



### BOARD OF TRUSTEES

Wednesday, February 28, 2018

1:00 PM-2:30 PM

*(or upon adjournment of previous committee meetings)*

Florida Polytechnic University  
Student Development Center  
4700 Research Way  
Lakeland, FL 33805

Frank Martin, Chair  
Dr. Jim Dewey  
Jacob Livingston  
Dr. Louis Saco

Don Wilson, Vice-Chair  
Rear Admiral Philip Dur  
Henry McCance  
Bob Stork

Mark Bostick  
Dr. Richard Hallion  
Cliff Otto  
Gary Wendt

### AGENDA

- I. Call to Order Frank Martin, Chair
- II. Roll Call Maggie Mariucci
- III. Public Comment Frank Martin, Chair
- IV. Approval of Minutes Frank Martin, Chair
  - A. December 6, 2017  
**\*Action Required\***
  - B. February 1, 2018  
**\*Action Required\***
- V. Chairman’s Remarks Frank Martin, Chair
- VI. National Society of Black Engineers (NSBE) Remarks  
Black History Month Presentation David Dure, President
- VII. President’s Remarks Dr. Randy Avent
- VIII. Strategic Plan Discussion – Mission, Vision, Values Dr. Randy Avent
- IX. ARC Design Status Update - HOK David Calhoun
- X. Committee Reports
  - A. Audit & Compliance Committee Cliff Otto, Chair
    - 1. Approve Audit & Compliance Workplan 2016-2018  
**\*Action Required\***

- B. Finance and Facilities Committee Bob Stork, Chair
1. Approve Finance and Facilities Workplan 2016-2018  
**\*Action Required\***
  2. Construction Manager Recommendation  
**\*Action Required\***
  3. Foundation Naming Opportunity  
**\*Action Required\***
  4. Regulation: FPU 8.001- Purchasing  
**\*Action Required\***

- C. Academic and Student Affairs Committee Dr. Richard Hallion,  
Vice-Chair
1. Rename Degree:  
Master of Science in Innovation & Technology  
to Master of Computer Science  
**\*Action Required\***
  2. 2018-2019 Academic Calendar  
**\*Action Required\***

- D. Governance Committee Dr. Richard Hallion,  
Vice-Chair
1. Approve Governance Workplan 2016-2018  
**\*Action Required\***
  2. Approval of Retirement Plan  
**\*Action Required\***
  3. Revision of BoT Bylaws  
**\*Action Required\***
  4. Regulation: FPU-6.005 Sick Leave  
**\*Action Required\***
  5. Regulation: FPU-6.002 – Personnel Code of Conduct  
**\*Action Required\***

XI. Upcoming Events/Meetings Frank Martin, Chair

- A. Board of Trustees Meetings
1. Retreat: May 22-23, 2018
  2. September 12, 2018 – *Conflict with BOG meeting; Discussion re: new date*  
**\*Action Required\***
  3. December 5, 2018
- B. Board of Governor's Meetings
1. March 28-29, 2018 (University of North Florida, Jacksonville, FL)
  2. May 8, 2018 (Conference Call)
  3. June 26-28, 2018 (University of Central Florida, Orlando, FL)
  4. September 12-13, 2018 (New College of Florida)
  5. October 16, 2018 Facilities Committee and Budget and Finance Committee Workshops (University of South Florida, Tampa)
  6. November 7-8, 2018 (Florida Atlantic University, Boca Raton)
- C. Women In STEM – March 14
- D. EXCELeRate – April 20
- E. Commencement – May 4, 3:30pm

XII. Closing Remarks and Adjournment Frank Martin, Chair

**DRAFT**

**FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES  
MEETING MINUTES  
Florida Polytechnic University Admissions Building  
4700 Research Way  
Lakeland, Florida 33805**

**December 6, 2017 @ 12:30 PM  
or upon the conclusion of the previous meeting**

I. Call to Order

Vice-Chair Don Wilson called the Board of Trustees meeting to order at 11:00 AM.

II. Roll Call

Maggie Mariucci called the roll: Vice-Chair Don Wilson, Trustee Mark Bostick, Trustee Jim Dewey, Trustee Henry McCance, Trustee Sandra Featherman, Trustee Louis Saco, Trustee Gary Wendt, Trustee Robert Stork, Trustee Cliff Otto, Trustee Dur and Trustee Jacob Livingston were present. (Quorum).

Staff present: President Randy Avent, Dr. Terry Parker, Mr. Mark Mroczkowski, Ms. Gina DeIulio, Mrs. Maggie Mariucci, and Mr. David Blanton.

III. Public Comment

There were no requests received for public comment.

IV. Approval of Minutes

**Trustee Jacob Livingston made a motion to approve the Board of Trustees meeting minutes of October 31, 2017. Trustee Sandra Featherman seconded the motion; a vote was taken, and the motion passed unanimously.**

V. Chairman's Remarks

Vice-Chair Don Wilson welcomed Trustee Louis Saco to the board and congratulated Trustee Gary Wendt on his re-appointment to the board.

VI. President's Remarks

President Avent reported on the key business cycles of the University, the University organizational structure, the culture of the University and the University Strategic plan.

The President's current focus is on creating a more functional organizational chart, including clear line management structure; improving the performance evaluation tool; minimizing bureaucracy on policies, and implementing a methodical and detailed conversation relating to culture.

VII. University Strategic Plan Discussion

President Avent reviewed progress on the Strategic Plan. The following questions should be taken in to consideration as the plan is developed:

- What is our mission?
- Who is our customer?
- How do we best serve Florida industries?
- What are our competitive advantages?
- What skills should our graduates have?

The Trustees discussed the questions and offered guidance to President Avent.

## VIII. Committee Reports

### A. Strategic Planning Committee

Committee Chair Don Wilson gave a report on the Strategic Planning Committee. There were two items for Board approval:

1. Revised Regulation: FPU-6.011 Employee Criminal Background Checks.
2. Repeal of FIPR Rules 6J-1.001-1.007

**Based upon the committee report, Vice-Chair Don Wilson presented a motion with full Committee approval to approve the Revised Regulation: FPU-6.001 Employee Criminal Background Checks and the Repeal of FIPR Rules 6J-1.001-1.007. A vote was taken and the motion passed unanimously.**

### B. Governance Committee

Committee Vice-Chair Philip Dur gave a report on the Governance Committee. No Board action was required.

### C. Audit and Compliance Committee

Committee Chair Cliff Otto gave a report on the Audit and Compliance Committee. There were four items for Board approval:

1. 2016-18 Audit and Compliance Work Plan

**Trustee Bostick made a motion to approve the 2016-18 Governance Committee Work Plan. Trustee Livingston seconded the motion; a vote was taken, and the motion passed unanimously.**

2. Audit and Compliance Annual Report

**Trustee Saco made a motion to approve the Audit and Compliance Annual Report. Trustee Livingston seconded the motion; a vote was taken, and the motion passed unanimously.**

3. FIPR Payroll Review

**Trustee Saco made a motion to approve the FIPR Payroll Review. Trustee Livingston seconded the motion; a vote was taken, and the motion passed unanimously.**

4. Audit and Compliance Risk Assessment/Work Plan

**Trustee Saco made a motion to approve the Audit and Compliance Risk Assessment/Work Plan. Trustee Livingston seconded the motion; a vote was taken, and the motion passed unanimously.**

D. Academic and Student Affairs Committee

Committee Chair Sandra Featherman gave a report on the Academic and Student Affairs Committee. There was one item for Board approval:

1. Revised Regulation: FPU-3.006 Student Code of Conduct

**Trustee Dur made a motion to approve the Revised Regulation: FPU-3.006 Student Code of Conduct. Trustee Saco seconded the motion; a vote was taken, and the motion passed unanimously.**

E. Finance and Facilities Committee

Committee Chair Bob Stork gave a report on the Finance and Facilities Committee. There were three items for Board approval:

1. Amended Regulation: FPU-1.003 Use of University Facilities and Property

**Trustee Stork made a motion to approve the Amended Regulation: FPU-1.003 Use of University Facilities and Property. Trustee McCance seconded the motion; a vote was taken, and the motion passed unanimously.**

2. Revision of Rule 6C13-1.003 Parking on Property and Creation of Rule 6C13-1.004 Schedule of Parking Fees and Fines

**Trustee McCance made a motion to approve the Revision of Rule 6C13-1.003 Parking on Property and creation of Rule 6C13-1.004 Schedule of Parking Fees and Fines. Trustee Saco seconded the motion; a vote was taken, and the motion passed unanimously.**

3. Amended Policy: Investment Policy

**Trustee Wendt made a motion to approve the Amended Investment Policy. Trustee McCance seconded the motion; a vote was taken, and the motion passed unanimously.**

IX. Upcoming Events/Meetings

Vice Chair Don Wilson reviewed the upcoming meeting dates:

A. Board of Trustees Meetings

1. February 28, 2018
2. Retreat: May 22-23, 2018
3. September 12, 2018

4. December 5, 2018

B. Board of Governor's Meetings

1. January 24-25, 2018 (Florida State University, Tallahassee, FL)
2. February 22, 2018 (Conference Call)
3. March 28-29, 2018 (University of North Florida, Jacksonville, FL)
4. May 8, 2018 (Conference Call)
5. June 26-28, 2018 (University of Central Florida, Orlando, FL)

X. Closing Remarks and Adjournment

With no further business to discuss, the meeting adjourned at 1:17 p.m.

DRAFT

**DRAFT**

**FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES – COMMITTEE CHAIRS  
MEETING MINUTES  
Florida Polytechnic University  
4700 Research Way  
Lakeland, Florida 33805**

**February 1, 2018 @ 10:00 AM**

I. Chairman’s Report/Update

Board of Trustees Chair Frank Martin called the Board of Trustees Committee Chair meeting to order at 10:00 AM.

Maggie Mariucci called the roll: Chair Frank Martin, Vice-Chair Don Wilson, Trustee Robert Stork, Trustee Cliff Otto, and Trustee Richard Hallion were present.

Staff present: President Randy Avent, Dr. Terry Parker, Mr. Mark Mroczkowski, Ms. Gina DeJulio, Mr. Kevin Aspegren, Mrs. Maggie Mariucci, Mr. David Blanton, Mr. Rick Maxey, and Mrs. Kris Wharton.

Chair Martin stated the purpose of the meeting is to discuss the University’s high priority issues and opportunities for both near and long-term. Issues include the need for two critical buildings, planning for student body growth, bringing staff from Poly South to campus, and fundraising needs. Trustees carry an important position within this University and honest, transparent discussions are critical to the institution’s success.

II. President’s Report/Update

President Avent stated the current and largest limiting factor at Florida Poly is the “one building campus.” The need for the Applied Research Center (ARC) is great. With the ARC, the University could handle close to 2,000 students. Office space is a critical need for both staff and faculty; it is difficult to attract top faculty without proper office and research space.

President Avent asked the Board of Trustees to assist staff in advocating state legislators for the funding necessary to complete the ARC. \$15.5M is still required to begin construction. If the state provides \$10M, Florida Poly will add the additional \$5.5M to complete the \$15.5M.

While the ARC is critical to the academic mission of the University, an administration building is critical for its employees. Costs for a new administration building are estimated at \$18M. For \$15M, Florida Poly could construct an operational first floor and phase in additional floors as more funds become available. Discussion occurred on the possibility of P3s for funding; however, P3s usually occur when there is a revenue source attached to them. Mark Mroczkowski stated a Request for Information (RFI) is being posted to explore ideas and options. Two organizations have expressed interest in having office space on campus. This could provide income through a lease. However, the University needs to prioritize workspace for employees.

Trustee Bob Stork inquired if Mr. Mroczkowski could handle bonding capabilities for the ARC to which the answer is ‘yes’. David Calhoun negotiated contracts with the ARC’s design firm that enables Florida Poly to phase construction based on availability of funding. Rick Maxey stated the

legislature views ARC as the priority. He confirmed with Chris Kinsley at the BOG that the University can start construction with \$27M in hand. PECO funding was also discussed and Mr. Maxey asked Trustees to advocate with PECO's leadership.

III. Committee Workplans

The committee workplan reviews were moved to the end of the agenda by the Chair. Subsequently, they were not reviewed due to lack of time.

IV. Campus Design Standards/Architect of Record

David Calhoun shared the initial baseline design standards were developed before Florida Poly existed. He reviewed the architectural items on campus with design standards. For future construction, design professionals must present a vision consistent with the University's design standards. Many design firms and construction firms are eager to be on Florida Poly's campus, next to a Calatrava building. Mr. Calhoun will present a recommendation for the Construction Manager (CM) to the Board of Trustees on February 28.

Chair Martin inquired as to Florida Poly's control of design standards on P3 funded structures. The University has little control over this, however, it may be mitigated somewhat if Florida Poly contributed some funding towards the building.

V. Foundation Update

Kevin Aspegren stated \$2M has been raised this fiscal year to date. He and his staff are conversing with a potential donor on naming the new Student Development Center and the athletic field and courts. Naming of a Student Achievement Center (estimated cost \$25-30M) has been proposed to a potential donor.

There are currently six advancement staff who are opening doors with potential donors. Mr. Aspegren is comfortable with the number of people he currently has on staff.

Outside of Polk County, it takes longer to develop relationships that result in giving. In Polk County, donors are tapped out either from Florida Poly or from other causes. Mr. Aspegren spoke to Rob Gidel's leadership with fundraising for the upcoming event *Excelerate*. Development also plans prospecting events such as *Poly Connect* receptions and dinners at the President's home. The development office is still primarily event driven.

TIAA manages the Foundation's endowment of \$6.5M. The current rate of return is 4.83%.

Mr. Aspegren reviewed total fundraising revenue year by year, starting with 2013. Nearly \$12M has been donated to the Foundation since 2013.

Regarding scholarship and tuition waivers, Mr. Mroczkowski recommends a debt forgiveness agreement with the Foundation. The financial impact to the University would be \$8M. This subject requires further discussion.

Currently, new members joining the Foundation board members are required to contribute \$25k per year.

VI. Strategic Planning Calendar



A SWOT analysis and focus groups with staff and faculty as well as external partners and constituents are complete. President Avent is currently forming an updated mission and vision statement and will present these at the February 28 BOT meeting. His intent is to present a new strategic plan at the May Board of Trustees retreat.

VII. Key Initiatives Proposal Framework

President Avent's focus is on the following key initiatives:

- a five-year scholarship analysis
- increasing economic development around the University/developing a research park
- campus development
- economic growth
- Foundation plan

President Avent intends to form several ad hoc committees to review each initiative and may invite one Trustee to sit on each committee.

Additional initiatives:

- Executive Education with two professors from Harvard Business School
- Entrepreneurship and Industry
- Leadership and soft skills development of students
- Faculty hiring
- Internal communications

VIII. Organizational Overview

President Avent reviewed the organizational change presentation he gave to employees in December. He explained the evolution of the organizational structure to a line management format. Department Heads (staff) and Department Chairs (faculty) have been assigned and are receiving leadership development training as well as technical management training. Some directors are not department heads; rather, they are directors for their technical expertise. President Avent reviewed the new structure in detail.

Dr. Parker reviewed organizational changes in Academic Affairs, specifically the move of student development into the enrollment department and the new structure under academic support services. He also addressed the creation of Department Chairs for each of the four degree granting departments, the graduate program, and the Arts & Sciences (formerly General Education) department. Department Chairs have a three-year appointment to their position.

IX. AMI, Autonomous Vehicle – SunTrax MOU Status

President Avent provided an update on the progress of the Advance Mobility Institute (AMI), including Florida Poly's involvement in each element of the five-step holistic approach (R&D, simulation, stimulation, closed-track testing, open-road testing). Florida Poly will own the R&D facility, simulation and stimulation aspect and will participate in open-road testing as well. Faculty have already been working on three AV related projects. There are three barriers to AMI progress: lack of faculty, lack of appropriate graduate research students, and lack of summer salary for faculty. Faculty growth, post-docs and AMI research staff are potential solutions but require legislative funding.

Florida Poly's involvement is providing value-added services, research and development, and training and instruction. Discussions are ongoing with FTE.

FDOT awarded Central Florida AV Proving Ground (CFAVP) designation as a National Test Center. A business model study is being conducted to define Florida Poly's services.

Last fall, Florida Poly hosted a CEO Summit on autonomous vehicles. Participants included industries that will be impacted by AV technology such as agriculture, logistics, planned communities and public transportation. Conversation is ongoing with attendees.

X. Entrepreneurship Program Update

Due to lack of time, this topic was not discussed.

XI. Board of Trustees Meetings and Schedule

Due to lack of time, this topic was not discussed.

XII. Executive Session: Labor Negotiation Update

At 1:57 p.m., the Trustees, Dr. Randy Avent, Dr. Terry Parker, Ms. Gina DeJulio, Mr. Mark Mroczkowski, and Mr. Rick Maxey relocated to the President's Conference Room to begin the executive session.

DRAFT

**AGENDA ITEM: VI**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: National Society of Black Engineers (NSBE) Remarks, Black History Month**

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**Proposed Committee Action**

No action required – information only

**Background Information**

Mr. David Dure, National Society of Black Engineers (NSBE), will give a presentation.

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**Supporting Documentation:**

PowerPoint Presentation

**Prepared by:** David Dure, National Society of Black Engineers (NSBE)



FLORIDA POLYTECHNIC  
UNIVERSITY

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National Society of Black Engineers BOT Presentation

# National Society of Black Engineers Board of Trustees Presentation

David Dure and Valinteshley Pierre  
2/28/2018





# Florida Polytechnic University's NSBE Chapter Executive Board

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- President - David Dure, Senior, Mechanical Engineering
- Vice President - Jhordina Alexander, Senior, Mechanical Engineering
- Treasurer - Jenario Johnson, Junior, Electrical Engineering
- Secretary - Theresta Desir, Junior, Data Analytics
- Senator - Valinteshley Pierre, Junior, Mechanical Engineering
  
- Muneer Tatum – President, Florida Poly Alumnus, Electrical Engineering
- Dieff Vital – Parliamentarian, Florida Poly Alumnus, Mechanical Engineering



# Overview of Presentation

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- Reasons Why We Should Celebrate Black History Month
- African-American Contributors Between the 19th and 21st Centuries
- National Society of Black Engineers and Their Purpose
- The “5%” Problem - Current Issues We Face
- Florida Polytechnic University Student Data
- Possible Strategies and Solutions



# Uncommon Names of Contributors in STEM (Pre-1900s)



Alice Augusta Ball- African-American chemist known for creating most effective treatment for Leprosy



Benjamin Banneker- Mathematician and astronomer known for surveying the territory of the nation's capital



Euphemia Lofton Haynes- First African-American woman to receive a doctorate's degree in Mathematics



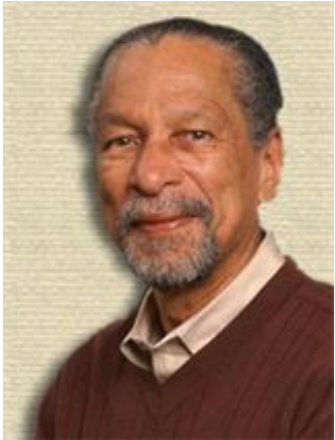
Henry Blair- Second African-American known to hold a patent in boosting agricultural productivity



Elijah McCoy- African-American inventor best known inventing lubrication devices to help make train travel more efficient



# Uncommon Names of Contributors in STEM (Modern Day)



James West-  
Acoustician  
responsible for  
developing  
polymer foil  
electret  
transducer  
technology



George  
Carruthers-  
Scientist  
responsible for  
inventing the  
spectrograph,  
an ultraviolet  
light used by  
NASA



Frederick Jones-  
Founder of  
Thermo King,  
company utilized  
by many  
companies for  
transport  
temperature  
control systems



Mae  
Jemison-  
First  
African-  
American  
woman to  
travel space



Katherine  
Johnson-  
Mathematician  
and  
Astrophysicist  
integral to  
NASA's Flight  
Research  
Division during  
the Space Race



Norma  
Sklarek-  
First licensed  
African-  
American  
female  
architect





# NSBE Organization and History

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- NSBE History
  - Founded 1975 by Mr. Edward Barnette and Mr. Fred Cooper, two undergraduate students at Purdue University
  - Organization was established to help improve retention and recruitment of black engineering students after witnessing an overwhelming population drop out of their respective engineering programs
  
- NSBE Mission: **“to increase the number of culturally responsible Black engineers who excel academically, succeed professionally, and positively impact the community”**
  
- Many well-known African-American STEM contributors are members of NSBE, and do much for their colleagues and communities



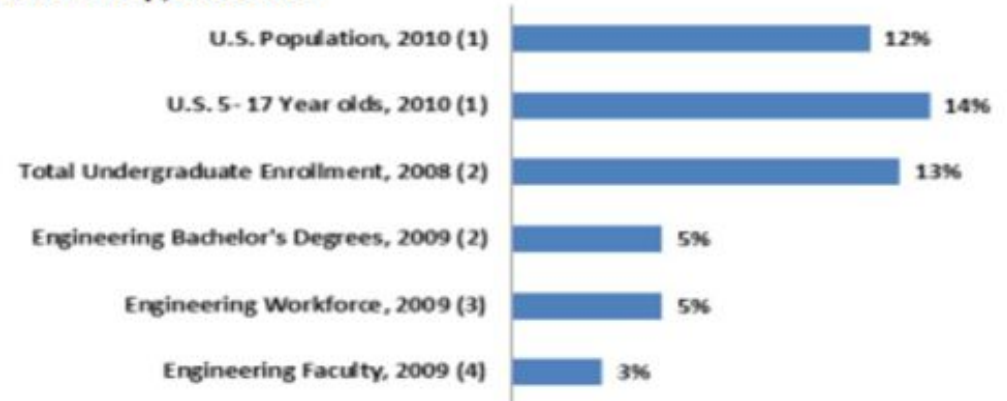
# Why the Mission Statement?

- The “5%” Problem
- Excel Academically
- Succeed Professionally
- Positively Impact the Community
  - Cultural Awareness
  - Community “Wealth”
  - Possibilities are Endless

Engineering Degrees Attained by Group, 2010			
	Bachelor's	Master's	PhD's
White	62,314	15,424	2,505
Asian	9,667	4,301	569
Latino	6,105	1,573	210
African American	4,688	1,385	163
American Indian/Alaska Native	525	114	10
Non-Resident Alien	4,951	16,549	4,314

Source: U.S. Department of Education, National Center for Education Statistics, Integrated Post-secondary Education System (IPEDS), Completions Component, 2009-2010 (persons of two or more races excluded)

**Figure 1. African American Representation in Engineering as a Percent of Each Group, 2008-2010**



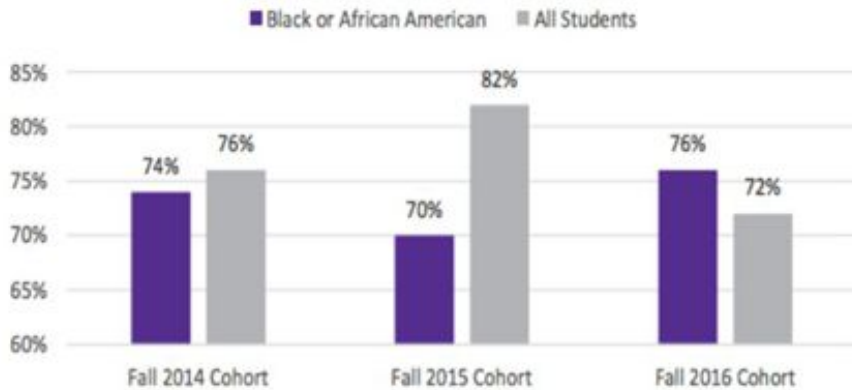
Source: Table prepared for NACME Data Book 2011 based on analysis of (1) U.S. Census Bureau, (2) IPEDS data accessed via NSFWebCASPASPAR database (percent of U.S. Citizens and permanent residents), (3) American Community Survey; analysis by NACME Research and Evaluation, October 2010, (4) American Society for Engineering Education, 2010 "By the numbers, 2009".

