

# 457 Plan Document

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# IRC SECTION 457(b)

## Deferred Compensation Specimen Plan Document

### INTRODUCTION

The purpose of this Plan is to enable eligible Employees to defer Compensation. This Plan is intended to meet the requirements of section 457(b) of the Internal Revenue Code of 1986, as amended.

### DEFINITIONS

The following words and phrases when used in the Plan with initial capital letters shall, for the purpose of this Plan, have the meanings set forth below unless the context indicates that other meanings are intended:

#### ACCOUNT

Means the separate account or accounts established and maintained under this Plan for each Participant with respect to such Participant's interest in the Plan.

#### ADOPTION AGREEMENT

Means the document executed by the Employer through which it adopts this Code Section 457(b) Deferred Compensation Plan and thereby agrees to be bound by all terms and conditions of the Plan.

#### ANNUAL DEFERRAL

Means, with respect to a taxable year of a Participant, the amount of Compensation deferred under the Plan, whether by salary reduction or by nonelective Employer contribution (Matching Contributions and Formula Contributions are nonelective Employer contributions). The amount of Compensation deferred under the Plan is taken into account as an Annual Deferral in the taxable year of the Participant in which deferred, or, if later, the year in which the amount of Compensation deferred is no longer subject to a substantial risk of forfeiture. If the amount of compensation deferred under the Plan during a taxable year of the Participant is not subject to a substantial risk of forfeiture, the amount taken into account as an Annual Deferral is not adjusted to reflect gain or loss allocable to the Compensation deferred. If, however, the amount of Compensation deferred under the Plan during the taxable year is subject to a substantial risk of forfeiture, the amount of Compensation deferred that is taken into account as an Annual Deferral in the taxable year in which the substantial risk of forfeiture lapses must be adjusted to reflect gain or loss allocable to the Compensation deferred until the substantial risk of forfeiture lapses.

#### APPLICABLE DOLLAR AMOUNT

Means the applicable dollar amount determined under the following table for the specified taxable year of a Participant, or pursuant to cost of living adjustments referred to after the table:

Taxable Year Beginning in the Following Calendar Year	Applicable Dollar Amount
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006	\$15,000

For taxable years beginning after December 31, 2006, the \$15,000 amount shall be adjusted in \$500 increments pursuant to Section 457(e)(15)(B) of the Code.

#### BASIC PLAN DOCUMENT

Means this specimen Code Section 457(b) Deferred Compensation Plan Document.

#### BENEFICIARY

Means any person(s) or entity(ies) designated by the Participant to receive the Participant's benefits from the Plan in the event the Participant dies before receiving a distribution of all of his or her Plan benefits.

#### CASHOUT LEVEL

Means the amount specified by the Employer in the Adoption Agreement for purposes of applying the Cashout Rules in Section 4.12 of the Plan.

#### CODE

Means the Internal Revenue Code of 1986 as amended from time-to-time.

**COMPENSATION**

Means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay that is includible in the Employee's gross income for the calendar year plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Section Three). Compensation deferred under this Plan shall be taken into account at its value in the Plan Year in which it is deferred.

**EFFECTIVE DATE**

Means the date this Plan becomes effective as indicated in the Adoption Agreement. However, where a separate date is stated in the Plan as of which a particular Plan provision becomes effective, such date will control with respect to said provision.

**ELECTIVE DEFERRAL**

Means the amount of Compensation which a Participant elects to defer pursuant to a Salary Reduction Agreement.

**ELIGIBLE EMPLOYEE**

Means those Employees identified as Eligible Employees in the Adoption Agreement.

**EMPLOYEE**

Means each natural person, whether appointed or elected, who is employed by the Employer as a common law employee or independent contractor, excluding any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

**EMPLOYER**

Means any state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state or any other organization exempt from tax under the provisions of the Code which evidences its sponsorship of this Plan by executing an Adoption Agreement.

**ENTRY DATES**

Means the first day of the Plan Year and the first day of the seventh month of the Plan Year, unless the Employer has specified more frequent dates in the Adoption Agreement.

**FUND**

Means the assets of the Plan.

**INCLUDIBLE COMPENSATION**

Means with respect to a Plan Year beginning after December 31, 2001, the Participant's compensation, as defined in Section 415(c)(3) of the Code, for service performed for the Employer.

Prior to such a Plan Year, Includible Compensation means a Participant's Compensation for a taxable year including only Compensation from the Employer that is attributable to services performed for the Employer and that is included in the Participant's gross income for the taxable year. For purposes of this paragraph, a Participant's Includible Compensation for a taxable year does not include an amount payable by the Employer that is excludable from the Employee's gross income under Section 457(a) of the Code and Treas. Reg. Section 1.457-1 or under Sections 125, 132(f)(4), 401(k), 403(b), 105(d) or 911 of the Code.

A Participant's Includible Compensation for a taxable year is determined without regard to any community property laws.

**MATCHING CONTRIBUTION**

Means a contribution made on behalf of a Participant by the Employer on account of an Elective Deferral made by such Participant.

**NORMAL RETIREMENT AGE**

Means the age specified in the Adoption Agreement. However, if the Employer enforces a mandatory retirement age which is less than the Normal Retirement Age, such mandatory age is deemed to be the Normal Retirement Age. If no age is specified in the Adoption Agreement, the Normal Retirement Age shall be age 70½.

For purposes of the limited catch-up rule of Section 3.02(A)(2), the Normal Retirement Age used shall not be prior to the earlier of age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the state of the Employer if this is a State Plan or of the Employer itself if it is a tax-exempt entity, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and shall not be later than age 70½. Alternatively, for purposes of the limited catch-up rule of Section 3.02(A)(2), a Participant may designate a Normal Retirement Age within that range of ages, if the Adoption Agreement permits such designation. Also, for purposes of the limited catch-up rule of Section 3.02(A)(2), if the Employer sponsors more than one plan that meets the requirements of Section 1.457-3 through 1.457-10 of the Treasury Regulations, then the Employer may not permit a Participant to have more than one normal retirement age under such plans and this Plan that the Employer sponsors.

For purposes of the limited catch-up rule of Section 3.02(A)(2), if the Plan has Participants that include qualified police or firefighters as defined under Section 415(b)(2)(H)(ii)(I) of the Code, then the Normal Retirement Age may be earlier than permitted by the prior paragraph, but in no event may the Normal Retirement Age be earlier than age 40. If the Adoption Agreement permits Participants to

designate a Normal Retirement Age for such purpose, then the range from which the selection may be made shall be as described in the Adoption Agreement, and may run from age 40 through age 70½.

#### **PARTICIPANT**

Means an Eligible Employee who executed a Salary Reduction Agreement to make Elective Deferrals into the Plan or an individual who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan.

#### **PLAN**

Means this Code Section 457(b) Deferred Compensation Plan adopted by the Employer. The terms of the Plan are set forth in this Basic Plan Document plus the corresponding Adoption Agreement as completed and signed by the Employer. The Plan is intended to be an eligible plan as defined in Section 1.457-2(f) of the Treasury Regulations that meets the requirements of Section 457(b) of the Code and Sections 1.457-3 through 1.457-10 of the Treasury Regulations.

#### **PLAN YEAR**

Means the 12 consecutive month period which coincides with the Employer's fiscal year or such other 12 consecutive month period as is designated in the Adoption Agreement.

#### **PRIOR PLAN**

Means a Plan that was replaced by adoption of this Plan document as indicated in the Adoption Agreement.

#### **SALARY REDUCTION AGREEMENT**

Means the agreement between a Participant and the Employer in a form acceptable to the Employer whereby the Participant elects to defer receipt of Compensation not yet earned.

#### **SEVERANCE FROM EMPLOYMENT**

##### **A. Common Law Employees**

A common law employee shall incur a Severance from Employment if: (1) there is a termination of such Employee's employment relationship with the Employee's Employer or (2) the participant dies or retires.

##### **B. Independent Contractors**

Means cessation of services upon expiration of the contract (or in the case of multiple contracts, all contracts) under which services are performed for the Employer provided the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration will not constitute a good-faith and complete termination of the contractual relationship if the Employer anticipates a renewal of the contractual relationship or the independent contractor changing status to a common law employee, i.e. the Employer intends to contract again for the services provided under the expired contract and neither the Employer nor the independent contractor have eliminated the independent contractor as a potential service provider under any such new contract. Further, the employer is considered to intend to contract again for services provided under an expired contract if the Employer's so acting is conditioned only upon the Employer's incurring a need for the services, the availability of funding to purchase such services, or both.

