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state where the Employer is located. All contributions to the Plan shall be transferred to a Trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.
- (c) If elected in Box D. 3 of the Adoption Agreement, Plan assets shall be set aside in one or more annuity contracts described in Code § 401(f), and the provisions of Sections 8.02 through 8.13 shall not apply to the Plan. Notwithstanding any contrary provision of the Plan, including any annuity contract issued under the Plan in accordance with Code § 401(a), all contributions to the Plan, all property and rights purchased with such amounts, and all income attributable to such

amounts, property, or rights shall be held under one or more annuity contracts, as defined in Code § 401(g), issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of Participants and Beneficiaries under the Plan. For this purpose, the term “annuity contract” does not include a life, health or accident, property, casualty, or liability insurance contract. The owner of the annuity contract is the “deemed trustee” of the assets invested under the contract for purposes of Code § 401(a). All contributions to the Plan shall be transferred to such annuity contract within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.

- (d) If elected in Box D. 4 of the Adoption Agreement, Plan assets shall be set aside in one or more Custodial Accounts described in Code § 401(f). The bank, trust company or other person named in the Adoption Agreement shall be the Custodian and “deemed trustee” for purposes of Code § 401(a) and shall accept such appointment by executing the same. The Employer and Custodian shall enter into a separate written custodial agreement, and the provisions of Sections 8.02 through 8.13 shall not apply to the Plan. For purposes of this paragraph, the Custodian of any Custodial Account created pursuant to the Plan must be a bank, as described in Code § 408(n), or a person who meets the non-bank Trustee requirements of paragraphs (2)-(6) of § 1.408-2(e) of the Treasury regulations relating to the use of non-bank Trustees. All contributions to the Plan shall be transferred to a Custodial Account described in Code § 401(f) within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.

8.02 Establishment of Trust. If elected in Box D.1 of the Adoption Agreement, the Employer or named Employees of the Employer (or certain holders of positions with the Employer) shall serve as Trustee as evidenced by the Trustee’s execution of the applicable page of the Adoption Agreement. In that event, a Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries. The Trust shall consist of all contributions made under the Plan and the investment thereof and earnings thereon. Except to the extent that the Employer enters into a separate written trust agreement with an institutional Trustee, the assets in Trust shall be administered as provided in this document.

8.03 Appointment and Termination of Trustee. A Trustee may be named by the Employer and may be a Participant. The Trustee shall remain in office at the will of the Employer and may be removed from office at any time by the Employer, with or without cause. Such removal shall be effective upon delivery of written notice to the Trustee or at such later time as may be designated in such notice; provided that any such notice of removal shall take effect no sooner than 30 days and no later than 60 days after the delivery thereof, unless such 30- or 60-day period shall be waived. The Trustee may resign at any time upon giving written notice to the Employer or at such later time as may be designated in the notice of resignation; provided that (a) any such notice of resignation shall take effect no sooner than 30 days and no later than 60 days after the delivery thereof, unless such 30-day or 60-day period shall be waived; and (b) upon such resignation or removal the Employer shall have the power and the duty to designate and appoint a successor Trustee and the actual appointment of a successor Trustee is a

condition that must be fulfilled before the resignation or removal of the Trustee shall become effective.

Upon appointment, the successor Trustee shall have all the rights, powers, privileges, liabilities and duties of the predecessor Trustee. The Trustee so resigned or removed shall take any and all action necessary to vest the rights, powers, privileges, liabilities and duties of the Administrator in his, her or its successor.

8.04 Acceptance. By signing the Adoption Agreement the Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed under this Article VIII.

8.05 Control of Plan Assets. The assets of the Trust or evidence of ownership shall be held by the Trustee, under the terms of the Plan and under either this Article VIII or under the separate written trust agreement with a bank or trust company. If the assets represent amounts transferred from a former plan, the Trustee shall not be responsible for the propriety of any investment under the former plan.

8.06 General Duties of the Trustee. The Employer or the individual(s) named as Trustee(s) in the Adoption Agreement shall be responsible for the administration of investments held in the Plan. The Trustee's duties shall include:

