



Central Texas Regional  
Mobility Authority

## AGENDA ITEM #13 SUMMARY

---

Approve amendments to the governing documents for the voluntary CTRMA employee retirement contributions plan.

Department: Finance  
Associated Costs: None  
Funding Source: None  
Board Action Required: YES

### Description of Matter:

By Resolution No. 06-11, enacted on January 31, 2006, the Board approved and adopted the Central Texas Regional Mobility Authority Governmental Plan, as set forth in the Nationwide Retirement Solutions Governmental Profit Sharing Plan and Trust (the “Plan”). Federal law requires that the Plan be restated periodically to incorporate applicable changes to federal laws and regulations.

Nationwide Retirement Solutions has provided restated plan documents (the “Governmental Plan for Nationwide Volume Submitter Plan” and the “Central Texas Regional Mobility Authority Governmental Plan Summary of Plan Provisions”) that incorporate the necessary changes. Board action to approve and adopt these restated documents is needed to ensure the Plan complies with federal law.

### Attached documentation:

Legislative Changes Overview, provided by Nationwide Retirement Solutions  
Draft Resolution

### Contact for further information:

Bill Chapman, Chief Financial Officer

**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 12-\_\_**

**APPROVING AMENDMENTS TO THE GOVERNING DOCUMENTS FOR  
THE VOLUNTARY CTRMA RETIREMENT CONTRIBUTIONS PLAN.**

WHEREAS, by Resolution No. 06-11, adopted January 31, 2006, the Board of Directors created and approved the Central Texas Regional Mobility Authority Governmental Plan as a retirement plan for CTRMA employees under section 401(a) of the Internal Revenue Code (the "Plan"); and

WHEREAS, federal law and regulations require the Plan to comply with applicable changes in the law over time; and

WHEREAS, Nationwide Retirement Solutions has provided CTRMA with a proposed amendment to the Plan referred to as the "Nationwide Governmental Volume Submitter Basic Plan Document" (the "Amended Plan") to ensure compliance with applicable federal laws; and

WHEREAS, Nationwide Retirement Solutions has also provided a revised document titled the "Central Texas Regional Mobility Authority Governmental Plan Summary of Plan Provisions" (the "Summary of Plan") that explains the Plan, as amended; and

WHEREAS, the Executive Director recommends approval of the proposed Amended Plan and Summary of Plan provided by Nationwide Retirement Solutions.

NOW THEREFORE, BE IT RESOLVED that the proposed Amended Plan and Summary of Plan presented to the Board at its January 25, 2012 meeting is hereby approved and adopted effective retroactive to January 1, 2011; and

BE IT FURTHER RESOLVED, that the Executive Director and other authorized representatives of CTRMA are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Amended Plan.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25<sup>th</sup> day of January, 2012.

Submitted and reviewed by:

Approved:

---

Andrew Martin  
General Counsel for the Central  
Texas Regional Mobility Authority

---

Ray A. Wilkerson  
Chairman, Board of Directors  
Resolution Number: 12-\_\_  
Date Passed: 1/25/12



## LEGISLATIVE CHANGES OVERVIEW

Federal law and corresponding regulations require all retirement plans to be maintained in writing, and also requires all retirement plans to be amended into compliance with applicable changes in the law over time. Recently the IRS adopted new rules regarding the restatement of the prototype plan documents. Legislative and regulatory changes include The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), The Pension Protection Act (PPA), Heroes Earnings Assistant and Relief Tax Act (HEART), and The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), and others. Brief descriptions of these acts are listed below and on the following pages.

Nationwide Retirement Plans has incorporated the required changes in the enclosed Plan Document and Adoption Agreement to meet these requirements.

**The Economic Growth and Tax Relief Reconciliation Act of 2001** - was signed into law by President Bush on June 7, 2001. This included the increase Employee Contribution limits for 401(k), 457, 403(b), SIMPLE plans; Employees over age 50 get to play "catch-up"; 415 Limitation Increases; and more.

**The Pension Protection Act (PPA)** - makes a host of changes affecting retirement plans, sponsoring employers, and participating employees. Some of these changes were: incentives for employers to adopt automatic enrollment features; guidance on investment advice; new participant disclosure rules; direct rollovers of distributions from qualified plans to Roth IRAs; hardship withdrawals permitted for a participant's beneficiary under the plan; and 402(f) notice requirement has been expanded to a 180 day notice period.

**Non-spouse Beneficiary Rollovers** - Beginning in 2007, non-spouse beneficiaries of a decedent's balance in certain plans (including 401(a) plans) may roll over the inherited amounts to their own IRAs. Previously, only beneficiaries who were surviving spouses could complete rollovers.

**Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)**- on December 19, 2005, the Department of Labor issued Final Regulations on the Uniformed Services Employment and Reemployment Act of 1994. USERRA protects the employment rights of veterans. For instance, employers are required to make missed benefits during the period of service for veterans returning within the proscribed timeframes. Examples include vesting service, profit sharing contributions, and non-elective safe-harbor 401(k) contributions. Further, veterans were provided the ability to make-up missed deferrals and receive any corresponding match.



**Heroes Earnings Assistant and Relief Tax Act (HEART)** - The HEART Act amends USERRA and addresses benefit protections for veterans who died or became disabled and could not return to work. HEART enables plans to treat a deceased/disabled serviceman as if they had returned to work on the day before dying or becoming disabled.

**The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA)** – this act includes technical corrections to the Pension Protection Act of 2006 and Section 201 suspended required minimum distributions for the 2009 year.

**Final 415 Regulations** - The significant statutory changes to Section 415 reflected in the final regulations include:

- The Section 415(c)(1) annual addition limit threshold, which was raised to \$40,000, as adjusted (\$45,000 in 2007) by EGTRRA.
- The repeal of the 415(e) combined limit on participation in both a defined benefit plan and a defined contribution plan sponsored by the same employer (as provided for in Small Business Job Protection Act of 1996 (SBJPA)).
- The repeal of the maximum exclusion allowance applicable to 403(b) arrangements (as provided for in EGTRRA).
- The current rounding rules for annual cost-of-living adjustments as amended by EGTRRA.
- The inclusion in the Section 415 definition of Compensation of salary deferral amounts not included in taxable compensation.

The regulations add specific rules regarding when amounts received following severance from employment are considered compensation for purposes of Section 415 and when such amounts may be deferred to Section 401(k), 403(b) or eligible 457(b) plans.

**MEETING OF THE BOARD OF DIRECTORS  
OF THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 06-11**

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA desires its employees to partake in the Central Texas Regional Mobility Authority Governmental Plan as set forth in the Nationwide Retirement Solutions Governmental Profit Sharing Plan and Trust, effective as of January 1, 2006 (the "Plan"), which is a profit sharing and defined contribution plan under section 401(a) of the Internal Revenue Code; and

WHEREAS, the CTRMA board has reviewed the "Adoption Agreement" for the Plan attached as "Attachment A" to this Resolution;

NOW THEREFORE, BE IT RESOLVED that the CTRMA board hereby approves participation in the Plan to provide benefits to CTRMA employees; and

BE IT FURTHER RESOLVED, that board members Robert Bennett, David Singleton and Henry Gilmore each serve as Trustee of the Plan (the "Trustees") as set forth in the Plan documents; and

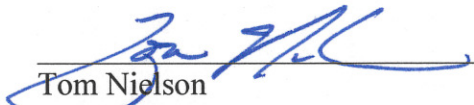
BE IT FURTHER RESOLVED, that the Trustees and Robert E. Tesch, as Chairman of the Board of Directors, shall each execute the "Adoption Agreement" for the Plan attached as "Attachment A" hereto; and

BE IT FURTHER RESOLVED, that the board hereby grants the Chairman the authority to execute such other documentation and take such further acts as necessary to fully create and operate the Plan now and in the future; and

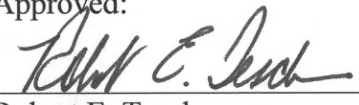
BE IT FURTHER RESOLVED, that upon execution of the "Adoption Agreement," the board directs CTRMA staff to transmit all necessary executed documents, along with a copy of this Resolution, to Nationwide Retirement Solutions, Inc. to facilitate participation in the Plan and to effectuate the Plan as of January 1, 2006.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 31st day of January, 2006.

Submitted and reviewed by:

  
\_\_\_\_\_  
Tom Nielson  
Legal Counsel for the Central  
Texas Regional Mobility Authority

Approved:

  
\_\_\_\_\_  
Robert E. Tesch  
Chairman, Board of Directors  
Resolution Number 06-11  
Date Passed 01/31/06

# Attachment "A"

## ADOPTION AGREEMENT FOR

### NATIONWIDE RETIREMENT SOLUTIONS GOVERNMENTAL PROFIT SHARING PLAN AND TRUST

The undersigned Employer adopts NRS Governmental Profit Sharing Plan and Trust for those Employees who shall qualify as Participants hereunder, to be known as the

A1 Central Texas Regional Mobility Authority Governmental Plan  
(Enter Plan Name)

It shall be effective as of the date specified below. The employer hereby selects the following Plan specifications:

**CAUTION:** In order for the Plan to qualify under Internal Revenue Code Section 401(a), this Adoption Agreement must be properly filled out.

#### EMPLOYER INFORMATION

Name of Employer Central Texas Regional Mobility Authority

B2 Address 301 Congress, Suite 650  
Austin Texas 78701  
City State Zip

Telephone (512) 996-9784

B3 Employer Identification Number 35-2198574

B4 NAME(S) OF TRUSTEE(S)

a.  \_\_\_\_\_

b.  \_\_\_\_\_

c.  \_\_\_\_\_

B5 TRUSTEES' ADDRESS

a.  Use Employer Address

b.  \_\_\_\_\_  
Street

\_\_\_\_\_

City State Zip

B6 LOCATION OF EMPLOYER'S PRINCIPAL OFFICE

a.  State of Texas

b.  Commonwealth of

\_\_\_\_\_ and this Plan and Trust shall be governed under the laws of the same.

B7 EMPLOYER FISCAL YEAR means the 12 consecutive month period:

Commencing on a. July 1 and  
month day

ending on b. June 30  
month day



PLAN INFORMATION

C1 EFFECTIVE DATE

This Adoption Agreement of NRS Governmental Money Purchase Plan and Trust shall:

- a.  establish a new Plan effective as of January 1, 2006 (hereinafter called the "Effective Date").
- b.  constitute an amendment and restatement in its entirety of a previously established qualified Plan of the Employer which was effective \_\_\_\_\_ (hereinafter called the "Effective Date"). Except as specifically provided in the Plan, the effective date of this amendment and restatement is \_\_\_\_\_.

C2 PLAN YEAR means the 12 consecutive month period:

Commencing on a. January 1  
 and ending on b. December 31

IS THERE A SHORT PLAN YEAR?

- c.  No
- d.  Yes, beginning \_\_\_\_\_  
and ending \_\_\_\_\_.

C3 ANNIVERSARY DATE of Plan (Annual Valuation Date)

a. December 31  
 month day

C4 PLAN NUMBER assigned by the Employer (select one)

- a.  001    b.  002    c.  003    d.  Other \_\_\_\_\_

C5 NAME OF PLAN ADMINISTRATOR (Document provides for the Employer to appoint an Administrator. If none is named, the Employer will become the Administrator.)

a.  Employer (Use Employer Address and Telephone)

b.  Name \_\_\_\_\_

Address  Use Employer Address

\_\_\_\_\_ Street

\_\_\_\_\_ City State Zip

Telephone \_\_\_\_\_

Administrator's I. D. Number \_\_\_\_\_

C6 PLAN'S AGENT FOR SERVICE OF LEGAL PROCESS

a.  Employer (Use Employer Address)

b.  Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ City State Zip

## ELIGIBILITY, VESTING AND RETIREMENT AGE

D1 ELIGIBLE EMPLOYEES (Plan Section 1.11) shall mean:

- a.  all Employees who have satisfied the eligibility requirements
- b.  all Employees who have satisfied the eligibility requirements in the classes checked below:
  1.  Elected Officials
  2.  Managers
  3.  All others
- c.  all Employees who have satisfied the eligibility requirements except those checked below:
  1.  Employees hourly paid.
  2.  Employees paid by salary.
  3.  Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are officers or executives of the Employer.
  4.  Employees who are non-resident aliens who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)).
  5.  Other

**NOTE:** For purposes of this section, the term Employee shall include all Employees of this Employer and any leased employees deemed to be Employees under Code Section 414(n) or 414(o).

D2 HOURS OF SERVICE (Plan Section 1.21) will be determined on the basis of the method selected below. Only one method may be selected. The method selected will be applied to all Employees covered under the Plan.

- a.  On the basis of actual hours for which an Employee is paid or entitled to payment.
- b.  On the basis of days worked. An Employee would be credited with ten (10) hours of service if, under the Plan, such employee would be credited with at least one (1) Hour of Service during the day.
- c.  On the basis of weeks worked. An Employee will be credited forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.
- d.  On the basis of semi-monthly payroll periods. An Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.
- e.  On the basis of months worked. An Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

D3 YEARS OF SERVICE (Plan Section 1.52)

- a. For Eligibility: (select one):
  - Hours Method. A Year of Service shall be credited for a computation period in which an Employee completes at least N\A Hours of Service.
  - Elapsed Time Method.
- b. For Vesting: (select one):
  - Hours Method. A Year of Service shall be credited for a computation period in which an Employee completes at least N\A Hours of Service.
  - Elapsed Time Method.

D4 CONDITIONS OF ELIGIBILITY (Plan Section 3.1)  
(Check either a **OR** b and c, and if applicable, d)

Any Eligible Employee will be eligible to participate in the Plan if such Eligible Employee has satisfied the service and age requirements, if any, specified below:

a.  NO AGE OR SERVICE REQUIRED

b.  SERVICE REQUIREMENT

1.  None
2.  \_\_\_\_\_ Months of Service
3.  1 Year of Service
4.  2 Years of Service
5.  Other \_\_\_\_\_

NOTE: If the service requirement selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year. If expressed in Months of Service, an Employee will not be required to complete any specified number of Hours of Service in a particular month.

c.  AGE REQUIREMENT

1.  N/A - No Age Requirement
2.  20 ½
3.  21
4.  Other \_\_\_\_\_

d.  FOR NEW PLANS ONLY - Regardless of any of the above age or service requirements, any Eligible Employee who was employed on the Effective Date of the Plan shall be eligible to participate hereunder and shall enter the Plan as of such date.