#### **SPONSOR**

Means the entity that offers this form of Plan document to the Employer for adoption.

#### **STATE PLAN**

Means a plan maintained by a state, a political subdivision of a state, any agency or instrumentality of a state, or a political subdivision of a state. If the Plan is a State Plan, the following sections contain special rules governing the Plan: 3.02(E), 3.03, 3.04, 3.07, 4.01(A)(1)(c), 4.01(A)(3), 4.08, 4.10, 4.12(A)(1)(a), 4.12(A)(3), 6.10, 6.11, 6.19 and 6.20.

#### **TRUSTEE**

Means the corporation or individual appointed and acting from time to time as trustee of the trust. As of the date of execution of the Adoption Agreement, the Trustee is the person or persons who are listed in and executed the Adoption Agreement as Trustee. If Section 6.10(B) applies to this Plan, then the term Trustee, when used in the Plan, shall refer to the custodian or insurance company for the custodial account or annuity contract that replaces the trust, except in Section 6.11, which is not applicable to the Plan in that event.

#### **UNFORESEEABLE EMERGENCY**

Means severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse or the Participant's dependent as defined in Section 152(a) of the Code (for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B)), and the loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. Finally, the need to pay for the funeral expenses of a spouse or dependent family member (as that term is defined in section 152(a) of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B)) may also constitute an Unforeseeable Emergency. The circumstances that will constitute an Unforeseeable Emergency depend upon the facts and circumstances of each situation. The Employer shall have sole discretion to determine the

existence of an Unforeseeable Emergency. Except in extraordinary circumstances, purchase of a home by a Participant or payment of college tuition by a Participant are not Unforeseeable Emergencies for these purposes.

#### **VALUATION DATE**

Means the last day of the Plan Year and each other date designated by the Employer which is selected in a uniform and nondiscriminatory manner when the assets of the Fund are valued at their then fair market value.

### **SECTION ONE. EFFECTIVE DATES**

Pursuant to the Definitions section of the Plan, the Effective Date means the date the Plan becomes effective as indicated in the Adoption Agreement. However, certain provisions of the Plan may become effective on a date other than the Plan's Effective Date, if, for example, the Plan is amended subsequent to the Effective Date.

### **SECTION TWO. ELIGIBILITY REQUIREMENTS**

#### **2.01 ELIGIBILITY REQUIREMENT AND PLAN ENTRY**

An Eligible Employee shall be eligible to participate and defer Compensation hereunder immediately effective the first Entry Date as provided by the Employer in the Adoption Agreement following acceptance of a completed Salary Reduction Agreement by the Employer, which acceptance may be evidenced by commencement of Elective Deferrals in accordance with such form.

#### **2.02 DETERMINATIONS UNDER THIS SECTION**

The Employer shall determine the eligibility of each Employee to be a Participant. This determination shall be conclusive and binding upon all persons except as otherwise provided herein or by law.

#### **2.03 INITIAL ENROLLMENT**

The Employer may designate in the Adoption Agreement, in a nondiscriminatory manner, additional enrollment times during the initial 12 month period following the Effective Date of the Plan to ensure an orderly first enrollment.

### **SECTION THREE. CONTRIBUTIONS**

#### **3.01 ELECTIVE DEFERRALS**

##### **A. Enrollment**

Each Eligible Employee shall designate the amount or percentage of such Eligible Employee's Compensation which is to be deferred in the Salary Reduction Agreement. The amount or percentage so elected shall remain effective until modified, or the election is revoked, in accordance with Section 3.01(B) of this Plan.

For any taxable year, a Participant's Elective Deferrals shall not exceed the limit prescribed under Section 457 of the Code, including the limited catch-up rule.

**B.** A Participant may change the amount of his Elective Deferral or revoke his election in accordance with procedures established by the Employer, provided that all such changes shall not be effective until the calendar month following completion by the Participant and acceptance by the Employer nor for a period of at least 30 days (or such lesser number of days as may be permitted uniformly by the Employer) following acceptance by the Employer of that form.

**C.** Compensation of a Participant is to be deferred for any calendar month only if a Salary Reduction Agreement providing for such Elective Deferral has been completed by the Participant and accepted by the Employer before the first day of the month. A new Employee of the Employer may defer Compensation payable in the calendar month during which the Employee first becomes an Employee if an agreement providing for the Elective Deferral is entered into on or before the first day on which the Participant performs services for the Employer.

**D.** If permitted under the Adoption Agreement, a Participant may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under the Plan. Consistent with Section 3.01(B), those amounts may be deferred for any calendar month only if an agreement providing for the Elective Deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee of the Employer in that month. Elective Deferrals made under this Section 3.01(D) must meet the limitations of Section 3.02. Notwithstanding the above, with respect to sick pay, accumulated vacation pay, and back pay that is payable before the Participant experiences a Severance from Employment, a deferral agreement may be entered into before the amount becomes currently payable, even if that is the month in which such amount becomes payable.

**E.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that compensation continues.

### 3.02 LIMITATIONS ON THE AMOUNT OF COMPENSATION TO BE DEFERRED

A. The maximum amount that may be deferred under the Plan for any taxable year of a Participant, including any Matching Contributions, shall be as follows:

1. **General Rule**

Generally, the maximum amount that may be deferred for any taxable year of a Participant shall not exceed the lesser of:

- a. the Applicable Dollar Amount, or
- b. 100% of such Participant's Includible Compensation.

2. **Limited Catch-Up Rule**

Notwithstanding the general rule of Section 3.02(A)(1), the maximum amount that may be deferred for one or more of a Participant's last three taxable years ending immediately before he or she attains (the Participant's) Normal Retirement Age shall be the lesser of:

- a. twice the Applicable Dollar Amount in effect under Section 3.02(A)(1)(a); or
- b. the sum of
  - i. the Plan limitation established under Section 3.02(A)(1) for the taxable year, and
  - ii. the Plan limitation established under Section 3.02(A)(1) (or under Section 457(b)(2) of the Code for any year before a taxable year beginning after 2001) for any prior taxable year or years, less the amount of Annual Deferrals under the Plan for such prior taxable year or years (disregarding any Annual Deferrals under the Plan permitted under the catch-up provisions of Section 3.03).

In determining the Includible Compensation of a Participant for purposes of calculating the amount described in Section 3.02(A)(2)(b)(i), Includible Compensation is not reduced by contributions of amounts described in Section 3.02(A)(2)(b)(ii).

A prior taxable year shall be taken into account under Section 3.02(A)(2)(b)(ii) only if it begins after December 31, 1978, the Participant was eligible to participate in the Plan during all or any portion of such taxable year, and Compensation deferred under the Plan during such year was subject to a limitation established under Section 3.02(A)(1). A Participant will be considered to be eligible to participate in the Plan for a taxable year if he or she was a Participant for any part of the particular taxable year.

For purposes of determining the limitation under Section 3.02(A)(2)(b)(ii) for years prior to 2002, Participants remain subject to the rules in effect prior to the repeal of the coordination limitation under Section 457(c)(2) of the Code. Thus, the applicable basic annual limitation under Section 3.02(A)(1) and the special Section 457 catch-up under this Section 3.02(A)(2) for years in effect prior to 2002 are reduced, for purposes of determining the limitation under Section 3.02(A)(2)(b)(ii) applicable to the Participant under the Plan, by amounts excluded from the Participant's income for any prior taxable year by reason of a nonelective employer contribution, salary reduction or elective contribution under any other eligible Section 457(b) plan, or a salary reduction or election contribution under any pre-2002 coordination plan. Similarly, in applying the Section 457(b)(2)(B) limitation for Includible Compensation for years prior to 2002, the limitation is 33-1/3 percent of the Participant's compensation includible in gross income.