- (a) receiving contributions under the terms of the Plan;
- (b) making distributions from Plan assets held in Trust in accordance with written instructions received from an authorized representative of the Employer;
- (c) keeping accurate records reflecting the administration of the Trust assets and making such records available to the Employer for review and audit. Within 90 days after each Plan Year, and within 90 days after its removal or resignation, the Trustee shall file with the Employer an accounting of the administration of the Trust assets during such year or from the end of the preceding Plan Year to the date of removal or resignation. Such accounting shall include a statement of cash receipts and disbursements since the date of its last accounting and shall contain an asset list showing the fair market value of investments held in the Trust as of the end of the Plan Year; the value of marketable investments shall be determined using the most recent price quoted on a national securities exchange or over-the-counter market. The value of non-marketable investments shall be determined in the sole judgment of the Trustee, which determination shall be binding and conclusive. The value of investments in securities or obligations of the Employer in which there is no market shall be determined in the sole judgment of the Employer, and the Trustee shall have no responsibility with respect to the valuation of such assets. The Employer shall review the Trustee's accounting and notify the Trustee in the event of its disapproval of the report within 90 days, providing the Trustee with a written description of the items in question. The Trustee shall have 60 days to provide the Employer with a written explanation of the items in question; and

- (d) employing such agents, attorneys or other professionals as the Trustee may deem necessary or advisable in the performance of the Trustee's duties.

The Trustee's duties shall be limited to those described above. The Employer or the Administrator shall be responsible for any other administrative duties required under the Plan or by applicable law.

8.07 Investment Powers of the Trustee. The Trustee shall implement an investment program based on the Employer's investment objectives. If either the Employer or the Employee fails to issue investment directions as provided in Article IX, the Trustee shall have authority to invest the Trust assets in its sole discretion. In addition to powers given by law, the Trustee may:

- (a) invest the Trust assets in any form of property, including common and preferred stocks, exchange and trade put and call options, bonds, money market instruments, mutual funds (including Trust assets for which the Trustee or an affiliate serves as investment advisor), Treasury bills, deposits at reasonable rates of interest at banking institutions, including but not limited to savings accounts and certificates of deposit, and other forms of securities or investment of any kind, class, or character whatsoever, or in any other property, real or personal, having a ready market;
- (b) invest and reinvest all or any part of the Trust assets in any insurance policies or other contracts with insurance companies, including but not limited to individual or group annuity, deposit administration, and guaranteed interest contracts. Such contracts shall be held in the name of the Trustee;
- (c) transfer any assets of the Trust to any group or common, collective or commingled fund that is maintained by a bank or other institution that is established to permit the pooling of separate trusts so long as such trust assets are permitted investments for § 401(a) plans;
- (d) hold cash uninvested and deposit same with any banking or savings institution at reasonable interest;
- (e) deposit fees earned from revenue sharing, 12(b)(1) fees, any investment gains and any otherwise unallocated trust assets into an account to be invested in any employer-directed investment option available under the Plan;
- (f) join in or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties, including those in which it is interested as a Trustee, upon such terms as it deems wise;
- (g) hold investments in nominee or bearer form;
- (h) to vote or refrain from voting any stocks, bonds, or other securities held in the Trust, to exercise any other right appurtenant to any securities or other property held in the Trust, to vote or refrain from voting proxies;

- (i) exercise all ownership rights with respect to assets held in the Trust; and
- (j) do any and all other acts that may be deemed necessary in the performance of the Trustee's duties hereunder.

8.08 Trustee Fees and Expenses. All reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Trust assets (including fees for legal services rendered to the Trustee) may be paid by the Employer, but if not paid by the Employer when due, shall be paid from the Trust. Such reasonable compensation to an institutional Trustee as may be agreed upon from time to time between the Employer and the Trustee may be paid by the Employer, but if not paid by the Employer when due shall be paid by the Trust. The Trustee shall have the right to liquidate Trust assets to cover its fees. Notwithstanding the foregoing, no compensation other than reimbursement for expenses shall be paid to a Trustee who is the Employer or a full-time Employee of the Employer. In the event any part of the Trust assets become subject to tax, all taxes incurred shall be paid from the Trust unless the Plan Administrator advises the Trustee not to pay such tax. If pursuant to 8.07(e) an account holding uninvested trust assets is in existence at anytime during the Plan Year, all amounts in the account shall be first used to offset any plan expenses and any amounts remaining shall be allocated to Participant's accounts no later than the end of the Plan Year.

8.09 Exclusive Benefit Rules. No part of the Trust assets shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with an interest in the Plan, and the Beneficiary or Beneficiaries of a deceased Participant having an interest in the Trust assets at the death of the Participant.

8.10 Trustee Actions. Every action taken by the Trustee shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The Trustee shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Trustee shall not be liable for amounts of Employer contributions or for other amounts payable under the Plan.

8.11 Delegation. Subject to any applicable laws and any approvals required by the Employer, the Trustee may delegate any or all powers and duties hereunder to another person, persons or entity and may pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

8.12 Division of Duties and Indemnification. The Trustee shall have the authority and discretion to manage the Trust assets to the extent provided in this instrument, but the Trustee does not guarantee the Trust in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Trust assets to meet and discharge all or any liabilities of the Plan.