D5 EFFECTIVE DATE OF PARTICIPATION (Plan Section 3.2)

An Eligible Employee shall become a Participant as of:

- a.  the first day he or she met all eligibility requirements.
- b.  the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which he or she met the requirements.
- c.  the first day of the Plan Year coinciding with or next following the date on which he or she met the requirements.
- d.  the first day of the month coinciding with or next following the date on which he or she met the requirements.
- e.  Other: \_\_\_\_\_, provided that an Employee who has satisfied the maximum age and service requirements that are permissible in Section D4 above and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

D6 VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))

The vesting schedule, based on number of Years of Service, shall be as follows:

a.  100% upon entering Plan.

b.             0-2 years      0%  
                          3 years      100%

c.             0-4 years      0%  
                          5 years      100%

d.             0-1 year      0%  
                          2 years      20%  
                          3 years      40%  
                          4 years      60%  
                          5 years      80%  
                          6 years      100%

e.             Less than 1      0%  
  year      25%  
  1 year      50%  
  2 years      75%  
  3 years      100%  
  4 years

f.             Less than 1 year      0%  
                          1 year      20%  
                          2 years      40%  
                          3 years      60%  
                          4 years      80%  
                          5 years      100%

g.             0-2 years      0%  
                          3 years      20%  
                          4 years      40%  
                          5 years      60%  
                          6 years      80%  
                          7 years      100%

h.  Other -

Years of Service

Percentage

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

D7 FOR AMENDED PLANS (Plan Section 6.4(d)) If the vesting schedule has been amended to a less favorable schedule, enter the pre-amended schedule below:

a.  Vesting schedule has not been amended or amended schedule is more favorable in all years.

b.  Years of Service                      Percentage

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



D8 VESTING (Plan Section 6.4(f)) In determining Years of Service for vesting purposes, Years of Service attributable to the following shall be EXCLUDED.

- a.  Service prior to the Effective Date of the Plan or a predecessor plan.
- b.  Service prior to the time an Employee attained age 18.
- c.  N/A – No Years of Service shall be excluded.

D9 PLAN SHALL RECOGNIZE SERVICE WITH PREDECESSOR EMPLOYER

- a.  No.
- b.  Yes: Years of Service with \_\_\_\_\_ shall be recognized for all purposes of this Plan.

**NOTE:** If the predecessor Employer maintained this qualified Plan, then Years of Service with such predecessor Employer shall be recognized pursuant to Section 1.51 and b. must be marked.

D10 NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.29) means:

- a.  the date a Participant attains his or her 65<sup>th</sup> birthday. (not to exceed 65<sup>th</sup>)
- b.  the later of the date a Participant attains his or her \_\_\_ birthday (not to exceed 65<sup>th</sup>) or the \_\_\_ (not to exceed 10<sup>th</sup>) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

D11 NORMAL RETIREMENT DATE (Plan Section 1.30) shall commence:

- a.  as of the Participant's "NRA."

**OR** (must select b. or c. AND 1. or 2.)

- b.  as of the first day of the month . . .
- c.  as of the Anniversary Date . . .
  - 1.  coinciding with or next following the Participant's "NRA"
  - 2.  nearest the Participant's "NRA."

D12 EARLY RETIREMENT DATE (Plan Section 1.9) means the:

- a.  No Early Retirement provision provided.
- b.  date on which a Participant . . .
- c.  first day of the month coinciding with or next following the date on which a Participant . .
- d.  Anniversary Date coinciding with or next following the date on which a Participant . . .

AND, if b, c, or d was selected . . .

attains his or her \_\_\_\_ birthday and has  
completed at least \_\_\_\_ Years of Service.

- e.  A Participant who attains his or her Early Retirement Date shall:
  - 1.  be 100 % vested upon attainment of his or her Early Retirement Date.
  - 2.  be subject to the vesting schedule set forth in Section D6 of the Adoption Agreement.

## CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

E1. a. COMPENSATION (Plan Section 1.7) with respect to any Participant means:

1.  Wages, tips, and other compensation on Form W-2.
2.  Section 3401(a) wages (wages for withholding purposes).
3.  415 safe-harbor compensation.

b. COMPENSATION shall be

1.  actually paid (must be selected if Plan is integrated)
2.  accrued

c. HOWEVER, for non-integrated plans, Compensation shall exclude (select all that apply):

1.  N/A. No exclusions
2.  overtime
3.  bonuses
4.  other \_\_\_\_\_

d. FOR PURPOSES OF THIS SECTION E1, Compensation shall be based on:

1.  the Plan Year.
2.  the Fiscal Year coinciding with or ending within the Plan Year.
3.  the Calendar Year coinciding with or ending within the Plan Year.

**NOTE:** The Limitation Year shall be the same as the year on which Compensation is based.

e. HOWEVER, for an Employee's first year of Participation, Compensation shall be recognized as of:

1.  the first day of the Plan Year.
2.  the date the Participant entered the Plan.

f. IN ADDITION, COMPENSATION 1.  Shall 2.  Shall not include compensation which is not currently includible in the Participant's gross income by reason of the application of Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h) or 457(b).

E2 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION (Plan Section 4.1)

- a.  Discretionary, to be determined by the Employer.
- b. \$\_\_\_\_\_.

E3 CONTRIBUTION ALLOCATIONS (Plan Section 4.3)

a.  FOR A NON-INTEGRATED PLAN

Executive Director \_\_\_\_\_

Manager \_\_\_\_\_

All Others \_\_\_\_\_

b.  FOR AN INTEGRATED PLAN

- c.  The Taxable Wage Base.
- d.  The greater of \$10,000 or 20% of the Taxable Wage Base.
- e.  \_\_\_\_\_% of the Taxable Wage Base (see Note below).
- f.  \$\_\_\_\_\_. (see note below).
- g.  \$\_\_\_\_, and increasing by \_\_\_\_\_% of the actual dollar increase in the Taxable Wage Base for each subsequent year.

**NOTE:** The integration percentage of 5.7% shall be reduced to:

- 1. 4.3% if e. or f. above is more than 20% and less than or equal to 80% of the Taxable Wage Base.
- 2. 5.4% if e. or f. above is less than 100% and more than 80% of the Taxable Wage Base.

**FOR A 457 PLAN CONTRIBUTION CONTINGENCY**

a.  A Participant in this Plan is required to make a contribution to the Employer's deferred compensation plan (457 Plan) in the amount of \$\_\_\_\_ or \_\_\_\_\_% per pay period to receive an Employer matching contribution in this Plan. The Employer's matching contribution shall be:

- 1.  An amount equal to \$\_\_\_\_ per pay period for each Employee eligible to receive an employer matching contribution.
- 2.  An amount equal to \_\_\_\_\_% of the amount that each Employee defers under the Employer's 457 Plan subject to a maximum of \_\_\_\_ per \_\_\_\_.  
(e.g. pay period)
- 3.  Other Discretionary Match \_\_\_\_\_

\_\_\_\_\_ or such other amount as the Employer shall authorize by resolution.

E4 FORFEITURES (Plan Section 4.3(e))

- a.  Forfeitures of contributions other than matching contributions shall be . . .
1.  N/A No Employer's contribution other than matching or Employer contribution (other than matching) is fully vested.
  2.  Allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the year bears to the Compensation of all Participants for such year.
  3.  Allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the year bears to the Compensation of all Participants for such year. NOTE: Employer forfeitures (other than matching forfeitures) shall only be allocated to all Participants who have a subaccount on the last day of the Plan Year in which such amounts were forfeited and allocated to such Participant's subaccount.
  4.  Used to reduce Employer's contribution (other than matching).
  5.  Applied to offset administrative expenses of the Plan. If forfeitures exceed the administrative expenses, 2 will apply to such excess.

E5 ALLOCATIONS TO ACTIVE PARTICIPANTS (Plan Section 4.3)

A Participant :

- a.  shall
- b.  shall not

be required to complete a Year of Service in order to share in any Contributions or Forfeitures (if reallocated).

NOTE: A Year of Service for allocation purposes will be credited for a computation period in which an Employee completes at least 1 (insert 1,000 or fewer) Hours of Service.

E6

ALLOCATIONS TO TERMINATED PARTICIPANTS (Plan Section 4.3(f))

Any Participant who terminated employment during the Plan Year for reasons other than death, Total and Permanent Disability or retirement:

- a.  shall share in the allocations of Contributions and Forfeitures provided such Participant completed more than 1 Hours of Service.
- b.  shall not share in the allocations of Contributions and Forfeitures regardless of Hours of Service.

Note: All forfeitures shall be allocated in accordance with Section E3.

E7

ALLOCATIONS TO TERMINATED PARTICIPANTS (Plan Section 4.3(G))

Any Participant who terminated employment during the Plan Year as a result of death, Total and Permanent Disability or retirement:

- a.  shall share in the allocations as provided in Section 4.3 of the basic plan document regardless of whether they complete the service requirement specified in E6 above.
- b.  shall not receive an allocation unless the Participant completes the service requirement specified in E6 above.

E8 LIMITATIONS ON ALLOCATIONS (Plan Section 4.4)

a. If any Participant is or was covered under another qualified defined contribution plan maintained by the Employer, or if the Employer maintains a welfare benefit fund, as defined in Code Section 415 (1)(2), under which amounts are treated as Annual Additions with respect to any Participant in this Plan:

1.  N/A.
2.  The provisions of Section 4.3(b) of the Plan will apply as if the other plan were a Master or Prototype Plan.
3.  Provide the method under which the Plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any Excess Amounts, in a manner that precludes Employer discretion.

---

---

---

b. If any participant is or ever has been a Participant in a defined benefit plan maintained by the Employer:

1.  N/A.
2.  In any Limitation Year, beginning before January 1, 2000, the Annual Additions credited to the Participant under this Plan may not cause the sum of the Defined Benefit Plan Fraction and the Defined Contribution Fraction to exceed 1.0. If the Employer's contribution that would otherwise be made on the Participant's behalf during the limitation year would cause the 1.0 limitation to be exceeded, the rate of contribution under this Plan will be reduced so that the sum of the fractions equals 1.0. If the 1.0 limitation is exceeded because of an Excess Amount, such Excess Amount will be reduced in accordance with Section 4.4(a)(4) of the Plan.
3.  Provide the method under which the Plans involved will satisfy the 1.0 limitation in a manner that precludes Employer discretion.

---

---

---

E9 DISTRIBUTIONS UPON DEATH (Plan Section 6.6(h))  
Distributions upon the death of a Participant prior to receiving any benefits shall . . .

- a.  be made pursuant to the election of the Participant or Beneficiary.
- b.  begin within 1 year of death for a designated beneficiary and be payable over the life (or over a period not exceeding the life expectancy) of such beneficiary, except that if the beneficiary is the Participant's spouse, begin within the time the Participant would have attained age 70 2.
- c.  be made within 5 years of death for all beneficiaries.
- d.  other \_\_\_\_\_

E10 LIFE EXPECTANCIES (Plan Section 6.14) for minimum distributions required pursuant to Code Section 401(a)(9) shall . . .

- a.  be recalculated at the Participant's election.
- b.  be recalculated.
- c.  not be recalculated.

E11 CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION

Distributions upon termination of employment pursuant to Section 6.4(a) of the Plan shall not be made unless the following conditions have been satisfied:

- a.  N/A. Immediate distributions may be made at Participant's election.
- b.  The Participant has incurred \_\_\_\_\_ 1-Year Break(s) in Service.
- c.  The Participant has reached his or her Early or Normal Retirement Age.
- d.  Distributions may be made at the Participant's election on or after the Anniversary Date following termination of employment.
- e.  Other \_\_\_\_\_

E12 FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)  
Distributions under the Plan may be made . . .

- a. 1.  in lump sums  
2.  in lump sums or installments
- b. **AND**, pursuant to Plan Section 6.13,
  - 1.  no annuities are allowed
  - 2.  annuities are allowed (Plan Section 6.13 shall not apply).

**AND**, regardless of any provisions in the Plan to the contrary, will Participant consent to distributions other than those required by Code Section 401(a)(9) be required except that an involuntary distribution



of vested accrued benefits of \$1,000 or less (including any rollover contributions and earnings thereon) may be made from the Plan without the Participant's consent?

- c.  Yes
- d.  No

E13 The provisions of Section 6.12, concerning domestic relations orders,  shall  shall not apply.

E14 The Joint and Survivor Annuity provisions of Plan Section 6.5 and the Pre-Retirement Survivor Annuity provisions of Section 6.6  shall  shall not apply.

### MISCELLANEOUS

F1 Loans to Participants (Plan Section 7.4)

- a.  Yes, loans may be made up to the lesser of \$50,000, reduced as provided in Section 7.4 of the Plan, or 1/2 of the Participant's vested interest.
- b.  No, loans may not be made.

IF YES, (check all that apply)

- c.  loans shall be treated as a Directed Investment.
- d.  loans shall be made for hardship or financial necessity.
- e.  the minimum loan shall be \$1,000.
- f.  loan payments  will  will not be suspended under this Plan as permitted under Code Section 414(u).

F2 DIRECTED INVESTMENT ACCOUNTS (Plan Section 4.8) are permitted for the interest in any one or more accounts.

- a.  Yes
- b.  No

F3 TRANSFERS FROM QUALIFIED PLANS (Plan Section 4.6)

- a.  Yes, transfers from qualified plan (and rollovers) will be allowed.
- b.  No, transfers from qualified plans (and rollovers) will not be allowed.

**AND**, transfers shall be permitted . . .

- c.  from any Employee, even if not a Participant.
- d.  from Participants only.

F4 EMPLOYEES' VOLUNTARY CONTRIBUTIONS (Plan Section 4.7)

- a.  Yes, Voluntary Contributions are allowed subject to the limits of Section 4.7.
- b.  No, Voluntary Contributions will not be allowed.

F5 HARDSHIP DISTRIBUTIONS (Plan Section 6.11 and 11.4)

- a.  Yes, from any accounts which are 100% vested.
- b.  Yes, but limited to the Participant's Account only.
- c.  Yes, but limited to the Participant's Combined Account only.
- d.  No.

F6 PRE-RETIREMENT DISTRIBUTION (Plan Section 6.10)

- a.  If a Participant has reached the age of \_\_\_\_, distributions may be made, at the Participant's election, from any accounts which are 100% vested without requiring the Participant to terminate employment.
- b.  No pre-retirement distribution may be made.

F7 LIFE INSURANCE (Plan Section 7.2 (d)) may be purchased with Plan contributions.

- a.  No life insurance may be purchased.
- b.  Yes, at the option of the Administrator.
- c.  Yes, at the option of the Participant.

**AND**, the purchase of initial or additional life insurance shall be subject to the following limitations, in addition to the Plan limitations:

(Select all that apply)

- d.  N/A, no limitations.
- e.  each initial Contract shall have a minimum face amount of \$\_\_\_\_\_.
- f.  each additional Contract shall have a minimum face amount of \$\_\_\_\_\_.
- g.  the Participant has completed \_\_\_\_\_ Years of Service.
- h.  the Participant has completed \_\_\_\_\_ Years of Service while a Participant in the Plan.
- i.  the Participant is under age \_\_\_\_\_ on the Contract issue date.
- j.  the maximum amount of all Contracts on behalf of a Participant shall not exceed \$\_\_\_\_\_.
- k.  the maximum face amount of life insurance shall be \$\_\_\_\_\_.
- l.  A Participant shall be 100% vested in life insurance upon purchase.
- m.  The date in any Plan Year on which life insurance shall be purchased shall be \_\_\_\_\_.