Also, for that same purpose, that coordination limitation applies to pre-2002 coordination plans of all employers for whom a Participant has performed services, not only to those of the Employer. Further, a Participant who was eligible under the Plan but did not defer any Compensation under the Plan in a given year before 2002 is not subject to the coordinated deferral limit for that year, even though the Participant may have deferred compensation under one of the other pre-2002 coordination plans. An individual is treated as not having deferred compensation under the Plan for a prior taxable year if all Annual Deferrals under the Plan are distributed as excess Elective Deferrals. However, the Participant is treated as having deferred amounts in a prior taxable year for purposes of determining the limitation under Section 3.02(A)(2)(b)(ii), but only to the extent that the Participant's salary reduction contributions or elective deferrals under all pre-2002 coordination plans have not exceeded the maximum deferral limitations in effect under Section 457(b) for that taxable year. To the extent the Employer did not offer the Plan to an individual in a prior given year, no limitation under Section 3.02(A)(2)(b)(ii) is available to the individual for that prior year, even if the individual subsequently becomes eligible to participate in the Plan.



A pre-2000 coordination plan is another eligible Section 457(b) plan, Section 401(k) qualified cash or deferred arrangement, Section 402(h)(1)(B) simplified employee pension, Section 403(b) annuity contract, or Section 408(p) simple retirement account.

A Participant shall have the right to use the limited catch-up rule only once. This rule applies only once notwithstanding whether the limited catch-up rule is used for less than all three taxable years ending immediately prior to attainment of Normal Retirement Age by the Participant and notwithstanding whether the Participant or former Participant rejoins the Plan or participates in another eligible plan after retiring from the services of the Employer.

- B. The minimum monthly amount which may be deferred by a Participant is such amount or percentage of Compensation as may be specified by the Employer in the Adoption Agreement in a uniform and nondiscriminatory manner.
- C. The Employer may limit Annual Deferrals with respect to a Participant for a taxable year in order to prevent the Participant's individual limitation under Section 457 of the Code from being exceeded and thus creating excess deferrals. Such individual limitation equals the basic annual deferral limitation under Section 1.457-4(c)(1)(i)(A) of the Treasury Regulations, the age 50 catch-up amount under Section 1.457-4(c)(2) of the Treasury Regulations, and the special Section 457 catch-up amount under Section 1.457-4(c)(3) of the Treasury Regulations, applied by taking into account the combined annual deferral for the Participant for any taxable year under all plans that meet the requirements of Section 1.457-3 through 1.457-10 of the Treasury Regulations. For purposes of applying Section 457(c) of the Code, the special Section 457 catch-up under Section 1.457-4(c)(3) of the Treasury Regulations is taken into account only to the extent that an annual deferral is made under such a plan as a result of plan provisions permitted under that section of the Treasury Regulations. In addition, if a Participant has annual deferrals under more than one such plan and the applicable catch-up amount under Section 1.457-4(c)(2) or (3) of the Treasury Regulations is not the same for each such plan for the taxable year, Section 457(c) is applied using the catch-up amount under whichever plan had the largest catch-up amount applicable to the Participant.
- D. Any amount deferred under the Plan for a taxable year of a Participant that exceeds the maximum deferral limitations set forth in the provisions of Section 3.02(A), and any amount that exceeds the individual limitation of the Participant described in Section 3.02(C), constitutes an excess deferral taxable in accordance with Section 1.457-11 of Treasury Regulations for that taxable year. Such an excess deferral is includible in gross income in the taxable year deferred or, if later, the first taxable year in which there is no substantial risk of forfeiture.
- E. If this Plan is a State Plan, any excess deferrals other than as a result of the individual limitation will be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Employer determines that there is an excess deferral and the amount of the excess deferral. For purposes of determining those excess deferrals, all plans under which the Participant participates by virtue of the Participant's relationship to the Employer are treated as a single plan.
- F. If this Plan is maintained by a tax-exempt employer and there are excess deferrals other than as a result of the individual limitations of Participants, the Plan will distribute to the Participant any excess deferrals (and any income allocable to such amount) not later than the first April 15 following the close of the taxable year of the excess deferrals. If the excess deferrals are not corrected by distribution in accordance with this Section 3.02(F), the Plan will be an ineligible plan under Section 457 of the Code and benefits under the Plan will be taxable in accordance with Section 1.457-11 of the Treasury Regulations.
- G. Excess deferrals arising as a result of a failure to comply with a Participant's individual limitation for a taxable year may be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Employer determines that there is such an excess deferral and the amount of the excess deferral.

### 3.03 CATCH-UP CONTRIBUTIONS

If the Plan is a State Plan and the Employer so elects in the Adoption Agreement, all Employees who are eligible to make Elective Deferrals under this Plan and who have attained age 50 before the close of the Plan Year will be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. An Employee eligible to make catch-up contributions pursuant to this section may not make such contributions until he or she cannot otherwise make any other Elective Deferrals to the Plan because of the application of any limitation of the Code or of the Plan.

If an Employee is also eligible to make catch-up contributions under Section 3.02(A)(2) of the Plan, then the age 50 catch-up limit described in the prior paragraph does not apply for any taxable year for which a higher limit applies under the special Section 457 catch-up described in Section 3.02(A)(2). Thus, such an Employee will be entitled to the larger of the limit under Section 3.02(A)(1) and the catch-up limit described in the prior paragraph (disregarding Section 3.02(A)(2)) or the limit under Section 3.02(A)(1) and Section 3.02(A)(2) (disregarding the catch-up limit described in the prior paragraph).

**3.04 TRANSFER CONTRIBUTIONS**

If the Employer so elects in the Adoption Agreement, the Trustee or, if applicable, the Employer may receive any amounts transferred to it from another plan that meet the requirements of Section 1.457-3 through 1.457-10 of the Treasury Regulations and a transfer may be made from this Plan to such a plan. If the Plan is a State Plan, only transfers from another State Plan may be accepted. If the Plan is maintained by a tax-exempt Employer, only transfers from another tax-exempt Employer's plan may be accepted. Also, if the Plan is a State Plan, transfers may be made to only another State Plan. If the Plan is maintained by a tax-exempt Employer, transfers may be made to only another tax-exempt employer's plan.

Such a transfer from an eligible State Plan to another eligible State Plan is permitted only if the transferor plan provides for transfers, the receiving plan provides for the receipt of transfers, the participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer, and the participant or beneficiary whose amounts are being transferred has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan. The last such requirement is not required to be satisfied if all of the assets held by the eligible State Plan are transferred, the transfer is to another eligible State Plan maintained by an eligible employer that is a state entity within the same state, and the participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section 3.02(A).

**3.05 MATCHING CONTRIBUTIONS**

If elected in the Adoption Agreement, the Employer may make Matching Contributions under the Plan on behalf of Participants who make Elective Deferrals. Matching Contributions shall be made in a uniform and nondiscriminatory manner, at the same time as Elective Deferrals or at any other time permitted by laws and regulations.

**3.06 FORMULA CONTRIBUTIONS**

If elected in the Adoption Agreement, the Employer may make Formula Contributions under the Plan on behalf of Participants.

**3.07 ROLLOVER CONTRIBUTIONS**

Except as otherwise elected in the Adoption Agreement, if the Plan is a State Plan, it may accept contributions that are eligible rollover distributions (as defined in Section 402(c)(4) of the Code) made from another eligible retirement plan (as defined in Section 402(c)(8)(B) of the Code). Such contributions are not taken into account for purposes of the annual limit on Annual Deferrals by a Participant described in Section 3.02(A) or the individual limitation described in Section 3.02(C), but are otherwise treated in the same manner as amounts deferred under Section 457 for purposes of Sections 1.457-3 through 1.457-10 of Treasury Regulations.

**SECTION FOUR. DISTRIBUTIONS AND LOANS**

**4.01 DISTRIBUTION TO PARTICIPANTS**

**A. When Distributable**

**1. Entitlement to Distribution**

A Participant's Account shall not be distributable to the Participant or anyone else before the Participant's Severance From Employment from the Employer, unless any of the following events occurs:

- a. the Participant incurs an Unforeseeable Emergency and distribution is permitted under Section 4.01(B);
- b. a distribution is permitted under Section 4.12 regarding small amounts;
- c. the Plan is terminated as provided in Section 6.02;
- d. distribution is to be made pursuant to a qualified domestic relations order described in Section 4.09; or
- e. a distribution made from a State Plan that elected to allow loans in the Adoption Agreement, to a Participant in accordance with the loan provisions in Section 6.20.