The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, or for any loss to or diminution of the Trust assets or for any other loss or damage which may result from the discharge of its duties hereunder except to the extent it is judicially determined that the Trustee has failed to exercise the care,

skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims.

The Employer warrants that all directions issued to the Trustee by it or the Plan Administrator shall be in accordance with the terms of the Plan and not contrary to the provisions of the Code.

The Trustee shall not be answerable for any action taken pursuant to any direction, consent, certificate or other paper or document on the belief that the same is genuine and signed by the proper person. All directions by the Employer or the Plan Administrator shall be in writing from the authorized individual or individuals named in the Adoption Agreement.

The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by this instrument or subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee shall rest solely with the Employer.

The Trustee shall be indemnified and held harmless by the Employer from and against any and all liability to which the Trustee may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act resulting from compliance with the instructions of the Employer, the employees or agents of the Employer, the Plan Administrator or any other fiduciary to the Plan and for any liability arising from the actions or inactions of any predecessor Trustee, custodian or other fiduciaries of the Plan, except to the extent liability is the result of the Trustee's gross negligence, willful misconduct or bad faith.

The Trustee shall not be responsible in any way for the application of any payments it is directed to make or for the adequacy of the Trust assets to meet and discharge any and all liabilities under the Plan.

8.13 Purchase of Life Insurance. If life insurance contracts are purchased by the Trustee on the life of any Participant, the following limitations shall be applicable:

- (a) Ordinary life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both non-decreasing death benefits and non-increasing premiums. If such contracts are purchased, less than one-half of the aggregate Employer contributions allocated to any Participant will be used to pay the premiums attributable to them.
- (b) Term and Universal Life - No more than one-quarter of the aggregate Employer contributions allocated to any Participant will be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.
- (c) Combination - The sum of one-half of the ordinary life insurance premiums and all other life insurance premiums will not exceed one-quarter of the aggregate Employer contributions allocated to any Participant.



As, when and if premium payments shall become due, the Trustee shall make such payment to the insurer from any funds then held by it and available for that purpose. The Trustee shall not be liable for non-payment of any premium unless funds sufficient for the purpose are delivered to it by the Employer within five business days prior to the expiration of the grace period for the payment of such premium or premiums. The insurance contracts on a Participant's life shall be converted to cash or an annuity or distributed to the Participant upon commencement of benefits.

The Trustee shall apply for and will be the owner of any insurance contract purchased under the terms of this Plan, and any contract will be endorsed as nontransferable. The insurance contract(s) must provide that proceeds will be payable to the Trustee, however the Trustee shall be required to pay over all proceeds of the contract(s) to the Participant's Beneficiary in accordance with the distribution provisions of the Plan. Under no circumstances shall the Trust retain any part of the proceeds. 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. The insurer shall not be or be deemed to be a party to the Plan.

## **IX. INVESTMENTS**

9.01 **Investment Options.** The Employer shall have the sole discretion to select one or more investment options from which Participants may instruct the Trustee as to the investment of their Account balances. These investment options may include specified life insurance policies, annuity contracts or investment media issued by an insurance company. It shall be the sole responsibility of the Employer to ensure that all investment options offered under the Plan are appropriate and in compliance with any and all state laws pertaining to such investments.

9.02 **Participant Investment Direction.** If the Employer chooses to designate one or more investment options in which Participants may direct investment of their Account, Participants shall have the option to direct the investment of their Account from among the investment options designated by the Employer. Such investment options shall be under the full control of the Trustee. A Participant's right to direct the investment of Account balances shall apply only to making selections among the options made available under the Plan and only to the extent specified by the Employer pursuant to uniform rules.

Each Participant shall designate in a manner authorized by the Administrator the one or more investment options in which he or she wishes to have his Account invested and may change such investment directions in accordance with and at the time or times specified under uniform rules established by the Administrator. The Participant's Account shall be debited or credited as appropriate to reflect all gains or losses on such investments.

Neither the Employer, the Administrator, the Trustee nor any other person shall be liable for any loss incurred by virtue of following the Participant's directions or by reason of any reasonable administrative delay in implementing such directions.

The Employer may from time to time change the investment options made available under the Plan pursuant to uniform rules established by the Administrator. If the Employer eliminates an investment option, all Participants who had chosen that investment option shall select another option. If no new option is selected by the Participant, money remaining in the eliminated

investment option shall be reinvested at the direction of the Employer. The Participants shall have no right to require the Employer to select or retain any investment option. Any change with respect to investment options made by the Employer or a Participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options.