(National Action Council on Minorities in Engineering, Inc.)

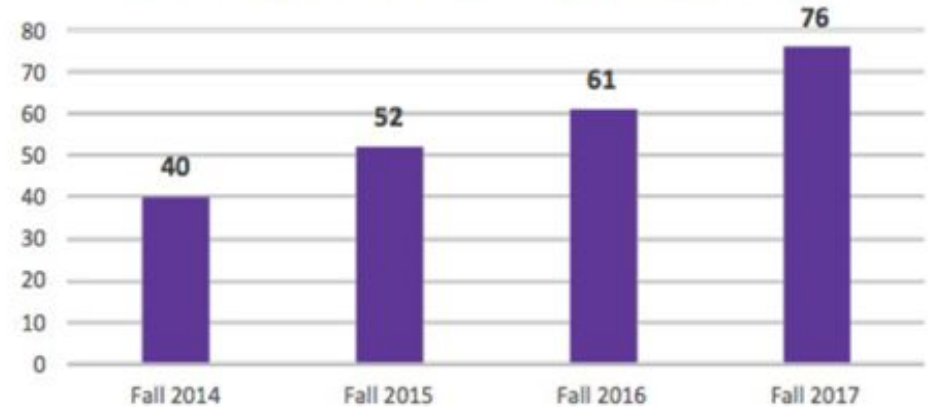


# Florida Polytechnic University Student Data

First Time in College - First Year Retention Rate



Black or African American Student Enrollment Trend



University Withdrawals			
	Total Registered	Total Withdrawn	Percent of Total Registered
Black or African American Students	111	29	26.1%
All Students	2,075	569	27.4%

- While 57% of all the students from the Inaugural class continue on a matriculated status, 56% of Black or African American students from Inaugural class continue on a matriculated status, 4.3% have graduated already
- Retention rates among African-Americans are almost that of the Florida Poly overall student average
- University Withdrawals:
  - 65% of African-American students were subject to administrative withdrawals after failing to register for two consecutive academic semesters
  - 35% of African-American students have withdrawn due to relocations, financial situations/hardships, and/or transfer to other institutions of higher education (high transfer rate to UCF and USF)



# Possible Strategies and Solutions

- Strategies & Solutions from the University's Standpoint:
  - Costs
  - Exposure to STEM at a young age
  - Lack of scholarships due to ABET accreditation
  - Working Students
  - Relationship with Community College (Possible Bridge Programs)
  - Access to Online Classes and Class Structure
  - Commute
  - Strategic Partnerships for in-school employment
  - Seminars with parents/family on how children can get into engineering degree paths in Tech Schools
  - Target Florida Residents; tap into Middle, High, and Tech schools
  - "Perceptions"

- Strategies & Solutions from NSBE's Standpoint:
  - Costs
  - Exposure to STEM at a young age
  - Socioeconomic Factors
    - cost of living
    - value of education in the household
    - one parent households
  - Working Students
  - Commute
  - Strategic Partnerships for in-school employment
  - Seminars with parents/family on how children can get into engineering degree paths in Tech Schools
  - Realistic Goals
  - Target Florida Residents; tap into Middle, High, and Tech schools
  - "Perceptions"



# NSBE Accomplishments and Future Goals





# QUESTIONS?















**FLORIDA POLYTECHNIC**  
UNIVERSITY

## **President's Report**

**Randy Avent**  
**28 February 2018**



# Operational Plan Status

<ul style="list-style-type: none"> <li><b>Produce highly sought-after graduates</b></li> </ul>	
<ul style="list-style-type: none"> <li>– Grow admissions outside central Florida &amp; increase diversity and academic quality to become a more selective institution</li> </ul>	
<ul style="list-style-type: none"> <li>– Strengthen the academic program with focus on instructional delivery, rigor, advising and engagement</li> </ul>	
<ul style="list-style-type: none"> <li>– Provide academic services and learning support to increase retention and 4-year graduation rates</li> </ul>	
<ul style="list-style-type: none"> <li>– Deliver excellent services and foster a climate of active and engage student life</li> </ul>	
<ul style="list-style-type: none"> <li><b>Build a high-technology economy around Florida Poly</b></li> </ul>	
<ul style="list-style-type: none"> <li>– Grow the faculty body and research infrastructure to build impactful programs in technologies relevant to the state economy</li> </ul>	
<ul style="list-style-type: none"> <li>– Enhance industry relationships by expanding both the number and depth of interactions. Refocus industry outreach efforts to deliver more impact and grow stronger bonds through internships, ...</li> </ul>	
<ul style="list-style-type: none"> <li>– Promote real-world problem solving and leaderships skills through competitions, undergraduate research and entrepreneurship opportunities</li> </ul>	
<ul style="list-style-type: none"> <li><b>Increase accountability and grow public support for the University</b></li> </ul>	
<ul style="list-style-type: none"> <li>– Work to engage all stakeholders in developing a new strategic plan for the University</li> </ul>	
<ul style="list-style-type: none"> <li>– Further strengthen relationships with community leaders, state legislature, Board of Trustees and Board of Governors to support our objectives</li> </ul>	
<ul style="list-style-type: none"> <li>– Develop a sustainable discount rate model for attracting strong students and launch a Development campaign to raise \$2M in new scholarship funding</li> </ul>	
<ul style="list-style-type: none"> <li>– Improve the unrestricted net position of the University and improve at least five major institutional processes</li> </ul>	
<ul style="list-style-type: none"> <li>– Attract and retain strong faculty and staff by growing wages to become more competitive. Finalize annual reviews, merit pay and promotion policies.</li> </ul>	





# Outline

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- Introduction
- **Discussion topics**
- **Notable events**
- **Upcoming events**
- **Summary**



# Legislative Requests

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- **Applied Research Center (PECO<sup>1</sup>)**
  - Requested                      \$26.7M
  - Appropriated                    \$5M
  - Updated request                \$10M + \$5.5M(Poly)
  
- **Advanced Mobility Institute (E&G<sup>2</sup>)**
  - Requested                      \$5M
  - Appropriated                    \$250K
  
- **Center for STEM Education (E&G)**
  - Requested                      \$5M
  - Appropriated                    \$0
  
- **Sustainability Institute (E&G)**
  - Requested                      \$4.4934
  - Appropriated                    \$250K

<sup>1</sup> Public Education Capital Outlay

<sup>2</sup> Education & General



# Applied Research Center

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- **Carry-forward funds**
  - Excess operational funds can be accumulated in a “carry forward” account and used at a later date
  - Provision passed in 2012 that new universities can use carry forward funding for capital projects for up to ten years
  - Florida Poly currently has approximately \$18M in carry forward
  
- **State requires 72% funds to begin construction (\$27.5m)**
  - Currently have \$12M (\$7M from PECO and \$5M matching)
  - Need \$15.5M to begin construction (vertical)
  
- **Construction options**
  - Complete infrastructure (ground improvements) (\$0M from state)
  - Start construction (\$5M-10M from state)
  - Start construction and increase building size (\$10M from state)



# Board Studies

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- **Five-year scholarship analysis**
    - Develop five-year roadmap for required scholarships as a function of student quality and size of incoming class
    - Plan for how to fund scholarships given Foundation status
  
  - **Economic Growth**
    - Report on Spring 2018 Economic Development Summit
    - Examines how to catalyze local EDCs into proactive recruitment of high-technology companies
    - Strong focus on developing live-work-play research park around campus
  
  - **Campus Development**
    - Updated campus development plan to support future growth
    - Investigates reallocation of space to maximize function
    - Investigates nontraditional funding options
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# Campus Development Study

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- **Update student growth model**
    - Focus on growing high-quality student body (SAT over 1300)
    - Use housing and matriculation models that provide desired occupancy
    - Grow faculty body to support student and program growth
    - Drive high faculty-to-staff ratios to concentrate spending on academics
  
  - **Consider three campus development trajectories**
    - Baseline provides faculty offices, research and student project space
    - Intermediate provides above plus staff offices
    - Optimal provides above plus staff offices and student center
  
  - **Consider mix of traditional and non-traditional funding**
    - Commit to a trajectory and expend Carry Forward funding
    - Provide leased space to high-tech companies that partner with the University
    - Consider innovative partnerships with private development firms (RFI)
    - Leverage strong financial index position
    - Broker purchase of William's property and lease new building space
-



# Outline

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- Introduction
- Discussion topics
- **Notable events**
- **Upcoming events**
- **Summary**



# Senate Testimony



- **Testified to the Committee on Commerce, Science and Technology on Driving Automotive Innovation and Federal Policies**
- **Discussed market impact of autonomous vehicles and challenges in verification**
- **Argued for a FFRDC- or UARC-like entity that provides unbiased technical expertise to the government**



# Meeting with Gov Bush



- **Briefed on his efforts to revolutionize primary education**
- **Discussed Center for STEM Education**
  - Vision for moving from craftsman model to software-managed system
  - Reliance on open-source instruction
  - Primary focus on commodity university classes
- **Provided advice on funding avenues and connection with his foundation**





# USAF Academy



- **Visited the Center for Character and Leadership Development at the US Air Force Academy**
- **Briefed on their programs to develop leaders and discussed potential partnering opportunities**



# Other Notable Events

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- **Management**

- Culture workshop and introduction to the 27 culture fundamentals
- Rolled out new organizational structure with Department Heads (administrative) and Department Chairs (academic)
- Started management training program for functional managers

- **Advocacy and partnerships**

- Met with ten key legislators (current and emerging leadership) to advocate for our legislative priorities and the University
- Hosted a visit by the Florida Council of 100 to include Ron Wanek
- Attended CASE<sup>1</sup> fundraising conference
- Hosted a Poly Connection event at the Orlando Citrus Club
- Discussed Laboratory-based partnership with Draken International
- Held first Florida Poly/Lakeland Regional Health Collaboration Oversight Board meeting
- Florida Poly selected to the High Tech Corridor Council as an advisor

- **Held Great Eight entrepreneurship competition**

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<sup>1</sup> Council for Advancement and Support of Education



# Notable Press Events

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- **Florida Poly Day connects students and legislators (1)**
  - **President Avent named to Florida High Tech Corridor (3)**
  - **Applauding those who recognize Florida Poly (1)**
  - **President Avent testifies on self-driving vehicles (4)**
  - **Florida Poly at forefront of autonomous technology (2)**
  - **Florida Poly develops “Happy Suit” for astronauts (16)**
  - **Payton Barnwell – Florida Poly students earns stellar (1)**
  - **Florida Polytechnic garden serves low-income communities (1)**
  - **Florida Poly missing student found safe (5)**
  - **Florida Poly students dominate statewide awards (1)**
  - **Florida Poly holds its biggest career internship fair (1)**
  - **Recruiting women tough for STEM-focused Universities (1)**
-



# Outline

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- Introduction
- Discussion topics
- Notable events
- **Upcoming events**
- **Summary**



# Florida Poly Leadership Development Program

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- **Developed by HBS Professor Emeriti Earl Sasser and Paul Marshall based on their Executive and Professional Education experience**
- **Five-day resident intensive program for 25-40 talented managers**
  - Taught by Florida Poly faculty and HBS professors
  - Includes lectures, case studies, small group discussions and preparation time
  - Intensive graduate level instruction with engaged learning
- **Key themes include strategic thinking, leading creativity and innovation, service excellence, leadership, data analytics for strategic decision making**



# Economic Development Forum



- **Goal**
  - Discuss Polk County economic development efforts
- **Moderators from NC State Economic Development Partnership Office**
  - Dennis Kekas (Associate Vice Chancellor)
  - Tom White (Director)
- **Attendees**
  - Key business and Economic Development Council (EDC) leaders across Polk County
- **Format**
  - Open discussions followed by two breakout sessions



# Other Upcoming Events

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- **Women in STEM (March 14, 2018)**
  - **Brazil trip (March 31-April 4, 2018)**
    - Serve on Artificial Intelligence panel with Industry CEOs
    - Recruit strong graduate students
    - Establish international joint venture research program
  - **ABLAZE Annual employee awards dinner (April 18, 2018)**
    - Faculty awards
    - Staff awards
    - University awards
  - **EXCELeRate Foundation event (April 20, 2018)**
    - Celebrates supporters and accomplishments
    - Highlights President's vision for Florida Poly
  - **2018 Commencement (May 4, 2018)**
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# Summary

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- **Continue to make steady progress on the yearly operational plan**
- **Remain hopeful of receiving funding to begin Applied Research Center**
  - Different options identified based on level of PECO funding received
  - No funding option includes infrastructure (ground improvements)
- **Received positive press on many fronts for Florida Poly and have made strides in building support for the University**
- **Key initiatives remain through the spring and summer with the conclusion of the strategic plan**



**AGENDA ITEM: VIII**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: Strategic Plan Discussion – Mission, Vision, Values**

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**Proposed Committee Action**

No action required – information only

**Background Information**

President Randy Avent Avent will provide an update on the status of the new strategic plan, including proposed mission, vision, and value statements.

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**Supporting Documentation:**

PowerPoint Presentation

**Prepared by:** President Randy K. Avent



**FLORIDA POLYTECHNIC**  
UNIVERSITY

## **Strategic Positioning**

**Randy Avent**  
**28 February 2018**



# Megatrends in Higher Education

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- **Declining state support and increased pressure on affordability**
- **Heightened focus on workforce preparation**
- **Greater accountability (state and students)**
- **Accessibility for nontraditional students**
- **Greater competition from new business and delivery models**



# Poly Differentiation

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- **Small institution**
- **New institution**
- **Applied sciences (STEM)**



# Positioning Matrix

Differentiation	Trend	Strengths	Weaknesses
Small	Affordability	No "beast" to feed	Difficult to compete for E&G
	Workforce	Selective institution High service model	Fortune 500 Industry partnerships
	Accountability		BOG metric focus on throughput
	Accessibility	Primarily FTIC	Primarily on-campus delivery
New	Affordability	No legacy programs Innovate in organizational construct Lack traditional bureaucracies & cultures	Limited capital infrastructure Geographically distributed
	Workforce	High growth industry alignment Business vertical construct SMB Industry partnerships	
	Accountability	High growth industry alignment	
	Accessibility		Branding Diversity
	Competition	Better postured for disruption	Programmatic accreditation
Applied Sciences	Affordability		Expensive programs
	Workforce	High growth industry alignment	Soft-skills, soft-power
	Accountability	High growth industry alignment	



# Steering Vectors

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- **Provides highly-sought after graduates in applied sciences**
    - Applied science programs with strong connections to jobs
    - Highly selective institution with the best student quality in the system
    - Strong curriculum with emphasis on broad education, theory and fundamentals
    - Orthogonal focus on practical skills
    - High service model for a uniquely personal experience
    - Molds students into “total engineers” (soft skills, hard skills, soft power)
  - **Grows applied research programs for near-term impact**
    - Faculty research efforts balanced across basic research, applied research, development, testing & evaluation and education innovation
    - Dynamic mix of Institutes and Centers in emerging fields
    - Partnerships with industry & government to solve complex problems
    - Development of IP encouraged
- 
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# Steering Vectors

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- **Builds high-technology economy around Florida Poly**
  - Focused on an effective interaction model for industry
  - Emphasis on Small & Medium Businesses (SMB) to keep graduates in Florida-based companies
  - Supports business verticals that support growth in strategic industries
  - Builds a high-technology economy around Florida Poly
- **Targets affordability through reduction in operational costs**
  - Creates organizational constructs that focus resources on academic programs
  - Experiments with different models of instructional delivery
  - Continuously improves business processes to drive down operational costs



# Positioning Statements

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- **Mission statement**
  - Specifies a firm’s purpose or “reason for being” and the primary objective toward which the firm’s programs and plans should be aimed. Statement specifying the firm’s key constituents and how the firm will serve them. It must be clear and understood.
- **Vision statement**
  - Statement describing what the firm strives to be at some future time. It should be specific and motivating.
- **Both statements should be concise, clear, future oriented, challenging and inspiring**





# Potential Mission Statements

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- **Deliver economic impact in applied sciences through education and research**
  - **Educate with excellence and promote an economy for tomorrow**
  - **Prepare well-rounded, highly-skilled STEM graduates and provide leadership in technology**
  - **Serve Florida and the nation through excellence in STEM education and leadership in technology and innovation**
  - **Educate with excellence, innovate for impact and bolster the economy of tomorrow**
  - **Graduate versatile STEM leaders and serve Florida and the nation through innovative research**
- 
-



# Potential Vision Statement

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- **Florida Poly will be nationally known for leading innovation in STEM education and research and will serve as a model for other institutions**
- **Florida Poly will be the premier engineering school in Florida and will be nationally known for its programs**
- **Florida Poly will help position Florida as a destination for high-technology companies and its employees**

**AGENDA ITEM: IX**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: ARC Design Status Update - HOK**

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**Proposed Committee Action**

No action required – information only

**Background Information**

Representatives from HOK will give a presentation on the status of the Applied Research Center (ARC) design.

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**Supporting Documentation:**

PowerPoint Presentation

**Prepared by:** David Calhoun and Representatives from HOK





# HOK S&T EXPERIENCE



# HOK FLORIDA EXPERIENCE





# HOK DESIGN



# DESIGN SCHEDULE

2018												2019							
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG
PROGRAMMING + PLANNING				ADVANCED SCHEMATIC DESIGN			DESIGN DEVELOPMENT			CONSTRUCTION DOCUMENTS									
CONCEPTUAL DESIGN						EARLY RELEASE PKG SITE / CIVIL													



# STATUS

## PROGRAMMING SCHEDULE



# VISIONING SESSION #1



# vision statement

Continuing a culture of design excellence to build an **icon** that creates a **functional, flexible** dynamic applied research building to promote **collaboration and connectivity** amongst its occupants while catering to the needs of **thematic** and disciplinary research needs.



# guiding principles

Create a highly **functional** research environment that supports dynamic **thematic research** projects while simultaneously providing **flexibility/adaptability** to support future changes. Promote a culture of **collaboration** amongst students and researchers throughout the building utilizing space efficiencies.



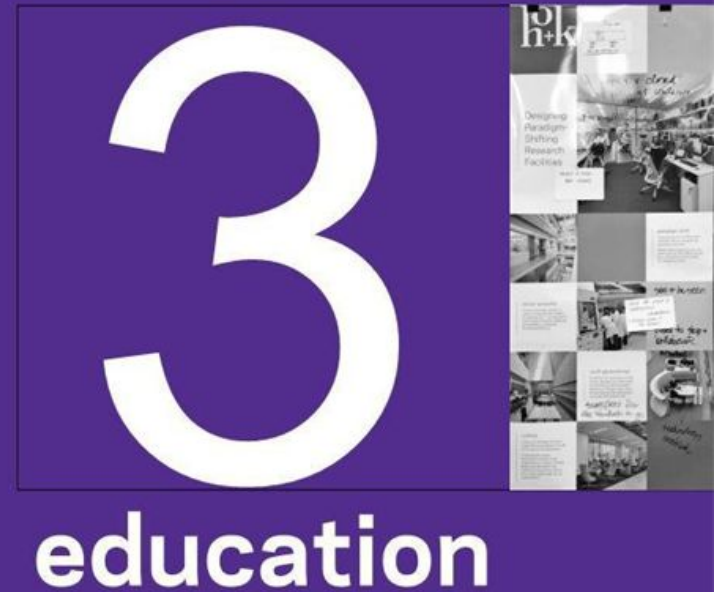
# guiding principles

Create a highly **connected**,  
**technology enabled** workplace  
environment which can **flex** while providing  
spaces that can cater to **diverse** tasks and  
workstyles



# guiding principles

Create a **flexible** integrated academic and research environment that **connects** faculty and students, to supports a spirit of **entrepreneurship**



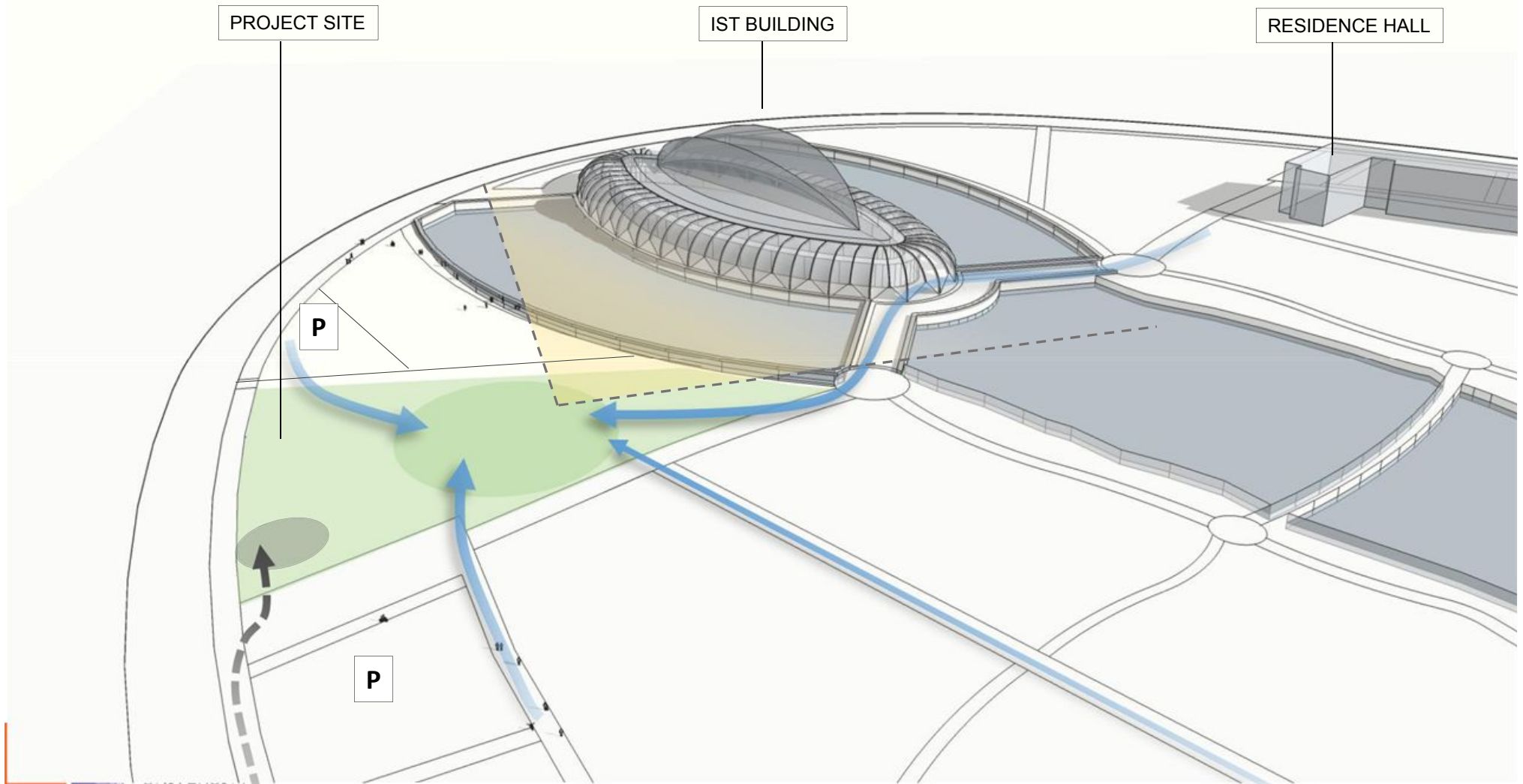
# guiding principles

Create a **people-centric, amenity rich** environment that is **connected to nature** and promotes physical and psychological **wellness** of all occupants.