**PLEASE CAREFULLY READ**

This Adoption Agreement may be used only in conjunction with the Nationwide Retirement Solutions, Inc. Model Governmental Defined Contribution Plan and Trust Document. This Adoption Agreement and the basic Plan document shall together be known as the Nationwide Retirement Solutions Governmental Profit Sharing Plan and Trust.

The adoption of this Plan, the qualification of the Plan and Trust under Code Sections 401(a) and 501(a), respectively, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to the appropriate office of the Internal Revenue Service.

This Adoption Agreement and the accompanying Plan document may not be used unless an authorized representative of Nationwide Retirement Solutions has acknowledged the use of the Plan. Such acknowledgment is for ministerial purposes only. It acknowledges that the Employer is using the Plan but does not represent that this Plan, including the choices selected on the Adoption Agreement, has been reviewed by a representative of Nationwide Retirement Solutions or constitutes a qualified defined contribution plan.

Nationwide Retirement Solutions, Inc.

By: \_\_\_\_\_

With regard to any questions regarding the provisions of this Plan, adoption of the Plan, or the effect of an opinion letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

IN WITNESS WHEREOF, the Employer and Trustee hereby cause this Plan to be executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

EMPLOYER:

By: \_\_\_\_\_

\_\_\_\_\_ TRUSTEE

\_\_\_\_\_ TRUSTEE

\_\_\_\_\_ TRUSTEE

PARTICIPATING EMPLOYER:

\_\_\_\_\_  
(enter name)

By: \_\_\_\_\_

**GOVERNMENTAL PLAN FOR NATIONWIDE**  
**VOLUME SUBMITTER PLAN**



**TABLE OF CONTENTS**

**ARTICLE I  
DEFINITIONS**

**ARTICLE II  
ADMINISTRATION**

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER ..... 9

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY ..... 9

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES ..... 9

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR ..... 9

2.5 RECORDS AND REPORTS ..... 10

2.6 APPOINTMENT OF ADVISERS ..... 10

2.7 INFORMATION FROM EMPLOYER ..... 10

2.8 PAYMENT OF EXPENSES ..... 10

2.9 MAJORITY ACTIONS ..... 11

2.10 CLAIMS PROCEDURE ..... 11

**ARTICLE III  
ELIGIBILITY**

3.1 CONDITIONS OF ELIGIBILITY ..... 11

3.2 EFFECTIVE DATE OF PARTICIPATION ..... 11

3.3 DETERMINATION OF ELIGIBILITY ..... 11

3.4 TERMINATION OF ELIGIBILITY ..... 11

3.5 REHIRED EMPLOYEES ..... 11

3.6 ELECTION NOT TO PARTICIPATE ..... 12

**ARTICLE IV  
CONTRIBUTION AND ALLOCATION**

4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION ..... 12

4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION ..... 12

4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS ..... 12

4.4 MAXIMUM ANNUAL ADDITIONS ..... 13

4.5 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS ..... 15

4.6 ROLLOVERS ..... 16

4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS ..... 17

4.8 MANDATORY EMPLOYEE CONTRIBUTIONS ..... 17

4.9 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS ..... 17

4.10 PARTICIPANT DIRECTED INVESTMENTS ..... 18

4.11 QUALIFIED MILITARY SERVICE ..... 19

4.12 HEART ACT PROVISIONS ..... 19

**ARTICLE V  
VALUATIONS**

5.1 VALUATION OF THE TRUST FUND ..... 19

5.2 METHOD OF VALUATION ..... 19

**ARTICLE VI  
DETERMINATION AND DISTRIBUTION OF BENEFITS**

6.1	DETERMINATION OF BENEFITS UPON RETIREMENT .....	20
6.2	DETERMINATION OF BENEFITS UPON DEATH .....	20
6.3	DETERMINATION OF BENEFITS IN EVENT OF DISABILITY .....	21
6.4	DETERMINATION OF BENEFITS UPON TERMINATION .....	21
6.5	DISTRIBUTION OF BENEFITS .....	21
6.6	DISTRIBUTION OF BENEFITS UPON DEATH .....	21
6.7	TIME OF DISTRIBUTION .....	22
6.8	REQUIRED MINIMUM DISTRIBUTIONS.....	22
6.9	DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL .....	25
6.10	LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN .....	25
6.11	IN-SERVICE DISTRIBUTION.....	26
6.12	QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION .....	26
6.13	DIRECT ROLLOVERS.....	26
6.14	TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN .....	27
6.15	CORRECTIVE DISTRIBUTIONS.....	27

**ARTICLE VII  
TRUSTEE AND CUSTODIAN**

7.1	BASIC RESPONSIBILITIES OF THE TRUSTEE .....	27
7.2	INVESTMENT POWERS AND DUTIES OF DISCRETIONARY TRUSTEE .....	28
7.3	INVESTMENT POWERS AND DUTIES OF NONDISCRETIONARY TRUSTEE.....	30
7.4	POWERS AND DUTIES OF CUSTODIAN.....	31
7.5	LIFE INSURANCE .....	31
7.6	LOANS TO PARTICIPANTS .....	32
7.7	ALLOCATION AND DELEGATION OF RESPONSIBILITIES .....	33
7.8	TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES.....	33
7.9	ANNUAL REPORT OF THE TRUSTEE .....	33
7.10	RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE .....	33
7.11	TRANSFER OF INTEREST .....	34
7.12	TRUSTEE INDEMNIFICATION .....	34

**ARTICLE VIII  
AMENDMENT, TERMINATION AND MERGERS**

8.1	AMENDMENT.....	34
8.2	TERMINATION.....	34
8.3	MERGER, CONSOLIDATION OR TRANSFER OF ASSETS.....	34

**ARTICLE IX  
MISCELLANEOUS**

9.1	EMPLOYER ADOPTIONS.....	35
9.2	PARTICIPANT'S RIGHTS .....	35
9.3	CONSTRUCTION OF PLAN .....	35
9.4	GENDER AND NUMBER.....	35
9.5	LEGAL ACTION .....	35



9.6	PROHIBITION AGAINST DIVERSION OF FUNDS.....	35
9.7	EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE.....	35
9.8.	INSURER'S PROTECTIVE CLAUSE.....	35
9.9	RECEIPT AND RELEASE FOR PAYMENTS.....	36
9.10	ACTION BY THE EMPLOYER.....	36
9.11	NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY.....	36
9.12	HEADINGS.....	36
9.13	APPROVAL BY INTERNAL REVENUE SERVICE.....	36
9.14	UNIFORMITY.....	36
9.15	PAYMENT OF BENEFITS.....	36
9.16	ELECTRONIC MEDIA.....	36
9.17	PLAN CORRECTION.....	37
9.18	NONTRUSTEED PLANS.....	37

**ARTICLE X  
PARTICIPATING EMPLOYERS**

10.1	ELECTION TO BECOME A PARTICIPATING EMPLOYER.....	37
10.2	REQUIREMENTS OF PARTICIPATING EMPLOYERS.....	37
10.3	DESIGNATION OF AGENT.....	37
10.4	EMPLOYEE TRANSFERS.....	37
10.5	PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES.....	38
10.6	AMENDMENT.....	38
10.7	DISCONTINUANCE OF PARTICIPATION.....	38
10.8	ADMINISTRATOR'S AUTHORITY.....	38
10.9	PARTICIPATING EMPLOYER CONTRIBUTION FOR AFFILIATE.....	38

**ARTICLE XI  
CASH OR DEFERRED PROVISIONS**

11.1	FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION.....	39
11.2	PARTICIPANT'S SALARY REDUCTION ELECTION.....	39
11.3	ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS.....	41
11.4	ADVANCE DISTRIBUTION FOR HARDSHIP.....	41



**ARTICLE I  
DEFINITIONS**

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

- 1.1 "Account"** means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following Accounts:
- (a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from (a) the Employer's contributions in the case of a Profit Sharing Plan or Money Purchase Plan, and (b) the Employer Nonelective Contributions in the case of a 401(k) Profit Sharing Plan. Separate accountings shall be maintained with respect to that portion of a Participant's Account attributable to Employer contributions made pursuant to Section 11.1(a)(2) and to Employer contributions made pursuant to Section 11.1(a)(3).
  - (b) "Elective Deferral Account" means the account established hereunder to which Elective Deferrals (including a separate accounting for Catch-Up Contributions) are allocated. Amounts in the Participant's Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 11.2(d). For calendar years beginning after December 31, 2005, the Elective Deferral Account may consist of the sub-Accounts listed below. Unless specifically stated otherwise, any reference to a Participant's Elective Deferral Account will refer to both of these sub-Accounts.
    - (1) "Pre-Tax Elective Deferral Account" means the portion of the Elective Deferral Account attributable to Pre-Tax Elective Deferrals (*i.e.*, Elective Deferrals that are not subject to Federal Income Tax at the time of their deferral to the Plan).
    - (2) "Roth Elective Deferral Account" means the portion of the Elective Deferral Account attributable to Roth Elective Deferrals (*i.e.*, that are subject to Federal Income Tax at the time of their deferral).
  - (c) "Rollover Account" means the account established hereunder to which amounts transferred from another qualified plan or Individual Retirement Account in accordance with Section 4.6 are allocated.
  - (d) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.
  - (e) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.9 are allocated.
- 1.2 "Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.
- 1.3 "Adoption Agreement"** means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan and Trust as specified by the Employer.
- 1.4 "Affiliated Employer"** means any entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414.
- 1.5 "Anniversary Date"** means the last day of the Plan Year.
- 1.6 "Annuity Starting Date"** means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.
- 1.7 "Beneficiary"** means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is payable, subject to the restrictions of Sections 6.2 and 6.6.
- 1.8 "Catch-Up Contribution"** means, effective for taxable years beginning after December 31, 2001, an Elective Deferral made to the Plan by a Catch-Up Eligible Participant that, during any taxable year of such Participant, exceeds a statutory dollar limit on Elective Deferrals or "annual additions" as provided in Code Sections 401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (without regard to Code Section 457(b)(3)), as applicable.

Catch-Up Contributions for a Participant for a Participant's taxable year may not exceed the dollar limit on Catch-Up Contributions under Code Section 414(v) for the Participant's taxable year. The dollar limit on Catch-Up Contributions under Code Section 414(v)(2)(B)(i) is \$1,000 for taxable years beginning in 2002, increasing by \$1,000 for each year thereafter up to \$5,000 for taxable years beginning in 2006 and later years. After 2006, the \$5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases

under Code Section 414(v)(2)(C). Any such adjustments shall be in multiples of \$500. Notwithstanding the preceding, different dollar limits apply to Catch-Up Contributions under SIMPLE 401(k) plans.

**1.9 "Catch-Up Eligible Participant"** means, for any Participant's taxable year beginning after December 31, 2001, a Participant who:

- (a) is eligible to make Elective Deferrals to the Plan pursuant to Section 11.2; and
- (b) will attain age 50 or older by the end of such taxable year.

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

**1.11 "Compensation"** means, with respect to any Participant and except as otherwise provided below and in the Adoption Agreement,

- (a) one of the following as elected in the Adoption Agreement:
  - (1) Information required to be reported under Code Sections 6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
  - (2) Code Section 3401(a) Wages. Compensation means an Employee's wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
  - (3) 415 safe harbor compensation. Compensation means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation Section 1.62-2(c))), and excluding the following:
    - (i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;
    - (ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
    - (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
    - (iv) Other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).
- (b) Compensation shall include only that Compensation which is actually paid to the Participant during the determination period. Except as otherwise provided in this Plan, the determination period shall be the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the determination period shall be the Plan Year.
- (c) Notwithstanding the above, if elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:
  - (1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), and 132(f)(4).

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

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

(d) Compensation will include payments made within 2½ months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered Compensation if paid after severance from employment, even if they are paid within the later of 2½ months following severance from employment or the end of the Plan Year, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(e) For Plan Years beginning on or after January 1, 2002, Compensation in excess of \$200,000 shall be disregarded for all purposes, except that for purposes of salary deferral elections, the Administrator is not required to disregard Compensation in excess of \$200,000. Such amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year. If a determination period consists of fewer than twelve (12) months, the \$200,000 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

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

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

(h) In the case of an eligible Participant in a governmental plan, the dollar limitation under Code §401(a)(17) shall not apply to the extent the amount under the plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this rule, an eligible Participant is an individual who first became a Participant before the first Plan Year beginning after the earlier of (i) the Plan Year in which the Plan was amended to reflect the new Code §401(a)(17), or (ii) December 31, 1995.

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

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

**1.14 "Designated Investment Alternative"** means a specific investment identified by name by the Employer (or such other Fiduciary who has been given the authority to select investment options) as an available investment under the Plan to which Plan assets may be invested by the Trustee (or Insurer) pursuant to the investment direction of a Participant.

**1.15 "Directed Investment Option"** means a Designated Investment Alternative and any other investment permitted by the Plan and the Participant Direction Procedures to which Plan assets may be invested pursuant to the investment direction of a Participant.

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

**1.17 "Discretionary Trustee"** means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets without direction from any person or entity.

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

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

**1.19 "Effective Date"** means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date. If this Plan is retroactively effective, the provisions of this Plan generally control. However, if the provisions of this Plan are different from the provisions of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, the provisions of such prior plan are incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

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

**1.20 "Elective Deferrals"** means the Employer's contributions to the Plan that are made pursuant to a Participant's deferral election pursuant to Section 11.2, excluding any such amounts distributed as "excess annual additions" pursuant to Section 4.5. For calendar years beginning after December 31, 2005, the term "Elective Deferrals" includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

**1.21 "Eligible Employee"** means any Eligible Employee as elected in the Adoption Agreement and as provided herein. An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out-sourced workers, are not Eligible Employees and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining and if two percent (2%) or less of the Employees covered pursuant to that agreement are professionals as defined in Regulation Section 1.410(b)-9, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer.

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

If, in the Adoption Agreement, the Employer elects to exclude Part-Time/Temporary/Seasonal Employees, then notwithstanding any such exclusion, if any such excluded Employee actually completes a Year of Service (or Period of Service if the Elapsed Time method is selected), then such Employee will enter the Plan on the next entry date following completion of the Year of Service (or, if applicable, Period of Service), provided the Employee is employed by the Employer on that entry date.

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

**1.23 "Employer"** means the governmental entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan. The term "Employer" shall exclude the federal government and any agency or instrumentality thereof.

**1.24 "Excess Deferrals"** means, with respect to any taxable year of a Participant, either (1) those elective deferrals within the meaning of Code Sections 402(g) or 402A that are made during the Participant's taxable year and exceed the dollar limitation under Code Section 402(g) (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code Section 414(v)) for such year; or (2) are made during a calendar year and exceed the dollar limitation under Code Sections 402(g) and 402A (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code Section 414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer.

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

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

**1.27 "Forfeiture"** means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan. A Forfeiture will occur on the distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For this purpose, a Participant's Vested benefit shall not include the Participant's Rollover Account.