9.03 Employer Investment Direction. To the extent the Employer chooses not to allow Participant direction of the investment of his Account, the Employer may direct the Trustee with respect to investments of the Plan assets, may appoint an investment manager to direct investments or may give the Trustee sole investment management responsibility. Any investment directive shall be made in writing by the Employer or investment manager. Such instructions regarding the delegation of investment responsibility shall remain in force until revoked or amended in writing. The Trustee shall not be responsible for the propriety of any investment made at the direction of the Employer or an investment manager and shall not be required to consult with or advise the Employer regarding the investment quality of any directed investment held hereunder.

If the Employer fails to direct the investment of Plan assets or name an investment manager, the Trustee shall have full investment authority, including the right to automatically invest the available cash in an appropriate interim investment until specific investment directions are received.

9.04 Participant Accounts. The Administrator shall maintain or cause to be maintained one or more individual Accounts for each Participant. Such Accounts shall include, as necessary, an Employer Contribution Account for Employer contributions, Mandatory Contribution Account for mandatory contributions, After-tax Contribution Account for after-tax contributions, Rollover Accounts for IRA rollovers, qualified plan rollovers, after-tax contribution rollovers, Code § 457(b) plan rollovers, and Code § 403(b) plan rollovers; a Transfer Account for transfer for contributions and such other accounts as may be appropriate from time to time for plan administration. At regular intervals established by the Administrator, each Participant Account shall be credited with the amount of any Employer contributions paid into the Plan; debited with any applicable administrative or investment expense, including, but not limited to, fees charged to Participants, allocated on a reasonable and consistent basis; credited or debited with investment gain or loss, as appropriate; and debited with the amount of any distribution. At least once a year each Participant shall be notified in writing of his total Account balance.

## **X. DISTRIBUTIONS**

10.01 Distributions from the Plan. The payment of benefits from the Plan in accordance with the terms of the Plan may be made by the Trustee or by any Custodian or other person so authorized by the Employer to make such distribution. Neither the Plan Administrator, the Trustee or any other person shall be liable with respect to any distribution from the Plan made at the direction of the Employer or a person authorized by the Employer to give disbursement direction.

10.02 Conditions for Distributions.

- (a) Employer Contribution, Mandatory Contribution and Transfer Contribution Account(s). Payments from a Participant's Employer Contribution Account, Mandatory Contribution Account, or Transfer Contribution Account to the Participant or Beneficiary shall not be made earlier than:
  - (i) the Participant's Severance from Employment, disability, attainment of Early Retirement Age, Normal Retirement Age or death; or
  - (ii) the time the Participant incurs hardship pursuant to Section 10.04.
- (b) Rollovers and After-tax Contributions. Payments from a Participant's Rollover Account or After-tax Contribution Account may be made at any time.

10.03 Times of Distribution.

- (a) Subject to subsection (b), distributions to a Participant shall commence following his attainment of Early Retirement Age, Normal Retirement Age, Disability, death, or Severance from Employment on the regular distribution commencement date (as the Employer or Administrator may establish from time to time) elected by the Participant in a form and manner determined pursuant to sections 10.06 and 10.07.
- (b) Upon notice to Participants, and subject to sections 10.08 and 10.10, the Administrator may establish procedures under which a Participant whose total Account balance is less than an amount specified by the Administrator (not in excess of \$5,000 or other applicable limitation under the Code, but disregarding amounts in the Participant's Rollover Account for years after 2001 or amounts in the Participant's deemed IRA) will receive a lump sum distribution as soon as practicable following the Participant's Severance from Employment, notwithstanding any election made by the Participant pursuant to Section 10.03(a).
- (c) Notwithstanding the foregoing, distribution to a Participant shall commence no later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or retires and severs service with the Employer.

10.04 Hardship Withdrawals. If so specified in the Adoption Agreement, if the Plan Administrator has determined that a Participant has incurred a genuine hardship and that no other resources of relief are available, the Plan Administrator may grant, in its sole discretion, a Participant's request for a payment from the Participant's Employer Contribution Account; provided, however, that (i) a Participant whose Employer Contribution Account is less than 100% vested as of the effective date of the withdrawal shall not be permitted to withdraw any part of such Account; and (ii) a Participant whose Employer Contribution Account is 100% vested as of the effective date of the withdrawal may not withdraw any amounts contributed within 24 months of the withdrawals unless he has been a Participant for at least 60 months. The

Participant shall choose the investment funds in the Account from which the withdrawal shall be made, but in the absence of such an election, the withdrawal shall be made pro rata from the investment funds of such Account. Any payment made under this provision shall be in a lump sum. The Plan Administrator shall have the right to establish conditions for hardship distributions and to request and review all pertinent information necessary to assure that hardship withdrawal requests are consistent with the provisions of the Code.