**2. Written Request: When Distributed**

A Participant entitled to distribution who wishes to receive a distribution must submit a written request to the Employer. Such request shall be made upon a form provided by the Employer. Upon a valid request, the Employer shall commence payment of deferred amounts not later than the later of:

- a. 60 days following close of the Plan Year in which the Participant or former Participant attains, or would have attained, Normal Retirement Age, or
- b. 60 days following close of the Plan Year in which the Participant incurs a Severance From Employment with the Employer.

**3. State Plan Exceptions**

If this Plan is a State Plan, the following shall apply: the deadline for payment described in Section 4.01(A)(2) shall not apply but the request provisions shall apply to the Plan; if a Participant makes such a request, the Employer shall commence payment to the Participant not later than 60 days after the Participant makes such request; further, if the total amount payable to a Participant under the Plan does not exceed \$1,000 (or such other Cashout Level specified in this Amendment), then the Employer shall distribute such amount to the Participant within 60 days of the Participant's Severance From Employment with the Employer pursuant to Section 4.02 of the Plan. Notwithstanding anything in this Plan to the contrary, if this Plan is a State Plan, the determination of whether a Participant's Account exceeds \$1,000 (or such other Cashout Level specified in this Amendment) shall be determined by including rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code.

**4. Exception for Account in a non-State Plan that Does Not Exceed \$5,000**

If the Plan is not a State Plan and the total amount payable to a Participant under the Plan does not exceed \$5,000, notwithstanding any other provision of the Plan, if such Participant does not elect to receive a lump sum distribution from the Plan upon the Participant's Severance From Employment with the Employer and the Employer has elected to make involuntary in-service distributions in the Adoption Agreement, the Plan shall distribute the total amount payable to such Participant under the Plan. Such amount may be distributed only if (a) no amount has been deferred under the Plan with respect to such Participant during the 2-year period ending on the date of the distribution, and (b) there has been no prior distribution under the Plan to such Participant to which this Subsection (A)(4) applies. No additional amounts may be deferred under the Plan with respect to any Participant who makes the election described in this Section 4.01(A)(4).

**5. Deferral of Commencement**

A Participant may elect to defer commencement of distributions under the Plan to the latest date permitted under the Plan, as described in Sections 4.05 and 4.06. However, if the Plan is not a State Plan, and if distribution is not required by another provision of the Plan, a Participant may elect (by a method permitted by the Employer) to defer commencement of distribution under the Plan of deferred amounts to a future time permitted by the Plan, if that election is made prior to the first time that any such amounts would be considered made available under the Plan pursuant to Section 1.457-7(c)(2) of Treasury Regulations. Further, if the Participant has made such an initial election, the Participant may make one additional election to defer (but not accelerate) commencement of distributions under the Plan before distributions have commenced in accordance with such initial deferral election. A Participant is not precluded from making an additional election to defer commencement of distributions merely because the Participant has previously received a distribution under Section 4.01(B) because of an Unforeseeable Emergency, has received a distribution of smaller amounts under Section 4.12, or has made (and revoked) other deferral or method of payment elections within the initial election period.

**6. Special Rule for Independent Contractors**

If this special rule is selected in the Adoption Agreement, and a Participant is an independent contractor of the Employer, no amount will be paid to the Participant before a date at least 12 months after the day on which the contract expires under which services are performed for the Employer (or, in the case of more than one contract, such contracts expire) and no amount payable to the Participant on that date will be paid to the Participant if, after the expiration of the contract (or contracts) and before that date, the Participant performs services for the Employer as an independent contractor or an Employee.

**B. Unforeseeable Emergency**

In the case of an Unforeseeable Emergency, a distribution to a Participant shall not exceed the amount reasonably necessary to satisfy the emergency need, which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. Payment shall not be made to the extent any financial hardship occasioned by the Unforeseeable Emergency is or may be relieved:

1. through reimbursement or compensation by insurance or otherwise;
2. by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
3. by cessation of Elective Deferrals under the Plan.

The Employer, in its discretion, shall determine if an Unforeseeable Emergency incurred by a Participant may be relieved through means other than a distribution from the Plan.

**4.02 FORM OF DISTRIBUTION TO A PARTICIPANT**

**A. Value of Account Does Not Exceed the Cashout Level**

If the value of a Participant's Account does not exceed the Cashout Level, the following rules shall apply regarding Section 4.01(A)(3) of the Plan. If the value of a Participant's Account does not qualify as an eligible rollover distribution, distribution from the Plan shall be made to the Participant in a single lump sum in lieu of all other forms of distribution under the Plan. If the value of a Participant's Account does not exceed \$1,000 and qualifies as an eligible

rollover distribution, 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 or to receive the distribution in accordance with this Section 4 of the Plan, distribution shall be made to the Participant in a single lump sum in lieu of all other forms of distribution under the Plan, unless specified otherwise in the Adoption Agreement. If the value of a Participant's Account exceeds \$1,000 and qualifies as an eligible rollover distribution, 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 or to receive the distribution in accordance with this Section Four of the Plan, distribution shall be paid by the Employer in a direct rollover to an individual retirement account (as described in Section 408(a) or 408(b) of the Code) designated by the Employer. Notwithstanding the foregoing, if the Participant is reemployed by the Employer prior to the occurrence of the distribution, no distribution will be made under this paragraph.

**B. Value of Account Exceeds \$5,000**

If the value of a Participant's Account exceeds \$5,000, the Participant may request in writing that his Account be paid to him in one or more of the following forms of payments: (1) in a lump sum; (2) in installment payments over a period not to exceed the life expectancy of the Participant or the joint and last survivor life expectancy of the Participant and his designated Beneficiary; or (3) applied to the purchase of an annuity contract. If the Plan is not a State Plan, the method of payment must be selected prior to the time the amounts are distributed in accordance with the Participant's initial or additional election to defer commencement of distributions described in Section 4.01(A)(5), in order to avoid taxation when the amounts first are made available in accordance with those elections.

**4.03 DISTRIBUTIONS UPON THE DEATH OF A PARTICIPANT**

**A. Designation of Beneficiary**

Each Participant may designate, upon a form provided by and delivered to the Employer, one or more primary and contingent Beneficiaries to receive all or a specified portion of his Account in the event of his death. A Participant may change or revoke such Beneficiary designation from time to time by completing and delivering the proper form to the Employer. A change in the Beneficiary designation shall not take effect until the election is accepted by the administrator.

**B. Payment to Beneficiary**

If a Participant dies before his entire Account has been paid to him, such deceased Participant's Account shall be payable to any surviving Beneficiary designated by the Participant, or, if no Beneficiary survives the Participant, to the Participant's estate.

**C. Written Request: When Distributed**

A Beneficiary of a deceased Participant entitled to a distribution who wishes to receive a distribution must submit a written request to the Employer. Such request shall be made upon a form provided by the Employer. Upon a valid request, the Employer shall commence distribution no later than 60 days following the close of the Plan Year in which Participant dies. However, distributions must commence no later than the later of:

1. 60 days following close of the Plan Year in which the Participant would have attained Normal Retirement Age, or
2. 60 days following close of the Plan Year in which the Participant incurred a Severance From Employment.

**D. Location of Participant or Beneficiary Unknown**

In the event that all, or any portion, of the distribution payable to a Participant or his Beneficiary hereunder shall, at the expiration of 5 years after it becomes payable, remain unpaid solely by reason of the inability of the Employer, 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 his Beneficiary, the amount so distributable shall be forfeited and allocated in accordance with the terms of the Plan. In the event a Participant or Beneficiary is located subsequent to this benefit being forfeited, such benefit shall be restored; provided, however, if all or a portion of such amount has been lost by reason of escheat under state law, the Participant or Beneficiary shall cease to be entitled to the portion so lost.

**4.04 FORM OF DISTRIBUTION TO BENEFICIARY**

**A. Value of Account Does Not Exceed \$5,000**

If the value of the Participant's Account does not exceed \$5,000, the Employer shall make a distribution to the Beneficiary in a single lump sum in lieu of all other forms of distribution from the Plan.

**B. Value of Account Exceeds \$5,000**

If the value of a Participant's Account exceeds \$5,000, the Beneficiary may, subject to the requirements of Section 4.04 (C), request in writing that the Participant's Account be paid to him as follows: (1) in a lump sum; or (2) in installment payments.