# 4

## amenity





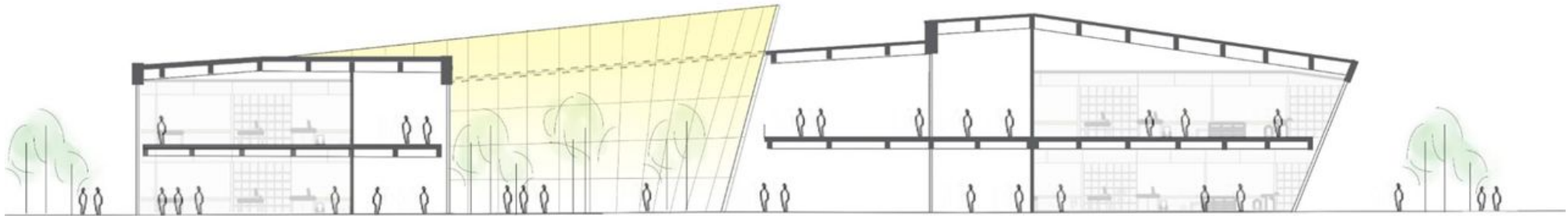


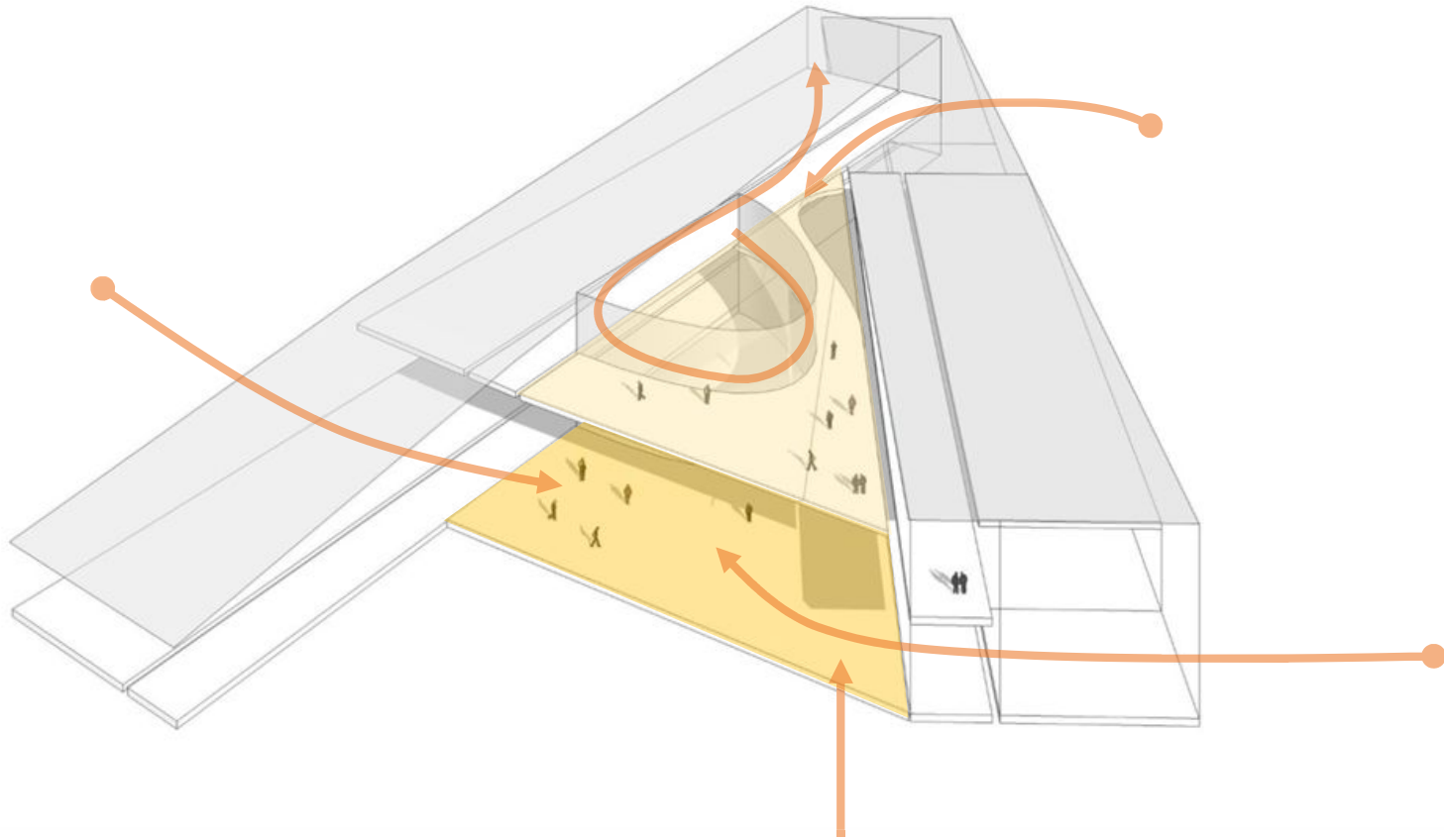
SITE PLAN



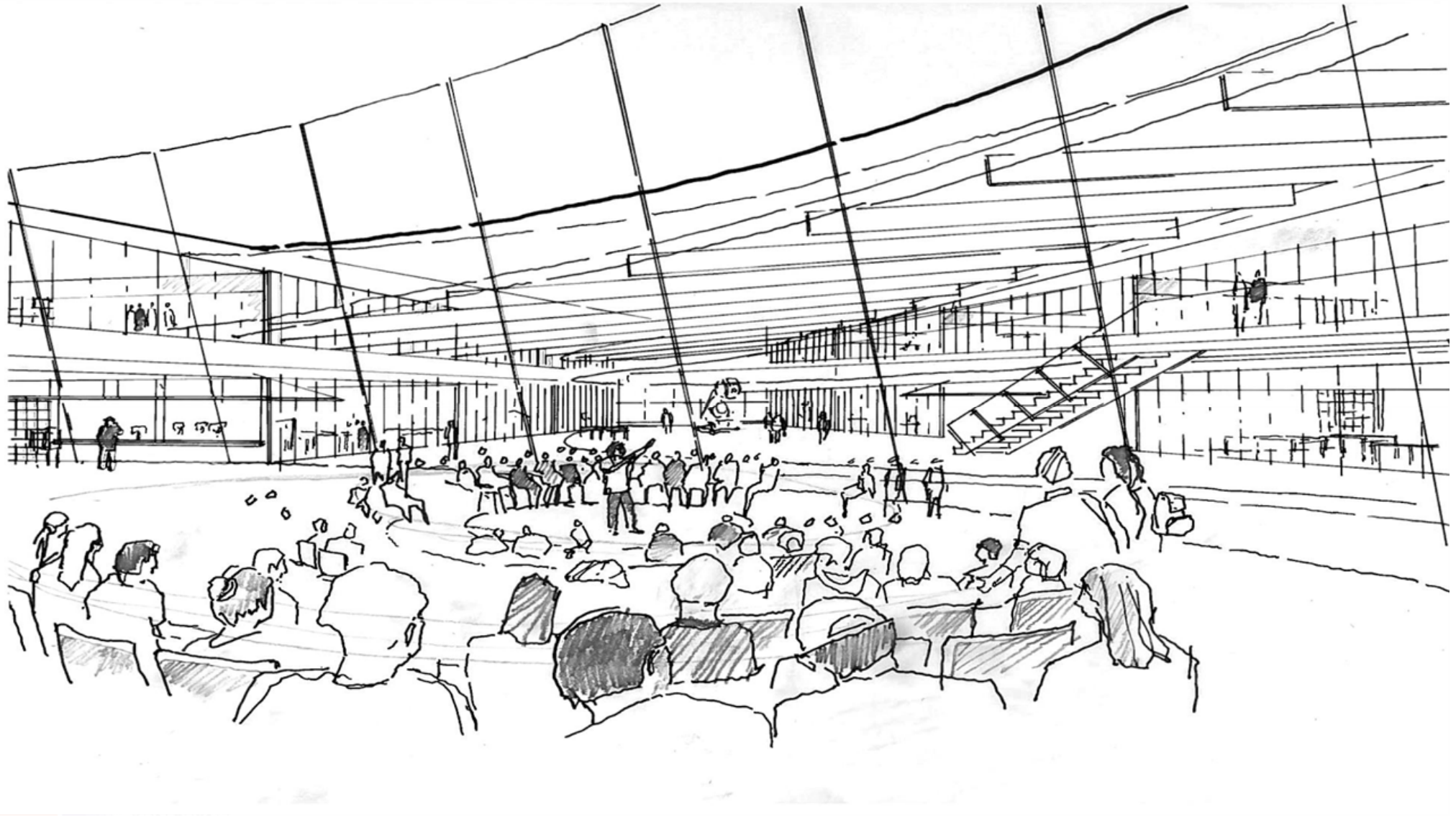


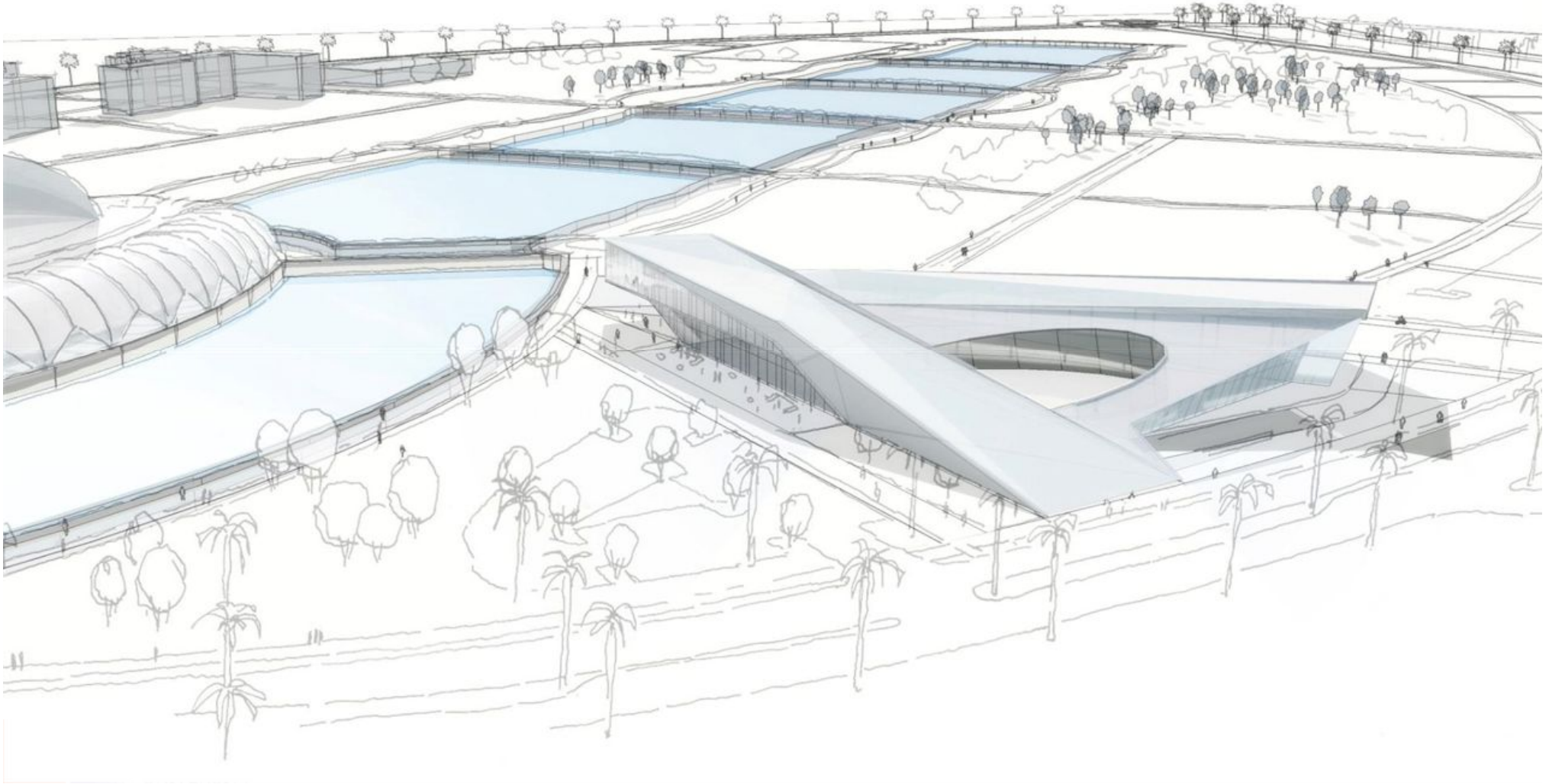
TRANSVERSE SECTION @ COURTYARD













**AGENDA ITEM: X. B. 1.**

**Florida Polytechnic University  
Finance and Facilities Committee  
Board of Trustees  
February 28, 2018**

**Subject: Construction Manager Recommendation**

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**Proposed Committee Action**

Approve the selection recommendation of the Finance and Facilities Committee for construction management services for the Applied Research Center (ARC).

**Background Information**

On February 28, 2018, the Florida Polytechnic University Board of Trustees Finance and Facilities Committee voted unanimously to approve the selection recommendation for construction management services for the Applied Research Center (ARC). The selection recommendation is coming before the full Board for approval.

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**Supporting Documentation:**

N/A

**Prepared by:** David Calhoun, Director, Facilities & Safety



**AGENDA ITEM: X.B.2.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: Foundation Naming Opportunity**

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**Proposed Committee Action**

Recommend approval of the naming of Collaboration Room 2073 in the Innovation, Science and Technology Building of Florida Polytechnic University as the “Campbell Family Collaboration Room”.

**Background Information**

On February 28, 2018, the Florida Polytechnic University Board of Trustees Finance and Facilities Committee voted unanimously to approve the naming of Collaboration Room 2073 in the Innovation, Science and Technology Building of Florida Polytechnic University as the “Campbell Family Collaboration Room”. The naming is coming before the full Board for approval.

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**Supporting Documentation:**

N/A

**Prepared by:** Kevin Aspegren, Vice President of Advancement

**AGENDA ITEM: X. B. 3.**

**Florida Polytechnic University  
Board of Trustees**

**Subject: FPU-8.001 Purchasing (being renamed “Procurement”)**

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**Proposed Action**

Approve revised regulation **FPU-8.001 Purchasing (being renamed “Procurement”)**.

**Background Information**

University regulation **FPU-8.001 Purchasing** was initially approved by the Board of Trustees on August 28, 2013.

This regulation is supplemental to Florida Board of Governors regulations in Chapter 18 and provides the framework for making purchases of commodities and services, including motor vehicles. The regulation states the Procurement Department’s responsibilities, the competitive solicitation threshold and requirements, employee and contractor’s standards of conduct, and the requirements of contracts.

This regulation is being revised primarily to refer to the department and the title of the regulation as “procurement” rather than “purchasing”; to align more closely to the requirements and language used in the BOG’s 18.001 Procurement Regulation; to add the purchase of products with recycled content to the list of exceptional purchases; to recognize the Workday ERP system as the mechanism used for creating, approving and issuing purchase orders; and to inform as to the location of certain business processes.

The Notice of Proposed Amended Regulation and the regulation were published on the University’s website on January 26, 2018. No comments were received during the review and comment period.

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**Supporting Documentation:**  
DRAFT revised regulation **FPU-8.001 Procurement**

**Prepared by: Gina DeIulio, VP & General Counsel**

## THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

### **FPU-8.001 Purchasing/Procurement.**

(1) **Statement of Intent.** These Purchasing/Procurement regulations are supplemental to Chapter 18 of the Florida Board of Governors regulations (“Board of Governors Purchasing regulations”). It is the intent of Florida Polytechnic University (the “University”) to acquire quality goods and services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. Responsible purchasing officials shall be protected from improper pressures of external political or business interests. The process shall reduce the appearance and opportunity for favoritism, ensure that contracts are awarded equitably and economically, and establish effective management oversight in the acquisition of commodities and contractual services, in order to preserve the integrity of public purchasing and contracting. The opportunity to respond to competitive solicitations and enter into contracts with the University is a privilege, not a right.

### (2) **Definitions.**

(a) **Commodity** - Any of the various supplies, materials, goods, merchandise, food, equipment or other personal property, including a mobile home, trailer or other portable structure, which are purchased, leased, lease-purchased or otherwise contracted for by the University. “Commodity” also includes interest on deferred-payment contracts entered into by the University for the purchase of other commodities.

(b) **Competitive Response** - The response submitted to an Invitation to Bid, Invitation to Negotiate, or a Request for Proposal by a responsive and qualified bidder or offeror.

(c) **Competitive Solicitation** - An Invitation to Bid, Request for Proposals or Invitation to Negotiate to competitively select a contractor/vendor.

(d) **Contractor/Vendor/Supplier** - A person or firm who sells commodities or contractual services to the University.

(e) **Contractual Service** - The rendering by a contractor of its time and effort rather than the furnishing of commodities. The term applies only to those services rendered by individuals and firms who are independent contractors. “Contractual service” does not include labor or materials or selection of professional services for the construction, renovation, repair or demolition of facilities.

(f) **Independent Contractor** - A person or firm who provides a service to the University, but does not have any employment or other relationship or connection with the University, except as permitted by Florida law.

(g) **Invitation to Bid** - A written solicitation for competitive bids with the title, date, and hour of the public bid opening designated and the commodity, group of commodities or services defined, for which competitive responses are sought.

(h) **Invitation to Negotiate** - An invitation extended to prospective contractor/vendors by the University, whether by advertisement, written solicitation, electronic media or any other form of communication, to define the specifications, terms and conditions of a contract for commodities or contractual services. Cost may or may not be a consideration in the initial stages of negotiating.

(i) **President** - The chief executive officer of the University or chief operating officer, responsible for its operation and administration.

(j) **Public Entity Crime** - A violation of any state or federal law by a person in the transaction of business with any public entity of any state or with the United States government involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.

(k) **Purchase** - An acquisition of commodities and/or services obtained by purchase order or contract whether by rent, lease, installment- purchase or lease-purchase, outright purchase, or license.

(l) **Renewal** - Contracting with the same contractor/vendor for an additional period of time after the initial contract term, provided the original terms of the agreement specify an option to renew.

(m) **Request for Proposal** - A written solicitation for competitive proposals for commodities or contractual services with the title, date, and hour of the public opening designated. The request for proposal may be used when the scope of work is not clearly defined.

(n) **Responsive and Qualified Bidder or Offeror** - A contractor/vendor who has submitted a competitive response that conforms in all material respects to a competitive solicitation.

(3) **Purchasing-Procurement Department Duties.** The University Board of Trustees has authority to establish a system of coordinated procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University. The ~~Purchasing-Procurement Department/shared services provider~~ (the "~~Purchasing Department~~**Procurement Department**") has the duty to:

(a) Canvass sources of supply and contracting for the purchase or lease of all commodities and contractual services for the University, in any manner, including purchase by installment- or lease-purchase contracts. Installment- or lease- purchase contracts may provide for the payment of interest on unpaid portions of the purchase price.

(b) Remove any contractor/vendor from the University's competitive vendor list that fails to fulfill any of its duties specified in a contract with the University and to reinstate any such contractor/vendor when satisfied that further instances of default will not occur.

(c) Plan and coordinate purchases in volume and negotiate and execute agreements and contracts for commodities and contractual services under which the University may make purchases.

(d) Develop an Annual Certification List to serve as a waiver of the competitive solicitation requirement for commodities/services that are frequently purchased and are available from a single source.

(e) Evaluate and approve contracts ~~let that are entered into after a public and open competitive solicitation~~ by any State of Florida agency or department, the Federal Government, other states, political subdivisions, ~~not-for-profit~~ cooperatives or consortia, or any independent college or university for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of the University to make purchases under contracts let by such other entities. The ~~Purchasing Department~~**Procurement Department** shall review existing consortia and cooperative contracts to identify potential savings and, if there is the potential for

savings, enter into new consortia and cooperative contracts to achieve the savings, with the goal of achieving a five-percent savings on existing contract prices.

(f) Award contracts for commodities and contractual services to multiple suppliers, if it is determined to be in the best interest of the University. Such awards may be on a university, regional or State University System-wide basis and the contracts may be for multiple years.

(g) Reject or cancel any or all competitive solicitations when determined to be in the best interest of the University.

(h) Bar any contractor/vendor from doing business with the University for demonstrated cause, including previous unsatisfactory performance.

(i) Prohibit University employees and University direct-support organization employees participating on a procurement selection committee for commodities or services from soliciting donations from responding contractor/vendors during the selection process, except for donations or other benefits expressly stated in the procurement document.

(4) **Employee and Contractor/Vendor Standard of Conduct.** It shall be a breach of ethical standards for any University employee to accept, agree to accept, or solicit a gratuity of any kind, form or type in connection with any contract for commodities or services. It shall also be a breach of ethical standards for any potential contractor/vendor to offer a University employee of the University a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services.

(5) **Competitive Solicitations Threshold.** All contracts entered into by the University for the purchase of commodities or contractual services exceeding \$75,000 shall be awarded pursuant to a public and open competitive solicitation, unless otherwise authorized herein or in the Board of Governors Purchasing regulations.

(6) **Notice of Decision or Intended Decision.** A notice of decision or intended decision concerning a solicitation, contract award, or sole source purchase shall be electronically posted on the ~~Purchasing Department~~Procurement Department website.

(7) **Preferences for Florida-Based Contractors/Vendors.** The University will provide preferences to Florida-based contractors/vendors for contracts for personal property and printing in accordance with Florida Board of Governors Purchasing regulations.

(8) **Tie Responses.** When multiple responses that are equal in all respects are received to a competitive solicitation, the University will give preference to responses that include commodities manufactured in the state, Florida businesses, businesses with a drug-free workplace program, or foreign manufacturers located in the state to determine the contract award, or, if these conditions do not exist or are the equivalent between two or more responses, will use toss of the coin.

(9) **Extension Errors.** In the case of extension errors in quotes or competitive responses, the unit price will prevail.

(10) **Withdrawal of Competitive Response.** A contractor/vendor may withdraw his or her competitive response in writing if done within seventy-two (72) hours of the competitive response/bid opening, if the competitive response is clearly erroneous, and if the competitive response is withdrawn prior to final award or the purchase order being issued, whichever comes sooner.

(11) **Exceptional Purchases.** The University has the following exceptional purchases:

(a) **Purchase of Private Attorney Services.** Written approval from the Attorney General is not required for private attorney services acquired by the University.