10.05 Death Benefit Distributions. Upon receipt of satisfactory proof of the Participant's death, the Participant's remaining Account balance shall be paid under a method satisfying the required minimum distribution rules of Code § 401(a)(9) and the Treasury regulations thereunder. In the case of a Participant who dies while performing Qualified Military Service under Code § 414(u), the Beneficiaries of the Participant shall, to the extent required by Code § 401(a)(37), be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) that would be provided under the Plan had the Participant resumed and then terminated employment on account of death.

(a) Death of Participant Before Participant's Required Beginning Date. If the Participant dies before the required beginning date, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in Section 10.05(e) and unless the surviving spouse elects the five-year rule, distributions to the surviving spouse will begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died, or by December 31<sup>st</sup> of the calendar year in which the Participant would have attained age 70½, if later.

A Beneficiary is deemed to elect the five-year rule if distributions do not begin by the required beginning date provided in this Section.

(ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, unless the Beneficiary elects the five-year rule, distributions to the designated beneficiary will begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died.

A Beneficiary is deemed to elect the five-year rule if distributions do not begin by the required beginning date provided in this Section.

(iii) If there is no designated beneficiary as of September 30<sup>th</sup> of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31<sup>st</sup> of the calendar year containing the fifth anniversary of the Participant's death.

(iv) 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 10.05(a), other than Section 10.05(a)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.05(a) and Section 10.05(e) unless Section 10.05(a)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.05(a)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.05(a)(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 10.05(a)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (b) 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 Section 10.05. 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 Treasury regulations.
- (c) Amount of Required Minimum Distribution For Each Distribution Calendar Year During the Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury 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 Treasury 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.
- (d) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Sections 10.05(c) and (d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

- (e) Amount of Required Minimum Distribution Where Death Occurs On or After Participant's Required Beginning Date.
- (i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the Participant's required beginning date 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<sup>th</sup> 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.
- (f) Amount of Required Minimum Distribution Where Death Occurs Before Participant's Required Beginning Date.

- (i) Participant Survived by Designated Beneficiary. If the Participant dies before the required beginning date 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 10.05(e).
- (ii) No Designated Beneficiary. If the Participant dies before the required beginning date and there is no designated beneficiary as of September 30<sup>th</sup> of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31<sup>st</sup> 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 required beginning date, 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 10.05(a)(i), this Section 10.05(f)(iii) will apply as if the surviving spouse were the Participant.
- (g) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code § 401(a)(9) and Treasury Regulation § 1.401(a)(9)-1, Q&A-4.
- (h) Distribution Calendar Year. 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 10.05(a). 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<sup>st</sup> of that distribution calendar year.
- (i) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation §1.401(a)(9)-9.
- (j) Participant's Account Balance. The 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 dates in the valuation calendar year after the valuation date and decreased by distributions

made in the valuation calendar year after the valuation date. 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.

- (k) Required Beginning Date. The date specified under Code § 401(a)(9) when distributions are required to begin, which, for a Participant, is the April 1<sup>st</sup> following the year the Participant attains age 70 ½ or retires and severs service with the Employer, whichever is later.

10.06 Payment Options. A payee's election of a payment option must be made at least 30 days prior to the date that the payment of benefits is to commence. If a timely election of a payment option is not made, benefits shall be paid in accordance with Section 10.07. Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options if selected in the Adoption Agreement.

- (a) A single lump-sum payment;
- (b) Installment payments for a period of years (payable on a monthly, quarterly, semi-annual, or annual basis), which extends no longer than the life expectancy of the Participant or Beneficiary as permitted under Code § 401(a)(9) and proposed or final Treasury regulations thereunder;
- (c) Partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in subsection (b);
- (d) Annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the Participant or for the lifetimes of the Participant and Beneficiary;
- (e) Such other forms of installment payments as may be approved by the Employer consistent with the limitations of Code § 401(a)(9) and proposed or final Treasury regulations thereunder; or
- (f) A Participant who is an eligible retired public safety officer, as defined under Code § 402(l)(4)(B), may elect to have distributions made directly to an insurer to pay qualified health insurance premiums for coverage for the eligible retired public safety officer, his/her spouse and dependents by an accident or health insurance plan or qualified long-term care insurance contract as defined in Code § 7703B(b). Any elections and distributions under this Section 10.06(f) shall be made in a manner consistent with the requirements and limits contained in Code § 402(l) and any applicable guidance issued thereunder.



10.07 Default Distribution Option. In the absence of an effective election by the Participant, Beneficiary or other payee, as applicable, as to the commencement and/or form of benefits, distributions shall be made in accordance with the applicable requirements of Code § 401(a)(9) and final Treasury regulations thereunder.