**DISTRIBUTION REQUIREMENTS (PRE-2003)****A. General Rules**

1. The requirements of this Section shall apply to any distribution of a Participant's interest on or before December 31, 2002, and will take precedence over any inconsistent provisions of this Plan.
2. All distributions required under this Section 4.05 shall be determined and made in accordance with the Income Tax Regulations under Section 401(a)(9), including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Treasury Regulations.
3. With respect to distributions under the Plan made in calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) of the Code that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. However, those regulations shall be interpreted as appropriate for this Plan and shall be superseded for this purpose by any regulations on this subject proposed with respect to plans covered by Section 457 of the Code. This paragraph shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) of the Code that apply to the Plan or such other date specified in guidance published by the Internal Revenue Service.

**B. Required Beginning Date**

The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required beginning date specified in the Adoption Agreement.

**C. Limits on Distribution Periods**

As of the first distribution calendar year, distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):

1. the life of the Participant,
2. the life of the Participant and a designated Beneficiary,
3. a period certain not extending beyond the life expectancy of the Participant, or
4. a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

**D. Determination of Amount to be Distributed Each Year**

If the Participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the required beginning date:

**1. Account**

- a. If a Participant's Account is to be distributed over (1) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or (2) a period not extending beyond the life expectancy of the designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first distribution calendar year, must at least equal the quotient obtained by dividing the Participant's Account by the applicable life expectancy.
- b. The amount to be distributed each year, beginning with distributions for the first distribution calendar year, shall not be less than the quotient obtained by dividing the Participant's Account by the lesser of (1) the applicable life expectancy or (2) if the Participant's spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of Section 1.401(a)(9)-2 of the Treasury Regulations. Distributions after the death of the Participant shall be distributed using the applicable life expectancy in Section 4.04(C)(4)(a)(i) above as the relevant divisor without regard to Section 1.401(a)(9)-2 of the Treasury Regulations.
- c. The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's required beginning date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, must be made on or before December 31 of that distribution calendar year.

**2. Other Forms**

If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the regulations thereunder.

## **E. Death Distribution Provisions**

### **1. Distribution Beginning Before Death**

If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

### **2. Distribution Beginning After Death**

If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

- a. If any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died.
- b. If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant dies or (2) December 31 of the calendar year in which the Participant would have attained age 70½.

If the Participant has not made an election pursuant to this Section 4.05 of the Plan by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this Section 4.05(E)(2) of the Plan, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

3. For purposes of Section 4.05(E)(2) above, if the surviving spouse dies before the Participant, but before payments to such spouse begin, the provisions of Section 4.05(E)(2), with the exception of paragraph (b) therein, shall be applied as if the surviving spouse were the Participant.
4. For purposes of this Section 4.05(E), 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.
5. For purposes of this Section 4.05(E), distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if Section 4.05(E)(3) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to Section 4.05(E)(2) above). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

## **F. Determination of Whether or Not Account Exceeds \$5,000**

The determination of whether or not a Participant's Account exceeds \$5,000 shall be determined without regard to that portion of the Participant's Account that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code, if an election is made in the Adoption Agreement to that effect.

## **G. Definitions of Terms Used in this Section**

### **1. Distribution Calendar Year**

A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 4.05(E) above.

### **2. Life Expectancy**

Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.

Unless otherwise elected by the Participant (or spouse, in the case of distributions described in Section 4.05(E)(2)(b) above) by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The life expectancy of a nonspouse Beneficiary may not be recalculated.

### 3. Participant's Benefit

- a. The Participant's Account balance as of the last Valuation Date in the valuation calendar year (the calendar year immediately preceding the distribution calendar year) increased by the amount of any contributions allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.
- b. Exception for second distribution calendar year. For purposes of paragraph (a) above, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been made in the immediately preceding distribution calendar year.

### 4. Required Beginning Date

The required beginning date of a Participant is a date determined by a method for determining that date selected in the Adoption Agreement.

### H. Distributions Prior to January 1, 2002

Distributions under the Plan prior to January 1, 2002 shall be subject to the terms of the Plan as it existed prior to that date.

## 4.06

### MINIMUM DISTRIBUTION REQUIREMENTS BEGINNING IN 2003

#### A. General Rules

##### 1. Effective Date

The provisions of this Section 4.06 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

##### 2. Precedence

The requirements of this section will take precedence over any inconsistent provisions of the Plan.

##### 3. Requirements of Treasury Regulations Incorporated

All distributions required under this section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Internal Revenue Code.

#### 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:

- a. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then 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.
- b. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- c. 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.
- d. 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 4.05(B)(2), other than paragraph (a) above, will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.06(B)(2) and Section 4.06(D), unless paragraph (d) above applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (a) above. 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 paragraph (a) above), 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 4.06(C) and 4.06(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 Section 401(a)(9) of the Code and the Treasury Regulations.

**4. Election by Participants or Beneficiaries**

Participants or beneficiaries may elect on an individual basis whether the 5-year rule in Section 4.06(B)(2)(c) and Section 4.06(D)(2)(a) or the life expectancy rule in Section 4.06(B)(2) and Section 4.06(D)(2) of the Plan applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of the end of the calendar year in which distribution would be required to begin under Section 4.06(B)(2) of the Plan, or by the end of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with Section 4.06(B)(2) and Section 4.06(D)(2) of the Plan. A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

**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:

- a. the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- b. 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 Section 1.401(a)(9)-9 of the Treasury Regulations, 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 4.06(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**

**a. 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:

- i. 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.
- ii. 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.
- iii. 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.

**b. 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

### a. Participant Survived by Designated Beneficiary

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 4.06(D)(1).

### b. 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.

### c. 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 4.06(B)(2)(a), this Section 4.06(D)(2) will apply as if the surviving spouse were the Participant.

## E. Definitions

### 1. Designated Beneficiary

The individual who is designated as the Beneficiary under the Definitions section of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

### 2. Distribution Calendar Year

A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 4.06(B)(2). 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

Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

### 4. Participant's Account Balance

The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

### 5. Required Beginning Date

The date specified in Section 4.05(G)(4) of the Plan.

## 4.07 DISTRIBUTION IN KIND

The Employer may cause any distribution under this Plan to be made either in a form actually held in the Fund, or in cash by converting assets other than cash into cash, or in any combination of the two foregoing ways.

## 4.08 DIRECT ROLLOVERS

If the Plan is a State Plan, the following requirements apply to distributions from the Plan made after December 31, 2001:

A. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this provision, a "distributee" may elect, at the time and in the manner prescribed by the Employer, to have all or any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. For purposes of implementing the requirements of this provision, certain terms contained in subsection (A) above shall be defined as follows:

### 1. Eligible Rollover Distribution

An eligible rollover distribution is 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 years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution 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 exception permitted by law or the Internal Revenue Service. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution (and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan).

**2. Eligible Retirement Plan**

An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. This 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 Section 414(p) of the Code.

**3. Distributee**

A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

**4. Direct Rollover**

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

**4.09 QUALIFIED DOMESTIC RELATIONS ORDERS**

Notwithstanding the other provisions of the Plan, distributions under the Plan must be consistent with a qualified domestic relations order as defined in Section 414(p) of the Code. A domestic relations order within the meaning of that section shall be treated as a qualified domestic relations order if it meets the requirements of Section 414(p)(1)(A)(i) of the Code, which indicates that such an order creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable to a Participant under the Plan.

**4.10 TRANSFER FROM PLAN TO DEFINED BENEFIT GOVERNMENTAL PLAN**

If the Plan is a State Plan, upon the written request of a Participant, the Employer may cause a part or all of a Participant's Account to be transferred to the trustee of a defined benefit governmental plan as defined in Section 414(d) of the Code for a purpose described in Section 457(e)(17) of the Code. A transfer may be made under this section only if the transfer is either for the purchase of permissive past service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code. The Participant's Account shall be reduced by the amount of the transfer.

**4.11 FILING A CLAIM FOR PLAN DISTRIBUTIONS AND CLAIMS PROCEDURE**

A Participant or Beneficiary who desires to make a claim for the Participant's Account shall file a written request with the Employer on a form to be furnished to him by the Employer for such purpose. The request shall set forth the basis of the claim. The Employer is authorized to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.