(b) **Purchase of Insurance.** The University may purchase insurance as deemed necessary and appropriate for the operation and educational mission of the University. Examples of insurance coverage that may be acquired by the University include:

1. Physical damage on vehicles and boats
2. Camps insurance
3. Building and property damage
4. Equipment losses due to theft
5. Equipment subject to transportation
6. Loss of rental income
7. Commercial general liability insurance for scientific equipment
8. Excess general liability coverage

**(c) Purchase of Products with Recycled Content.**

~~(12)~~(d) **Purchase of Printing.** University purchases of printing are not subject to Florida Statutes Chapter 283. However, if the University decides to purchase printed materials through a competitive solicitation process, the preference provision in the Board of Governors Purchasing regulations shall apply.

~~(12)~~ **Types of Purchases Not Subject to the Competitive Solicitation Process.** Purchasing actions that are not subject to the competitive solicitation process include those types of purchases that are enumerated in the Florida Board of Governors Purchasing regulations or Florida Statutes and commodities to be incorporated into any public work (as that term is defined in Fla. Admin. Code R. 12A-1.094) which are procured by the University in accordance with the requirements of the University's direct purchase program.

~~(13)~~ **Purchases from small and disadvantaged business enterprises.** The University is an equal opportunity institution and encourages procurement contracting with small and disadvantaged businesses which includes minority business enterprises.

~~(14)~~ **Purchases from Contractors/Vendors Convicted of Public Entity Crimes.** The University shall not accept a competitive solicitation from, or purchase commodities or contractual services from, a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date of being added to the convicted vendor list. No federal funds may be used to pay any party who is listed on the federal excluded parties list system.

**(1615) Contractors/Vendors Excluded from Competition.** In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations to bid and/or requests for proposals shall be excluded from competing for such procurements.

**(1716) University Employees Involved in the Competitive Solicitation Process.** All persons taking part in the development or selection of criteria for evaluation, the evaluation process, and the contract award process in any purchase shall follow all relevant portions of the State of Florida Code of Ethics for Public Employees, Chapter 112, Part 3, Florida Statutes, and the University's regulation on outside activities.

**(1817) Bonds.** The University may require solicitation security as a condition for a contractor/vendor's participation in a competitive solicitation and/or payment and performance bonds. An entity protesting a decision or intended decision pertaining to a competitive solicitation must post a solicitation protest bond. Requirements related to solicitation security, payment and performance bonds, and solicitation protest bonds must be in accordance with Board of Governors Purchasing regulations.

**(1918) Contracts.**

(a) **Form of Contract.** Contracts for commodities or contractual services or licenses shall consist of a purchase order or bilateral agreement signed by the President or designee prior to or within thirty (30) days of the goods or services being rendered by the contractor/vendor. This provision does not apply to appropriate ~~ProCard~~ Expense Card (University issued procurement card) purchases that are made in accordance with applicable policies and procedures.

(b) **Annual Appropriation.** Any contract for the purchase of services or tangible personal property for a period in excess of one fiscal year shall include the following statement: "The State of Florida's and University's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(c) **Extension.** Extension of a contract shall be for a period not to exceed 12 months or until completion of the competitive solicitation and award or protest, whichever is longer, shall be in writing, shall be signed by both parties, and shall be subject to the same terms and conditions set forth in the original contract. There shall be only one extension of a contract.

(d) **Renewal.** A contract may contain provisions for renewal ~~(s) - of a contract - entered into as a result of a competitive solicitation; may be renewed for a period that may not exceed 5 years or twice the term of the original contract, whichever is longer. This provision is not intended to apply retroactively; existing contracts entered into prior to January 1, 2017, including that included any specified renewal period(s) may continue in accordance with the existing contract terms.~~ If the commodity or contractual service is purchased as a result of a competitive solicitation, the cost of any contemplated renewal must be included in the solicitation response. All contract renewals are subject to sufficient annual appropriations.

(e) **Deferred Payment.** The President has the authority to enter into deferred payment agreements utilizing the State of Florida Controller's Consolidated Equipment Financing Program. When a commodity contract requires deferred payments and the payment of



interest under that program, the contract will be submitted to the State of Florida Controller for the purpose of pre-audit review and approval prior to acceptance by the University. No agreement shall establish a debt of the State or shall be applied to the faith and credit of the State; nor shall any agreement be a liability or obligation of the State except from appropriated funds.

(f) **Limitation of Liability.** In order to promote cost-effective procurement of commodities and contractual services, the University may enter into contracts that limit the liability of a contractor/vendor consistent with Florida Statutes section 672.719.

(g) **Value of Contract.** The total value of a contract shall be the purchase price for the initial term of the contract plus all costs for the contemplated renewal terms.

**(2019) Purchase of Motor Vehicles.**

(a) The term “motor vehicle” includes any automobile, truck, watercraft or other vehicle designed primarily for transporting persons, and construction vehicles or farm equipment.

(b) The University has authority to:

1. Establish standard classes of motor vehicles to be leased, purchased or used by University personnel.
2. Obtain the most effective and efficient use of motor vehicles for state purposes.
3. Establish and operate facilities for the acquisition, disposal, operation, maintenance, repair, storage, control and regulation of University-owned motor vehicles. Acquisition may be by purchase, lease, installment-purchase, loan or by any other legal means and may include a trade-in. All motor vehicles purchased or leased shall be of a class that will safely transport University personnel and adequately meet the requirements of the University.
4. Contract for specialized maintenance services.

(c) Motor vehicles owned, leased or operated by the University shall be available for official University business only.

**(20) Workday.**

(a) Effective October 1, 2015, Workday, the University’s Enterprise Resource Planning (ERP) system, is the mechanism used for creating requisitions and issuing purchase orders.

(b) The Procurement Department must approve, in Workday, all requisitions and approve or issue all purchase orders on behalf of the University.

**(21) Procedures**

(a) The procedures necessary to initiate this regulation are supported by the business processes located at the following locations:

1. Purchasing Manual (Procurement Website)
2. Expense Card Manual (Procurement Website)
3. Workday Business Processes (Workday)
  - i. Login to Workday
  - ii. Select “Poly Workday Job Aids”
  - iii. Refer to “Procurement” Job Aids



*Authority: FBOG regulations 1.001(7), 18.001, 18.002, and 18.003.*  
*History--New 8.28.13; Amended:*

DRAFT

**AGENDA ITEM: X.C.1.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: Rename Degree: Master of Science in Innovation & Technology to Master of Science, Computer Science**

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**Proposed Committee Action**

Recommend approval of the degree name change from Master of Science, Innovation and Technology to Master of Science, Computer Science to the Board of Trustees.

**Background Information**

On February 28, 2018, the Florida Polytechnic University Board of Trustees Academic and Student Affairs Committee voted unanimously to approve the degree name change from Master of Science, Innovation and Technology to Master of Science, Computer Science. The degree name change is coming before the full Board for approval.

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**Supporting Documentation:** N/A

**Prepared by:** Dr. Terry Parker, Executive Vice President and Provost

**AGENDA ITEM: X. C. 2.**

**Florida Polytechnic University  
Academic and Student Affairs Committee  
Board of Trustees  
February 28, 2018**

**Subject: 2018-2019 Academic Calendar**

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**Proposed Committee Action**

Recommend approval of the 2018-2019 academic calendar.

**Background Information**

On February 28, 2018, the Florida Polytechnic University Board of Trustees Academic and Student Affairs Committee voted unanimously to approve the 2018-2019 academic calendar. The 2018-2019 academic calendar is coming before the full Board for approval.

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**Supporting Documentation:** N/A

**Prepared by:** Dahl Grayckowski, University Registrar



**FLORIDA POLYTECHNIC**  
UNIVERSITY

## **Academic Calendar**

**Dahl Grayckowski, University Registrar**  
**February 28, 2018**



## **Calendar Constraints**

- 1. BOG Regulation – must start within a specific date**
- 2. Meeting contact hours – Federal requirement**
- 3. Respecting faculty pedagogy & time – quality concerns**
- 4. Leap year 2020 – wild card**

## **Emergency Campus Closures Make-up**

- 1. Holidays (3 days)**
  - 2. Reading Days (2 days)**
  - 3. Mandatory evenings (upper division),  
Saturdays and/or Sundays (lower division)**
-



# Calendar – Fall 2019 to Summer 2021

	Fall 2019	Fall 2020	Fall 2021
<b>Classes Begin</b>	Wednesday, August 21, 2019	Wednesday, August 26, 2020	
<b>Labor Day Holiday</b>	Monday, September 2, 2019	Monday, September 7, 2020	
<b>Veteran's Day Holiday (Observed) 2020 is Tentative</b>	Monday, November 11, 2019	Wednesday, November 11, 2020	
<b>Thanksgiving Holiday</b>	November 27 - 30	November 25 - 28	
<b>Last Day of Classes</b>	Wednesday, December 4, 2019	Wednesday, December 9, 2020	
<b>Commencement</b>	Friday, December 13, 2019	Friday, December 18, 2020	
<b>Winter Break - Campus Closed</b>	December 26 - 31	December 26 - 31	
	<b>Spring 2019</b>	<b>Spring 2020</b>	<b>Spring 2021 (Tentative)</b>
<b>Classes Begin</b>	Monday, January 7, 2019	Monday, January 6, 2020	Monday, January 11, 2021
<b>Martin Luther King Jr. Holiday - No Classes</b>	Monday, January 21, 2019	Monday, January 20, 2020	Monday, January 18, 2021
<b>Spring Break - No Classes</b>	March 2 - 10	Feb 29 - March 7	March 7 - 14
<b>Last Day of Classes</b>	Wednesday, April 24, 2019	Wednesday, April 22, 2020	Wednesday, April 28, 2021
<b>Commencement</b>	Friday, May 3, 2019	Friday, May 1, 2020	Friday, May 7, 2021
	<b>Summer A 2019</b>	<b>Summer A 2020</b>	<b>Summer A 2021</b>
<b>Classes Begin</b>	Monday, May 13, 2019	Monday, May 11, 2020	Monday, May 17, 2021
<b>Memorial Day Holiday</b>	Monday, May 27, 2019	Monday, May 25, 2020	Monday, May 31, 2021
<b>Last Day of Classes</b>	Friday, June 21, 2019	Friday, June 19, 2020	Friday, June 25, 2021
<b>Summer Break</b>	June 24 - 29	June 22 - 27	June 28 - July 3
	<b>Summer B 2019</b>	<b>Summer B 2020</b>	<b>Summer B 2021</b>
<b>Classes Begin</b>	Monday, July 1, 2019	Monday, June 29, 2020	Tuesday, July 6, 2021
<b>Independence Day (Observed)</b>	Thursday, July 4, 2019	Friday, July 3, 2020	Monday, July 5, 2021
<b>Last Day of Classes</b>	Friday, August 9, 2019	Friday, August 7, 2020	Friday, August 13, 2021
	<b>Summer C 2019</b>	<b>Summer C 2020</b>	<b>Summer C 2021</b>
<b>Classes Begin</b>	Monday, May 13, 2019	Monday, May 11, 2020	Monday, May 17, 2021
<b>Memorial Day Holiday</b>	Monday, May 27, 2019	Monday, May 25, 2020	Monday, May 31, 2021
<b>Summer Break</b>	June 24 - 29	June 22 - 27	June 28 - July 3
<b>Independence Day (Observed)</b>	Thursday, July 4, 2019	Friday, July 3, 2020	Monday, July 5, 2021
<b>Last Day of Classes</b>	Friday, August 9, 2019	Friday, August 7, 2020	Friday, August 13, 2021

**DIRECTIONS:** Each university shall operate on a year-round calendar which provides 220 days of classroom instruction including examinations, or 210 days of instruction excluding examinations. Exceptions may be approved by the Board of Governors. Unless an exception is granted, the first day of classes will fall within each of the following three periods of time: a) The first three (3) weekdays after August 22;b) The first three (3) weekdays after January 4; and c) The first three (3) weekdays after May 5. Each calendar shall minimize time lost to students in completing the transfer between programs or institutions. A summer program for teachers, school personnel and other students shall begin no earlier than June 15 and close no later than August 15.

**If the university's calendar does not meet the above requirements, please submit a request for an exception.**

**2020-2021 Academic Calendars for State Universities**

University	Term One: Fall 2020-Start	Term One - Fall 2020 - No Classes (i.e. holidays/breaks)	Term One - Fall 2020 - Last Day of Classes	Term Two - Spring 2021 - Start	Term Two - Spring 2021 - No Classes	Term Two - Spring 2021 - Last Day of Classes	Term Three - Summer A 2021 - Start	Term Three - Summer A 2021 - No Classes	Term Three - Summer A 2021 - Last Day of Class	Term Four - Summer B 2021 - Start	Term Four - Summer B 2021 - No Classes	Term Four - Summer B 2021 - Last day of Class	Term Five - Summer C 2021- Start	Term Five - Summer C 2021- No Classes	Term Five - Summer C 2021 - Last day of Class	Term Five - Summer D 2021- Start	Term Five - Summer D 2021 - No Classes	Term Five - Summer D 2021 - Last day of Class	Commencement Date(s): Fall 2020 - Summ 2021
FAMU																			
FAU																			
FGCU																			
FIU																			
FPU	8/26/2020	09/07/2020; 11/11/2020; 11/25-11/28/2020	12/9/2020	1/11/2021	01/18/2021; 03/07/2021-03/14/2021	4/28/2021	5/17/2021	5/31/2021	6/25/2021	7/6/2021	7/5/2021	8/13/2021	5/17/2021	05/31/2021; 07/05/2021	8/13/2021				5/7/2021
FSU																			
NCF																			
UCF																			
UF																			
UNF																			
USF																			
UWF																			

**AGENDA ITEM: X. D. 1.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: Approval of Retirement Plan**

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**Proposed Action**

1. Approve the Florida Polytechnic University Retirement Plan (“Retirement Plan”) and resolutions as stated in the **Secretary’s Certificate of Florida Polytechnic University**, which include:

- approval and adoption of the Florida Polytechnic University Retirement Plan (“Retirement Plan”) effective as of July 1, 2017;
- appointment of TIAA, FSB as trustee of the Retirement Plan; and
- designation of the Governance Committee as Plan Administrator of the Retirement Plan.

2. Authorize the Chair and the Vice-Chair of the Governance Committee (currently Trustee Richard Hallion and Trustee Philip Dur) to sign documents related to the Retirement Plan and amendments to the Retirement Plan on the Plan Administrator’s behalf.

**Background Information**

The President’s Employment Agreement provides in 7.2:

**Supplemental Retirement Benefit.** During each year of the Presidential Appointment Term, the President will receive and reserve on a quarterly basis, in addition to his base salary, fifteen percent (15%) of the President’s annual base salary which shall be used to establish a supplemental retirement benefit in a form reasonably acceptable to the President, such as an annuity or other tax deferred product to supplement his retirement. The FPU will contribute the sum required fund this retirement benefit.

The University hired outside counsel, Melanie Hancock Brown, to work with the University and the President to create an acceptable supplemental retirement plan.

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**Supporting Documentation:**

Proposed Florida Polytechnic University Retirement Plan:

Basic Plan Document

Governmental Volume Submitter Plan Adoption Agreement

Secretary’s Certificate of Florida Polytechnic University

Resolutions of the Governance Committee of the Florida Polytechnic University Board of Trustees

Letter to General Counsel regarding process

**Prepared by: Gina DeIulio, VP & General Counsel**



**GOVERNMENTAL DEFINED CONTRIBUTION VOLUME SUBMITTER  
PLAN AND TRUST**

**BASIC PLAN DOCUMENT**

**[DC-BPD #05]**

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SECTION 1  
PLAN DEFINITIONS

This Section contains definitions for common terms that are used throughout the Plan. All capitalized terms under the Plan are defined in this Section or in the relevant section of the Plan document where such term is used.

**1.01** **Account.** The separate Account maintained for each Participant under the Plan. A Participant may have any (or all) of the following separate Accounts, to the extent authorized under the Plan:

- Employer Contribution Account
- Matching Contribution Account
- After-Tax Employee Contribution Account
- Employer Pick-Up Contribution Account
- Rollover Contribution Account
- Transfer Account

In addition, if this Plan qualifies as a Grandfathered 401(k) Arrangement (as defined in Section 1.54), a Participant also may have any (or all) of the following separate Accounts:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Roth Rollover Contribution Account

The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

**1.02** **Account Balance.** Account Balance shall mean a Participant's balances in all of the Accounts maintained by the Plan on his or her behalf.

**1.03** **Actuarial Factor.** A Participant's Actuarial Factor is used for purposes of determining the Participant's allocation under the age-based formula under AA §6-3(f) of the Profit Sharing Plan Adoption Agreement or under the age-based contribution formula under AA §6-2(d) of the Money Purchase Plan Adoption Agreement. See Section 3.02(a)(1)(i)(E) or 3.02(b)(4).

**1.04** **Adoption Agreement (“Agreement”).** The Adoption Agreement contains the elective provisions that an Employer may complete to supplement or modify the provisions under the Plan. Each adopting Employer must complete and execute the Adoption Agreement. If the Plan covers Employees of an Employer other than the Employer that executes the Employer Signature Page of the Adoption Agreement, such additional Employer(s) must execute a Participating Employer Adoption Page under the Adoption Agreement. (See Section 16 for rules applicable to adoption by Participating Employers.) An Employer may adopt more than one Adoption Agreement associated with this Plan document. Each executed Agreement is treated as a separate Plan. The Employer may adopt a Profit Sharing Plan Adoption Agreement or a Money Purchase Plan Adoption Agreement. The Employer also may elect under the Profit Sharing Plan Adoption Agreement to provide for a Grandfathered 401(k) Arrangement under the Plan. Any reference to the Profit Sharing Plan Adoption Agreement includes the Grandfathered 401(k) Plan Adoption Agreement, unless specifically provided otherwise.

**1.05** **After-Tax Employee Contributions.** Employee Contributions that may be made to the Plan by a Participant that are included in the Participant's gross income in the year such amounts are contributed to the Plan and are maintained under a separate After-Tax Employee Contribution Account to which earnings and losses are allocated. See Section 3.04. For this purpose, Roth Deferrals are not considered as After-Tax Employee Contributions.

**1.06** **Alternate Payee.** A person designated to receive all or a portion of the Participant's benefit pursuant to a QDRO. See Section 1.76.

**1.07** **Anniversary Years.** An alternative period for measuring Eligibility Computation Periods (under Section 2.03(a)(3)) and Vesting Computation Periods (under Section 6.05). An Anniversary Year is any 12-month period which commences with the Employee's Employment Commencement Date or which commences with the anniversary of the Employee's Employment Commencement Date.

**1.08** **Annual Additions.** The amounts taken into account under a Defined Contribution Plan for purposes of applying the limitation on allocations under Code §415. See Section 5.02(c)(1) for the definition of Annual Additions.

**1.09** **Annuity Starting Date.** The date an Employee commences distribution from the Plan. If a Participant commences distribution with respect to a portion of his/her Account Balance, a separate Annuity Starting Date applies to any subsequent distribution. If

distribution is made in the form of an annuity, the Annuity Starting Date is the first day of the first period for which annuity payments are made.

- 1.10 Beneficiary.** A person designated by the Participant (or by the terms of the Plan) to receive a benefit under the Plan upon the death of the Participant. See Section 7.07(c) for the applicable rules for determining a Participant's Beneficiaries under the Plan.
- 1.11 Break in Service.** The Computation Period (as defined in Section 2.03(a)(3) for purposes of eligibility and Section 6.05 for purposes of vesting) during which an Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects under AA §4-3(a) or AA §8-5(a) to require less than 1,000 Hours of Service to earn a Year of Service for eligibility or vesting purposes, a Break in Service will occur for any Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn a Year of Service for eligibility or vesting purposes, as applicable. However, if the Elapsed Time method applies under AA §4-3(c) (for purposes of eligibility) or AA §8-5(c) (for purposes of vesting), an Employee will incur a Break in Service if the Employee incurs at least a one year Period of Severance (as defined under Section 1.69). (See Section 2.07 for a discussion of the eligibility Break in Service rules and Section 6.08 for a discussion of the vesting Break in Service rules.)
- 1.12 Cash-Out Distribution.** A total distribution made to a terminated Participant in accordance with Section 6.10(a).
- 1.13 Catch-Up Contributions.** Salary Deferrals that may be made under a Grandfathered 401(k) Arrangement that are in excess of an otherwise applicable Plan limit and that are made by a Participant who is aged 50 or over by the end of the taxable year. See Section 3.02(c)(2)(iv).
- 1.14 Catch-Up Contribution Limit.** The annual limit applicable to Catch-Up Contributions as set forth in Section 3.02(c)(2)(iv)(A).
- 1.15 Code.** The Internal Revenue Code of 1986, as amended.
- 1.16 Code §415 Limitation.** The limit on the amount of Annual Additions a Participant may receive under the Plan during a Limitation Year. See Section 5.02.
- 1.17 Collectively Bargained Employee.** An Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining. Such Employees may be excluded from the Plan if designated under AA §3-1(b). See Section 2.02(b)(1) for additional requirements related to the exclusion of Collectively Bargained Employees.
- 1.18 Compensation Limit.** The maximum amount of compensation that can be taken into account for any Plan Year for purposes of determining a Participant's Plan Compensation. For Plan Years beginning on or after January 1, 1994, and before January 1, 2002, the Compensation Limit taken into account for determining benefits provided under the Plan for any Plan Year is \$150,000, as adjusted for increases in cost-of-living in accordance with Code §401(a)(17)(B). For any Plan Years beginning on or after January 1, 2002, the Compensation Limit is \$200,000, as adjusted for cost-of-living increased in accordance with Code §401(a)(17)(B). In determining the Compensation Limit for any applicable period (the "determination period"), the cost-of-living adjustment in effect for a calendar year applies to any determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months, the Compensation Limit for such period is an amount equal to the otherwise applicable Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. A determination period will not be considered to be less than 12 months merely because compensation is taken into account only for the period the Employee is a Participant. If Salary Deferrals, Matching Contributions, or After-Tax Employee Contributions are separately determined on the basis of specified periods within the determination period (e.g., on the basis of payroll periods), no proration of the Compensation Limit is required with respect to such contributions.

If compensation for any prior determination period is taken into account in determining a Participant's allocations for the current Plan Year, the compensation for such prior determination period is subject to the applicable Compensation Limit in effect for that prior period. However, solely for purposes of determining a Participant's allocations for Plan Years beginning on or after January 1, 2002, the Compensation Limit in effect for determination periods beginning before that date is \$200,000.

In determining the amount of a Participant's Salary Deferrals under a Grandfathered 401(k) Arrangement, a Participant may defer with respect to Plan Compensation that exceeds the Compensation Limit, provided the total deferrals made by the Participant satisfy the Elective Deferral Dollar Limit and any other limitations under the Plan.