10.08 Limitations on Distribution Options. Notwithstanding any other provision of this Article X, subject to Sections 16.06 and 17.06, Plan distributions shall satisfy the requirements of this Section 10.08.

No distribution option may be selected by a payee under this Article X unless it satisfies the applicable requirements of Code § 401(a)(9) and final Treasury regulations thereunder.

For mandatory distributions, if any, made on or after the effective date of and subject to the final Treasury regulations under Code § 401(a)(31), payment of an Account balance that exceeds \$1,000 but is less than \$5,000 (or other applicable limit under the final Treasury Regulations) and for which the Participant has not made an election either to receive in a lump sum or to roll over to a qualified retirement plan shall, to the extent required by and in accordance with such regulations, be rolled over to an account set up for the benefit of the Participant with the IRA provider designated from time to time by the Employer or Administrator.

The terms of this Article shall be construed in accordance with all applicable Code sections.

10.09 Taxation of Distributions. To the extent required by law, income and other taxes shall be withheld from each benefit payment, and payments shall be reported to the appropriate governmental agency or agencies.

10.10 Eligible Rollover Distributions.

- (a) General. 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 Employer, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A non-spousal Beneficiary may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to an inherited IRA, referred to in Code § 402(c)(11).
- (b) Definitions. For purposes of this Section, the following definitions shall apply.
  - (i) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee or to the non-spousal Beneficiary, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequent 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 10 years or more; any distribution to the extent such distribution is required under

Code § 401(a)(9); any distribution that is a deemed distribution under the provisions of Code § 72(p); the portion of any distribution that is not includable in gross income (except to the extent authorized by the Code); and any hardship distribution.

- (ii) Eligible Retirement Plan. An eligible retirement plan is any plan described in Code § 402(c)(8). An eligible retirement plan is described as an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified trust described in Code § 401(a) (including § 401(k)), a tax-sheltered annuity described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) that accepts the distributee's eligible rollover distribution. Effective for distributions made on/after January 1, 2008, an eligible retirement plan includes a Roth IRA described in Code § 408A.
- (iii) 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 under a Qualified Domestic Relations Order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (iv) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee or to the inherited IRA specified by the non-spousal Beneficiary.

10.11 Elections. Elections under this Article shall be made in such form and manner as the Plan Administrator may specify from time to time.

10.12 Practices and Procedures. The Employer may adopt practices and procedures applicable to existing and new distribution elections.

10.13 Required Minimum Distribution Waiver of 2009. Notwithstanding any other provisions of Article X. of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. If the Participant or Beneficiary has not elected to receive a 2009 RMD or Extended 2009 RMD then the Participant or Beneficiary will not receive a 2009 or Extended 2009 RMD unless the Participant elects to receive the distribution(s).

## **XI. CLAIMS PROCEDURES**

11.01 Application for Benefits. All applications for benefits under the Plan shall be submitted to and processed by the Administrator. Applications for benefits must be in writing on forms acceptable to the Administrator. The Administrator reserves the right to require the Participant to furnish proof of his or her age and the age of the Participant's Beneficiary(s) before processing any application. Each application shall be acted upon and approved or disapproved by the Administrator within 90 days following receipt by the Administrator (or within 180 days if special circumstances require and notice is given to the applicant before the end of the 90-day period informing the applicant of the circumstances requiring the extension of time and the date by which the Administrator expects to render a decision).

If any application for benefits is denied, in whole or in part, the Administrator shall notify the applicant in writing of such denial and of the applicant's right to a review of the decision as set forth below and shall set forth, in a manner calculated to be understood by the applicant, the specific reasons for such denial, the specific references to pertinent Plan provisions on which the denial is based, a description of any additional material or information necessary for the applicant to perfect the application, an explanation of why such material or information is necessary, and an explanation of the Plan's review procedure and the time limits applicable to such procedures.

11.02 Review. Any person whose application for benefits is denied in whole or in part may appeal to the Administrator for review of the decision by submitting, within 60 days after receiving notice of the denial of the claim, a written statement to the Administrator that:

- (a) requests a review of the application for benefits;
- (b) sets forth all of the grounds upon which the request for review is based and any facts in support of such request; and
- (c) sets forth any issues or comments that the applicant deems pertinent to the application.

In addition, an applicant may submit written comments, documents, records, and other information in support of the appeal, and the applicant shall be provided, free of charge, reasonable access to and copies of all documents, records and other information relevant to the applicant's claim for benefits.