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

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

**1.29 "415 Compensation"** means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Section 3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation. 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Sections 125, 457, and 132(f)(4).

For Limitation Years beginning in and after 2005, payments made within 2½ months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) will be compensation within the meaning of Code Section 415(c)(3) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

415 Compensation will be limited to the same dollar limitations set forth in Section 1.11 adjusted in such manner as permitted under Code Section 415(d).

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

**1.30 "Hour of Service"** means (1) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation Section 2530.200b-2 which is incorporated herein by reference); (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

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

insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

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

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

**1.32 "Investment Manager"** means a person or entity which renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or property of the Plan and which is appointed in accordance with Section 2.1(b).

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

**1.34 "Leased Employee"** means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer.

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

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

**1.36 "Nonelective Contribution"** means the Employer's contributions to the Plan other than Elective Deferrals

**1.37 "Normal Retirement Age"** means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if the Participant is employed by the Employer on or after that date). However, solely for purposes of nondiscrimination testing under Code Section 401(a)(4), the Employer may deem the social security retirement age (as defined in Code Section 415(b)(8)) as the Normal Retirement Age.

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

**1.39 "Participant"** means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (*e.g.*, because the Participant has an Account balance in the Plan).

**1.40 "Participant Directed Account"** means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

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

**1.42 "Participating Employer"** means an Employer who adopts the Plan pursuant to Section 10.1.

**1.43 "Period of Service"** means every twelve (12) month period commencing with an Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive partial credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.



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

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service method to the Elapsed Time method, an Employee will receive credit for a Period of Service consisting of:

- (a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and
- (b) The greater of (1) the Periods of Service that would be credited to the Employee under the Elapsed Time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service method as of the date of the amendment.

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

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

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

**1.45 "Plan"** means this instrument (hereinafter referred to as the Nationwide Governmental Volume Submitter Basic Plan Document) and the Adoption Agreement as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

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

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

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

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

**1.50 "Roth Elective Deferrals"** means, for calendar years beginning after December 31, 2005, a Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her deferral election. Roth Elective Deferrals shall be subject to the requirements of Sections 11.2(c) and 11.2(d) and shall, except as otherwise provided herein, be required to satisfy the nondiscrimination requirements of Regulation Section 1.401(k)-1(b)(2), the provisions of which are incorporated herein by reference. A Participant's Roth Elective Deferrals will be maintained in a separate account containing only the Participant's Roth Elective Deferrals and gains and losses attributable to those Roth Elective Deferrals.

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

A Salary Reduction Agreement may not be effective prior to the later of: (a) the date the Employee becomes a Participant; or (b) the date the Participant agrees (including by automatic consent) to the Salary Reduction Agreement. A Salary Reduction Agreement is valid even though it is executed by an Employee before he or she actually becomes a Participant, so long as the Salary Reduction

Agreement is not effective before the date the Employee becomes a Participant. A Salary Reduction Agreement may only apply to Compensation that becomes currently available to the Employee after the effective date of the Salary Reduction Agreement.

A Salary Reduction Agreement (or other written procedures) must designate a uniform period during which an Employee may change or terminate his or her deferral election under the Salary Reduction Agreement. A Participant's right to change or terminate a Salary Reduction Agreement may not be available on a less frequent basis than once per Plan Year.

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

**1.51 "Terminated Participant"** means a person who has been a Participant, but whose employment has been terminated with the Employer or applicable Participating Employer other than by death, Total and Permanent Disability or retirement.

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

**1.53 "Trustee"** means any person or entity that is named in the Adoption Agreement or has otherwise agreed to serve as Trustee, or any successors thereto.

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

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

**1.56 "Vested"** means the nonforfeitable portion of any account maintained on behalf of a Participant.

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

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

If two (2) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) Years of Service for eligibility purposes upon completing two (2) consecutive Years of Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as specified in Section 3.5.

Years of Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service for vesting purposes will be measured on the same vesting computation period.

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

In the event the method of crediting service is amended from the Elapsed Time method to the Hour of Service method, an Employee will receive credit for Years of Service equal to:

- (a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and
- (b) In the computation period which includes the date of the amendment, a number of Hours of Service to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

## ARTICLE II ADMINISTRATION

### 2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

- (a) **Appointment of Trustee, Insurer, and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee, Insurer and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent such as a third party administrative services provider and recordkeeper) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.
- (b) **Appointment of Investment Manager.** The Employer may appoint, at its option, an Investment Manager, investment adviser, or other agent to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.
- (c) **Review of fiduciary performance.** The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder.

### 2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

### 2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

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

### 2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

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

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

- (a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct agents of the Plan with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct all discretionary or otherwise directed disbursements from the Trust Fund;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;
- (g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;
- (h) to compute and certify to the Employer and agents of the Plan from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and agents of the Plan regarding the short and long-term liquidity needs of the Plan;
- (j) to assist Participants regarding their rights, benefits, or elections available under the Plan; and
- (k) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it.

## 2.5 RECORDS AND REPORTS

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

## 2.6 APPOINTMENT OF ADVISERS

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

## 2.7 INFORMATION FROM EMPLOYER

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

## 2.8 PAYMENT OF EXPENSES

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

incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

## 2.9 MAJORITY ACTIONS

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

## 2.10 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits) after the application is filed, or such period as is required by applicable law. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

## ARTICLE III ELIGIBILITY

### 3.1 CONDITIONS OF ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility elected in the Adoption Agreement.

### 3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement. If said Employee is not employed on such date, but is reemployed, then such Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment.

(b) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

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

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

### 3.3 DETERMINATION OF ELIGIBILITY

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

### 3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

### 3.5 REHIRED EMPLOYEES

(a) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee or the Employee's prior service is disregarded. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

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

(c) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan.

### 3.6 ELECTION NOT TO PARTICIPATE

Employee participation in the Plan is mandatory for employees who meet the Plan's eligibility requirements. A Participant in a 401(k) Profit Sharing Plan has the option of making a deferral election, including an election not to defer any Compensation.

## ARTICLE IV CONTRIBUTION AND ALLOCATION

### 4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **For a Money Purchase Plan:**

The Employer will make contributions on the following basis. On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount elected in the Adoption Agreement. All contributions by the Employer will be made in cash. In the event a funding waiver is obtained, this Plan shall be deemed to be an individually designed plan.

(b) **For a Profit Sharing Plan:**

(1) For each Plan Year, the Employer may contribute to the Plan such amount as elected by the Employer in the Adoption Agreement.

(2) Subject to the terms of the Plan's investment providers, the Employer may make its contribution to the Plan in the form of property, provided such contribution does not constitute a prohibited transaction under the Code.

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

(d) **Social Security Replacement Plan.** The Employer may elect under the Adoption Agreement to indicate its intention to qualify this Plan as a Social Security Replacement Plan under Code §3121(b)(7)(F). If the Employer makes the election to qualify the Plan as a Social Security Replacement Plan, the Plan will allocate a minimum contribution amount (Employer and Employee Contributions) of 7.5%. The Plan will consider each Participant a member of a retirement system that provides benefits comparable to the benefits he/she would have received under Social Security. In the case of part-time, seasonal and temporary Employees, the benefit will be nonforfeitable.

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

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

### 4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

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

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

(1) **Money Purchase allocation.** For a Money Purchase Plan:

(i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.

(ii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied. If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service during the Plan Year or is employed on the last day of the Plan Year. Furthermore, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service.

(2) **Profit sharing allocation.** For a Profit Sharing Plan the Employer's contribution shall be allocated to each Participant's Account in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the provisions below.

Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied. If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service during the Plan Year or is employed on the last day of the Plan Year.

(c) **Gains or losses.** Except as otherwise elected in the Adoption Agreement or as provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in the same proportion that each Participant's nonsegregated accounts bear to the total of all Participants' nonsegregated accounts as of such date.

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

(e) **Forfeitures.** The Forfeitures shall be allocated in accordance with the elections made in the Forfeiture Section of the Adoption Agreement. In the event Forfeitures are used to reduce an Employer discretionary contribution and the Forfeitures exceed such contribution, then the remaining Forfeitures will be allocated as an additional discretionary contribution. If no election is made in the Adoption Agreement, then any remaining Forfeitures will be used to reduce any Employer contributions under the Plan. Regardless of the preceding sentences, in the event the allocation of Forfeitures provided herein shall cause the "annual additions" (as defined in Section 4.4) to any Participant's Account to exceed the amount allowable by the Code, an adjustment shall be made in accordance with Section 4.5. Except, however, a Participant shall only be eligible to share in the allocations of Forfeitures for the year if the conditions set forth in the Adoption Agreement are satisfied. If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service during the Plan Year or is employed on the last day of the Plan Year.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

**4.4 MAXIMUM ANNUAL ADDITIONS**

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

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code Section 419(e)) maintained by the "employer," or an individual medical benefit account (as defined in Code Section 415(1)(2)) maintained by the "employer," or a simplified

employee pension (as defined in Code Section 408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

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

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

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

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

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

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

(4) If, pursuant to Section 4.4(b)(2) or Section 4.5, a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code Section 412, regardless of the actual allocation date.

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

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

(ii) the ratio of (1) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (2) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(6) Any "excess amount" attributed to this Plan will be disposed of in the manner described in Section 4.5.



(c) **Certain amounts are not "annual additions."** For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an "annual addition." In addition, the following are not Employee contributions for the purposes of Section 4.4(d)(1)(b): (1) rollover contributions (as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16)); (2) repayments of loans made to a Participant from the Plan; (3) repayments of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash-outs); (4) repayments of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); (5) Catch-Up Contributions; and (6) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

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

(1) "Annual additions" means the sum credited to a Participant's accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit fund (as defined in Code Section 419(e)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (e)(7)(ii) shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an "annual addition," or (2) any amount otherwise treated as an "annual addition" under Code Section 415(l)(1).

For this purpose, any "excess amount" applied under Section 4.5 in the Limitation Year to reduce "employer" contributions shall be considered "annual additions" for such Limitation Year.

(2) "Defined contribution dollar limitation" means, effective with respect to Limitation Years beginning after December 31, 2001, \$40,000 as adjusted under Code Section 415(d).

(3) "Employer" means, for purposes of this Section and Section 4.5, the Employer that adopts this Plan and all Affiliated Employers, except that for purposes of this Section, the determination of whether an entity is an Affiliated Employer shall be made by applying Code Section 415(h).

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

(5) "Maximum permissible amount" means, except to the extent permitted under this Plan and Code Section 414(v), effective with respect to Limitation Years beginning after December 31, 2001, the maximum "annual addition" that may be contributed or allocated to a Participant's accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:

- (i) the "defined contribution dollar limitation," or
- (ii) one-hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

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

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

#### 4.5 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS

Allocation of "annual additions" (as defined in Section 4.4) to a Participant's Combined Account for a Limitation Year generally will cease once the limits of Section 4.4 have been reached for such Limitation Year. However, if as a result of the allocation of Forfeitures, a reasonable error in estimating a Participant's annual 415 Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant under the limits of Section 4.4, or other facts and circumstances to which Regulation Section 1.415-6(b)(6) shall be applicable, the "annual additions" under this Plan would cause the maximum provided in Section 4.4 to be exceeded, the "excess amount" will be disposed of in one of the following manners, as uniformly determined by the Plan Administrator for all Participants similarly situated:

(a) Any after-tax voluntary Employee contributions (plus attributable gains), to the extent they would reduce the "excess amount," will be distributed to the Participant;

- (b) If, after the application of subparagraph (a), an "excess amount" still exists, any unmatched Elective Deferrals, and any gains attributable to such Elective Deferrals, to the extent they would reduce the "excess amount," will be distributed to the Participant;
- (c) To the extent necessary, matched Elective Deferrals and "employer" matching contributions will be proportionately reduced from the Participant's Account. The Elective Deferrals, and any gains attributable to such Elective Deferrals, will be distributed to the Participant and the "employer" matching contributions, and any gains attributable to such matching contributions, will be used to reduce the "employer's" contributions in the next Limitation Year;
- (d) If, after the application of subparagraphs (a), (b) and (c), an "excess amount" still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the "excess amount" in the Participant's Account will be used to reduce "employer" contributions (including any allocation of Forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;
- (e) If, after the application of subparagraphs (a), (b) and (c), an "excess amount" still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the "excess amount" will be held unallocated in a suspense account. The suspense account will be applied to reduce future "employer" contributions (including allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary; and
- (f) If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, no investment gains and losses shall be allocated to such suspense account. 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 or any Employee contributions may be made to the Plan for that Limitation Year. Except as provided in (a), (b) and (c) above, "excess amounts" may not be distributed to Participants.

#### 4.6 ROLLOVERS

- (a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." Furthermore, any Roth Elective Deferrals that are accepted as "rollovers" in this Plan on or after January 1, 2006 shall be separately accounted for. A Participant's Rollover Account shall be fully Vested at all times and shall not be subject to forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include former Employees if the Employer and Administrator consent to accept "rollovers" of distributions made to former Employees from any plan of the Employer.
- (b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.
- (c) **Distribution of "rollovers."** At Normal Retirement Date, or such other date when the Participant or Eligible Employee or such Participant's or Eligible Employee's Beneficiary shall be entitled to receive benefits, the Participant's Rollover Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder.
- (d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.
- (e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of rollover contributions that may be accepted by the Plan.
- (f) **Definitions.** For purposes of this Section, the following definitions shall apply:
- (1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;"
  - (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover

to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code Section 401(a) which is exempt from tax under Code Section 501(a)), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and an annuity contract described in Code Section 403(b).

#### 4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

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

(b) **Accounting of transfers.** Amounts in a Participant's Transfer Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and subsection (d) below, provided the restrictions of subsection (c) below and Section 6.13 are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

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

(d) **Distribution of plan-to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder.

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

#### 4.8 MANDATORY EMPLOYEE CONTRIBUTIONS

(a) **Mandatory Employee Contributions.** An Employer may elect in the Adoption Agreement to provide for Mandatory Employee Contributions. If the Employer elects to provide for such contributions, each Participant, as a condition of employment, will make a Mandatory Employee Contribution in the amount elected in the Adoption Agreement. Alternatively, the Employer may elect to provide a range of Mandatory Employee Contribution percentages from which the Participant may choose to contribute. Under this option, the Employee, as a condition of employment, must make an irrevocable election to contribute a percentage of his/her Compensation no later than his/her Plan Entry Date. The Mandatory Employee Contributions are excludible from the Employee's gross income. During the period of the Participant's participation in the Plan, the Participant may not revoke the election and receive cash in lieu of the contribution, nor may the Participant change the amount of the Mandatory Employee Contribution.

(b) **Government Pick-up Contribution.** The Employer will "pick-up" the Mandatory Employee contribution and will pay the Mandatory Employee contribution to the Plan as an Employer contribution. This provision is effective only after the Employer provides for the treatment of the Employee contributions as described in this paragraph, through a person authorized to take such action, and evidenced in writing by minutes of a meeting, resolution, ordinance, or other formal action by the Employer, which will effectuate the "pick-up" provision.