- 1.19** **Computation Period.** The 12-consecutive month period used for measuring whether an Employee completes a Year of Service for eligibility or vesting purposes.
- (a) **Eligibility Computation Period.** The 12-consecutive month period used for measuring Years of Service for eligibility purposes. See Section 2.03(a)(3).
- (b) **Vesting Computation Period.** The 12-consecutive month period used for measuring Years of Service for vesting purposes. See Section 6.05.
- 1.20** **Custodian.** An organization that has custody of all or any portion of the Plan assets. See Section 12.13.
- 1.21** **Defined Benefit Plan.** A plan under which a Participant's benefit is based solely on the Plan's benefit formula without the establishment of separate Accounts for Participants.
- 1.22** **Defined Contribution Plan.** A plan that provides for individual Accounts for each Participant to which all contributions, forfeitures, income, expenses, gains and losses under the Plan are credited or deducted. A Participant's benefit under a Defined Contribution Plan is based solely on the fair market value of his/her vested Account Balance.
- 1.23** **Designated Beneficiary.** A Beneficiary who is designated by the Participant (or by the terms of the Plan) and whose life expectancy is taken into account in determining minimum distributions under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4. See Section 8.05(a).
- 1.24** **Differential Pay.** Certain payments made by the Employer to an individual while the individual is performing service in the Uniformed Services. See Section 1.89(e).
- 1.25** **Directed Account.** The Plan assets under a Trust which are held for the benefit of a specific Participant. See Section 10.03(d)(2).
- 1.26** **Directed Trustee.** A Trustee is a Directed Trustee to the extent that the Trustee's investment powers are subject to the direction of another person. See Section 12.02(a).
- 1.27** **Direct Rollover.** A rollover, at the Participant's direction, of all or a portion of the Participant's vested Account Balance directly to an Eligible Retirement Plan. See Section 7.04.
- 1.28** **Disabled.** Unless provided otherwise under AA §9-4(b), an individual is considered Disabled for purposes of applying the provisions of this Plan if the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence. The Plan Administrator may establish reasonable procedures for determining whether a Participant is Disabled.
- 1.29** **Discretionary Trustee.** A Trustee is a Discretionary Trustee to the extent the Trustee has exclusive authority and discretion to invest, manage or control the Plan assets without direction from any other person. See Section 12.02(b).
- 1.30** **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. See Section 8.05(b).
- 1.31** **Early Retirement Age.** The age and/or Years of Service set forth in AA §7-2. Early Retirement Age may be used to determine distribution rights and/or vesting rights. If a Participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the Participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement. The Plan is not required to have an Early Retirement Age.
- 1.32** **Effective Date.** The date this Plan, including any restatement or amendment of this Plan, is effective. The Effective Date of the Plan is designated on the Employer Signature Page under the Adoption Agreement. See Section 14.01(d)(2) for special rules concerning the retroactive effective date of provisions under the Plan designed to comply with the requirements of the Pension Protection Act of 2006 (PPA).
- 1.33** **Elapsed Time.** A special method for crediting service for eligibility or vesting. See Section 2.03(a)(6) for more information on the Elapsed Time method of crediting service for eligibility purposes and Section 6.04(b) for more information on the Elapsed Time method of crediting service for vesting purposes. Also see Section 3.07 for the ability to use the Elapsed Time method for applying allocation conditions under the Plan.
- 1.34** **Elective Deferral Dollar Limit.** The maximum amount of Elective Deferrals a Participant may make for any calendar year. See Section 5.03.

- 1.35 Elective Deferrals.** A Participant's Elective Deferrals is the sum of all Salary Deferrals (as defined in Section 1.83) and other contributions made pursuant to a Salary Deferral Election under a SARSEP described in Code §408(k)(6), a SIMPLE IRA plan described in Code §408(p), a plan described under Code §501(c)(18), and a custodial account or other arrangement described in Code §403(b). Elective Deferrals shall not include any amounts properly distributed as an Excess Amount under Code §415.
- 1.36 Eligible Employee.** An Employee who is not excluded from participation under Section 2.02 of the Plan or AA §3-1.
- 1.37 Eligible Retirement Plan.** A qualified retirement plan or IRA that may receive a rollover contribution. See Section 7.04(a)(2).
- 1.38 Eligible Rollover Distribution.** An amount distributed from the Plan that is eligible for rollover to an Eligible Retirement Plan. See Section 7.04(a)(1).
- 1.39 Employee.** An Employee is any individual employed by the Employer (including any Related Employers). An independent contractor is not an Employee. An Employee is not eligible to participate under the Plan if the individual is not an Eligible Employee under Section 2.02. A Leased Employee is also treated as an Employee of the recipient organization, as provided in Section 2.02(b)(3).
- 1.40 Employer.** Except as otherwise provided, Employer means the Employer that adopts this Plan and any Related Employer. The Employer must be qualified to maintain a Governmental Plan under Code §414(d). (See Section 2.02(c) for rules regarding coverage of Employees of Related Employers. Also see Section 16 for rules that apply to Employers that execute a Participating Employer Adoption Page.)
- 1.41 Employer Contributions.** Contributions the Employer makes pursuant to AA §6. See Section 3.02.
- 1.42 Employer Pick-up Contributions.** Contributions made by the Employee and picked up by the Employer in accordance with Code §414(h)(2). See Section 3.03.
- 1.43 Employment Commencement Date.** The date the Employee first performs an Hour of Service for the Employer.
- 1.44 Entry Date.** The date on which an Employee becomes a Participant upon satisfying the Plan's minimum age and service conditions. See Section 2.03(b).
- 1.45 Equivalency Method.** An alternative method for crediting Hours of Service for purposes of eligibility and vesting. See Section 2.03(a)(5) for eligibility provisions and Section 6.04(a)(2) for vesting provisions.
- 1.46 ERISA.** The Employee Retirement Income Security Act of 1974, as amended.
- 1.47 Excess Amount.** Amounts which exceed the Code §415 Limitation. See Section 5.02(c)(4).
- 1.48 Excess Compensation.** The amount of Plan Compensation that exceeds the Integration Level for purposes of applying the permitted disparity allocation formula. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.49 Excess Deferrals.** Elective Deferrals that exceed the Elective Deferral Dollar Limit (as defined in Section 5.03). (See Section 5.03(b) for rules regarding the correction of Excess Deferrals.)
- 1.50 Favorable IRS Letter.** An advisory letter issued by the IRS to a Volume Submitter Sponsor as to the qualified status of a Volume Submitter Plan.
- 1.51 FICA Replacement Plan.** This Plan may qualify as a FICA Replacement Plan under Code §3121(b)(7)(F) if the requirements under Section 4.03 are satisfied.
- 1.52 General Trust Account.** The Plan assets under a Trust which are held for the benefit of all Plan Participants as a pooled investment. See Section 10.03(d)(1).
- 1.53 Governmental Plan.** A plan established and maintained for its Employees by any State or political subdivision of a State, any State agency or instrumentality or an Indian Tribal Government (provided the requirements under Section 4.02 of the Plan are satisfied), as provided under Code §414(d).
- 1.54 Grandfathered 401(k) Arrangement.** An arrangement under Code §401(k) maintained by a governmental employer that was in existence on May 6, 1986. If a governmental entity adopted a 401(k) plan before May 6, 1986, then all 401(k) plans adopted

by the governmental entity are treated as adopted before such date, including a 401(k) plan that is actually adopted after such date. A Grandfathered 401(k) Arrangement also may be adopted by an Indian Tribal Government, as defined in Section 1.57.

The Employer may elect to provide a Grandfathered 401(k) Arrangement under AA §2-3 of the Profit Sharing Plan Adoption Agreement. Any such election under AA §2-3 will be null and void if the Employer does not satisfy the requirements for maintaining a Grandfathered 401(k) Arrangement. If the Employer elects a Grandfathered 401(k) Arrangement under AA §2-3, the Employer may authorize Employees to make Salary Deferrals under the Plan in addition to Matching Contributions, Employer Contributions and After-Tax Employee Contributions, to the extent provided under AA §6 - §6B of the Adoption Agreement.

**1.55** **Hardship.** A heavy and immediate financial need which meets the requirements of Section 7.10(e).

**1.56** **Hour of Service.** Each Employee of the Employer will receive credit for each Hour of Service he/she works for purposes of applying the eligibility and vesting rules under the Plan. An Employee will not receive credit for the same Hour of Service under more than one category listed below.

- (a) **Performance of duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours will be credited to the Employee for the computation period in which the duties are performed. In the case of Hours of Service to be credited to an Employee in connection with a period of no more than 31 days which extends beyond one computation period, all such Hours of Service may be credited to the first computation period or the second computation period. Hours of Service under this subsection (a) must be credited consistently for all Employees within the same job classifications.
- (b) **Nonperformance of duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single Computation Period). Hours under this paragraph will be calculated and credited pursuant to §2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference.
- (c) **Back pay award.** Hours of Service include each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). These hours will be credited to the Employee for the Computation Period(s) to which the award or agreement pertains rather than the Computation Period(s) in which the award, agreement or payment is made.
- (d) **Related Employers/Leased Employees.** Hours of Service will be credited for employment with any Related Employer. Hours of Service also include hours credited as a Leased Employee or as an employee under Code §414(o).
- (e) **Maternity/paternity leave.** Solely for purposes of determining whether a Break in Service has occurred in a Computation Period, an individual who is absent from work for maternity or paternity reasons will receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence:
  - (1) by reason of the pregnancy of the individual,
  - (2) by reason of a birth of a child of the individual,
  - (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
  - (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

The Hours of Service credited under this paragraph will be credited in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following Computation Period.

**1.57** **Indian Tribal Government.** The governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary of Treasury, after consultation with the Secretary of Interior, to exercise governmental functions, as defined under Code §7701(a)(40) and regulations thereunder. See Section 4.02 of the Plan for special rules applicable to Indian Tribal Governments.



- 1.58** **Insurer.** An insurance company that issues a life insurance policy on behalf of a Participant under the Plan in accordance with the requirements under Section 10.08.
- 1.59** **Integration Level.** The amount used for purposes of applying the permitted disparity allocation formula. The Integration Level is the Taxable Wage Base, unless the Employer designates a different amount under the Adoption Agreement. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.60** **Leased Employee.** An individual who performs services for the Employer pursuant to an agreement between the Employer and a leasing organization, and who satisfies the definition of a Leased Employee under Code §414(n). See Section 2.02(b)(3) for rules regarding the treatment of a Leased Employee as an Employee of the Employer.
- 1.61** **Limitation Year.** The measuring period for determining whether the Plan satisfies the Code §415 Limitation under Section 5.02. See Section 5.02(c)(5).
- 1.62** **Matching Contributions.** Matching Contributions are contributions made by the Employer on behalf of a Participant on account of other contributions made by the Participant under this Plan or another plan maintained by the Employer. See Section 3.02(c)(3).
- 1.63** **Maximum Disparity Rate.** The maximum amount that may be allocated with respect to Excess Compensation under the permitted disparity allocation formula. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.64** **Normal Retirement Age.** The age selected under AA §7-1. For purposes of applying the Normal Retirement Age provisions under AA §7-1, an Employee's participation commencement date is the first day of the first Plan Year in which the Employee commenced participation in the Plan.
- 1.65** **Participant.** Except as provided under AA §3-1, a Participant is an Employee (or former Employee) who has satisfied the conditions for participating under the Plan, as described in Section 2.03 and AA §4-1. A Participant also includes any Employee (or former Employee) who has an Account Balance under the Plan, including an Account Balance derived from a rollover or transfer from another qualified plan or IRA. A Participant is entitled to share in an allocation of contributions or forfeitures under the Plan for a given year only if the Participant is an Eligible Employee as defined in Section 2.02, and satisfies the allocation conditions set forth in Section 3.07.
- An Employee is treated as a Participant with respect to Salary Deferrals and After-Tax Employee Contributions once the Employee has satisfied the eligibility conditions under AA §4-1 for making such contributions, even if the Employee chooses not to actually make such contributions to the Plan. An Employee is treated as a Participant with respect to Matching Contributions once the Employee has satisfied the eligibility conditions under AA §4-1 for receiving such contributions, even if the Employee does not receive a Matching Contribution because of the Employee's failure to make contributions eligible for the Matching Contribution.
- 1.66** **Participating Employer.** An Employer that adopts this Plan by executing the Participating Employer Adoption Page under the Adoption Agreement. See Section 16 for the rules applicable to contributions and deductions for contributions made by a Participating Employer.
- 1.67** **Participating Employer Adoption Page.** The signature page in the Adoption Agreement for a Related Employer to adopt the Plan as a Participating Employer.
- 1.68** **Part-Time Employee.** Unless designated otherwise under AA 3-1(k), a Part-Time Employee is an Employee who is normally scheduled to work 20 or fewer hours per week. Notwithstanding the foregoing, if the Employer is a post-secondary educational institution, an Employee who is a teacher shall not be considered a Part-Time Employee if he/ she normally has classroom hours of one-half or more of the number of classroom hours designated by the Employer as constituting full-time employment, provided that such designation is reasonable under all of the facts and circumstances.
- 1.69** **Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer and which is used to determine an Employee's Participation under the Elapsed Time method. See Section 2.03(a)(6) for rules regarding eligibility and Section 6.04(b) for rules regarding vesting.
- 1.70** **Plan.** The Plan is the retirement plan established or continued by the Employer for the benefit of its Employees under this Plan document. The Plan consists of the basic plan document and the elections made under the Adoption Agreement. The basic plan document is the portion of the Plan that contains the non-elective provisions. The Employer may supplement or modify the basic plan document through its elections in the Adoption Agreement or by separate governing documents that are expressly

authorized by the Plan. If the Employer adopts more than one Adoption Agreement under this Plan, then each executed Adoption Agreement represents a separate Plan.

- 1.71 Plan Administrator.** The Plan Administrator is the person designated to be responsible for the administration and operation of the Plan. Unless otherwise designated by the Employer, the Plan Administrator is the Employer. If another Employer has executed a Participating Employer Adoption Page, the Employer referred to in this Section is the Employer that executes the Employer Signature Page of the Adoption Agreement. A Plan Administrator also includes a Qualified Termination Administrator (QTA) that assumes the responsibilities of Plan Administrator.
- 1.72 Plan Compensation.** Plan Compensation is Total Compensation, as modified under AA §5-3, which is actually paid to an Employee during the determination period (as defined in subsection (a) below). In determining Plan Compensation, the Employer may elect under AA §5-3(b) to exclude all Elective Deferrals (as defined in Section 1.35), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4). In addition, the Employer may elect under AA §5-3 to exclude other designated elements of compensation.
- Plan Compensation generally includes amounts an Employee earns with a Participating Employer and amounts earned with a Related Employer (even if the Related Employer has not executed a Participating Employer Adoption Page under the Adoption Agreement). However, the Employer may elect under AA §5-3(h) to exclude all amounts earned with a Related Employer that has not executed a Participating Employer Adoption Page.
- In no case may Plan Compensation for any Participant exceed the Compensation Limit (as defined in Section 1.18).
- (a) **Determination period.** Unless designated otherwise under AA §5-4(a), Plan Compensation is determined based on the Plan Year. Alternatively, the Employer may elect under AA §5-4(a) to determine Plan Compensation on the basis of the calendar year ending in the Plan Year or any other 12-month period ending in the Plan Year. If the determination period is the calendar year or other 12-month period ending in the Plan Year, for any Employee whose date of hire is less than 12 months before the end of the designated 12-month period, Plan Compensation will be determined over the Plan Year.
- (b) **Partial period of participation.** If an Employee is a Participant for only part of a Plan Year, Plan Compensation may be determined over the entire Plan Year or over the period during which such Employee is a Participant. In determining whether an Employee is a Participant for purposes of applying this subsection (b), the Employee's status will be determined solely with respect to the contribution type for which the definition of Plan Compensation is being determined. Plan Compensation does not include any amounts earned for any period while an individual is not an Eligible Employee (as defined in Section 2.02).
- 1.73 Plan Year.** The 12-consecutive month period designated under AA §2-4 on which the records of the Plan are maintained. The Plan Year can be a 52-53 week period by designating the appropriate ending date in AA §2-4(b). If the Plan Year is amended to create a Short Plan Year or if a new Plan has an initial Short Plan Year, the Employer may document such Short Plan Year under AA §2-4(c).
- 1.74 Predecessor Employer.** An employer that previously employed the Employees of the Employer. See Sections 2.06 (eligibility), 3.07(b) (allocation conditions) and 6.07 (vesting) for the rules regarding the crediting of service with a Predecessor Employer.
- 1.75 Pre-Tax Deferrals.** Pre-tax Deferrals are a Participant's Salary Deferrals that are not includible in the Participant's gross income at the time deferred.
- 1.76 Qualified Domestic Relations Order (ODRO).** A domestic relations order that provides for the payment of all or a portion of the Participant's benefits to an Alternate Payee and satisfies the requirements under Code §414(p). See Section 11.05.
- 1.77 Reemployment Commencement Date.** The first date upon which an Employee is credited with an Hour of Service following a Break in Service (or Period of Severance, if the Plan is using the Elapsed Time method of crediting service).
- 1.78 Related Employer.** A Related Employer includes all members of a controlled group of corporations (as defined in Code §414(b)), all commonly controlled trades or businesses (as defined in Code §414(c)) or affiliated service groups (as defined in Code §414(m)) of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code §414(o). For purposes of applying the provisions under this Plan, the Employer and any Related Employers are treated as a single Employer, unless specifically stated otherwise. See Section 16.06 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.
- 1.79 Required Beginning Date.** The date by which minimum distributions must commence under the Plan. See Section 8.05(e).

- 1.80** **Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution (as defined in Section 7.04(a)(1) from another qualified plan or IRA. See Section 3.05 for rules regarding the acceptance of Rollover Contributions under this Plan.
- 1.81** **Roth Deferrals.** Roth Deferrals are Salary Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Deferrals in the Participant's Salary Deferral Election. A Participant's Roth Deferrals will be maintained in a separate Account containing only the Participant's Roth Deferrals and gains and losses attributable to those Roth Deferrals. See Section 3.02(c)(2)(v).
- 1.82** **Salary Deferral Election.** An agreement between a Participant and the Employer, whereby the Participant elects to have a specific percentage or dollar amount withheld from his/her Plan Compensation and the Employer agrees to contribute such amount into the Plan. A Salary Deferral Election may only be made if the Plan qualifies as a Grandfathered 401(k) Arrangement as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement. See Section 3.02(c)(2)(i).
- 1.83** **Salary Deferrals.** Amounts contributed under a Grandfathered 401(k) Arrangement at the election of the Participant, in lieu of cash compensation, which are made pursuant to a Salary Deferral Election or other deferral mechanism. Salary Deferrals include Roth Deferrals and Pre-Tax Deferrals. Salary Deferrals shall not include any amounts properly distributed as an Excess Amount under Code §415 pursuant to Section 5.02(c)(4). An Employee's Salary Deferrals are treated as employer contributions for all purposes under this Plan, except as otherwise provided under the Code or Treasury regulations. See Section 3.02(c)(2).
- 1.84** **Seasonal Employee.** An Employee who normally works on a full-time basis less than five months during any year.
- 1.85** **Short Plan Year.** Any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year.
- 1.86** **Spouse.** Subject to any additional guidance by the IRS or other agency or court, a Spouse is any individual who is lawfully married to the Participant under a state or foreign jurisdiction, without regard to the location of the Employer or the state where the Participant and Spouse are domiciled. However, a former Spouse of the Participant will be treated as the Spouse or surviving Spouse and any current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a valid QDRO.
- 1.87** **Taxable Wage Base.** The maximum amount of wages taken into account for Social Security purposes. The Taxable Wage Base is used to determine the Integration Level for purposes of applying the permitted disparity allocation formula. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.88** **Temporary Employee.** Any Employee performing services under a contractual arrangement with the Employer of two years or less duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement, but only if, under the facts and circumstances, there is a significant likelihood that the Employee's contract will be extended. Future contract extensions are considered significantly likely to occur for purposes of this rule if:
- (a) on average 80 percent of similarly situated Employees have had bona fide offers to renew their contracts in the immediately preceding two academic or calendar years; or
  - (b) the Employee with respect to whom the determination is being made has a history of contract extensions with respect to his or her current position.
- An Employee is not considered a Temporary Employee solely because he or she is included in a unit of Employees covered by a collective bargaining agreement of two years or less duration.
- 1.89** **Total Compensation.** A Participant's compensation for services with the Employer, as defined in this Section 1.89. Total Compensation may be defined in AA §5-1 to be either W-2 Wages, Wages under Code §3401(a), or Code §415 Compensation. Each definition of Total Compensation includes Elective Deferrals (as defined in Section 1.35), elective contributions to a cafeteria plan under Code §125 or to an eligible deferred compensation plan under Code §457, Employer Pick-Up Contributions under Code §414(h)(2), and elective contributions that are not includible in the Employee's gross income as a qualified transportation fringe under Code §132(f)(4).
- (a) **Total Compensation definitions.** The Employer may elect under AA §5-1 to define Total Compensation as any of the following definitions:
    - (1) **W-2 Wages.** Wages within the meaning of Code §3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is

required to furnish the Employee a written statement under Code §6041(d), 6051(a)(3), and 6052, determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

- (2) **Wages under Code §3401(a).** Wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
- (3) **Code §415 Compensation.** Wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer (without regard to whether or not such amounts are paid in cash) to the extent that the amounts are includible in gross income, including amounts that are includible in the gross income of an Employee under the rules of Code §409A or §457(f)(1)(A) or because the amounts are constructively received by the Employee. Such amounts include, but are not limited to, commissions, compensation for services on the basis of a percentage of profits, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. §1.62-2(c)), and excluding the following:
  - (i) Employer contributions (other than elective contributions described in Code §402(e)(3), §408(k)(6), §408(p)(2)(A)(i), or §457(b)) to a plan of deferred compensation (including a SEP described in Code §408(k) or a SIMPLE IRA described in Code §408(p), and whether or not qualified) to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified);
  - (ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
  - (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option.
  - (iv) Other amounts which received special tax benefits, or contributions made by the Employer (other than Elective Deferrals) towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).
- (b) **Post-severance compensation.** Effective for the first Limitation Year beginning on or after July 1, 2007, Total Compensation includes compensation that is paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes such date of severance from employment. For this purpose, compensation paid after severance of employment may only be included in Total Compensation to the extent such amounts would have been included as compensation if they were paid prior to the Employee's severance from employment.

For purposes of applying this subsection (b), unless designated otherwise under AA §5-2(a), the following amounts that are paid after a Participant's severance of employment are included in Total Compensation:

- (1) **Regular pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
- (2) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; and
- (3) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

Other post-severance payments (such as severance pay, parachute payments within the meaning of Code §280G(b)(2), or post-severance payments under a nonqualified unfunded deferred compensation plan that would not have been paid if the Employee had continued in employment) are not included as Total Compensation, even if such amounts are paid within the time period described in this subsection (b).

In determining the amount of a Participant's Employer Contributions, Matching Contributions or Salary Deferrals, Plan Compensation may not include any amounts that do not satisfy the requirements of this subsection (b) or subsection (c). If Total Compensation is defined to include post-severance compensation, the Employer may elect to exclude all such compensation paid after termination of employment from the definition of Plan Compensation under AA §5-3(j) or may elect to exclude any of the specific types of post-severance compensation defined in subsections (1), (2) and/or (3) above, by designating such compensation types under AA §5-3(l). The exclusion of post-severance compensation from the definition of Plan Compensation that is otherwise includible in Total Compensation may cause the Plan to fail the nondiscriminatory compensation rules under Treas. Reg. §1.414(s)-1.