The Administrator shall review appeals of denials of applications for benefits submitted to it. The Administrator shall act upon each appeal within 60 days after receipt of the applicant's request for review by the Administrator. The Administrator shall make a full and fair review of each application and any written material submitted by the applicant in connection with such review, without regard to whether such information was submitted or considered in the initial benefit determination. If the Administrator determines that special circumstances require an extension of time for processing an appeal, it may extend the initial period, in which case written notice of the extension shall be furnished to the applicant before the end of the initial period

indicating the special circumstances requiring an extension and the date by which the Administrator expects to render a determination on review. In no event shall such extension exceed a period of 60 days from the end of the initial period. Based on this review, the Administrator shall make an independent determination of the applicant's eligibility for benefits under the Plan.

In the case of a denial of any appeal, the Administrator shall notify the applicant in writing of such determination and shall set forth, in a manner calculated to be understood by the applicant, the specific reasons for the adverse determination, references to the specific Plan provisions on which the determination is based, a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to the applicant's claim for benefits.

The decision of the Administrator on any application for benefits shall be final and conclusive upon all persons.

## **XII. LEAVE OF ABSENCE**

12.01 Paid Leave of Absence. If a Participant is on an approved leave of absence from the Employer with Compensation, or on approved leave of absence without Compensation, said Participant's participation in the Plan may continue.

12.02 Unpaid Leave of Absence. If a Participant is on an approved leave of absence without Compensation and such leave of absence continues to such an extent that the Participant's employment with the Employer terminates, a Severance from Employment shall occur for purposes of this Plan.

## **XIII. PARTICIPANT LOANS**

13.01 Authorization of Loans. If so specified in the Adoption Agreement, the Administrator may direct the Trustee to make loans to Participants. Such loans shall be made on the application of the Participant in a form approved by the Administrator and under such terms and conditions as are set forth in this Article, provided, however, that the Administrator may adopt regulations, rules or procedures specifying different loan terms and conditions if necessary or desirable to comply with or conform to such Treasury regulations, other guidance or other applicable law.

13.02 Maximum Loan Amount. In no event shall any loan made to a Participant be in an amount which shall cause the outstanding aggregate balance of all loans made to such Participant under this Plan exceed the lesser of:

- (a) \$50,000, reduced by the excess (if any) of:
  - (i) the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which the loan is made; over

- (ii) the outstanding balance of loans from the Plan to the Participant or the Beneficiary on the date on which the loan is made; or
- (b) One-half of the Participant's total Account balance.

13.03 Repayment of Loan. Each loan shall mature and be payable, in full and with interest, within five years from the date such loan is made, unless:

- (a) The loan is used to acquire any dwelling unit that within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant; or
- (b) Loan repayments are, at the Employer's election, suspended as permitted by Code § 414(u)(4) (with respect to Qualified Military Service).

13.04 Loan Terms and Conditions. In addition to such rules and regulations as the Administrator may adopt, which rules are hereby incorporated into this Plan by reference, all loans to Participants shall comply with the following terms and conditions:

- (a) Loans shall be available to all Participants on a reasonably equivalent basis.
- (b) Loans shall bear interest at a reasonable rate to be fixed by the Administrator based on interest rates currently being charged by commercial lenders for similar loans. The Administrator shall not discriminate among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates based on prevailing rates at the time.
- (c) Each loan shall be made against collateral, including the assignment of no more than one-half of the present value of the Participant's total Account balance as security for the aggregate amount of all loans made to such Participant, supported by the Participant's collateral promissory note for the amount of the loan, including interest.
- (d) In all events, payments of principal and interest must be made at least quarterly and such payments shall be sufficient to amortize the principal and interest payable pursuant to the loan on a substantially level basis.
- (e) A loan to a Participant or Beneficiary shall be considered a directed investment option for such Participant's Account balance.
- (f) No distribution shall be made to any Participant, or to a Beneficiary of any such Participant, unless and until all unpaid loans, including accrued interest thereon, have been satisfied. If a Participant terminates employment with the Employer for any reason, the outstanding balance of all loans made to him shall become fully payable and, if not paid within 30 days, any unpaid balance shall be deducted from any benefit payable to the Participant or his Beneficiary. In the event of default in repayment of a loan or the bankruptcy of a Participant who has received a loan, the note will become immediately due and payable, foreclosure

on the note and attachment of the security will occur, the amount of the outstanding balance of the loan will be treated as a distribution to the Participant, and the defaulting Participant's Account balance shall be reduced by the amount of the outstanding balance of the loan (or so much thereof as may be treated as a distribution without violating the requirements of the Code).