#### 4.9 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **After-tax voluntary Employee contributions.** If elected in the Adoption Agreement, each Participant may, in accordance with nondiscriminatory procedures established by the Administrator, elect to make after-tax voluntary Employee

contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution (other than Roth Elective Deferrals) made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is separately accounted for under the Plan.

(b) **Full Vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, any notice requirements. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event a Participant has received a hardship distribution under the safe harbor hardship provisions of the Code Section 401(k) Regulations from any plan maintained by the Employer, then the Participant shall be barred from making any after-tax voluntary Employee contributions for a period of twelve (12) months after receipt of the hardship distribution. However, with respect to Plan Years beginning on or after December 31, 2002, the suspension period shall be six (6) months rather than twelve (12) months.

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

#### 4.10 PARTICIPANT DIRECTED INVESTMENTS

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

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

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

(d) **Allocation of gains or losses.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

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

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

#### 4.11 QUALIFIED MILITARY SERVICE

Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code Section 414(u)(4).

#### 4.12 HEART ACT PROVISIONS

(a) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

(b) **Benefit accrual.** For benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

(1) **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

(c) **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treasury Reg. §1.415(c)-2 (e.g., for purposes of Code §415, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes.

The provision above applies only if all Employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

(d) **Deemed Severance.** If a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

### ARTICLE V VALUATIONS

#### 5.1 VALUATION OF THE TRUST FUND

The Administrator, with the assistance of any named Fiduciary or agent of the Plan, shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all unpaid expenses not yet been paid by the Employer or the Trust Fund.

#### 5.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator will value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted

security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Administrator may appraise such assets itself (assuming it has the appropriate expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

## ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS

### 6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without termination of employment with the Employer (subject to Section 11.2(d)), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

### 6.2 DETERMINATION OF BENEFITS UPON DEATH

- (a) **100% Vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.
- (b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary.
- (c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- (d) **Beneficiary designation.** The Participant shall designate a Beneficiary on a form provided by the Administrator.
- (e) **Beneficiary if no Beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in an appendix to the Adoption Agreement, to:
- (1) The Participant's surviving spouse;
  - (2) The Participant's children, including adopted children, per stirpes;
  - (3) The Participant's surviving parents, in equal shares; or
  - (4) The Participant's estate.

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

- (f) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code Section 414(p)) provides otherwise or a subsequent Beneficiary designation is made.
- (g) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is affected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.
- (h) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

### 6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Administrator, in accordance with the provisions of Sections 6.5 and 6.7, shall direct the distribution to such Participant of the entire Vested interest in the Plan.

### 6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on termination of employment.** If a Participant's employment with the Employer is terminated for any reason other than death, Total and Permanent Disability, or retirement, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

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

Notwithstanding the above, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$1,000, the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include, if selected in the Conditions for Distributions Upon Termination of Employment Section of the Adoption Agreement, the Participant's Rollover Account. Effective with respect to distributions made on or after March 28, 2005, if a mandatory distribution is made pursuant to this paragraph and such distribution is greater than \$1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Section 6.13 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Section 6.13, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied.

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

### 6.5 DISTRIBUTION OF BENEFITS

(a) **Required minimum distributions (Code Section 401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Section 6.8.

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

### 6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) **Required minimum distributions (Code Section 401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

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

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

## 6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. However, unless a Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant to consent to a distribution shall be deemed to be an election to defer the commencement of payment of any benefit.

## 6.8 REQUIRED MINIMUM DISTRIBUTIONS

### (a) General rules

(1) **Effective Date.** Subject to the good faith interpretation standard, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan. The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning after December 31, 2001.

(2) **Coordination with minimum distribution requirements previously in effect.** If the "effective date" of this amendment is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this Section will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the "effective date" of this Section equals or exceeds the required minimum distributions determined under this Section, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the "effective date" of this Section is less than the amount determined under this amendment, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section.

(3) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

(4) **Limits on distribution periods.** As of the first distribution calendar year, distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Participant, (ii) the joint lives of the Participant and a "designated Beneficiary," (iii) a period certain not extending beyond the life expectancy of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "designated Beneficiary."

(5) **Good faith interpretation standard.** In applying any provision of this section, the Plan will apply a reasonable good faith interpretation of Code §401(a)(9).

### (b) Time and manner of distribution

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

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

(i) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary," then, except



as otherwise provided herein, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(ii) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(b)(3) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving spouse were the Participant.

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

(3) **Forms of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date," as of the first "distribution calendar year" distributions will be made in accordance with Sections 6.8(c) and 6.8(d). 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 Section 401(a)(9) and the Regulations thereunder.

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

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following, as elected in the Form of Distributions Section of the Adoption Agreement:

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

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

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

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

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

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

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

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

the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

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

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

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

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

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

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

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

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

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

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

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

(5) "Required beginning date" means, except as otherwise elected in an appendix to the Adoption Agreement, with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

(f) **Transition rules.**

- (1) **For plans in existence before 2003.** Required minimum distributions before 2003 were made pursuant to Section (e), if applicable, and Sections 6.8(f)(2) through (4) below.
- (2) **2000 and Before.** Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Code Section 401(a)(9) and the proposed Regulations thereunder published in the Federal Register on July 27, 1987 (the "1987 Proposed Regulations").
- (3) **2001.** Required minimum distributions for calendar year 2001 were made in accordance with Code Section 401(a)(9) and the 1987 Proposed Regulations, unless the Adoption Agreement provides that required minimum distributions for 2001 were made pursuant to the proposed Regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 Proposed Regulations"). If distributions were made in 2001 under the 1987 Proposed Regulations prior to the date in 2001 the Plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.
- (4) **2002.** Required minimum distributions for calendar year 2002 were made in accordance with Code Section 401(a)(9) and the 1987 Proposed Regulations unless either (i) or (ii) below applies.
- (i) The Adoption Agreement provides that required minimum distributions for 2002 were made pursuant to the 2001 Proposed Regulations.
- (ii) The Adoption Agreement provides that required minimum distributions for 2002 were made pursuant to the Final and Temporary Regulations under Code Section 401(a)(9) published in the Federal Register on April 17, 2002, (the "2002 Final and Temporary Regulations") which are described in Sections (b) through (e) of this Section. If distributions were made in 2002 under either the 1987 Proposed Regulations or the 2001 Proposed Regulations prior to the date in 2002 the Plan began operating under the 2002 Final and Temporary Regulations, the special transition rule in Section 1.2 of the model amendment in Revenue Procedure 2002-29, 2002-1 C.B. 1176, applied.
- (5) **Waiver of 2009 required distributions**
- (i) **Suspension of RMDs unless otherwise elected by Participant.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("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, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.
- (ii) **Direct Rollovers.** A direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

**6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL**

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

**6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, effective with respect to distributions made after March 28, 2005, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a)

or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Plan Section 6.13(b)(1) may be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

### 6.11 IN-SERVICE DISTRIBUTION

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts.

### 6.12 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

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

### 6.13 DIRECT ROLLOVERS

(a) **Right to direct rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section effective with respect to distributions made after December 31, 2001, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least \$500. Furthermore, the Administrator shall apply this Section by treating a Participant's Roth Elective Deferral Account separately from the Participant's other Accounts.

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

(1) An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" "designated Beneficiary," or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), (other than an endowment contract), a Roth IRA described in Code Section 408A, a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a), an annuity plan described in Code Section 403(a), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b), that accepts the "distributee's" "eligible rollover distribution." However, in the case of an "eligible rollover distribution" to the surviving spouse, an "eligible retirement plan" is an individual retirement account or individual retirement annuity. The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate

payee under a qualified domestic relations order, as defined in Code Section 414(p). If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

(3) 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 Section 414(p), are "distributees" with regard to the interest of the spouse or former spouse.

(4) A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided no earlier than 30 days and no later than 180 days prior to the distribution. The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

#### 6.14 TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution).

#### 6.15 CORRECTIVE DISTRIBUTIONS

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

### ARTICLE VII TRUSTEE AND CUSTODIAN

#### 7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) The provisions of this Article, other than Section 7.6, shall not apply to this Plan if a separate trust agreement is being used. Furthermore, the provisions of this Article, other than Sections 7.5 and 7.6, shall not apply if the Plan is fully insured.

(b) The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan.

(c) The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.

(d) In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures if the Plan permits Participant directed investments), the Employer, or an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

(1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including but not limited to, voice recorded) instructions of a Participant (pursuant to the Participant Direction Procedures), the Employer, or any Fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

- (3) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense that may result from the Trustee's refusal or failure to comply with any direction from the Participant.
- (4) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.
- (5) Notwithstanding anything herein above to the contrary, the Trustee shall not invest any portion of a Participant's Directed Account in "collectibles" within the meaning of Code Section 408(m).
- (e) The Trustee will maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.9.
- (f) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.
- (g) The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

**7.2 INVESTMENT POWERS AND DUTIES OF DISCRETIONARY TRUSTEE**

- (a) This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a Discretionary Trustee. If so designated, then the Trustee has the discretion and authority to invest, manage, and control those Plan assets except, however, with respect to those assets which are subject to the investment direction of a Participant (if Participant directed investments are permitted), or an Investment Manager, the Administrator, or other agent appointed by the Employer. The exercise of any investment discretion hereunder shall be consistent with the "funding policy and method" determined by the Employer.
- (b) The Trustee shall, except as otherwise provided in this Plan, invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust. The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with 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 and with like aims.
- (c) The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Plan, shall have the following powers and authorities to be exercised in the Trustee's sole discretion:
  - (1) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
  - (2) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
  - (3) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
  - (4) To cause any securities or other property to be registered in the Trustee's own name, or in the name of a nominee or in a street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;

- (5) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100, all or such part of the Trust Fund as the Trustee may deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in an appendix to the Adoption Agreement. The Trustee may withdraw from such common, collective, or pooled trust fund all or such part of the Trust Fund as the Trustee may deem advisable;
- (6) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (7) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration (provided such arbitration does not apply to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agents or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a Profit Sharing Plan (including a 401(k) Plan), on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other Contracts; to collect, receive, and settle for the proceeds of all such annuity, or other Contracts as and when entitled to do so under the provisions thereof;
- (12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);
- (13) To invest in Treasury Bills and other forms of United States government obligations;
- (14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;
- (15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee);
- (16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and
- (17) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.
- (d) The Trustee may appoint, at its option, an Investment Manager, investment adviser, or other agent to provide direction to the Trustee with respect to the investment of any or all of the Plan assets. Such appointment shall be in writing and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

### 7.3 INVESTMENT POWERS AND DUTIES OF NONDISCRETIONARY TRUSTEE

(a) This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a nondiscretionary Trustee. If so designated, then the Trustee shall have no discretionary authority to invest, manage, or control those Plan assets, but must act solely as a Directed Trustee of those Plan assets. A nondiscretionary Trustee, as Directed Trustee of the Plan funds it holds, is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein, each of which the nondiscretionary Trustee exercises solely as Directed Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets. If no directions are provided to the Trustee, the Employer will provide necessary direction. Furthermore, the Employer and the nondiscretionary Trustee may, in writing, limit the powers of the nondiscretionary Trustee to any combination of powers listed within this Section. The party which has the authority to manage and control the investment of the Plan assets shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with 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 and with like aims.

(b) The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Plan, shall have the following powers and authorities:

- (1) To invest the assets, without distinction between principal and income, in securities or property, real or personal, wherever situated, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust;
- (2) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (3) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (4) At the direction of the party which has the authority or discretion, to vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (5) To cause any securities or other property to be registered in the Trustee's own name, or in the name of a nominee or in a street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;
- (6) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100, all or such part of the Trust Fund as the party which has the authority to manage and control the investment of the assets shall deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in an appendix to the Adoption Agreement;
- (7) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration (provided such arbitration does not apply to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;



- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a Profit Sharing Plan (including a 401(k) Plan), on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at the direction of the person with the authority to do so, whatever rights and privileges may be granted under such annuity or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;
- (12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);
- (13) To invest in Treasury Bills and other forms of United States government obligations;
- (14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;
- (15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee); and
- (16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests.

#### 7.4 POWERS AND DUTIES OF CUSTODIAN

The Employer may appoint a custodian of the Plan assets. A custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a custodian unless the context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the Custodian's liability. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an Investment Manager, a named Fiduciary or other third party with authority to provide direction to the Custodian. The resignation or removal of the Custodian shall be made in accordance with Section 7.10 as though the Custodian were a Trustee.

#### 7.5 LIFE INSURANCE

(a) **Permitted insurance.** The Trustee (or Insurer), in accordance with nondiscriminatory operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of a Profit Sharing Plan (including a 401(k) Plan), on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than \$1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a Profit Sharing Plan (including a 401(k) Plan), to the portion of the Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** The Trustee (or Insurer) must distribute the Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the date on which benefits commence. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan.

(c) **Limitations on purchase.** No life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

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

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

## 7.6 LOANS TO PARTICIPANTS

(a) **Permitted Loans.** The Trustee (or the Administrator if the Trustee is a nondiscretionary Trustee or if loans are treated as Participant directed investments) may, in the Trustee's (or, if applicable, the Administrator's) sole discretion, make loans to Participants. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants on a reasonably equivalent basis; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan.

(b) **Prohibited assignment or pledge.** An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a loan under this Section.

(c) **Loan program.** The Administrator shall be authorized to establish a participant loan program to provide for loans under the Plan. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(d) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(e) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

## 7.7 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If there is more than one Trustee, then the responsibilities of each Trustee may be specified by the Employer and accepted in writing by each Trustee. If no such delegation is made by the Employer, then the Trustees may allocate the responsibilities among themselves, in which event the Trustees shall notify the Employer and the Administrator in writing of such action and specify the responsibilities of each Trustee. Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

## 7.8 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full-time compensation from the Employer shall not receive compensation from this Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

## 7.9 ANNUAL REPORT OF THE TRUSTEE

(a) **Annual report.** Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (1) the net income, or loss, of the Trust Fund;
- (2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (3) the increase, or decrease, in the value of the Trust Fund;
- (4) all payments and distributions made from the Trust Fund; and
- (5) such further information as the Trustee and/or Administrator deems appropriate.

(b) **Employer approval of report.** The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

## 7.10 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) **Trustee resignation.** Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.

(b) **Trustee removal.** Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

(c) **Appointment of successor.** Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, any remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) **Appointment of successor prior to removal of predecessor.** The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) **Trustee's statement upon cessation of being Trustee.** Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual

statement of account for the Plan Year required under Section 7.9 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.9 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.9 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.9 and this subparagraph.

#### 7.11 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code Section 401(a), provided that the trust to which such transfers are made permits the transfer to be made.