- (c) **Continuation payments for disabled Participants.** Unless designated otherwise under AA §5-2(b), Total Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). If elected under AA §5-2(b), the Plan may take into account compensation the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled (if such compensation is greater than the Participant's compensation determined without regard to this subsection (c)), provided contributions made with respect to amounts treated as compensation under this subsection (c) are nonforfeitable when made. If so elected under AA §5-2(b), payment to disabled Participants will be included as Total Compensation, notwithstanding the rules under subsection (b).
- (d) **Deemed §125 compensation.** A reference to elective contributions under a Code §125 cafeteria plan includes any amounts that are not available to a participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. Such deemed §125 compensation will be treated as an amount under Code §125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan. If the Employer elects under AA §5-3(i) to exclude deemed §125 compensation from the definition of Plan Compensation, such exclusion also will apply for purposes of determining Total Compensation under this Section 1.89.
- (e) **Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the Employer:
- (1) such individual will be treated as an Employee of the Employer making the payment, and
  - (2) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit based on Differential Pay. However, for purposes of applying this subparagraph, the provisions of Code §§410(b)(3), (4), and (5) shall apply. The Employer may elect to exclude Differential Pay from the definition of Plan Compensation under AA §5-3(k).

For purposes of this subsection (e), Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this subsection (e), Uniformed Services are services as described in Code §3401(h)(2)(A).

- 1.90** **Trust.** The Trust is the separate funding vehicle under the Plan.
- 1.91** **Trustee.** The Trustee is the person or persons (or any successor to such person or persons) identified in the Adoption Agreement or under a separate Trust document. The Trustee may be a Discretionary Trustee or a Directed Trustee. See Section 12 for the rights and duties of a Trustee under this Plan.
- 1.92** **Valuation Date.** The date or dates upon which Plan assets are valued. Plan assets will be valued as of the last day of each Plan Year. In addition, the Employer may elect under AA §11-1 to establish additional Valuation Dates. Notwithstanding any election under AA §11-1, Plan assets may be valued on a more frequent basis within the complete discretion of the Employer. See Section 10.02.
- 1.93** **Year of Service.** A Year of Service is a 12-consecutive month Computation Period during which an Employee completes 1,000 Hours of Service. For purposes of applying the eligibility rules under Section 2.03 of the Plan, an Employee will earn a Year of Service if he/she completes 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in Section 2.03(a)(3)). For purposes of applying the vesting rules under Section 6, an Employee will earn a Year of Service if he/she completes 1,000 Hours of Service with the Employer during a Vesting Computation Period (as defined in

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Section 6.05). The Employer may elect under AA §4-3(a) (for eligibility purposes) and AA §8-5(a) (for vesting purposes) to require the completion of any lesser number of Hours of Service to earn a Year of Service. Alternatively, the Employer may elect to apply the Elapsed Time method (for eligibility and/or vesting purposes) in calculating an Employee's Years of Service under the Plan.

**SECTION 2  
ELIGIBILITY AND PARTICIPATION**

- 2.01** **Eligibility.** In order to participate in the Plan, an Employee must be an Eligible Employee (as defined in Section 2.02) and must satisfy the Plan's minimum age and service conditions (as defined in Section 2.03). Once an Employee satisfies the Plan's minimum age and service conditions, such Employee shall become a Participant on the appropriate Entry Date (as selected in AA §4-2). An Employee who meets the minimum age and service requirements set forth herein, but who is not an Eligible Employee, will be eligible to participate in the Plan only upon becoming an Eligible Employee. For purposes of determining eligibility to make Salary Deferrals, an Employee will be deemed to commence participation on a timely basis if the Employee is permitted to commence making Salary Deferrals as soon as administratively feasible after satisfying the eligibility conditions under the Plan.
- 2.02** **Eligible Employees.** Unless specifically excluded under AA §3-1 or under this Section 2.02, all Employees of the Employer are Eligible Employees. AA §3-1 lists various classes of Employees that may be excluded from Plan participation. If an Employee is not an Eligible Employee (e.g., such Employee is a member of a class of Employees excluded under AA §3-1), that individual may not participate under the Plan, unless he/she subsequently becomes an Eligible Employee.
- (a) **Only Employees may participate in the Plan.** To participate in the Plan, an individual must be an Employee. If an individual is not an Employee (e.g., the individual performs services with the Employer as an independent contractor) such individual may not participate under the Plan. If an individual who is classified as a non-Employee is later determined by the Employer or by a court or other government agency to be an Employee of the Employer, the reclassification of such individual as an Employee will not create retroactive rights to participate in the Plan. Thus, for example, if the IRS or DOL should find that an independent contractor is really an Employee, such individual will be eligible to participate in the Plan as of the date the IRS or DOL issues a final determination declaring such individual to be an Employee (provided the individual has satisfied all conditions for participating in the Plan (as described in this Section 2)). For periods prior to the date of such final determination, the reclassified Employee will not have any rights to accrued benefits under the Plan, except as agreed to by the Employer or mandated by a court or government agency, or as set forth in an amendment adopted by the Employer.
- (b) **Excluded Employees.** The Employer may elect under AA §3-1 to exclude designated classes of Employees. Since a governmental plan is exempt from minimum coverage testing, the Employer may elect to exclude any class of Employees without subjecting the Plan to minimum coverage or nondiscrimination testing.
- (1) **Collectively Bargained Employees.** The Employer may elect under AA §3-1(b) to exclude Collectively Bargained Employees. For this purpose, a Collectively Bargained Employee is an Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining.
- (2) **Nonresident aliens.** The Employer may elect under AA §3-1(c) to exclude Employees who are nonresident aliens. For this purpose, a nonresident alien is neither a citizen of the United States nor a resident of the United States for U.S. tax purposes (as defined in Code §7701(b)), and who does not have any earned income (as defined in Code §911) for the Employer that constitutes U.S. source income (within the meaning of Code §861). If a nonresident alien Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty.
- (3) **Leased Employees.** The Employer may elect under AA §3-1(d) to exclude Leased Employees. For this purpose, a Leased Employee is any person (other than an Employee of the Employer) who pursuant to an agreement between the recipient Employer and a leasing organization performs services for the recipient Employer on a substantially full time basis for a period of at least one year, and such services are performed under the primary direction or control of the recipient Employer. (See Code §414(n) for rules applicable to the determination of Leased Employees.)
- (c) **Employees of Related Employers.** If the Employer is a member of a Related Employer group, Employees of each member of the Related Employer group may participate under this Plan, provided the Related Employer executes a Participating Employer Adoption Page under the Adoption Agreement. If a Related Employer does not execute a Participating Employer Adoption Page, any Employees of such Related Employer are not eligible to participate in the Plan. See Section 16.06 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.
- (d) **Ineligible Employee becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the Plan's minimum age and service conditions and has passed

the Entry Date (as defined in AA §4-2) that would otherwise have applied had the Employee been an Eligible Employee. If the Employee's original Entry Date (determined as if the Employee was always an Eligible Employee) has not passed as of the date the Employee becomes an Eligible Employee, the Employee will not become a Participant until such Entry Date. This requirement is deemed satisfied with respect to Salary Deferrals if the Employee is permitted to commence making Salary Deferrals under the Plan as soon as administratively feasible after the Employee becomes an Eligible Employee. If an ineligible Employee has not satisfied the Plan's minimum age and service conditions at the time such Employee becomes an Eligible Employee, such Employee will become a Participant on the appropriate Entry Date following satisfaction of the Plan's minimum age and service requirements.

- (e) **Eligible Employee becomes ineligible Employee.** If an Employee ceases to qualify as an Eligible Employee (i.e., the Employee changes status from an eligible class to an ineligible class of Employees), such Employee will immediately cease to participate in the Plan. If such Employee should subsequently become an Eligible Employee, he/she will be able to participate in the Plan in accordance with subsection (d) above.
- (f) **Improper exclusion of eligible Participant.** If the Plan improperly excludes a Participant who has satisfied the requirements under this Section 2 for participating under the Plan, the Employer may take reasonable action to correct such violation, provided such corrective action is consistent with the requirements of the Employee Plans Compliance Resolution System (EPCRS) program. For example, the violation may be corrected by making an additional contribution to the Plan on behalf of the omitted Participant or by allocating any available forfeitures under the Plan to such Participant to restore any missed contributions under the Plan. (See Rev. Proc. 2013-12 or subsequent IRS guidance for a description of the EPCRS program.)

**2.03 Minimum Age and Service Conditions.** AA §4-1 contains specific elections as to the minimum age and service conditions which an Employee must satisfy prior to becoming eligible to participate under the Plan. A Governmental Plan is exempt from both the ERISA and pre-ERISA eligibility requirements. Therefore, the Plan may provide any minimum age and service requirements under AA §4-1 without the need to comply with the requirements of Code §410(a).

The Employer may elect to apply different minimum age and service requirements for different groups of Employees or for different contribution formulas under AA §4-1(c). In addition, the Employer may select different age and service conditions under AA §4-1 for Salary Deferrals, Matching Contributions, and/or Employer Contributions if the Plan qualifies as a Grandfathered 401(k) Arrangement.

- (a) **Application of age and service conditions.** The Employer may elect under AA §4-1 to impose minimum age and service conditions that an Employee must satisfy in order to participate under the Plan.
  - (1) **Year of Service.** In applying the minimum service requirements under AA §4-1, unless designated otherwise under AA §4-3, an Employee will earn a Year of Service if the Employee completes at least 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in subsection (3) below). The Employer may modify the definition of Year of Service under AA §4-3(a) to require a different number of Hours of Service to earn a Year of Service. An Employee will receive credit for a Year of Service, as of the end of the Eligibility Computation Period during which the Employee completes the required Hours of Service needed to earn a Year of Service. Unless otherwise provided under AA §4-3, an Employee need not be employed for the entire Eligibility Computation Period to receive credit for a Year of Service, provided the Employee completes the required Hours of Service during such period.
  - (2) **Months of service.** The Employer may elect under AA §4-1(a) to require a specific number of Hours of Service during a designated number of months of employment. If an Employee is required under AA §4-1(a) to complete a certain number of Hours of Service during a designated period, an Employee generally will satisfy the eligibility conditions as of the end of the designated period, regardless of whether the Employee is employed during the entire period. Alternatively, the Employer may elect under AA §4-1(a)(3)(ii) to require an Employee to be employed continuously throughout the designated period provided the Employee is eligible to participate in the Plan upon completing a Year of Service as defined in subsection (1) above.

If an Employee does not complete the required Hours of Service during the designated period or does not work continuously during the designated period, if required under AA §4-1(a)(3)(ii), the Employee will satisfy eligibility upon completion of a Year of Service as defined in subsection (1) above. For purposes of applying the Year of Service requirement, an Employee need not be employed during the entire measuring period as long as the Employee completes the required Hours of Service, as specified under subsection (1) above. For example, an Employee who is not employed throughout the designated period, if required under AA §4-1(a)(5)(ii), would still satisfy the eligibility conditions as of the end of the Eligibility Computation Period if the Employee completes a Year of Service, regardless of whether the Employee is employed during the entire period.



- (3) **Eligibility Computation Periods.** Unless provided otherwise under AA §4-3, in determining whether an Employee has earned a Year of Service for eligibility purposes, an Employee's initial Eligibility Computation Period is the 12-month period beginning on the Employee's Employment Commencement Date. Subsequent Eligibility Computation Periods will either be based on Plan Years or Anniversary Years (as set forth in AA §4-3).
- (i) **Plan Years.** If the Employer elects under AA §4-3 to base subsequent Eligibility Computation Periods on Plan Years, the Plan will begin measuring Years of Service on the basis of Plan Years beginning with the first Plan Year commencing after the Employee's Employment Commencement Date. Thus, for the first Plan Year following the Employee's Employment Commencement Date, the initial Eligibility Computation Period and the first Plan Year Eligibility Computation Period may overlap.
- (ii) **Anniversary Years.** If the Employer elects under AA §4-3(b) to base subsequent Eligibility Computation Periods on Anniversary Years, the Plan will measure Years of Service after the initial Eligibility Computation Period on the basis of 12-month periods commencing with the anniversaries of the Employee's Employment Commencement Date.
- (iii) **Rehired Employee.** If an Employee is rehired following a Break in Service, the Employee's initial Eligibility Computation Period following the Employee's return to employment will be measured from the Employee's Reemployment Commencement Date. Subsequent Eligibility Computation Periods will be measured based on the Plan Year or anniversaries of the Reemployment Commencement Date, as designated under subsection (i) or (ii) above. For this purpose, an Employee's Reemployment Commencement Date is the first day the Employee is entitled to be credited with an Hour of Service after the first Eligibility Computation Period in which the Employee incurs a Break in Service.
- (4) **Hours of Service.** In calculating an Employee's Hours of Service for purposes of applying the eligibility rules under this Section 2.03, the Employer will count the actual Hours of Service an Employee works during the year. (See Section 1.56 for the definition of Hours of Service). The Employer may elect under AA §4-3 to use an alternative method for crediting service, such as the Equivalency Method or Elapsed Time method (instead of counting the actual Hours of Service an Employee works). (See subsections (5) and (6) below for a description of the Equivalency Method and Elapsed Time method of crediting service.)
- (5) **Equivalency Method.** Instead of counting actual Hours of Service in applying the minimum service conditions under this Section 2.03, the Employer may elect under AA §4-3(d) to determine Hours of Service based on the Equivalency Method. Under the Equivalency Method, an Employee receives credit for a specified number of Hours of Service based on the period worked with the Employer.
- (i) **Monthly.** Under the monthly Equivalency Method, an Employee is credited with 190 Hours of Service for each calendar month during which the Employee completes at least one Hour of Service with the Employer.
- (ii) **Daily.** Under the daily Equivalency Method, an Employee is credited with 10 Hours of Service for each day during which the Employee completes at least one Hour of Service with the Employer.
- (iii) **Weekly.** Under the weekly Equivalency Method, an Employee is credited with 45 Hours of Service for each week during which the Employee completes at least one Hour of Service with the Employer.
- (iv) **Semi-monthly.** Under the semi-monthly Equivalency Method, an Employee is credited with 95 Hours of Service for each semi-monthly period during which the Employee completes at least one Hour of Service with the Employer.
- (6) **Elapsed Time method.** Instead of counting actual Hours of Service in applying the minimum service requirements under this Section 2.03, the Employer may elect under AA §4-3(c) to apply the Elapsed Time method for calculating an Employee's service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee terminates employment with the Employer. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

In calculating an Employee's aggregate period of service, the Employer may credit an Employee with service for any Period of Severance that lasts less than 12 consecutive months. For this purpose, a Period of Severance is any continuous period of time during which the Employee is not employed by the Employer. A Period of Severance begins on the date the Employee retires, quits or is discharged, or if earlier, the 12-month anniversary

of the date on which the Employee is first absent from service for a reason other than retirement, quit or discharge. In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence

- (i) by reason of the pregnancy of the Employee,
- (ii) by reason of the birth of a child of the Employee,
- (iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or
- (iv) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

- (7) **Amendment of age and service requirements.** If the Plan's minimum age and service conditions are amended, the amendment may consider an Employee who is a Participant immediately prior to the effective date of the amendment as satisfying the amended requirements or may require all Employees to satisfy the amended minimum age and service conditions. If an Employee has not satisfied the minimum age and service conditions as of the effective date of the amendment, the Employee must satisfy the eligibility requirements as amended. This provision may be modified under the special Effective Date provisions under Appendix A of the Adoption Agreement or under a separate amendment implementing the updated minimum age and service provisions.

- (b) **Entry Dates.** Once an Eligible Employee satisfies the minimum age and service conditions (as set forth in AA §4-1), the Employee will be eligible to participate under the Plan as of his/her Entry Date (as set forth in AA §4-2). If the Employer adopts a Grandfathered 401(k) Arrangement as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement, the Employer may elect different Entry Dates with respect to Salary Deferrals, Matching Contributions, and Employer Contributions.

- 2.04 Participation on Effective Date of Plan.** Unless designated otherwise under AA §4-4, an Eligible Employee who has satisfied the minimum age and service conditions and reached his/her Entry Date as of the Effective Date of the Plan will be eligible to participate in the Plan as of such Effective Date. If an Employee has satisfied the minimum age and service conditions as of the Effective Date of the Plan but has not yet reached his/her Entry Date, the Employee will be eligible to participate on the appropriate Entry Date. The Employer may modify this rule under AA §4-4 by electing to treat all Employees employed on the Effective Date of the Plan as Participants (regardless of whether they have satisfied the Plan's minimum age and service conditions) or by designating a specific date as of which all Eligible Employees will be deemed to be a Participant, (regardless of whether the Employee has otherwise satisfied the minimum age and service conditions).

- 2.05 Rehired Employees.** If a terminated Employee is subsequently rehired, such Employee will be eligible to participate in the Plan on his/her reemployment date, if the Employee is an Eligible Employee and the Employee had satisfied the Plan's minimum age and service conditions prior to his/her termination of employment. If a rehired Employee had not satisfied the Plan's minimum age and service conditions prior to termination of employment, such Employee is eligible to participate in the Plan on the appropriate Entry Date following satisfaction of the eligibility requirements under this Section 2.

- 2.06 Service with Predecessor Employers.** To the extent provided under AA §4-5, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the provisions of this Plan.

- 2.07 Break in Service Rules.** Generally, an Employee will be credited with all service earned for the Employer, including service earned prior to the effective date of the Plan and service earned while the Employee is an ineligible Employee. However, the Employer may elect under AA §4-6 to disregard an Employee's service with the Employer under the Break in Service rules. For this purpose, an Employee incurs a Break in Service for any Eligibility Computation Period (as defined in Section 2.03(a)(3)) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects to require less than 1,000 Hours of Service to earn a Year of Service for eligibility purposes, a Break in Service will occur for any Eligibility Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn an eligibility Year of Service.

- 2.08 Waiver of Participation.** An Employee may not waive participation under the Plan unless specifically permitted under AA §11-4. For this purpose, the mere failure to make Salary Deferrals or After-Tax Employee Contributions is not a waiver of participation. The Employer may elect under AA §11-4 to permit Employees to make a one-time irrevocable election to not participate under the Plan or may permit Employees to make a one-time irrevocable election to waive any Employer Pick-Up Contributions under the Plan.

### SECTION 3 PLAN CONTRIBUTIONS

This Section 3 describes the type of contributions that may be made to the Plan. The type of contributions that may be made to the Plan and the method for allocating such contributions may vary depending on the type of Plan involved. (See Section 5 for a discussion of the limits that apply to any contributions made under the Plan.)

**3.01 Types of Contributions.** An Employer may designate under the Adoption Agreement the amount and type of contributions that may be made under the Plan. The Plan may provide for Employer Contributions (as authorized under AA §6) and, if so elected under AA §6-6, After-Tax Employee Contributions. In addition, the Profit Sharing Plan may provide for Matching Contributions with respect to any After-Tax Employee Contributions under the Plan or Elective Deferrals made under another plan maintained by the Employer. If the Plan qualifies as a Grandfathered 401(k) Arrangement (as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement, the Plan may provide for Salary Deferrals, Employer Contributions, Matching Contributions and After-Tax Employee Contributions.

To share in a contribution under the Plan, an Employee must satisfy all of the conditions for being a Participant (as described in Section 2) and must satisfy any allocation conditions (as described in Section 3.07) applicable to the particular type of contribution. The Employer may designate under AA §2-5 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions or Matching Contributions with respect to Plan Compensation earned after the date identified in AA §2-5 and no Participant will be permitted to make Salary Deferrals or Employee After-Tax Employee Contributions to the Plan for any period following the effective date of the freeze as identified in AA §2-5.

**3.02 Employer Contribution Formulas.** If permitted under AA §6, the Employer may make an Employer Contribution to the Plan, in accordance with the contribution formula selected under AA §6-2. Subsection (a) below describes the Employer Contributions that may be selected under the Profit Sharing Plan Adoption Agreement, subsection (b) below describes the Employer Contributions that may be made under the Money Purchase Plan Adoption Agreement and subsection (c) below describes the Employer Contributions that may be made under a Grandfathered 401(k) Arrangement. Since a governmental plan is exempt from the nondiscrimination requirements, the contribution formulas described in this Section 3.02 need not satisfy the nondiscrimination tests under Code §401(a)(4) or the regulations thereunder.

(a) **Contribution formulas (Profit Sharing Plan).** The Employer may elect under AA §6-2 of the Profit Sharing Plan Adoption Agreement to make any of the following Employer Contributions. If the Employer elects more than one Employer Contribution formula, each formula is applied separately. The Employer's aggregate Employer Contribution for a Plan Year will be the sum of the Employer Contributions under all such formulas. Any reference to the Adoption Agreement under this subsection (a) is a reference to the Profit Sharing Plan Adoption Agreement.

(1) **Employer Contributions.** An Employer may designate under AA §6 of the Profit Sharing Adoption Agreement the amount of Employer Contributions that may be made under the Plan. Any Employer Contributions selected under AA §6 will be made in accordance with the contribution formula selected under AA §6-2. Any Employer Contribution must be allocated in accordance with a definite allocation formula as set forth in AA §6-3. To receive an allocation of Employer Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.07 below.

In determining the amount of Employer Contributions to be allocated to Participants under the Plan, the Plan will take into account Plan Compensation (as defined in Section 1.72) for the Plan Year. The Employer may designate under AA §6-4(a) alternative periods for determining the allocation of Employer Contributions. If alternative periods are designated under AA §6-4(a), a Participant's allocation of Employer Contributions will be determined separately for each designated period based on Plan Compensation earned during such period. If an alternative period is designated under AA §6-4(a), the Employer need not actually make the Employer Contribution during the designated period, provided the total Employer Contribution for the Plan Year is allocated based on the proper Plan Compensation. (If the permitted disparity allocation method applies under AA §6-2(b), the allocation will be based on the Plan Year.)

If the Employer maintains any other qualified plan(s) which cover any Participants under this Plan, the Employer may elect under AA §6-4(c) to reduce such Participants' allocation under this Plan to take into account the benefits provided under the Employer's other qualified plan(s). The Employer describe how the offset will be applied under AA §6-4(c)(2).

(i) **Discretionary Employer Contribution.** If a discretionary contribution is selected under AA §6-2(a), the Employer may decide on an annual basis how much (if any) it wishes to contribute to the Plan as an Employer Contribution. If the Employer elects to make a discretionary contribution, such amount may be allocated under the pro rata, permitted disparity, Employee group, age-based or uniform points allocation method (as selected in AA §6-3).

- (A) **Pro rata allocation formula.** Under the pro rata allocation formula, a pro rata share of the Employer Contribution is allocated to each Participant's Employer Contribution Account. A Participant's pro rata share may be determined based on the ratio such Participant's Plan Compensation bears to the total Plan Compensation of all Participants or as a uniform dollar amount, as designated in AA§6-3(a).
- (B) **Permitted disparity allocation formula.** Under the permitted disparity allocation formula, the Employer Contribution is allocated to Participants' Employer Contribution Accounts using a two-step method. The Employer may not elect the permitted disparity allocation formula under the Plan if the Employer maintains another qualified plan, covering any of the same Employees, which uses permitted disparity in determining the allocation of contributions or the accrual of benefits under such plan.
- (I) **Two-step method.** Under the two-step method, the discretionary Employer Contribution is allocated under the following method:
- (a) **Step one.** The Employer Contribution is allocated to each Participant's Employer Contribution Account in the ratio that the sum of each Participant's Plan Compensation plus Excess Compensation (as defined in subsection (II) below) bears to the sum of the total Plan Compensation plus Excess Compensation of all Participants, but not in excess of the Maximum Disparity Rate (as defined in subsection (IV) below).
- (b) **Step two.** Any Employer Contribution remaining after the allocation in subsection (a) above one will be allocated in the ratio that each Participant's Plan Compensation bears to the total Plan Compensation of all Participants.
- (II) **Excess Compensation.** The amount of Plan Compensation that exceeds the Integration Level.
- (III) **Integration Level.** The Taxable Wage Base, unless specified otherwise under AA §6-3(c)(1).
- (IV) **Maximum Disparity Rate.** The Maximum Disparity Rate is the maximum amount that may be allocated with respect to Excess Compensation. Unless provided otherwise under AA §6-3(c)(2), the maximum amount that may be allocated as a percentage of Plan Compensation and Excess Compensation under step one of the two-step allocation method under subsection (I) above, may not exceed the following percentage:
- | Integration Level<br>(as a percentage of the Taxable Wage Base) | Maximum<br>Disparity Rate |
|---|---------------------------|
| 100%  | 5.7%                      |
| More than 80% but less than 100%                                | 5.4%                      |
| More than 20% and not more than 80%                             | 4.3%                      |
| 20% or less   | 5.7%                      |
- The Employer may elect to apply a greater Maximum Disparity Rate under AA §6-3(c)(2).
- (V) **Taxable Wage Base.** The maximum amount of wages that are considered for Social Security purposes as in effect at the beginning of the Plan Year.
- (C) **Uniform points allocation.** Under the uniform points allocation, the Employer will allocate the discretionary Employer Contribution on the basis of each Participant's total points for the Plan Year, as determined under AA §6-3(d). A Participant's allocation of the Employer Contribution is determined by multiplying the Employer Contribution by a fraction, the numerator of which is the Participant's total points for the Plan Year and the denominator of which is the sum of the points for all Participants for the Plan Year.