If this is not a State Plan, then the procedure for filing claims by a Participant or Beneficiary shall be as follows:

- A. If for any reason a claim for benefits under this Plan is denied by the Employer, the Employer will deliver to the claimant a written explanation setting forth the specific reasons for the denial, pertinent references to the section under the Plan on which the denial is based, such other data as may be pertinent and information on the procedures to be followed by the claimant in obtaining a review of his or her claim, all written in a manner calculated to be understood by the claimant. For this purpose:
  1. The claimant's claim will be deemed to be filed when presented orally or in writing to the Employer.
  2. The Employer's explanation will be in writing delivered to the claimant within 90 days of the date the claim is filed.
- B. The claimant will have 60 days following his or her receipt of the denial of the claim to file with the Employer a written request for review of the denial. For such review, the claimant or the claimant's representative may submit pertinent documents and written issues and comments.

- C. The Employer shall decide the issue on review and furnish the claimant with a copy within 60 days of receipt of the claimant's request for review of the claimant's claim. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent provisions in the Plan on which the decision is based. If a copy of the decision is not so furnished to the claimant within such 60 days, the claim shall be deemed denied on review.

#### 4.12 SPECIAL RULE IF BENEFIT DOES NOT EXCEED \$5,000

##### A. Involuntary In-Service Distribution

1. If elected in the Adoption Agreement Amendment, the Plan shall distribute the total amount payable under the Plan to a Participant who is an active Employee of the Employer, if the following requirements are met:
  - a. the total amount payable to the Participant under a State Plan does not exceed \$1,000 (or such other Cashout Level specified in the Adoption Agreement; the Cashout Level for a Plan that is not a State Plan shall be \$5,000, unless otherwise specified in the Adoption Agreement)
  - b. the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan, and
  - c. no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.
2. For purposes of this section, if the value of a Participant's Account does not qualify as an eligible rollover distribution, distribution from the Plan shall be made to the Participant in a single lump sum. If the value of a Participant's Account does not exceed \$1,000 and qualifies as an eligible rollover distribution, distribution shall be made to the Participant in a single lump sum, unless specified otherwise in the Adoption Agreement Amendment.
3. If the Plan is a State Plan and the value of a Participant's Account exceeds \$1,000 and qualifies as an eligible rollover distribution, distribution shall be paid by the Employer in a direct rollover to an individual retirement account (as described in Section 408(a) or 408(b) of the Code) designated by the Employer. The determination of whether a Participant's Account exceeds \$1,000 (or such other Cashout Level specified in the Adoption Agreement) shall be determined without regard to that portion of the Participant's Account that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code.

##### B. Voluntary In-Service Distribution

If elected in the Adoption Agreement, a Participant who is an active Employee of the Employer shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:

1. the total amount payable to the Participant under the Plan does not exceed the amount specified in the Adoption Agreement,
2. the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan,
3. no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
4. the Participant elects to receive the distribution.

## SECTION FIVE. DEFINITIONS

Unless modified in Section Five of the Adoption Agreement, words and phrases used in the Plan with initial capital letters shall, for the purpose of this Plan, have the meanings set forth at the beginning of the Basic Plan Document unless the context indicates that other meanings are intended.

## SECTION SIX. MISCELLANEOUS

### 6.01 RIGHT OF EMPLOYER TO AMEND THE PLAN

- A. The Employer shall have the right at any time and from time to time to amend this Plan in any manner it deems necessary or advisable in order to conform or maintain conformity of this Plan and the Accounts established under it to the requirements of Section 457 of the Code or other applicable law or regulation, as amended from time to time.

- B. No amendment shall cause or permit any portion of Compensation deferred pursuant to the Plan to revert or become the property of the Participant except as permitted by Section 457 of the Code or other applicable law or regulation. All amendments shall be in writing and each amendment shall state its Effective Date.

**6.02 TERMINATION OR SUSPENSION**

The Employer shall have the right at any time to eliminate future deferrals for existing Participants, to limit participation to existing Participants and Employees, or to terminate the Plan. An Employer may terminate or suspend the Plan effective as of a date specified by written notice to Participants not less than 30 days prior to the anticipated date of termination or suspension. No termination or suspension shall affect the funds already deferred under the Plan. In order for the Plan to be considered terminated, amounts deferred under the Plan must be distributed to all Plan Participants and Beneficiaries as soon as administratively practicable after termination of the Plan. The balances of the Accounts maintained under the Plan shall continue to be invested until distributed. If the Plan is terminated, such balances shall be distributed as soon as administratively practicable after that termination. Such distributions will be made under the terms of the Plan applicable to distributions on Severance from Employment

**6.03 HEADINGS**

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

**6.04 GENDER AND NUMBER**

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

**6.05 GENERAL UNDERTAKING OF ALL PARTIES**

All parties to this Plan and all persons claiming any interest whatsoever hereunder agree to perform any and all acts and execute any and all documents and papers which may be necessary or desirable for the carrying out of this Plan and any of its provisions.

**6.06 AGREEMENT BINDS HEIRS, ETC**

This plan shall be binding upon the heirs, executors, administrators, successors and assigns, as those terms shall apply to any and all parties hereto, present and future.

**6.07 MILITARY SERVICE**

- A. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Code. This provision is effective with respect to reemployments initiated 60 days or more after the October 13, 1994, enactment date of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), that is, reemployments initiated on or after December 12, 1994.
- B. For purposes of this section, and in accordance with Section 414(u) of the Code, if an Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) is reemployed under USERRA, the Employee shall be treated as not having incurred a break in service because of the period of military service and the Employee's military service is treated as service with the Employer for vesting and benefit accrual purposes. Such Employee may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave.)
- C. In accordance with Section 414(u) of the Code, an Employee is treated as receiving Compensation from the Employer during the period of military service equal to the Compensation the Employee otherwise would have received from the Employer during that period, or, if the Compensation the Employee otherwise would have received is not reasonably certain, the Employee's average Compensation from the Employer during the period immediately preceding the period of military service. For purposes of such Section 414(u), USERRA is not treated as requiring the crediting of earnings to an Employee with respect to any contribution before the contribution is actually made.

**6.08 INVESTMENT AUTHORITY**

Except as provided in Section 6.09 below, (relating to direction of investments by Participants), the Employer shall have exclusive control over the investment of the Fund. Notwithstanding the foregoing, an Employer may delegate the duties of managing the Fund (all or a portion) to any person or entity authorized under law to manage and direct investment of the Fund. Such written agreement shall specify in detail the respective responsibilities and obligations of the parties.

## 6.09 DIRECTION OF INVESTMENTS BY PARTICIPANT

If so indicated in the Adoption Agreement, each Participant may direct the Employer regarding the investment of part or all of his Account. The Employer shall determine the investment alternatives available for Participants' direction. Participants shall direct the investment of their Accounts in accordance with uniform and nondiscriminatory procedures adopted by the Employer, which shall include, but not be limited to the following: (1) identification of the portions of a Participant's Account that are subject to Participant investment direction; (2) a description of the investment options available (3) the frequency of permitted investment changes; (4) the procedures for making initial investment elections and subsequent changes thereto; and (5) the effect of a Participant's failure to make a valid investment direction. The Employer shall not be liable for any loss which results from a Participant's investment direction in accordance with this Section.

## 6.10 GOVERNMENTAL PLAN

If the Employer is a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, as identified in the Adoption Agreement, Section 6.10(A) or (B) below shall apply, as selected in the Adoption Agreement.

### A. Trust

If this is a State Plan, all amounts deferred under this Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, must be held in trust for the exclusive benefit of Participants and their Beneficiaries. Section 6.11 describes such a trust and is adopted by the Employer if the Adoption Agreement provides for use of a trust to hold Plan assets. All assets of the Trust, including investment income, shall be retained for, and may not be diverted to or used for any purposes other than, the exclusive benefit of Participants and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust to the extent not paid by the Employer and shall not revert to or inure to the benefit of the Employer.

Amounts deferred under the Plan must be transferred to the Trust within a period that is not longer than is reasonable for the proper administration of the Participant Accounts. Elective Deferrals shall be contributed to the Trust not later than 15 business days following the month in which these amounts would otherwise have been paid to the Participant.