#### 7.12 TRUSTEE INDEMNIFICATION

The Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

### ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS

#### 8.1 AMENDMENT

- (a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.
- (b) **Permissible amendments.** The Employer may (1) change the choice of options in the Adoption Agreement, (2) add any appendix to the Adoption Agreement ; (3) amend administrative trust or custodial provisions; (4) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions
- (c) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

#### 8.2 TERMINATION

- (a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan (in the case of a Profit Sharing Plan), all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to forfeiture.
- (b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5, except that no Participant or spousal consent is required. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer.
- (c) **Abandoned plan.** If the Employer abandons the Plan, the Plan may terminate in accordance with applicable IRS regulations and other guidance.

#### 8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer,

merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation.

## ARTICLE IX MISCELLANEOUS

### 9.1 EMPLOYER ADOPTIONS

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Trustee (or Insurer), and it shall provide such additional information as the Trustee (or Insurer) may require. The consent of the Trustee (or Insurer) to act as such shall be signified by its execution of the Adoption Agreement or a separate agreement.

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

### 9.2 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

### 9.3 CONSTRUCTION OF PLAN

This Plan and Trust shall be construed and enforced according to the Code and the laws of the state or commonwealth in which the Employer's (or if there is a corporate Trustee, the Trustee's, or if the Plan is fully insured, the Insurer's) principal office is located (unless otherwise designated in the Adoption Agreement), other than its laws respecting choice of law.

### 9.4 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### 9.5 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

### 9.6 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact pursuant, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

### 9.7 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

### 9.8 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee, and shall have no duty to

see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

#### **9.9 RECEIPT AND RELEASE FOR PAYMENTS**

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

#### **9.10 ACTION BY THE EMPLOYER**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

#### **9.11 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY**

The "named Fiduciaries" of this Plan are (1) the Employer, (2) the Administrator, (3) the Trustee (if the Trustee has discretionary authority as elected in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee), and (4) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under the Plan; and shall have the sole authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's "funding policy and method"; and to amend the elective provisions of the Adoption Agreement or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. If the Trustee has discretionary authority, it shall have the sole responsibility of management of the assets held under the Trust, except those assets, the management of which has been assigned to an Investment Manager or Administrator, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

#### **9.12 HEADINGS**

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### **9.13 APPROVAL BY INTERNAL REVENUE SERVICE**

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law, or such later date as the Secretary of Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this volume submitter plan and will be considered an individually designed plan.

#### **9.14 UNIFORMITY**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

#### **9.15 PAYMENT OF BENEFITS**

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11 and 11.4, only upon death, Total and Permanent Disability, normal or early retirement, termination of employment, or termination of the Plan.

#### **9.16 ELECTRONIC MEDIA**

The Plan Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants,

making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

#### 9.17 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a). Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. If the Plan is a 401(k) Plan, to correct an operational error, the Plan Administrator may require the Trustee (or Insurer) to distribute from the Plan Elective Deferrals or Vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code Section 415, or Code Section 402(g).

#### 9.18 NONTRUSTEED PLANS

If the Plan is funded solely with Contracts, then notwithstanding Sections 9.6 and 9.13, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that: (1) no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

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

### ARTICLE X PARTICIPATING EMPLOYERS

#### 10.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee (or Insurer), any Affiliated Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer. Regardless of the preceding, an entity that ceases to be an Affiliated Employer may continue to be a Participating Employer through the end of the transition period for certain dispositions set forth in Code Section 410(b)(6)(C). In the event a Participating Employer is not an Affiliated Employer and the transition period in the preceding sentence, if applicable, has expired, then this Plan will be considered an individually designed plan.

#### 10.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

- (a) **Provisions may not vary.** Each Participating Employer shall be required to select the same Adoption Agreement provisions as those selected by the Employer other than the Fiscal Year and such other items that must, by necessity, vary among employers.
- (b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.
- (c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

#### 10.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

#### 10.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which

the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

**10.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES**

If elected by a Participating Employer in its participation agreement, effective with respect to Plan Years beginning in and after the Plan Year in which the provisions of this Plan are adopted, any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share in the contribution and forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed. Alternatively (if so elected), any contribution or Forfeiture subject to allocation during each Plan Year shall be allocated among all Participants of all Participating Employers in accordance with the provisions of this Plan. However, if a Participating Employer is not an Affiliated Employer then any contributions made by such Participating Employer will only be allocated among the Participants eligible to share in the contribution and forfeiture allocation of the Participating Employer.

On the basis of the information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

**10.6 AMENDMENT**

Any Participating Employer that is an Affiliated Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer then amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee (or Insurer) where such consent is necessary in accordance with the terms of this Plan.

**10.7 DISCONTINUANCE OF PARTICIPATION**

Any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee (or insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees. If a separate plan has not been established, at the time of such continuance or revocation for whatever reason, the assets and liabilities, Contracts and other Trust Fund assets allocable to such Participating Employer's participation in this Plan shall be spun off pursuant to Code Section 414(l) and such spun off assets shall constitute a retirement plan of the Participating Employer with such Participating Employer becoming sponsor and the individual who has signed the participation agreement on behalf of the Participating Employer becoming Trustee for this purpose. Such individual shall agree to this appointment by virtue of signing the participation agreement. If such individual is no longer an Employee of the Participating Employer, then the Participating Employer shall appoint a Trustee. If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the employees of such Participating Employer.

**10.8 ADMINISTRATOR'S AUTHORITY**

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

**10.9 PARTICIPATING EMPLOYER CONTRIBUTION FOR AFFILIATE**

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

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



**ARTICLE XI  
CASH OR DEFERRED PROVISIONS**

Except as specifically provided elsewhere in this Plan, the provisions of this Article shall apply with respect to any 401(k) Profit Sharing Plan currently maintained by the Employer regardless of any provisions in the Plan to the contrary. The Employer may not adopt a new 401(k) Profit Sharing Plan but may maintain its existing 401(k) Profit Sharing Plan.

**11.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION**

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

- (1) The amount of the total salary reduction elections of all Participants made pursuant to Section 11.2(a), which amount shall be deemed Elective Deferrals, plus
- (2) If elected in the Adoption Agreement, a matching contribution equal to the percentage, if any, specified in the Adoption Agreement of the Elective Deferrals of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution, plus
- (3) If elected in the Adoption Agreement, a discretionary amount determined each year by the Employer, which amount if any, shall be deemed an Employer Nonelective Contribution, which amount shall be an Employer Nonelective Contribution or an Elective Contribution as elected in the Adoption Agreement, plus

**11.2 PARTICIPANT'S SALARY REDUCTION ELECTION**

(a) **Deferral elections.** Each Participant may elect to defer a portion of Compensation which would have been received in the Plan Year, but for the salary reduction election, subject to the limitations of this Section and the Adoption Agreement. A salary reduction election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election, or if later, the later of the date the Employer adopts this cash or deferred arrangement or the date such arrangement first became effective. Any elections made pursuant to this Section, including a modification or termination of an election, shall become effective as soon as is administratively feasible following the receipt of such election by the Administrator

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

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

For purposes of this Section, the annual dollar limitation of Code Section 401(a)(17) (\$200,000 as adjusted) shall not apply except that the Administrator may elect to apply such limit as part of the deferral election procedures established hereunder.

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

(b) **Catch-Up Contributions.** If selected in the Adoption Agreement, effective for calendar years beginning after December 31, 2001, all Employees who are eligible to make Elective Deferrals under this Plan and who have attained age 50 before the close of the taxable year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the dollar limitations of, Code Section 414(v)(2)(B)(i) for the taxable year. The dollar limit on Catch-Up Contributions under Code Section 414(v)(2)(B)(i) is \$1,000 for taxable years beginning in 2002, increasing by \$1,000 for each year thereafter up to \$5,000 for taxable years beginning in 2006 and later years. After 2006, the \$5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 414(v)(2)(C). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such Catch-Up Contributions (but Catch-Up Contributions made in prior years are counted in determining whether the Plan is a Top-Heavy Plan). Catch-Up Contributions shall be treated as Elective Deferrals for purposes of applying any Employer matching contributions.

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

(d) **Distribution restrictions.** Effective with respect to distributions and transactions made after December 31, 2001, amounts held in a Participant's Elective Deferral Account may only be distributable as provided in (4) below or as provided under the other provisions of this Plan, but in no event prior to the earlier of the following events or any other events permitted by the Code or Regulations:

- (1) the Participant's severance of employment (regardless of when the severance of employment occurred), Total and Permanent Disability, or death;
- (2) the Participant's attainment of age 59½;
- (3) the proven financial hardship of the Participant, subject to the limitations of Section 11.4; or
- (4) the termination of the Plan without the existence at the time of Plan termination of another defined contribution plan or the establishment of a successor defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution plan does not include a simplified employee pension plan (as defined in Code Section 408(k)) or a SIMPLE individual retirement account plan (as defined in Code Section 408(p)). A distribution that is made because of this paragraph must be made in a lump-sum.

(e) **Code Section 402(g) dollar limit.** A Participant's Elective Deferrals made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan during any calendar year shall not exceed the dollar limitation imposed by Code Section 402(g), as in effect at the beginning of such calendar year, except to the extent permitted under Section 11.2(b) and Code Section 414(v), if applicable. The dollar limitation contained in Code Section 402(g) is \$10,500 for taxable years beginning in 2000 and 2001 increasing to \$11,000 for taxable years beginning in 2002 and increasing by \$1,000 for each year thereafter up to \$15,000 for taxable years beginning in 2006 and later years. After 2006, the \$15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 402(g)(4). For this purpose, "elective deferrals" means, with respect to a calendar year, the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code Section 401(k), any salary reduction simplified employee pension (as defined in Code Section 408(k)(6)), any SIMPLE IRA plan described in Code Section 408(p), any eligible deferred compensation plan under Code Section 457, any plans described under Code Section 501(c)(18), and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. "Elective deferrals" shall not include any deferrals properly distributed as excess "annual additions" pursuant to Section 4.5.

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

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

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

For the purpose of this subsection, "income" means the amount of income or loss allocable to a Participant's Excess Deferrals, which amount shall be allocated in the same manner as income or losses are allocated pursuant to Section 4.3(c). However, "income" for the period between the end of the taxable year of the Participant and the date of the distribution (the "gap period") is not required to be distributed for Excess Deferrals attributable to taxable years beginning prior to 2007.

Notwithstanding the above, for any years in which a Participant makes both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the distribution of any Excess Deferrals for such year shall be made from the Participant's Pre-Tax Elective Deferral Account before the Participant's Roth Elective Deferral Account, to the extent Pre-Tax Elective Deferrals were made for

the year, unless the Participant elects otherwise. Matching contributions which relate to Excess Elective Deferrals (regardless of whether such Excess Elective Deferrals are Pre-Tax Elective Deferrals or Roth Elective Deferrals) shall be treated as a Forfeiture.

Any distribution of Excess Deferrals made pursuant to this subsection shall be made first from unmatched Elective Deferrals (regardless of whether they are attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals) and, thereafter, from Elective Deferrals which are matched. Matching contributions which relate to Excess Deferrals that are distributed pursuant to this Section 11.2(f) shall be treated as a Forfeiture to the extent required pursuant to Code Section 401(a)(4) and the Regulations thereunder.

(g) **Suspension due to hardship.** Effective with respect to distributions made on or after December 31, 2001, in the event a Participant has received a hardship distribution pursuant to Regulation Section 1.401(k)-1(d)(3) from any other plan maintained by the Employer or from the Participant's Elective Deferral Account pursuant to Section 11.4, then such Participant shall not be permitted to elect to have Elective Deferrals contributed to the Plan for a period of six (6) months following the receipt of the distribution. Furthermore, any provisions of the Plan providing for the reduction of the dollar limitation under Code Section 402(g) for the Participant's taxable year following the taxable year in which the hardship distribution was made shall no longer apply.

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

(i) **Procedures must be established.** The Employer and the Administrator shall establish procedures necessary to implement the salary reduction elections provided for herein. Such procedures may contain limits on salary deferral elections such as limiting elections to whole percentages of Compensation or to equal dollar amounts per pay period that an election is in effect.

### 11.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

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

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

(1) With respect to Elective Deferrals made pursuant to Section 11.1(a)(1), to each Participant's Elective Deferral Account in an amount equal to each such Participant's Elective Deferrals for the year.

(2) With respect to the Employer matching contribution made pursuant to Section 11.1(a)(2), to each Participant's Account, as elected in the Adoption Agreement, in accordance with Section 11.1(a)(2).

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

(3) With respect to the Employer Nonelective Contribution made pursuant to Section 11.1(a)(3), to each Participant's Account in accordance with the provisions of Section 4.3(b)(2).

(4) With respect to the Employer Qualified Nonelective Contribution made pursuant to Section 11.1(a)(4), to each Participant's Qualified Nonelective Contribution Account in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.

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

(d) **Conditions for sharing in contributions/allocations.** Notwithstanding anything herein to the contrary, Participants shall only share in the allocations of the Employer matching contribution made pursuant to Section 11.1(a)(2), the Employer Nonelective Contributions made pursuant to Section 11.1(a)(3), and Forfeitures as provided in the Adoption Agreement.