A Participant will receive points for each year(s) of age and/or each Year(s) of Service designated under AA §6-3(d). In addition, a Participant also may receive points based on his/her Plan Compensation. Each Participant will receive the same number of points for each designated year of age and/or service and the same number of points for each designated level of Plan Compensation.

- (D) **Employee group allocation.** Under the Employee group allocation method, the Employer may make a different discretionary contribution to each Participant's Employer Contribution Account based on the Employee allocation groups designated under AA §6-3(e). The Employer Contribution made for an allocation group will be allocated as a uniform percentage of Plan Compensation or as a uniform dollar amount. If the Employer Contribution is allocated as a percentage of Plan Compensation, the amount that will be allocated to each Participant within an allocation group is determined by multiplying the Employer Contribution made for that allocation group by the following fraction:

$$\frac{\text{Participant's Plan Compensation}}{\text{Plan Compensation of all Participants in the allocation group}}$$

Alternatively, the Employer may set forth in the description of the Employee groups under AA §6-3(e)(2) a fixed contribution amount for a designated Employee group. If a fixed contribution is provided for a specific Employee group, the amount designated as the fixed contribution will be allocated to each Participant within the designated Employee group.

The Employer must designate how much of the Employer Contribution is made for each of the Employee allocation groups and whether such amounts are allocated on the basis of Plan Compensation or as a uniform dollar amount. The portion of the Employer Contribution designated for a specific allocation group will be allocated only to Participants within that allocation group. If a Participant is in more than one allocation group during the Plan Year, the Participant will receive an Employer Contribution based on the Participant's status on the last day of the Plan Year. In the event a Participant is in two or more allocation groups on the last day of the Plan Year, the Participant will receive an Employer Contribution based on the first allocation group listed under AA §6-3(e)(2) in which the Participant is a part. The Employer can provide for a different treatment of Employees in multiple groups under AA §6-3(e)(3)(i).

- (E) **Age-based allocation formula.** Under the age-based allocation formula, the Employer will allocate the discretionary Employer Contribution on the basis of each Participant's adjusted Plan Compensation. For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor. A Participant's Actuarial Factor is determined based on standard actuarial assumptions using a testing age that is the later of Normal Retirement Age or the Employee's current age. Unless designated otherwise under AA §6-3(f), a Participant's Actuarial Factor is determined based on an 8.5% interest rate and the UP-1984 mortality table. (See Appendix A of the Plan for the Actuarial Factors associated with an 8.5% interest rate and the UP-1984 mortality table and a testing age of 65. If an interest rate other than 8.5% or a mortality table other than the UP-1984 mortality table is selected under AA §6-3(f), or if a testing age other than age 65 is used, the Plan must determine the appropriate Actuarial Factors based on the designated interest rate, mortality table and testing age.)
- (ii) **Fixed Employer Contribution.** The Employer may elect under AA §6-2(b) to make a fixed contribution to the Plan. The Employer may elect under AA §6-2(b)(1) or (2) to make a fixed contribution as a designated percentage of Plan Compensation or as a uniform dollar amount. If a fixed contribution is selected under AA §6-2(b)(1) or (2), the Employer Contribution will be allocated under the fixed contribution formula under AA §6-3(b) in accordance with the selections made in AA §6-2(b).
- (iii) **Service-based Employer Contribution.** If elected in AA §6-2(c), the Employer may make a contribution based on an Employee's service with the Employer during the Plan Year (or other period designated under AA §6-4(a)). The Employer may elect to make the service-based contribution as a discretionary contribution or as a fixed contribution. Any such contribution will be allocated on the basis of Participants' Hours of Service, weeks of employment or other measuring period selected under AA §6-2(c). The Employer Contribution will be allocated under the service-based allocation formula under AA §6-3(g).

- (iv) **Frozen Plan.** The Employer may designate under AA §2-5 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions with respect to Plan Compensation earned after the date identified in AA §2-5. If the Plan holds any unallocated forfeitures at the time the Plan is frozen, such forfeitures may be allocated to all eligible Participants in accordance with Section 6.11 in the year the Plan is frozen, regardless of any contrary selections under AA §8-7.
- (2) **Matching Contributions.** The Employer may elect under AA §6A of the Profit Sharing Plan Adoption Agreement to authorize Matching Contributions under the Plan. The Employer may elect to provide Matching Contributions with respect to After-Tax Employee Contributions or Employer Pick-Up Contributions authorized under AA §6-6 or with respect to Elective Deferrals under another plan, 457(b) plan or 403(b) plan maintained by the Employer. If the Employer elects to make a Matching Contribution based on the Employee's Elective Deferrals or Roth Deferrals under another plan, 457(b) plan or 403(b) plan, the Employer shall make a Matching Contribution on behalf of any Eligible Participant who makes Elective Deferrals or Roth Deferrals to the plan designated under AA §6A-3(b). Any such Matching Contribution made to the Plan will be allocated under the formula elected in AA §6A-2. Any such Matching Contributions will be in addition to any Matching Contributions made with respect to After-Tax Employee Contributions or Employer Pick-Up Contributions under the Plan.

If the Employer elects more than one Matching Contribution formula under AA §6A-2, each formula is applied separately. A Participant's aggregate Matching Contributions will be the sum of the Matching Contributions under all such formulas. Any Matching Contribution made under the Plan will be allocated to Participants' Matching Contribution Account. To receive an allocation of Matching Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.07 below.

- (i) **Period for determining Matching Contributions.** AA §6A-5 sets forth the period for which the Matching Contribution formula(s) applies. For this purpose, the period designated in AA §6A-5 applies for purposes of determining the amount of Elective Deferrals (and After-Tax Employee Contributions or Employer Pick-Up Contributions, if applicable) taken into account in applying the Matching Contribution formula(s) and in applying any limits on the amount of Elective Deferrals, After-Tax Employee Contributions or Employer Pick-Up Contributions that may be taken into account under the Matching Contribution formula(s). (See subsection (ii) for rules applicable to true-up contributions where the Employer contributes Matching Contributions to the Plan on a different period than selected under AA §6A-5.)
- (ii) **True-up contributions.** If the Employer makes Matching Contributions more frequently than annually, the Employer may have to make true-up contributions for Participants. Such true-up contributions will be required if the Employer actually contributes Matching Contributions to the Plan on a more frequent basis than is used for purposes of determining the amount of Salary Deferrals taken into account under AA §6A-5. If a true-up contribution is required under this subsection (ii), the Employer may make such additional contribution as required to satisfy the contribution requirements under the Plan.
- (b) **Employer Contribution formulas (Money Purchase Plan).** The Employer may elect under AA §6 of the Money Purchase Plan Adoption Agreement to make any of the following Employer Contributions. Each Participant will receive an allocation of Employer Contributions equal to the amount determined under the contribution formula elected under AA §6-2. Any reference to the Adoption Agreement under this subsection (b) is a reference to the Money Purchase Plan Adoption Agreement. To receive an allocation of Employer Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.07 below.

In determining the amount of Employer Contributions to be allocated to Participants under the Plan, the Plan will take into account Plan Compensation (as defined in Section 1.72) for the Plan Year. The Employer may designate under AA §6-4 alternative periods for determining the allocation of Employer Contributions. If alternative periods are designated under AA §6-4, a Participant's allocation of Employer Contributions will be determined separately for each designated period based on Plan Compensation earned during such period. If an alternative period is designated under AA §6-4, the Employer need not actually make the Employer Contribution during the designated period, provided the total Employer Contribution for the Plan Year is allocated based on the proper Plan Compensation. (If the permitted disparity allocation method applies under AA §6-2(b), the allocation will be based on the Plan Year.)

If the Employer maintains any other qualified plan(s) which cover any Participants under this Plan, the Employer may elect under AA §6-3(b) to reduce such Participants' allocation under this Plan to take into account the benefits provided under the Employer's other qualified plan(s). The Employer may describe under AA §6-3(b)(2) how the offset will be applied.

- (1) **Uniform Employer Contribution.** If elected under AA §6-2(a), the Employer will make a contribution to each Participant under the Plan as a uniform percentage of Plan Compensation or as a uniform dollar amount, as designated in AA§6-2(a).
- (2) **Permitted disparity contribution formula.** If elected under AA §6-2(b), the Employer will make a permitted disparity contribution to each Participant using either the individual or group method. The Employer may not elect the permitted disparity contribution formula under the Plan if the Employer maintains another qualified plan, covering any of the same Employees, which uses permitted disparity in determining the allocation of contributions or the accrual of benefits under such plan.
- (i) **Individual method.** Under the individual method, each Participant will receive an allocation of the Employer Contribution equal to the amount determined under the contribution formula under AA §6-2(b)(1). A Participant may not receive an allocation with respect to Excess Compensation that exceeds the Maximum Disparity Rate.
- (A) **Excess Compensation.** The amount of Plan Compensation that exceeds the Integration Level.
- (B) **Integration Level.** The Taxable Wage Base, unless specified otherwise under AA §6-2(b)(3).
- (C) **Maximum Disparity Rate.** The Maximum Disparity Rate is the maximum amount that may be allocated with respect to Excess Compensation under the permitted disparity formula. Unless provided otherwise under AA §6-2(b)(3), the maximum amount that may be allocated as a percentage of Plan Compensation and Excess Compensation is the following percentage:

<u>Integration Level</u> <u>(as a percentage of the Taxable Wage Base)</u>	<u>Maximum</u> <u>Disparity Rate</u>
100%	5.7%
More than 80% but less than 100%	5.4%
More than 20% and not more than 80%	4.3%
20% or less	5.7%

The Employer may elect to apply a greater Maximum Disparity Rate under AA §6-2(b)(3)(ii).

- (D) **Taxable Wage Base.** The maximum amount of wages that are considered for Social Security purposes as in effect at the beginning of the Plan Year.
- (ii) **Group method.** Under the group method, the Employer contributes a fixed percentage of total Plan Compensation of all Participants. The Employer Contribution is then allocated under the two-step method (as described in subsection (a)(1)(i)(B)(I) above). In determining Excess Compensation, the Integration Level is the Taxable Wage Base, unless designated otherwise under AA §6-2(b)(3).
- (3) **Employee group contribution formula.** Under the Employee group contribution formula, the Employer may make a different contribution to each Participant’s Employer Contribution Account based on the designated Employee groups identified under AA §6-2(c).

The Employer Contribution made for a designated Employee group will be allocated to each eligible Participant in such group as a uniform percentage of Plan Compensation or as a uniform dollar amount, as designated in AA §6-2(c)(2). The Employer also may elect to allocate an amount to each eligible Participant in a designated Employee group the maximum amount permissible under Code §415. See Section 5.02.

The Employee groups designated in AA §6-2(c) must be clearly defined in a manner that will not violate the definite determinable requirement of Treas. Reg. §1.401-1(b)(1)(ii). The portion of the Employer Contribution designated for a specific Employee group will be allocated only to Participants within that group. If a Participant is in more than one Employee group during the Plan Year, the Participant will receive an Employer Contribution based on the Participant’s status on the last day of the Plan Year. In the event a Participant is in two or more Employee groups on the last day of the Plan Year, the Participant will receive an Employer Contribution based on the first Employee group listed under AA §6-2(c) in which the Participant is a part. The Employer can provide for a different treatment of Employees in multiple groups as part of the group description in AA §6-2(c)(1).

- (4) **Age-based contribution formula.** Under the age-based contribution formula, the Employer will contribute a specific percentage of each Participant's adjusted Plan Compensation. For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor. A Participant's Actuarial Factor must be determined based on standard actuarial assumptions using a testing age that is the later of Normal Retirement Age or the Employee's current age. Unless designated otherwise under AA §6-2(d), a Participant's Actuarial Factor is determined based on an 8.5% interest rate and the UP-1984 mortality table. (See Appendix A of the Plan for the Actuarial Factors associated with an 8.5% interest rate and the UP-1984 mortality table and a testing age of 65. If an interest rate other than 8.5% or a mortality table other than the UP-1984 mortality table is selected under AA §6-2(d), or if a testing age other than age 65 is used, the Plan must determine the appropriate Actuarial Factors based on the designated interest rate, mortality table and testing age.)
- (5) **Service-based Employer Contribution.** If elected in AA §6-2(e), the Employer will make a contribution based on an Employee's service with the Employer during the Plan Year (or other period designated under AA §6-4.) The Employer Contribution will be allocated on the basis of Participants' Hours of Service, weeks of employment or other measuring period selected under AA §6-2(e).
- (6) **Frozen Plan.** The Employer may designate under AA §2-5 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions with respect to Plan Compensation earned after the date identified in AA §2-5. If the Plan holds any unallocated forfeitures at the time of the termination, such forfeitures may be allocated to all eligible Participants in accordance with Section 6.11 in the year of the termination, regardless of any contrary selections under AA §8-5.
- (c) **Contribution formulas (Grandfathered 401(k) Plan).** If the Employer is eligible to maintain a Grandfathered 401(k) Arrangement (as defined under Section 2-3(b)), the Employer may elect under the Adoption Agreement to make Employer Contributions, Matching Contributions and/or Salary Deferrals. Any reference to the Adoption Agreement under this subsection (c) is a reference to the Grandfathered 401(k) Plan Adoption Agreement.
- (1) **Employer Contributions.** An Employer may designate under AA §6 of the Grandfathered 401(k) Plan Adoption Agreement the amount of Employer Contributions that may be made under the Plan. The same rules apply with respect to Employer Contributions under the Grandfathered 401(k) Arrangement as apply under the Profit Sharing Plan, as set forth under subsection (a), above. If the Employer elects more than one Employer Contribution formula, each formula is applied separately. The Employer's aggregate Employer Contribution for a Plan Year will be the sum of the Employer Contributions under all such formulas.
- (2) **Salary Deferrals.** The Employer may elect under AA §6A of the Grandfathered 401(k) Plan Adoption Agreement to authorize Participants to make Salary Deferrals under the Plan. A Participant's total Salary Deferrals may not exceed the lesser of any limitation designated under AA §6A-2, the Elective Deferral Dollar Limit described under Section 5.03, or the amount permitted under the Code §415 Limitation described under Section 5.02. The Employer may elect under AA §6A-2(b) of the Grandfathered 401(k) Plan Adoption Agreement to apply a different limit on Salary Deferrals to the extent such Salary Deferrals are withheld from a Participant's bonus payments.
- (i) **Salary Deferral Election.** In order to make Salary Deferrals under the Plan, a Participant must enter into a Salary Deferral Election which authorizes the Employer to withhold a specific dollar amount or a specific percentage from the Participant's Plan Compensation. The Salary Reduction Agreement may permit a Participant to specify a different percentage or dollar amount be withheld from specified components of Plan Compensation, such as base pay, bonuses, commissions, etc. In addition, the Salary Deferral Election may provide that the Employee's deferral election will increase by a designated amount unless the Employee affirmatively elects otherwise. The Employer will deposit any amounts withheld from a Participant's Plan Compensation as Salary Deferrals into the Participant's Salary Deferral Account under the Plan. A Salary Deferral Election may only relate to Plan Compensation that is not currently available at the time the Salary Deferral Election is completed. In determining the amount to be withheld from a Participant's Plan Compensation, a Salary Deferral election may be rounded to the next highest or lowest whole dollar amount.

The Employer may designate under AA §6A-8 of the Grandfathered 401(k) Plan Adoption Agreement to apply a special effective date as of which Participants may begin making Salary Deferrals under the Plan. Regardless of any special effective date designated under AA §6A-8, a Salary Deferral Election may not be effective prior to the later of:

- (A) the date the Employee becomes a Participant;



- (B) the date the Participant executes the Salary Deferral Election; or
- (C) the date the Plan is first adopted or effective.

In addition, Salary Deferrals made pursuant to a Salary Deferral Election may not be made earlier than the date the Participant performs the services to which such Salary Deferrals relate or the date the compensation subject to such Salary Deferral Election would be currently available to the Participant absent the deferral election (if earlier). Regardless of when a Participant elects to commence making Salary Deferrals, the Employer may delay commencement for a reasonable period of time in order to implement the Salary Deferral election.

A Salary Deferral Election is valid even though it is executed by an Employee before he/she actually has qualified as a Participant, so long as the Salary Deferral Election is not effective before the date the Employee is a Participant.

- (ii) **Change in deferral election.** An Employee must be permitted to enter into a new Salary Deferral Election or to modify or terminate an existing Salary Deferral Election at least once a year. The Employer may designate additional dates on the Salary Deferral Election form (or other written procedures) as to when a Participant may modify or terminate a Salary Deferral Election. Alternatively, the Employer may designate under AA §6A-6 of the Grandfathered 401(k) Plan Adoption Agreement specific dates for a Participant to modify or terminate an existing Salary Deferral Election. Any election to modify or terminate a Salary Deferral Election will take effect within a reasonable period following such election and will apply only on a prospective basis. Regardless of any specific dates designated under AA §6A-6, the Employer may allow an Employee to increase his/her deferral election up to the Elective Deferral Dollar Limit at any time during the last two months of the Plan Year.
- (iii) **Automatic Contribution Arrangement.** The Employer may elect under AA §6A-7 of the Grandfathered 401(k) Plan Adoption Agreement to provide for an automatic deferral election under the Plan. If the Employer elects to apply an automatic deferral election, the Employer will automatically withhold the amount designated under AA §6A-7 from Participants' Plan Compensation, unless the Participant completes a Salary Deferral Election electing a different deferral amount (including a zero deferral amount). Unless provided otherwise under AA §6A-7, an Employee who is automatically enrolled under a prior plan document will continue to be automatically enrolled under the current Plan document.
  - (A) **Automatic increase.** The Plan may provide under AA §6A-7 of the Grandfathered 401(k) Plan Adoption Agreement that the automatic deferral amount will automatically increase by a designated percentage each Plan Year. Unless designated otherwise under AA §6A-7(a)(4), in applying any automatic deferral increase under AA §6A-7, the initial deferral amount will apply for the period that begins when the employee first participates in the automatic contribution arrangement and ends on the last day of the following Plan Year. The automatic increase will apply for each Plan Year beginning with the Plan Year immediately following the initial deferral period and for each subsequent Plan Year.
  - (B) **Annual notice requirement.** Each eligible Employee must receive a written notice describing the Participant's rights and obligations under the Plan which is sufficiently accurate and comprehensive to apprise the Employee of such rights and obligations, and is written in a manner calculated to be understood by the average Plan Participant. The annual notice only needs to be provided to those Employees who are covered under the Automatic Contribution Arrangement. If it is impractical to provide the annual notice to a newly eligible Participant before the date such individual becomes eligible to participate under the Plan, the notice will be treated as timely if it is provided as soon as practicable after such date and the Employee is permitted to defer from Plan Compensation earned beginning on the date of participation.
  - (C) **Timing of annual notice.** The annual notice must be provided within a reasonable period before the beginning of each Plan Year (or, in the year an Employee becomes an eligible Employee, within a reasonable period before the Employee becomes an eligible Employee). In addition, a notice satisfies the timing requirements only if it is provided sufficiently early so that the Employee has a reasonable period of time after receipt of the notice and before the first Salary Deferral made under the arrangement to make an alternative deferral election. The annual notice will be deemed timely if it is provided to each eligible Employee at least 30 days (and no more than 90 days) before the beginning of each Plan Year. In the case of an Employee who does not

receive the notice within such period because the Employee becomes an eligible Employee after the 90th day before the beginning of the Plan Year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the Employee becomes an eligible Employee (and no later than the date the Employee becomes an eligible Employee).

- (D) **Timing of automatic deferral.** Generally, the automatic deferral will commence as of the date the Employee is otherwise eligible to make Salary Deferrals under the Plan, if the Employee had completed a Salary Deferral Election. However, the automatic deferral will be treated as timely if the automatic deferral commences no later than the earlier of the pay date for the second payroll period or the pay date that occurs at least 30 days following the later of:

- (I) the date on which the Employee first becomes an Eligible Employee (or becomes an Eligible Employee following a rehire); or
- (II) the date on which such Employee is provided notice of the automatic deferral,

but in no event later than the time period prescribed in Code §410(a) or any other regulations thereunder.

- (E) **Permissible Withdrawals.** If so elected under AA §6A-7(b) of the Grandfathered 401(k) Plan Adoption Agreement, effective for Plan Years beginning on or after January 1, 2008, any Employee who has Salary Deferrals contributed to the Plan pursuant to an automatic deferral election may elect to withdraw such contributions (and earnings attributable thereto) in accordance with the requirements of this subsection (E). A permissible withdrawal under this subsection (E) may be made without regard to any elections under AA §10 and will not cause the Plan to fail the prohibition on in-service distribution applicable to Salary Deferrals under Section 7.10(c).

- (I) **Amount of distribution.** A distribution satisfies the requirement of this subsection (E) if the distribution is equal to the amount of Salary Deferrals made pursuant to the automatic deferral election through the effective date of the withdrawal election (as described in subsection (III)) adjusted for allocable gains and losses as of the date of the distribution.

The distribution amount determined under this subsection (I) may be reduced by any generally applicable fees. However, the Plan may not charge a greater fee for a permissible distribution under this subsection (E) than applies with respect to other Plan distributions.

- (II) **Timing of permissive withdrawal election.** An election to withdraw Salary Deferrals under this subsection (E) must be made no later than 90 days after the date of the first default Salary Deferral. The date of the first default Salary Deferral is the date that the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income. The Employer may designate an alternative period for making permissive withdrawals under AA §6A-7(b)(3).
- (III) **Effective date of permissible withdrawal.** The effective date of a permissible withdrawal election cannot be later than the pay date for the second payroll period that begins after the election is made or, if earlier, the first pay date that occurs at least 30 days after the election is made. If an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissive withdrawal, but only with respect to default contributions made after the Employee's return to employment.
- (IV) **Consequences of permissible withdrawal.** Any amount distributed under this subsection (E) is includible in the Employee's gross income for the taxable year in which the distribution is made. However, the portion of any distribution consisting of Roth Deferrals is not included in an Employee's gross income a second time. In addition, a permissible withdrawal under this subsection (E) is not subject to any penalty tax under Code §72(t). Unless the Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Salary Deferrals made on the Employee's behalf as of the date specified in subsection (III) above.