### B. Custodial Accounts or Annuity Contracts

A custodial account or accounts or annuity contract or contracts may be selected in the Adoption Agreement as a substitute for the Trust. Such an account or contract that has been established or acquired by the Employer will be treated as a trust and a substitute for the Trust if the account or annuity satisfies the general provisions of Section 1.401(f)-(1)(b) of Treasury Regulations. Further, for a custodial account to be treated as a trust, the custodian must be a bank, as described in Section 408(n) of the Code, or a person who meets the nonbank trustee requirements of Section 1.457-8(a)(3)(ii)(B) of Treasury Regulations and the account must meet the requirements of Sections 6.10(A), other than the requirement that it be a trust. For an annuity contract to be treated as a trust, the contract must be an annuity contract as defined in Section 401(g) of the Code that has been issued by an insurance company qualified to do business in the State of the Employer and the contract must meet the requirements of Sections 6.10(A), other than the requirement that it be a trust. An annuity contract does not include a life, health or accident, property, casualty, or liability insurance contract. If a custodial account or annuity contract is selected in the Adoption Agreement as a substitute for the trust and this Section 6.10(B) is satisfied, then Section 6.11 shall not apply to the Plan.

## 6.11 TRUST AGREEMENT

### A. Receipt of Contributions by Trustee

1. If this is a State Plan, unless Section 6.10(B) applies to the Plan, all contributions under this Plan shall be paid to the Trustee, deposited in the trust, and shall, together with any earnings thereon, be held, managed, controlled and administered exclusively by the Trustee, pursuant to the terms and conditions of this Section, and subject to the remaining provisions of the Plan. The Trustee may delegate any of its purely ministerial duties, including, but not limited to, recordkeeping functions, which it may have with respect to the administration of the Plan's assets.
2. Notwithstanding anything herein to the contrary, if permitted under the Code or the regulations thereunder, upon the Employer's request, any amount of Employer or Employee contributions that were made by a mistake of fact (such amounts will be adjusted for any income or loss in value, if any, allocable thereto) shall be returned to the Employer or Employee, as the case may be within one year after the payment of the contribution.

### B. General Investment Powers

Subject to the provisions of Sections 6.08 and 6.09 of the Plan, and the laws of the State of domicile of the Trustee, as identified in the Adoption Agreement, with respect to trusts, the Trustee shall be authorized and empowered to invest and reinvest all or any part of the trust fund in any property, real or personal or mixed, including, but not limited to, capital or common, preferred or preference stock (whether voting or nonvoting and whether or not currently paying a dividend), shares of regulated investment companies, convertible securities, including corporate and governmental obligations, leaseholds, ground rents, mortgages and other investments in realty, trust and participation certificates, oil, mineral or gas properties, royalty interests or rights (including equipment pertaining thereto), notes and other evidence of indebtedness or ownership (whether secured or unsecured), contracts, warrants, and other instruments

entitling the owner thereof to subscribe to or purchase any of the above. The Trustee shall not engage in any transaction that would be prohibited under the Code or laws of the State of the Trustee's domicile applicable to trusts.

#### C. Other Powers of the Trustee

1. Subject to the laws of the State of the Trustee's domicile, applicable to trusts, the Trustee is authorized and empowered with respect to the Trust
  - a. subject to any proper investment instructions pursuant to the terms of the Plan to sell, exchange, convey, transfer or otherwise dispose of, either at public or private sale, any property, real, personal or mixed, at any time held by it, for such consideration and on such terms and conditions as to credit or otherwise as the Trustee may, in its sole discretion, deem to be in the best interest of the trust;
  - b. to vote, in person or by proxy, any stocks, bonds or other securities held by it; to exercise any options appurtenant to any stocks, bonds or other securities or to exercise any rights to subscribe for additional stocks, bonds or other securities; and to make any and all necessary payments therefor; to join in or to dissent from; and to oppose, the reorganization, consolidation, liquidation, sale or merger of corporations or properties in which it may be interested as Trustee, upon such terms and conditions as it may deem advisable;
  - c. 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 execute the powers granted herein;
  - d. to register any investment held in the trust in the name of the trust or in the name of a nominee and to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the trust;
  - e. to employ suitable agents and counsel (who may also be agents and/or counsel for the Employer) and to pay their reasonable expenses and compensation; and
  - f. to borrow or raise monies for the purpose of the trust from any source and, for any sum so borrowed, to issue a promissory note as Trustee, but nothing contained herein shall obligate the Trustee to render itself liable in its individual capacity for the amount of any such borrowing, and no person loaning money to the Trustee shall be bound to see to the application of money loaned or to inquire into the validity or propriety of such borrowing.

Each of the foregoing powers may be exercised without a court order or approval. No person dealing with the Trustee need inquire into the validity or propriety of anything that is done by the Trustee or need see to the application of any money paid or property transferred to or upon the order of the Trustee.

Notwithstanding any provision in this Section 6.11 to the contrary, the Trustee shall not engage in any transaction that would be prohibited under the Code or under the laws of the State of the Trustee's domicile applicable to trusts.

2. Notwithstanding anything in this Section 6.11 to the contrary, the Trustee shall have all of the powers necessary or desirable to do all such acts, participate in all such proceedings and exercise all such rights and privileges, whether or not expressly authorized herein, which it may deem necessary or appropriate for the administration of the trust and protection of the property of the trust and to accomplish any action provided for in the Plan; provided, that, any such act, proceeding or privilege is consistent with the requirements of the laws of the State of the Trustee's domicile applicable to trusts.

#### D. Distributions from the Trust

1. Distributions from the trust shall be made by the Trustee in accordance with proper written directions of the Employer, and the Employer shall have the sole responsibility for determining that the directions given conform to the terms of the Plan and applicable law, including, without limitation, responsibility for calculating the interests of a Participant in his or her Account; calculating the amounts payable to a Participant or Beneficiary under the terms of the Plan; and determining the proper person or persons to whom benefits are payable under the Plan.
2. Except to the extent otherwise provided in the Plan and consistent with the laws of the State of the Trustee's domicile applicable to trusts and the Code, the interests of Participants and their Beneficiaries in the trust and in the net earnings and profits thereof may not be assigned or used by any Participant or Beneficiary as collateral for a loan and shall not be subject to garnishment, attachment, levy or execution of any kind for the debts or defaults of the Trustee, any Participant or Beneficiary, or of any person, natural or legal, having an interest in the trust.

#### E. Trustee's Fees and Expenses of the Trust

1. The Trustee's fees for performing its duties hereunder shall be such reasonable amounts as shall be established by it from time to time. The Trustee shall furnish the Employer with the current schedule of fees and shall give written notice to the Employer whenever its fees are changed or revised. Such fees, any taxes of any kind whatsoever which may be levied or assessed upon or in respect of the trust, to the extent incurred by the Trustee,

and any and all expenses incurred by the Trustee in the performance of its duties, including fees for legal services rendered to the Trustee, shall, unless paid by the Employer, be paid from the trust.

2. Unless paid by the Employer, all fees of the Trustee and taxes and other expenses charged to a Participant's Accounts may be collected by the Trustee from the amount of any contribution or earnings to be credited to or distribution to be charged against such Accounts or may be paid by redeeming or selling any assets directly allocated to such Accounts under the terms of the Plan.

**F. Annual Report of the Trustee**

1. Within a reasonable period of time after the Trustee has caused the assets of the trust fund to be valued for each Plan Year, the Trustee shall provide to the Employer a written report of such valuation, which written report shall include, but need not be limited to:
  - a. the net income, or loss, of the trust fund;
  - b. the gains, or losses, realized by the trust fund upon the sale or other disposition of the assets held in the trust;
  - c. the increase, or decrease, in the value of the trust;
  - d. all payments and distributions made from the trust for the Plan Year ending with the Valuation Date; and
  - e. such other information as the Trustee shall deem appropriate.
2. Upon receipt of each such annual report, the Employer shall acknowledge in writing its receipt of the annual report and shall therein advise the Trustee of its approval or disapproval. If the Employer does not expressly disapprove of the contents of the annual report within thirty days after receipt, the annual report shall be deemed to have been approved. The approval of the Employer, whether express or implied, shall be binding on all persons interested in the trust fund to the same extent as if the account of the Trustee had been settled by judgment or decree in a court of competent jurisdiction; provided, that, the Trustee shall retain the right to have its accounts judicially settled if the Trustee so desires.

**G. Records of the Trustee**

The Trustee shall keep accurate books and records of all investments, receipts, and disbursements, and any other transactions engaged in by the trust. The books and records kept by the Trustee shall be open to inspection at all reasonable times by the Employer or its designated representative. Moreover, the books and records shall be kept in a manner that will facilitate the collection of information by the Employer for filing such reports as may be required by law from time to time.