### 11.4 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** If elected in the Adoption Agreement, the Administrator, at the election of a Participant, shall direct the Trustee (or Insurer) to distribute to the Participant in any one Plan Year up to the lesser of (1) 100% of the Accounts as selected in the Adoption Agreement valued as of the last Valuation Date or (2) the amount necessary to satisfy the immediate and heavy financial need of the Participant. For purposes of this Section, a Participant shall include an Employee who has an Account

balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Effective with respect to Plan Years beginning in 2006 (or if earlier, the date the final 401(k) Regulations are effective with respect to the Plan), withdrawal under this Section shall be authorized only if the distribution is for one of the following or any other item permitted under Regulation Section 1.401(k)-1(d) (3)(iii)(B) or any other federally enacted legislation:

- (1) Expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
  - (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
  - (3) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code Section 152(d)(1)(B));
  - (4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's spouse, children, or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code Section 152(b)(1), (b)(2), and (d)(1)(B));
  - (5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
  - (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).
- (b) **Other limits and conditions.** No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:
- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state, or local taxes or penalties reasonably anticipated to result from the distribution);
  - (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer (to the extent the loan would not increase the hardship);
  - (3) The Plan, and all other plans maintained by the Employer, provide that the Participant's Elective Deferrals and nondeductible voluntary Employee contributions will be suspended, effective for Plan Years beginning after December 31, 2001, for at least six (6) months after receipt of the hardship distribution (twelve months for Plan Years beginning prior to 2002); and
  - (4) Effective for Plan Years beginning prior to January 1, 2002, the Plan, and all other plans maintained by the Employer, provide that the Participant may not make Elective Deferrals for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such next taxable year.
- (c) **Limitation on Account withdrawals.** Notwithstanding the above, distributions from the Participant's Elective Deferral Account pursuant to this Section shall be limited solely to the Participant's Elective Deferrals and any income attributable thereto credited to the Participant's Elective Deferral Account as of December 31, 1988.
- (d) **Other limits and conditions.** If a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.
- (e) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY GOVERNMENTAL PLAN  
SUMMARY OF PLAN PROVISIONS**

**TABLE OF CONTENTS**

**INTRODUCTION TO YOUR PLAN**

What information does this Summary provide? ..... 1

**ARTICLE I  
PARTICIPATION IN THE PLAN**

How do I participate in the Plan? ..... 1  
What happens if I'm a participant, terminate employment and then I'm rehired? ..... 1

**ARTICLE II  
EMPLOYEE CONTRIBUTIONS**

What are rollover contributions? ..... 1

**ARTICLE III  
EMPLOYER CONTRIBUTIONS**

What is the Employer profit sharing contribution and how is it allocated? ..... 2  
What is the Employer matching contribution and how is it allocated? ..... 2  
How is my service determined for allocation purposes? ..... 3

**ARTICLE IV  
COMPENSATION AND ACCOUNT BALANCE**

What compensation is used to determine my Plan benefits? ..... 3  
Is there a limit on the amount of compensation which can be considered? ..... 3  
Is there a limit on how much can be contributed to my account each year? ..... 3  
How is the money in the Plan invested? ..... 3  
Will Plan expenses be deducted from my account balance? ..... 3

**ARTICLE V  
VESTING**

What is my vested interest in my account? ..... 4

**ARTICLE VII  
BENEFITS AND DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT**

When can I get money out of the Plan? ..... 4  
What happens if I terminate employment before death, disability or retirement? ..... 4  
What happens if I terminate employment at Normal Retirement Date? ..... 5  
What happens if I terminate employment due to disability? ..... 5  
How will my benefits be paid to me? ..... 5

**ARTICLE VIII  
BENEFITS AND DISTRIBUTIONS UPON DEATH**

What happens if I die while working for the Employer? ..... 5  
Who is the beneficiary of my death benefit? ..... 5  
How will the death benefit be paid to my beneficiary? ..... 5  
When must the last payment be made to my beneficiary? ..... 5  
What happens if I'm a participant, terminate employment and die before receiving all my benefits? ..... 6

**ARTICLE IX  
TAX TREATMENT OF DISTRIBUTIONS**

What are my tax consequences when I receive a distribution from the Plan? ..... 6  
Can I elect a rollover to reduce or defer tax on my distribution? ..... 6

**ARTICLE X  
LOANS**

Is it possible to borrow money from the Plan? ..... 6  
What are the loan rules and requirements? ..... 6

**ARTICLE XI  
CLAIMS AND BENEFITS**

Can the Plan be amended? ..... 7  
What happens if the Plan is discontinued or terminated? ..... 7  
How do I submit a claim for Plan benefits? ..... 7  
What if my benefits are denied? ..... 8

**ARTICLE XII  
GENERAL INFORMATION ABOUT THE PLAN**

Plan Name ..... 8  
Plan Number ..... 8  
Plan Effective Dates ..... 9  
Other Plan Information ..... 9  
Employer Information ..... 9  
Plan Administrator Information ..... 9  
Plan Trustee Information and Plan Funding Medium ..... 9

# CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY GOVERNMENTAL PLAN

## SUMMARY OF PLAN PROVISIONS

### INTRODUCTION TO YOUR PLAN

#### What information does this Summary provide?

This Summary of Plan Provisions contains information regarding when you may become eligible to participate in the Plan, your Plan benefits, your distribution options, and many other features of the Plan. You should take the time to read this Summary to get a better understanding of your rights and obligations under the Plan.

In this summary, your Employer has addressed the most common questions you may have regarding the Plan. If this Summary does not answer all of your questions, please contact the Administrator or other plan representative. The Administrator is responsible for responding to questions and making determinations related to the administration, interpretation, and application of the Plan. The name and address of the Administrator can be found at the end of this Summary in the Article entitled "General Information About the Plan."

This Summary describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language and is designed to comply with applicable legal requirements. If the non-technical language in this Summary and the technical, legal language of the Plan document conflict, the Plan document always governs. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This Summary describes the current provisions of the Plan. The Plan and your rights under the Plan are subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS). Your Employer may also amend or terminate this Plan. If the provisions of the Plan that are described in this Summary change, your Employer will notify you.

**Types of Contributions.** The following types of contributions may be made under this plan:

- employer profit sharing contributions
- matching contributions to our 457(b) plan
- employee rollover contributions

## ARTICLE I PARTICIPATION IN THE PLAN

#### How do I participate in the Plan?

You may begin participating under the Plan once you have satisfied the eligibility requirements and reached your "Entry Date." The following describes the eligibility requirements and Entry Dates that apply. You should contact the Administrator if you have questions about the timing of your Plan participation.

#### Profit Sharing Contributions

**Excluded Employees.** There are no Excluded Employees for purposes of the profit sharing contributions provided under the Plan.

**Eligibility Conditions.** You will be eligible to participate for purposes of profit sharing contributions on your date of hire. However, you will actually enter the Plan once you reach the Entry Date as described below.

**Entry Date.** For purposes of profit sharing contributions, your Entry Date will be the date on which you satisfy the eligibility requirements.

#### What happens if I'm a participant, terminate employment and then I'm rehired?

If you are no longer a participant because you terminated employment, and you are rehired, then you will be able to participate in the Plan on your date of rehire provided you are otherwise eligible to participate in the Plan.

## ARTICLE II EMPLOYEE CONTRIBUTIONS

#### What are rollover contributions?

**Rollover contributions.** At the discretion of the Administrator, if you are a Participant who is currently employed or an Eligible Employee, you may be permitted to deposit into the Plan distributions you have received from other retirement plans. Such a deposit is called a "rollover" and may result in tax savings to you. You may ask the Administrator or Trustee of the other plan to directly transfer (a "direct rollover") to this Plan all or a portion of any amount that you are entitled to receive as a distribution from such plan. Alternatively, if you received a distribution from a prior plan, you may elect to deposit any amount eligible to be rolled over within 60



days of your receipt of the distribution. You should consult qualified counsel to determine if a rollover is permitted and in your best interest.

**Rollover account.** Your rollover will be accounted for in a "rollover account." You will always be 100% vested in your "rollover account" (see the Article in this Summary entitled "Vesting"). This means that you will always be entitled to all amounts in your rollover account. Rollover contributions will be affected by any investment gains or losses.

**Withdrawal of rollover contributions.** You may withdraw the amounts in your "rollover account" at any time.

### ARTICLE III EMPLOYER CONTRIBUTIONS

This Article describes Employer contributions that will be made to the Plan and how your share of the contribution is determined.

#### **What is the Employer profit sharing contribution and how is it allocated?**

**Profit sharing contribution.** Each year, your Employer may make a discretionary profit sharing contribution to the Plan.

**Your share of the contribution.** The profit sharing contribution will be "allocated" or divided among participants eligible to share in the contribution for the Plan Year.

Your share of the profit sharing contribution is determined by the following fraction:

$$\text{Profit Sharing Contribution} \quad \times \quad \frac{\text{Your Compensation}}{\text{Total Compensation of All Participants Eligible to Share}}$$

For example: Suppose the profit sharing contribution for the Plan Year is \$20,000. Employee A's compensation for the Plan Year is \$25,000. The total compensation of all participants eligible to share, including Employee A, is \$250,000. Employee A's share will be:

$$\$20,000 \quad \times \quad \frac{\$25,000}{\$250,000} \quad \text{or} \quad \$2,000$$

**Allocation conditions.** In order to share in the profit sharing contribution for a Plan Year, you must satisfy the following conditions:

- If you are employed on the last day of the Plan Year, you will share if you completed at least 1 Hours of Service during the Plan Year.
- If you terminate employment (not employed on the last day of the Plan Year), you must be credited with more than 1 Hours of Service during the Plan Year.

#### **What is the Employer matching contribution and how is it allocated?**

**Matching Contribution.** Your Employer may make a discretionary matching contribution equal to a uniform percentage of your salary deferrals. Each year, your Employer will determine the amount of the discretionary percentage.

**Limit on matching percentage.** In applying this matching percentage, however, your Employer has the option to disregard salary deferrals made each payroll period that exceed a certain dollar amount or a certain percentage of your compensation for such period. The Plan Administrator will inform you of this limit.

**Allocation conditions.** In order to share in the matching contribution for a Plan Year, you must satisfy the following conditions:

- If you are employed on the last day of the Plan Year, you will share if you completed at least 1 Hours of Service during the Plan Year.
- If you terminate employment (not employed on the last day of the Plan Year), you will receive a matching contribution Participants will share in the allocation upon completing 1 hour of service.
- You will share in the matching contribution for the year regardless of the amount of service you complete during the Plan Year in the year of your death, disability or retirement.

### **How is my service determined for allocation purposes?**

**Hour of Service.** You will be credited with your actual Hours of Service for:

- (a) each hour for which you are directly or indirectly compensated by the Employer for the performance of duties during the Plan Year;
- (b) each hour for which you are directly or indirectly compensated by the Employer for reasons other than the performance of duties (such as vacation, holidays, sickness, disability, lay-off, military duty, jury duty or leave of absence during the Plan Year); and
- (c) each hour for back pay awarded or agreed to by the Employer.

You will not be credited for the same Hours of Service both under (a) or (b), as the case may be, and under (c).

## **ARTICLE IV COMPENSATION AND ACCOUNT BALANCE**

### **What compensation is used to determine my Plan benefits?**

**Definition of compensation.** For the purposes of the Plan, compensation has a special meaning. Compensation is generally defined as your total compensation that is subject to income tax and paid to you by your Employer during the Plan Year. Amounts paid to you after you terminate employment are generally not treated as compensation. If you are a self-employed individual, your compensation will be equal to your earned income. The following describes the adjustments to compensation that may apply under the Plan.

**Adjustments to compensation.** The following adjustments to compensation will be made:

- compensation paid while not a participant in the Plan will be excluded.
- compensation paid for unused accrued bona fide sick, vacation or other leave, if such amounts would have been included in compensation if paid prior to your termination of employment and you would have been able to use the leave if employment had continued will be included. However, regardless of the preceding, these amounts will not be included if they are otherwise excluded from Plan compensation or if they are paid more than 2 1/2 months after you terminate employment, or if later, the last day of the Plan Year in which you terminate employment.

### **Is there a limit on the amount of compensation which can be considered?**

The Plan, by law, cannot recognize annual compensation in excess of a certain dollar limit. The limit for the Plan Year beginning in 2011 is \$245,000. After 2011, the dollar limit may increase for cost-of-living adjustments.

### **Is there a limit on how much can be contributed to my account each year?**

Generally, the law imposes a maximum limit on the amount of contributions that may be made to your account and any other amounts allocated to any of your accounts during the Plan Year, excluding earnings. Beginning in 2011, this total cannot exceed the lesser of \$49,000 or 100% of your annual compensation. After 2011, the dollar limit may increase for cost-of-living adjustments.

### **How is the money in the Plan invested?**

The Trustee of the Plan has been designated to hold the assets of the Plan for the benefit of Plan participants and their beneficiaries in accordance with the terms of this Plan. The trust fund established by the Plan's Trustee will be the funding medium used for the accumulation of assets from which Plan benefits will be distributed.

**Participant directed investments.** You will be able to direct the investment of your entire interest in the Plan. The Administrator will provide you with information on the investment choices available to you, the procedures for making investment elections, the frequency with which you can change your investment choices and other important information. You need to follow the procedures for making investment elections and you should carefully review the information provided to you before you give investment directions. If you do not direct the investment of your applicable Plan accounts, then your accounts will be invested in accordance with the default investment alternatives established under the Plan.

**Earnings or losses.** When you direct investments, your accounts are segregated for purposes of determining the earnings or losses on these investments. Your account does not share in the investment performance of other participants who have directed their own investments. You should remember that the amount of your benefits under the Plan will depend in part upon your choice of investments. Gains as well as losses can occur and your Employer, the Administrator, and the Trustee will not provide investment advice or guarantee the performance of any investment you choose.

### **Will Plan expenses be deducted from my account balance?**

**Expenses allocated to all accounts.** The Plan permits the payment of Plan expenses to be made from the Plan's assets. If expenses are paid using the Plan's assets, then the expenses will generally be allocated among the accounts of all participants in the Plan. These expenses will be allocated either proportionately based on the value of the account balances or as an equal dollar amount based on the number of participants in the Plan. The method of allocating the expenses depends on the nature of the

expense itself. For example, certain administrative (or recordkeeping) expenses would typically be allocated proportionately to each participant. If the Plan pays \$1,000 in expenses and there are 100 participants, your account balance would be charged \$10 (\$1,000/100) of the expense.

**Terminated employee.** After you terminate employment, your Employer reserves the right to charge your account for your pro rata share of the Plan's administration expenses, regardless of whether your Employer pays some of these expenses on behalf of current employees.

**Expenses allocated to individual accounts.** There are certain other expenses that may be paid just from your account. These are expenses that are specifically incurred by, or attributable to, you. For example, if you are married and get divorced, the Plan may incur additional expenses if a court mandates that a portion of your account be paid to your ex-spouse. These additional expenses may be paid directly from your account (and not the accounts of other participants) because they are directly attributable to you under the Plan. The Administrator will inform you when there will be a charge (or charges) directly to your account.

Your Employer may, from time to time, change the manner in which expenses are allocated.

## **ARTICLE V VESTING**

### **What is my vested interest in my account?**

In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be entitled ("vested") in all of the contributions until you have been employed with the Employer for a specified period of time.

**100% vested contributions.** You are always 100% vested (which means that you are entitled to all of the amounts) in your accounts attributable to the following contributions:

- rollover contributions
- profit sharing contributions

## **ARTICLE VII BENEFITS AND DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT**

### **When can I get money out of the Plan?**

You may receive a distribution of the vested portion of some or all of your accounts in the Plan for the following reasons:

- termination of employment for reasons other than death, disability or retirement
- normal retirement
- disability
- death

This Plan is designed to provide you with retirement benefits. However, distributions are permitted if you die or become disabled. In addition, certain payments are permitted when you terminate employment for any other reason. The rules under which you can receive a distribution are described in this Article. The rules regarding the payment of death benefits to your beneficiary are described in "Benefits and Distributions Upon Death."

**Military Service.** If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. There may also be benefits for employees who die or become disabled while on active duty. Employees who receive wage continuation payments while in the military may benefit from various changes in the law. If you think you may be affected by these rules, ask the Plan Administrator for further details.

**Distributions for deemed severance of employment.** If you are on active duty for more than 30 days, then the Plan treats you as having severed employment for distribution purposes. This means that you may request a distribution from the Plan. If you request a distribution on account of this deemed severance of employment, then you are not permitted to make any contributions to the Plan for 6 (six) months after the date of the distribution.

### **What happens if I terminate employment before death, disability or retirement?**

You may elect to have your vested account balance distributed to you as soon as administratively feasible following your termination of employment.

### **What happens if I terminate employment at Normal Retirement Date?**

**Normal Retirement Date.** You will attain your Normal Retirement Age when you reach your 65th birthday. Your Normal Retirement Date is the date on which you attain your Normal Retirement Age.