The loan program under the Plan shall be administered by the Administrator in a uniform and nondiscriminatory manner. The Administrator shall establish procedures for loans, including procedures for applying for loans, guidelines governing the basis on which loans shall be approved, procedures for determining the appropriate interest rate, the types of collateral which shall be accepted as security, any limitations on the types and amount of loans offered, loan fees and the events which shall constitute default and actions to be taken to collect loans in default.

#### **XIV. AMENDMENT OR TERMINATION OF PLAN**

14.01 Termination. The Employer may at any time terminate this Plan; provided, however, that no termination shall affect the amount of benefits which at time of such termination shall have accrued for Participant or Beneficiaries. Such amount shall be calculated in accordance with Section 9.04 and the terms and conditions of the affected investment option. In the event of the termination or partial termination of the Plan, or the complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

14.02 Amendment. The Employer may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for Participants or Beneficiaries, calculated in accordance with Section 9.04 and the terms and conditions of the investment options hereunder; and provided further, that no amendment shall affect the duties and responsibilities of the Trustee unless executed by the Trustee.

To the extent permitted by applicable law, the Employer delegates to the Administrator the authority to adopt rules, regulations or procedures from time to time as may be necessary or desirable to conform Plan provisions to, or to elaborate Plan provisions in light of, technical amendments to the Code, Treasury regulations or other guidance issued under the Code, and such rules, regulations or procedures are hereby ratified by the Employer as having the force and effect of Plan amendments.

14.03 Exclusive Benefit. Except as provided in Section 5.04, the corpus or income of the Trust and Plan may not be diverted to or used for other than the exclusive benefit of Participants and Beneficiaries.

14.04 Copies of Amendments. The Administrator shall provide a copy of any Plan amendment to any Trustee or custodian and to the issuers of any investment options selected pursuant to Section 9.01.

## **XV. NON-ASSIGNABILITY**

15.01 Non-Assignability. It is agreed that neither the Participant, nor any Beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable; and in the event of attempt to assign or transfer, the Employer shall have no further liability hereunder nor shall any unpaid amounts be subject to attachment, garnishment or execution or be transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

15.02 Qualified Domestic Relations Orders. If so specified in the Adoption Agreement, domestic relations orders approved by the Plan Administrator shall be administered as follows.

To the extent required under a final judgment, decree, or order meeting the requirements of Code § 414(p), herein referred to as a Qualified Domestic Relations Order (“QDRO”), which is duly filed the Employer or the Trustee, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse or child of the Participant. Where necessary to carry out the terms of such a QDRO, a separate Account shall be established with respect to the spouse, former spouse or child and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the Account created for the spouse, former spouse or child making the investment selection.

Any amounts so set aside for a spouse, former spouse or a child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the QDRO directs a different form of payment or different payment date, including an immediate payment date. Withholding and income tax reporting shall be done with respect to the Alternate Payee under the terms of the Code as amended from time to time.

The Employer’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse or child pursuant to this Section. No amount shall be paid or set aside unless the Employer, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the Employer from any claim with respect to such amounts in any case in which the Employer has been notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant’s Account for a spouse, former spouse or child and the Participant fails to obtain an order of the court in the proceeding relieving the Employer from the obligation to comply with the QDRO.

The Employer shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate any Plan provision or any provision of Code § 401(a). Neither the Employer nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a Participant’s benefits under the Plan unless the full expense of such legal action is borne by the Participant. In the event that the Participant’s action (or inaction) nonetheless causes the Employer, its agents or assigns to incur such expense, the amount of the expense may be charged

against the Participant's Account and thereby reduce Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation or child support, the Employer, its agents and assigns shall be authorized to disclose information relating to Participant's individual account to the Participant's spouse, former spouse, child (including the legal representatives of the spouse, former spouse or child) or to a court.

## **XVI. DISCLAIMER**

The Employer and the Administrator make no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary, or any other person with respect to (a) the financial soundness, investment performance, fitness, or suitability (for meeting a Participant's objectives, future obligations under the Plan, or any other purpose) of any investment option offered pursuant to Section 9.01 or any investment vehicle in which contributions under the Plan are actually invested, or (b) the tax consequences of the Plan to any Participant, Beneficiary or any other person.

## **XVII. INTERPRETATION**

19.01 Governing Law. This Plan shall be construed under the laws of the state in which the Employer is located.

19.02 § 401(a). This Plan is intended to be a qualified plan within the meaning of Code § 401(a), and shall be interpreted so as to be consistent with the applicable requirements of such Section and the regulations promulgated thereunder.

19.03 Word Usage. Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

19.04 Headings. The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

19.05 Entire Agreement. This Plan, the executed Adoption Agreement and any properly adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant. This Plan and any properly adopted amendment shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors and assigns and on all designated Beneficiaries of the Participant.