**H. Resignation or Removal of the Trustee**

1. The Trustee may resign at any time upon thirty days notice in writing to the Employer, and may be removed by the Employer at any time upon thirty days notice in writing to the Trustee.
2. Upon such resignation or removal, the Employer shall appoint a successor Trustee.
3. Upon receipt by the Trustee of written notice of acceptance of such appointment by the successor Trustee, the Trustee shall transfer and pay over to such successor the assets of the trust and all records pertaining thereto; provided, that, any successor Trustee shall agree not to dispose of any such records without the Trustee's consent.

The successor Trustee shall be entitled to rely on all accounts, records, reports and other documents received by it from the Trustee, and shall not incur any liability whatsoever for such reliance. However, the Trustee is authorized to reserve such sum of money or property as it may deem advisable for all of its fees, compensation, costs, and expenses, or for payment of any other liabilities constituting a charge on or against the assets of the trust or on or against the Trustee, with any balance of such reserve remaining after the payment of all such items to be paid over to the successor Trustee. In addition, the Trustee shall furnish to the Employer a final report setting forth a written statement of account with respect to the portion of the Plan Year during which it served as Trustee. Such final report shall be furnished at the time required for the annual report of the Trustee under Section 6.11(F).

The Employer shall acknowledge in writing receipt of the final report and advise the Trustee of its approval or disapproval thereof in a written statement to the Trustee. Failure to disapprove of any such final report within thirty days of receipt shall be deemed an approval.

**6.12 POWERS AND DUTIES OF THE EMPLOYER**

- A. The administrator may, by appointment, allocate the duties of the Employer among several individuals or entities. Such appointments shall not be effective until the party designated accepts such appointment in writing.

- B. The administrator shall have the authority to control and manage the operation and administration of the Plan. The administrator shall administer the Plan for the benefit of the Participants and their Beneficiaries in accordance with the specific terms of the Plan.
- C. The administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:
1. To determine all questions of interpretation or policy in a manner consistent with the Plan's documents and the administrator's construction or determination in good faith shall be conclusive and binding on all persons except as otherwise provided herein or by law.
  2. To determine all questions relating to the eligibility of Employees to become or remain Participants hereunder.
  3. To compute the amounts necessary or desirable to be contributed to the Plan.
  4. To compute the amount and kind of benefits to which a Participant or Beneficiary shall be entitled under the Plan and to direct all disbursements under the Plan.
  5. To maintain all records necessary for the administration of the Plan.
  6. To be responsible for preparing and filing such disclosure and tax forms as may be required from time-to-time.
  7. To furnish each Employee, Participant or Beneficiary such notices, information and reports under such circumstances as may be required by law.
- D. The administrator shall have all of the powers necessary or appropriate to accomplish his duties under the Plan, including, but not limited to, the following:
1. To appoint and retain such persons as may be necessary to carry out the functions of the administrator;
  2. To appoint and retain counsel, specialists or other persons as the administrator deems necessary or advisable in the administration of the Plan;
  3. To resolve all questions of administration of the Plan;
  4. To establish such uniform and nondiscriminatory rules which it deems necessary to carry out the terms of the Plan;
  5. To make any adjustments in a uniform and nondiscriminatory manner which it deems necessary to correct any arithmetical or accounting errors which may have been made for any Plan Year; and
  6. To correct any defect, supply any omission 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.
- E. The administrator may permit any item that the Plan requires to be put in writing to be accomplished by another method, electronic or otherwise, permitted by applicable law.
- F. The Employer shall be the administrator unless it designates a person or persons other than the Employer as the administrator. The Employer shall also be the administrator if the person or persons so designated cease to be the administrator. If the Employer designates a person or persons other than the Employer as administrator, such person or persons shall serve as administrator pursuant to such procedures as the Employer may provide. The Employer may remove any person or persons as administrator by written notice to such person or persons. Each such person shall be bonded as may be required by law.

#### 6.13 EXPENSES AND COMPENSATION

All reasonable expenses of administration including, but not limited to, those involved in retaining necessary professional assistance shall be paid by the Employer. The Sponsor of this Plan, and any other person or entity acting as the agent of the Employer for purposes of administering the provisions of this Plan, shall receive such reasonable compensation as may be agreed upon by the parties. The Sponsor or any other agent contemplated herein shall be entitled to reimbursement by the Employer for all proper expenses incurred in carrying out its duties under this Plan, including reasonable legal, accounting and actuarial expenses. If not paid by the Employer, such compensation and expenses may be charged against the Fund. All taxes of any kind that may be levied or assessed under existing or future laws upon, or in respect of, the Fund or the income thereof shall be paid from the Fund.

#### 6.14 PARTICIPANT ACCOUNTS

The Employer may establish and maintain an Account in the name of each Participant to reflect the total value of his interest in the Fund. Each Account established hereunder shall be comprised of as many subaccounts as may be necessary for such Participant including a subaccount to reflect a Participant's transfer contributions. A subaccount shall be established to reflect excess deferrals of the Plan described in Section 3.02(D) that are a result of a Participant's individual limitation and which have not been distributed to the Participant as provided in Section 3.02(G). Also, a subaccount shall be established for any rollover contributions described in Section 3.07 accepted under the Plan, and further subaccounts may be established, as necessary, to account for each type of rollover. Such Accounts and subaccounts are primarily for accounting purposes and do not necessarily require a segregation of Plan assets.

#### 6.15 STATEMENT OF ACCOUNTS

As administratively feasible, the Employer shall furnish a statement to each Participant indicating the Account balances of such Participant as of the most recent Valuation Date.



**6.16 NOT OBLIGATED TO QUESTION**

The Sponsor, Trustee, if any, and Employer shall each be entitled to act on such information as supplied them by the others, and shall have no duty or responsibility to further verify or question such information.

**6.17 DEGREE OF CARE**

The Sponsor shall not be liable for any losses incurred by the trust or Fund by reason of any lawful investment direction communicated by the Employer, or any Participant or Beneficiary. The Sponsor shall be under no liability for distributions made or other action taken or not taken at the written direction of the Employer. It is specifically understood that the Sponsor shall have no duty or responsibility with respect to the determination of the eligibility of any Employee to become a Participant or remain a Participant hereunder, the amount of benefit which a Participant or Beneficiary shall be entitled to receive hereunder, whether a distribution to Participant or Beneficiary is appropriate under the terms of the Plan or the size and type of any policy to be purchased from any insurer for any Participant hereunder or similar matters; it being understood that all such responsibilities under the Plan are vested in the Employer.

**6.18 INDEMNIFICATION OF SPONSOR**

Notwithstanding any other provision hereunder, the Employer shall indemnify and hold harmless the Sponsor, its officers, directors, employees, agents, its heirs, executors, successors and assigns, from and against any and all liabilities, damages, judgments, settlements, losses, costs, charges or expense (including legal expenses) at any time arising out of or incurred in connection with any action taken by such parties in the performance of their duties with respect to this Plan, unless there has been a final adjudication of gross negligence or willful misconduct in the performance of such duties.

**6.19 CORRECTION OF INCONSISTENCY**

If the Plan is a State Plan and is administered in a manner which is inconsistent with the requirements of any of paragraphs (1) through (6) of Section 457(b), the Plan shall be treated as not meeting the requirements of such paragraph as of the first Plan Year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the Employer corrects the inconsistency before the first day of such Plan Year.

**6.20 LOANS FROM PLAN ASSETS**

If the Plan is a State Plan and if the Adoption Agreement provides that loans may be made under the Plan, then loans may be made to Participants out of Plan assets whether held pursuant to a trust, custodial account, or an annuity contract. If loans are permitted, the Employer will establish the terms and provisions of the program which shall be observed by the entity holding the assets, whether that holder is the Trustee, a custodian, or an insurance company, provided that those terms and provisions conform with this section. Those terms and provisions shall require that the loan has a fixed repayment schedule and a reasonable interest rate, and shall provide for repayment safeguards to which a prudent lender would adhere. Also, those terms and provisions shall be consistent with the exclusive benefit requirements of Section 457(g)(1) of the Code and Section 1.457-8(a)(1) of Treasury Regulations.

Subject to the provisions of this section and any direction from the Employer, upon the request of a Participant in writing or by a method required or made available by the Employer, that holder of the Plan assets will make a loan or loans from such funding vehicle to such Participant.

**SECTION SEVEN. EMPLOYER SIGNATURE**