**Payment of benefits.** The actual payment of benefits generally will not begin until you have terminated employment and reached your Normal Retirement Date. In such event, a distribution will be made, at your election, as soon as administratively feasible. If you remain employed past your Normal Retirement Date, benefits will be deferred until you actually terminate employment and request them; however, in some cases payment must begin upon your attainment of age 70 1/2. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

### **What happens if I terminate employment due to disability?**

**Definition of disability.** Under the Plan, disability is defined as a physical or mental condition resulting from bodily injury, disease, or mental disorder which renders you incapable of continuing any gainful occupation and which has lasted or can be expected to last for a continuous period of at least twelve (12) months. Your disability must be determined by a licensed physician. However, if your condition constitutes total disability under the federal Social Security Act, then the Administrator may deem that you are disabled for purposes of the Plan.

**Payment of benefits.** If you become disabled while an employee, you will be entitled to your vested account balance under the Plan. Payment of your disability benefits will be made to you as if you had retired. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

### **How will my benefits be paid to me?**

**Lump-sum distributions.** All distributions from the Plan will be made in a single lump-sum payment.

**Medium of payment.** Benefits under the Plan will generally be paid to you in cash.

**Delaying distributions.** You may delay the distribution of your vested account balance. However, if you elect to delay the distribution of your vested account balance, there are rules that require that certain minimum distributions be made from the Plan. Distributions are required to begin not later than the April 1st following the later of the end of the year in which you reach age 70 1/2 or retire. You should see the Administrator if you think you may be affected by these rules.

## **ARTICLE VIII BENEFITS AND DISTRIBUTIONS UPON DEATH**

### **What happens if I die while working for the Employer?**

If you die while still employed by the Employer, then your vested account balance will be used to provide your beneficiary with a death benefit.

### **Who is the beneficiary of my death benefit?**

You may designate a beneficiary on a form to be supplied to you by the Administrator.

**No beneficiary designation.** At the time of your death, if you have not designated a beneficiary or your beneficiary is also not alive, the death benefit will be paid in the following order of priority to:

- (a) your surviving spouse
- (b) your children, including adopted children in equal shares (and if a child is not living, that child's share will be distributed to that child's heirs)
- (c) your surviving parents, in equal shares
- (d) your estate

### **How will the death benefit be paid to my beneficiary?**

**Lump-sum distributions.** The death benefit will be paid to your beneficiary in a single lump-sum payment.

### **When must the last payment be made to my beneficiary?**

The law generally restricts the ability of a retirement plan to be used as a method of retaining money for purposes of your death estate. Thus, there are rules that are designed to ensure that death benefits are distributable to beneficiaries within certain time periods.

Regardless of the method of distribution selected, if your designated beneficiary is a person (rather than your estate or some trusts) then minimum distributions of your death benefit will begin by the end of the year following the year of your death ("1-year rule") and must be paid over a period not extending beyond your beneficiary's life expectancy. If your spouse is the beneficiary, then under the

"1-year rule," the start of payments will be delayed until the year in which you would have attained age 70 1/2 unless your spouse elects to begin distributions over his or her life expectancy before then. However, instead of the "1-year rule" your beneficiary may elect to have the entire death benefit paid by the end of the fifth year following the year of your death (the "5-year rule"). Generally, if your beneficiary is not a person, your entire death benefit must be paid under the "5-year rule."

Since your spouse has certain rights to the death benefit, you should immediately report any change in your marital status to the Administrator.

### **What happens if I'm a participant, terminate employment and die before receiving all my benefits?**

If you terminate employment with the Employer and subsequently die, your beneficiary will be entitled to your remaining interest in the Plan at the time of your death.

## **ARTICLE IX TAX TREATMENT OF DISTRIBUTIONS**

### **What are my tax consequences when I receive a distribution from the Plan?**

Generally, you must include any Plan distribution in your taxable income in the year in which you receive the distribution. The tax treatment may also depend on your age when you receive the distribution. Certain distributions made to you when you are under age 59 1/2 could be subject to an additional 10% tax.

### **Can I elect a rollover to reduce or defer tax on my distribution?**

**Rollover or Direct Transfer.** You may reduce, or defer entirely, the tax due on your distribution through use of one of the following methods:

(a) **60-day rollover.** The rollover of all or a portion of the distribution to an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the rollover. This will result in no tax being due until you begin withdrawing funds from the IRA or other qualified employer plan. The rollover of the distribution, however, **MUST** be made within strict time frames (normally, within 60 days after you receive your distribution). Under certain circumstances, all or a portion of a distribution may not qualify for this rollover treatment. In addition, most distributions will be subject to mandatory federal income tax withholding at a rate of 20%. This will reduce the amount you actually receive. For this reason, if you wish to roll over all or a portion of your distribution amount, then the direct transfer option described in paragraph (b) below would be the better choice.

(b) **Direct rollover.** For most distributions, you may request that a direct transfer (sometimes referred to as a direct rollover) of all or a portion of a distribution be made to either an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the transfer. A direct transfer will result in no tax being due until you withdraw funds from the IRA or other employer plan. Like the rollover, under certain circumstances all or a portion of the amount to be distributed may not qualify for this direct transfer. If you elect to actually receive the distribution rather than request a direct transfer, then in most cases 20% of the distribution amount will be withheld for federal income tax purposes. If you decide to directly transfer all or a portion of a distribution, you (and your spouse, if you are married) must first waive the annuity form of payment. (See the question entitled "How will my benefits be paid to me?" for a further explanation of this waiver requirement.)

**Tax Notice.** WHENEVER YOU RECEIVE A DISTRIBUTION, THE ADMINISTRATOR WILL DELIVER TO YOU A MORE DETAILED EXPLANATION OF THESE OPTIONS. HOWEVER, THE RULES WHICH DETERMINE WHETHER YOU QUALIFY FOR FAVORABLE TAX TREATMENT ARE VERY COMPLEX. YOU SHOULD CONSULT WITH QUALIFIED TAX COUNSEL BEFORE MAKING A CHOICE.

## **ARTICLE X LOANS**

### **Is it possible to borrow money from the Plan?**

Yes, you may request a participant loan from all your accounts using an application form provided by the Administrator. Your ability to obtain a participant loan depends on several factors. The Administrator will determine whether you satisfy these factors.

### **What are the loan rules and requirements?**

There are various rules and requirements that apply to any loan, which are outlined in this question. In addition, your Employer has established a written loan program which explains these requirements in more detail. You can request a copy of the loan program from the Administrator. Generally, the rules for loans include the following:

- Loans are available to participants on a reasonably equivalent basis. Loans will be made to participants who are creditworthy. The Administrator may request that you provide additional information, such as financial statements, tax returns and credit reports to make this determination.
- All loans must be adequately secured. You must sign a promissory note along with a loan pledge. Generally, you must use your vested interest in the Plan as security for the loan, provided the outstanding balance of all your loans does not exceed 50% of your vested interest in the Plan. In certain cases, the Administrator may require you to provide additional collateral to receive a loan.

- You will be charged a commercially reasonable rate of interest. The Administrator will determine a reasonable rate of interest by reviewing the interest rates charged for similar types of loans by other lenders. The interest rate will be fixed for the duration of the loan.
- If approved, your loan will provide for level amortization with payments to be made not less frequently than quarterly. Generally, the term of your loan may not exceed five (5) years. However, if the loan is for the purchase of your principal residence, the Administrator may permit a longer repayment term. Generally, the Administrator will require that you repay your loan by agreeing to payroll deduction. If you have an unpaid leave of absence or go on military leave while you have an outstanding loan, please contact the Administrator to find out your repayment options.
- All loans will be considered a directed investment of your account under the Plan. All payments of principal and interest by you on a loan will be credited to your account.
- The amount the Plan may loan to you is limited by rules under the Internal Revenue Code. Any new loans, when added to the outstanding balance of all other loans from the Plan, will be limited to the lesser of:
  - (a) \$50,000 reduced by the excess, if any, of your highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date of the new loan over your current outstanding balance of loans as of the date of the new loan; or
  - (b) 1/2 of your vested interest in the Plan.
- No loan in an amount less than \$1,000 will be made.
- The maximum number of Plan loans that you may have outstanding at any one time is 1.
- Your spouse generally must consent to any loan before it can be made if you use your vested interest as security for the loan.
- If you fail to make payments when they are due under the terms of the loan, you will be considered to be "in default." The Administrator will consider your loan to be in default if any scheduled loan repayment is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. The Plan would then have authority to take all reasonable actions to collect the balance owed on the loan. This could include filing a lawsuit or foreclosing on the security for the loan. Under certain circumstances, a loan that is in default may be considered a distribution from the Plan and could be considered taxable income to you. In any event, your failure to repay a loan will reduce the benefit you would otherwise be entitled to from the Plan.
- If you become entitled to a distribution from the Plan, or if you terminate employment, your loan generally becomes due and payable in full immediately. You may repay the entire outstanding balance of the loan (including any accrued interest). If you do not repay the entire outstanding loan balance, your vested account balance will be reduced by the remaining outstanding balance of the loan.

The Administrator may periodically revise the Plan's loan policy. If you have any questions on participant loans or the current loan policy, please contact the Administrator.

## **ARTICLE XI CLAIMS AND BENEFITS**

### **Can the Plan be amended?**

Your Employer has the right to amend the Plan at any time. In no event, however, will any amendment authorize or permit any part of the Plan assets to be used for purposes other than the exclusive benefit of participants or their beneficiaries. Additionally, no amendment will cause any reduction in the amount credited to your account.

### **What happens if the Plan is discontinued or terminated?**

Although your Employer intends to maintain the Plan indefinitely, your Employer reserves the right to terminate the Plan at any time. Upon termination, no further contributions will be made to the Plan and all amounts credited to your accounts will continue to be 100% vested. Your Employer will direct the distribution of your accounts in a manner permitted by the Plan as soon as practicable. (See the question entitled "How will my benefits be paid to me?" for a further explanation.) You will be notified if the Plan is terminated.

### **How do I submit a claim for Plan benefits?**

Benefits will be paid to you and your beneficiaries without the necessity for formal claims. However, if you think an error has been made in determining your benefits, then you or your beneficiaries may make a request for any Plan benefits to which you believe you are entitled. Any such request should be in writing and should be made to the Administrator.

If the Administrator determines the claim is valid, then you will receive a statement describing the amount of benefit, the method or methods of payment, the timing of distributions and other information relevant to the payment of the benefit.

### **What if my benefits are denied?**

Your request for Plan benefits will be considered a claim for Plan benefits, and it will be subject to a full and fair review. If your claim is wholly or partially denied, the Administrator will provide you with a written or electronic notification of the Plan's adverse determination. This written or electronic notification must be provided to you within a reasonable period of time, but not later than 90 days after the receipt of your claim by the Administrator, unless the Administrator determines that special circumstances require an extension of time for processing your claim. If the Administrator determines that an extension of time for processing is required, written notice of the extension will be furnished to you prior to the termination of the initial 90-day period. In no event will such extension exceed a period of 90 days from the end of such initial period. The extension notice will indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the benefit determination.

In the case of a claim for disability benefits, if disability is determined by a physician (rather than relying upon a determination of disability for Social Security purposes), then instead of the above, the Administrator will provide you with written or electronic notification of the Plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the Plan. This period may be extended by the Plan for up to 30 days, provided that the Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies you, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Administrator determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Administrator notifies you, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any such extension, the notice of extension will specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and you will be afforded at least 45 days within which to provide the specified information.

The Administrator's written or electronic notification of any adverse benefit determination must contain the following information:

- (a) The specific reason or reasons for the adverse determination.
- (b) Reference to the specific Plan provisions on which the determination is based.
- (c) A description of any additional material or information necessary for you to perfect the claim and an explanation of why such material or information is necessary.
- (d) Appropriate information as to the steps to be taken if you or your beneficiary want to submit your claim for review.
- (e) In the case of disability benefits where disability is determined by a physician:
  - (i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided to you free of charge upon request.
  - (ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to your medical circumstances, or a statement that such explanation will be provided to you free of charge upon request.

## **ARTICLE XII GENERAL INFORMATION ABOUT THE PLAN**

There is certain general information which you may need to know about the Plan. This information has been summarized for you in this Article.

### **Plan Name**

The full name of the Plan is Central Texas Regional Mobility Authority Governmental Plan.

### **Plan Number**

Your Employer has assigned Plan Number 001 to your Plan.

**Plan Effective Dates**

This Plan was originally effective on January 1, 2006. The amended and restated provisions of the Plan become effective on January 1, 2011. However, this restatement was made to conform the Plan to new tax laws and some provisions may be retroactively effective.

**Other Plan Information**

Valuations of the Plan assets are generally made every business day. Certain distributions are based on the Anniversary Date of the Plan. This date is the last day of the Plan Year.

The Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1st and ends on December 31st.

The Plan and Trust will be governed by the laws of Texas to the extent not governed by federal law.

Benefits provided by the Plan are NOT insured by the Pension Benefit Guaranty Corporation (PBGC) under Title IV of the Employee Retirement Income Security Act of 1974 because the insurance provisions under ERISA are not applicable to this type of Plan.

Service of legal process may be made upon your Employer. Service of legal process may also be made upon the Trustee or Administrator.

**Employer Information**

Your Employer's name, address and identification number are:

Central Texas Regional Mobility Authority  
301 Congress, Suite 650  
Austin, Texas 78701  
35-2198574

**Plan Administrator Information**

The Plan Administrator is responsible for the day-to-day administration and operation of the Plan. For example, the Administrator maintains the Plan records, including your account information, provides you with the forms you need to complete for Plan participation, and directs the payment of your account at the appropriate time. The Administrator will also allow you to review the formal Plan document and certain other materials related to the Plan. If you have any questions about the Plan or your participation, you should contact the Administrator. The Administrator may designate other parties to perform some duties of the Administrator.

The Administrator has the complete power, in its sole discretion, to determine all questions arising in connection with the administration, interpretation, and application of the Plan (and any related documents and underlying policies). Any such determination by the Administrator is conclusive and binding upon all persons.

The name, address and business telephone number of the Plan's Administrator are:

Central Texas Regional Mobility Authority  
301 Congress, Suite 650  
Austin, Texas 78701  
512-996-9778

**Plan Trustee Information and Plan Funding Medium**

All money that is contributed to the Plan is held in a trust fund. The Trustees are responsible for the safekeeping of the trust fund and must hold and invest Plan assets in a prudent manner and in the best interest of you and your beneficiaries. The trust fund established by the Plan's Trustee(s) will be the funding medium used for the accumulation of assets from which benefits will be distributed. While all the Plan assets are held in a trust fund, the Administrator separately accounts for each Participant's interest in the Plan.

The names and address of the Plan's Trustees are:

Robert Bennett

Henry Gilmore

David Singleton

301 Congress, Suite 650  
Austin, Texas 78701

The Trustees shall collectively be referred to as Trustee throughout this Summary of Plan Provisions.