- (iv) **Catch-Up Contributions.** If permitted under AA §6A-4 of the Grandfathered 401(k) Plan Adoption Agreement, a Participant who is aged 50 or over by the end of his/her taxable year beginning in the calendar year may make Catch-Up Contributions, provided such Catch-Up Contributions are in excess

of an otherwise applicable limit under the Plan. For this purpose, an otherwise applicable Plan limit is a limit in the Plan that applies to Salary Deferrals without regard to Catch-up Contributions, such as a Plan-imposed Salary Deferral limit under AA §6A-2, the Code §415 Limitation (described in Section 5.02), or the Elective Deferral Dollar Limit (described in Section 5.03).

- (A) **Catch-Up Contribution Limit.** Catch-up Contributions for a Participant for a taxable year may not exceed the Catch-Up Contribution Limit. The Catch-Up Contribution Limit for taxable years beginning in 2010 through 2014 is \$5,500. For taxable years beginning after 2014, the Catch-Up Contribution Limit will be adjusted for cost-of-living increases under Code §414(v)(2)(C). The Employer may operationally limit Catch-Up Contributions so that a Participant's total Catch-Up Contributions, when added to other Salary Deferrals, may not exceed 75 percent of the Participant's Plan Compensation for the taxable year.
  - (B) **Special treatment of Catch-Up Contributions.** Catch-up Contributions are not subject to the Elective Deferral Dollar Limit or the Code §415 Limitation.
- (v) **Roth Deferrals.** For Plan Years beginning on or after January 1, 2006, if permitted under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement, a Participant may designate all or a portion of his/her Salary Deferrals as Roth Deferrals. For this purpose, a Roth Deferral is a Salary Deferral that satisfies the following conditions.
- (A) **Irrevocable election.** The Participant makes an irrevocable election (at the time the Participant enters into his/her Salary Deferral Election) designating all or a portion of his/her Salary Deferrals as Roth Deferrals. The irrevocable election applies with respect to Salary Deferrals that are made pursuant to such election. A Participant may modify or change a Salary Deferral Election to increase or decrease the amount of Salary Deferrals designated as Roth Deferrals, provided such change or modification applies only with respect to Salary Deferrals made after such change or modification. (See subsection (ii) above for rules regarding the timing of permissible changes or modifications to a Participant's Salary Deferral Election.)
  - (B) **Subject to immediate taxation.** To the extent a Participant designates all or a portion of his/her Salary Deferrals as Roth Deferrals, such amounts will be includible in the Participant's income at the time the Participant would have received the contribution amounts in cash if the Employee had not made the Salary Deferral election.
  - (C) **Separate account.** Any amounts designated as Roth Deferrals will be maintained by the Plan in a separate Roth Deferral Account. The Plan will credit and debit all contributions and withdrawals of Roth Deferrals to such separate Account. The Plan will separately allocate gains, losses, and other credits and charges to the Roth Deferral Account on a reasonable basis that is consistent with such allocations for other Accounts under the Plan. However, in no event may the Plan allocate forfeitures under the Plan to the Roth Deferral Account. The Plan will separately track Participants' accumulated Roth Deferrals and the earnings on such amounts.
  - (D) **Satisfaction of Salary Deferral requirements.** Roth Deferrals are subject to the same requirements as apply to Salary Deferrals. Thus Roth Deferrals are subject to the following requirements:
    - (I) Roth Deferrals are always 100% vested, as provided in Section 6.01.
    - (II) Roth Deferrals are subject to the Elective Deferral Dollar Limit, as described in Section 5.03. For this purpose, all Salary Deferrals (both Pre-Tax Salary Deferrals and Roth Deferrals) are aggregated in applying the Elective Deferral Dollar Limit.
    - (III) Roth Deferrals are subject to the same distribution restrictions as apply to Salary Deferrals under Section 7.10(c). See Section 7.11(b) for special distribution provisions applicable to Roth Deferrals.
    - (IV) Roth Deferrals are subject to the required minimum distribution requirements under Code §401(a)(9), as set forth in Section 8.

- (E) **Rollover of Roth Deferrals.**
- (I) **Rollovers from this Plan.** For purposes of the rollover rules under Section 7.04, a Direct Rollover of a distribution from a Participant's Roth Deferral Account will only be made to another Roth Deferral Account under a qualified plan described in Code §401(a) or an annuity contract or custodial account described in Code §403(b) or to a Roth IRA described in §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).
- (II) **Rollovers to this Plan.** Subject to the provisions under Section 3.05, a Participant may make a Rollover Contribution to his/her Roth Deferral Account only if the rollover is a Direct Rollover from another Roth Deferral Account under a qualified retirement plan (as described in Section 3.05) and only to the extent the rollover is permitted under the rules of Code §402(c). A rollover of Roth Deferrals may not be made to this Plan from a Roth IRA. Any rollover of Roth Deferrals to this Plan will be held in a separate Roth Rollover Account.
- (III) **Minimum rollover amount.** The Plan will not provide for a Direct Rollover for distributions from a Participant's Roth Deferral Account if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than \$200. In addition, any distribution from a Participant's Roth Deferral Account is not taken into account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than \$200 during a year.
- (IV) **Separate treatment of Roth Deferrals.** The provisions under Section 7.04 that allow a Participant to elect a Direct Rollover of only a portion of an Eligible Rollover Distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from the Participant's Roth Deferral Account as a separate distribution from any amount distributed from the Participant's other Accounts in the Plan, even if the amounts are distributed at the same time.
- (3) **Matching Contributions.** The Employer may elect under AA §6B of the Grandfathered 401(k) Plan Adoption Agreement to authorize Matching Contributions under the Plan. If the Employer elects more than one Matching Contribution formula under AA §6B-2, each formula is applied separately. A Participant's aggregate Matching Contributions will be the sum of the Matching Contributions under all such formulas. Any Matching Contribution made under the Plan will be allocated to Participants' Matching Contribution Account. To receive an allocation of Matching Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.07 below.
- (i) **Contributions eligible for Matching Contributions.** The Matching Contribution formula(s) apply to Salary Deferrals, Catch-Up Contributions, After-Tax Employee Contributions and/or Employer Pick-Up Contributions made under the Plan, to the extent authorized under the Adoption Agreement. In addition, the Employer may elect under AA §6B-3(g) to match Elective Deferrals under another qualified plan, 403(b) plan or 457(b) plan maintained by the Employer. If the Employer elects to make a Matching Contribution based on the Employee's Elective Deferrals or Roth Deferrals under another qualified plan, 403(b) plan or 457(b) plan, the Employer shall make a Matching Contribution on behalf of any eligible Participant who makes Elective Deferrals or Roth Deferrals to the plan designated under AA §6B-3(g). Any such Matching Contribution made to the Plan will be allocated in accordance with any special provisions added under AA §6B-3(b). Any such Matching Contributions will be in addition to any Matching Contributions made with respect to Salary Deferrals, After-Tax Employee Contributions, Catch-Up Contributions and/or Employer Pick-Up Contributions under this Plan.
- (ii) **Period for determining Matching Contributions.** AA §6B-5 sets forth the period for which the Matching Contribution formula(s) applies. For this purpose, the period designated in AA §6B-5 applies for purposes of determining the amount of Salary Deferrals, Catch-Up Contributions, After-Tax Employee Contributions, and/or Employer Pick-Up Contributions taken into account in applying the Matching Contribution formula(s) and in applying any limits on the amount of Salary Deferrals that may be taken into account under the Matching Contribution formula(s). (See subsection (iii) for rules applicable to true-up contributions where the Employer contributes Matching Contributions to the Plan on a different period than selected under AA §6B-5.)

If the Employer elects a discretionary Matching Contribution under the Plan, the Employer may elect to make a different Matching Contribution for each period for which Matching Contributions are determined under the Plan. Thus, for example, if the discretionary Matching Contribution is based on the

Plan Year quarter, the Employer may elect to make a different level of Matching Contribution for each Plan Year quarter. The Matching Contribution for the full Plan Year must be taken into account in applying the ACP Test with respect to such Plan Year.

- (iii) **True-up contributions.** If the Employer makes Matching Contributions more frequently than annually, the Employer may have to make true-up contributions for Participants. True-up contributions will be required if the Employer actually contributes Matching Contributions to the Plan on a more frequent basis than the period that is used to determine the amount of the Matching Contributions under AA §6B-5. For example, if Matching Contributions apply with respect to Salary Deferrals made for the Plan Year, but the Employer contributes the Matching Contributions on a quarterly basis, the Employer may have to make a true-up contribution to any Participant based on Salary Deferrals for the Plan Year. If a true-up contribution is required under this subsection (iii), the Employer may make such additional contribution as required to satisfy the contribution requirements under the Plan. If true-up contributions will not be made for any Participant under the Plan, payroll period should be selected under AA §6B-5(a).

If Matching Contributions are determined on a period other than the Plan Year, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Matching Contributions were determined on a Plan Year basis. If an additional discretionary Matching Contribution is made under this subsection (iii), such contribution must be provided to all eligible Participants who would otherwise be entitled to a true-up contribution based on Plan Compensation for the Plan Year.

- 3.03 Employer Pick-Up Contributions.** The Employer may elect under AA §6-6(c) to make Employer Pick-Up Contributions. A Employer Pick-Up Contribution is a contribution made by an Employee that is “picked up” by the Employer in accordance with Code §414(h)(2). If the Employer elects to provide Employer Pick-Up Contributions under AA §6-6(c), a Participant who meets the eligibility requirements of AA §4-1 shall be deemed to have authorized the Employer to deduct the amount designated under AA §-6-6(c) from the Participant’s Plan Compensation prior to payment. Contributions picked-up under this Section 3.03 will be withheld from the Employee’s compensation and deposited into the Participant’s Employer Pick-up Contribution Account. Contributions that are picked up under this Section 3.03 will be treated as Employer Contributions under the Plan and such contributions and earnings thereon will be 100% vested at all times.

To constitute an Employer Pick-up Contribution under this Section 3.03, the Employer must:

- (a) specify that the contributions, although designated as Employee contributions, are being paid by the Employer in lieu of contributions by the Employee,
- (b) take the action necessary to effectuate the pick-up, which must be completed before the period to which such contributions relate,
- (c) exclude from the Employee's gross income the contributions picked up by the Employer until such time as they are distributed to the Employee, and
- (d) prohibit an Employee from opting out of the Employer Pick-up Contribution and prohibit the receipt of the contributed amounts directly instead of having them paid by the Employer to the Plan.

To satisfy the requirements of this Section 3.03, the Employer Pick-Up Contributions must be effectuated by a person duly authorized to take such action with respect to the Employer and must be evidenced by a contemporaneous written document, such as minutes from a meeting, a resolution, an ordinance or this Plan document. Any Participating Employee may not enter into a cash or deferred election (within the meaning of Treas. Reg. § 1.401(k)-1(a)(3)) with respect to the designated Employee contributions, at any time from or after the date of the implementation of the Employer Pick-Up Contribution. For example, a Participant may not opt out of the Employer Pick-Up Contribution or receive the contributed amounts directly instead of having them paid by the Employer into the Plan.

- 3.04 After-Tax Employee Contributions.** The Employer may elect under AA §6-6 to allow Participants to make After-Tax Employee Contributions under the Plan. If permitted under AA §6-6, a Participant’s compensation will be reduced by the amount the Participant elects to contribute as an After-Tax Employee Contribution. The After-Tax Employee Contributions may be Voluntary After-Tax Employee Contributions as designated under AA §6-6(a) or may be Mandatory After-Tax Employee Contributions as designated under AA §6-6(b). Any After-Tax Employee Contributions made under the Plan will be held in Participants’ After-Tax Employee Contribution Account, which is always 100% vested.

A Participant may increase, decrease, discontinue or resume his/her After-Tax Employee Contributions as designated under AA §6-6. An Employee must be permitted to modify or terminate an existing After-Tax Employee Contribution election at least once a year. The Employer may designate additional dates on the After-Tax Employee Contribution election form (or other

written procedures) as to when a Participant may commence, modify or terminate After-Tax Employee Contributions. Alternatively, the Employer may designate under AA §6-6(a)(2) specific dates as of which a Participant may commence, modify or terminate Voluntary After-Tax Employee Contributions. Any election to modify or terminate an After-Tax Employee Contribution election will take effect within a reasonable period following such election and will apply only on a prospective basis.

A Participant may withdraw amounts from his/her After-Tax Employee Contribution Account at any time, in accordance with the distribution rules under Section 7.10(a), except as otherwise provided under AA §10. No forfeitures will occur solely as a result of an Employee's withdrawal of After-Tax Employee Contributions. The Employer may collect Participants' After-Tax Employee Contributions using payroll reduction or other collection procedures. The Employer may designate in AA §6-6(a)(3) or AA §6-6(b)(2), as applicable, or in separate administrative procedures any special rules regarding the acceptance of After-Tax Employee Contributions. Any separate procedures will apply uniformly to all Participants under the Plan.

**3.05** **Rollover Contributions.** An Employee (or former Employee) may make a Rollover Contribution to this Plan from a qualified retirement plan or from an IRA, if the acceptance of rollovers is permitted under AA §C-2 or if the Plan Administrator adopts administrative procedures regarding the acceptance of Rollover Contributions. Subject to the provisions under Section 3.02(c)(2)(v)(E) relating to rollovers of Roth Deferrals, any Rollover Contribution an Employee (or former Employee) makes to this Plan will be held in the Employee's Rollover Contribution Account, which is always 100% vested. A Participant may withdraw amounts from his/her Rollover Contribution Account at any time, in accordance with the distribution rules under Section 7, except as prohibited under AA §10. Any amounts received as a Rollover Contribution under this Section 3.05 will not be treated as an Annual Addition for purposes of applying the Code §415 Limitation described in Section 5.02.

For purposes of this Section 3.05, a qualified retirement plan is a tax-qualified retirement plan described in Code §401(a) or Code §403(a), an annuity contract described in §403(b) of the Code, or an eligible plan under §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. To qualify as a Rollover Contribution under this Section, the Rollover Contribution must be transferred directly from the qualified retirement plan or IRA in a Direct Rollover or must be transferred to the Plan by the Employee within sixty (60) days following receipt of the amounts from the qualified plan or IRA.

If Rollover Contributions are permitted, an Employee (or former Employee) may make a Rollover Contribution to the Plan even if the Employee is not a Participant with respect to any or all other contributions under the Plan, unless otherwise prohibited under AA §C-2 or separate administrative procedures adopted by the Plan Administrator. An Employee who makes a Rollover Contribution to this Plan prior to becoming a Participant shall be treated as a Participant only with respect to such Rollover Contribution Account, but shall not be treated as a Participant with respect to other contribution sources under the Plan until he/she otherwise satisfies the eligibility conditions under the Plan. To the extent Participant loans are authorized under the Plan, a "limited Participant" under this paragraph may request a Participant loan from the Rollover Contribution Account, unless provided otherwise under AA §B-3 or separate administrative procedures adopted by the Plan Administrator.

The Plan Administrator may refuse to accept a Rollover Contribution if the Plan Administrator reasonably believes the Rollover Contribution:

- (a) is not being made from a proper plan or IRA;
- (b) is not being made within sixty (60) days from receipt of the amounts from a qualified retirement plan or IRA;
- (c) could jeopardize the tax-exempt status of the Plan; or
- (d) could create adverse tax consequences for the Plan or the Employer.

Prior to accepting a Rollover Contribution, the Plan Administrator may require the Employee to provide satisfactory evidence establishing that the Rollover Contribution meets the requirements of this Section.

The Plan Administrator may apply different conditions for accepting Rollover Contributions from qualified retirement plans and IRAs. For example, the Plan Administrator may decide in its discretion whether to accept a Direct Rollover of a loan note from another qualified plan. Any conditions on Rollover Contributions must be applied uniformly to all Employees under the Plan.

**3.06** **Deductible Employee Contributions.** The Plan Administrator will not accept deductible employee contributions that are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate Account which will be nonforfeitable at all times. The Account will share in the gains and losses under the Plan in the same manner as described in Section 10.03(d). No part of the deductible voluntary contribution Account will be used to purchase life insurance. The Participant may withdraw any part of the deductible voluntary contribution Account by making a written application to the Plan Administrator.

- 3.07** **Allocation Conditions.** In order to receive an allocation of Employer Contributions and/or Matching Contributions, a Participant must satisfy any allocation conditions designated under the Adoption Agreement with respect to such contributions. If the Employer elects to apply a minimum service requirement for Employer Contributions and/or Matching Contributions, the Employer may elect to base such minimum service requirement on the basis of Hours of Service or on the basis of consecutive days of employment under the Elapsed Time method.
- (a) **Special rule for year of termination.** A last day employment condition automatically applies for any Plan Year in which the Plan is terminated, regardless of whether the Employer has elected to apply a last day employment condition under the Adoption Agreement. If there are unallocated forfeitures at the time of Plan termination, such forfeitures will be allocated to Participants under the Plan's procedures for allocating forfeitures.
- (b) **Service with Predecessor Employers.** To the extent provided by the Employer under AA §4-5, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the allocation conditions under this Section 3.07.
- 3.08** **Contribution of Property.** Subject to the consent of the Trustee, the Employer may make its contribution to the Plan in the form of property.

**SECTION 4**  
**SPECIAL RULES AFFECTING GOVERNMENTAL PLANS AND INDIAN TRIBAL GOVERNMENT PLANS**

**4.01** **Governmental Plan.** Provided the Plan is properly adopted by an entity that meets the requirements for establishing and maintaining a Governmental Plan under Code §414(d), this Plan is a qualified plan under Code §401(a).

- (a) **Governmental Plan exemptions.** As a Governmental Plan, this Plan is exempt from Title I of ERISA and certain qualification rules under Code §401(a), including:
- (1) The minimum age and service rules under Code §410(a) and the minimum coverage rules under Code §410(b).
  - (2) The minimum vesting requirements of Code §411, including minimum vesting schedules, consent requirements for plan distributions, and the anti-cutback rule under Code §411(d)(6).
  - (3) The nondiscrimination requirements under Code §§401(a)(4), 401(k) and 401(m).
  - (4) The top-heavy rules under Code §416.
  - (5) The joint and survivor annuity rules under Code §§401(a)(11) and 417.
  - (6) The requirements for protecting benefits pursuant to a plan merger or a transfer of plan assets and liabilities, as prescribed by Code §401(a)(12).
  - (7) The anti-assignment rule under Code §401(a)(13). However, the Code provisions relating to the taxability of benefits distributed pursuant to a Qualified Domestic Relations Order (QDRO) are applicable to benefits payable to an alternate payee under the QDRO. See Code §414(p)(11).
  - (8) The commencement of benefit requirements under Code §401(a)(14).
  - (9) The protections under Code §401(a)(19).
- (b) **Adoption Agreement elections.** An Employer's election of provisions similar to requirements applicable to plans covered under Title I of ERISA or to otherwise inapplicable qualification requirements under Code §401(a) will not affect the Plan's status as a Governmental Plan under Section 1.53. Provided the Employer is qualified to maintain a Governmental Plan, the Plan remains exempt from ERISA and certain Code requirements as a Governmental Plan.

**4.02** **Plan of Indian Tribal Government Treated as Governmental Plan.** A Plan established and maintained by:

- (a) an Indian Tribal Government, as defined in Code §7701(a)(40),
- (b) a subdivision of an Indian Tribal Government, determined in accordance with Code §7871(d), or
- (c) an agency or instrumentality of either subsection (a) or (b)

is treated as a Governmental Plan, provided the conditions in this Section 4.02 are satisfied.

To qualify as a Governmental Plan, the Plan must cover only Employees substantially all of whose services are in the performance of essential government functions, but not in the performance of commercial activities (whether or not essential government functions). The interpretation of these conditions, including the meaning of essential government function and commercial activities, is determined under applicable regulations. Provided the requirements of this Sections 4.02 are satisfied, the Plan may include a cash or deferred arrangement as provided under Code §401(k).

**4.03** **FICA Replacement Plan.** An Employee who satisfies the requirements as a Qualified Participant under subsection (b) will be exempt from FICA tax as provided under Code §3121(b)(7)(F) if the requirements under this Section 4.03 are satisfied. The Plan may be identified as a FICA Replacement Plan under AA §2-3(c).

- (a) **Minimum benefit requirement.** The Plan must provide a minimum retirement benefit as set forth under this subsection (a). For this purpose, the Plan satisfies the minimum retirement benefit requirement with respect to an Employee if allocations to the Employee's Account (without regard to any earnings allocated to the Employee's Account) are at least 7.5% of the Employee's Plan Compensation for service with the Employer. Matching Contributions by the Employer may be taken into account for this purpose.



**Governmental Volume Submitter Defined Contribution Plan**  
**Section 4 – Special Rules Affecting Governmental Plans and Indian Tribal Government Plans**

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- (1) **Definition of Plan Compensation.** The definition of Plan Compensation used in determining whether the minimum retirement benefit requirement under this subsection (a) is satisfied must be at least equal to the Employee's base pay, provided such designation is reasonable under all the facts and circumstances. Thus, the Employer may elect under AA §5-3 to exclude items such as overtime pay, bonuses, or fringe benefits. In addition, the Employer may elect under AA §5-3(1) to exclude any compensation in excess of the contribution base described in Code §3121(x) as of the beginning of the Plan Year.
- (2) **Reasonable rate of earnings.** An Employee's Account must be credited with a reasonable rate of earnings. This requirement is satisfied if Employees' Accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual earnings under the Plan.
- (3) **Employee Contributions.** Contributions from both the Employer and Employee may be used to make up the 7.5% allocation requirement under subsection (a). If the Plan only provides for Employee Contributions, the Plan will satisfy the minimum benefit requirement under subsection (a) if the total Employee Contributions are at least 7.5% of Plan Compensation.
- (b) **Qualified Participant.** An Employee is a Qualified Participant under the Plan with respect to the services performed on a given day if, on that day, the Employee has satisfied all conditions (other than vesting) for receiving an allocation under the Plan that meets the minimum retirement benefit requirement under subsection (a). An Employee will be a Qualified Participant on any day with respect to compensation earned during a period ending on that day and beginning on or after the beginning of the Plan Year, regardless of whether the allocations were made or accrued before the effective date of Code §3121(b)(7)(F).
- (1) **Part-Time, Seasonal and Temporary Employees.** A Part-Time, Seasonal, or Temporary Employee is not a Qualified Participant on a given day unless any benefit relied upon to meet the minimum benefit requirement under subsection (a) is 100% vested. A Part-Time, Seasonal or Temporary Employee's benefit is considered 100% vested on a given day if on that day the Employee is unconditionally entitled to a single-sum distribution on account of death or separation from service of an amount that is at least equal to 7.5% of Plan Compensation for all periods of service taken into account in determining whether the Employee's benefit meets the minimum retirement benefit requirement under subsection (a).
- (2) **Alternative lookback rule.** The Employer may elect to apply the alternative lookback rule described in Treas. Reg. §31.3121(b)(7)-2(d)(3) in determining whether an Employee is a Qualified Participant. Under the alternative lookback rule, an Employee may be treated as a Qualified Participant throughout a calendar year if the Employee is a Qualified Participant at the end of the Plan Year ending in the previous calendar year. For this purpose, if the alternative lookback rule is used, an Employee may be treated as a Qualified Participant on any given day during the first Plan Year of participation if it is reasonable on such day to believe that the Employee will be a Qualified Participant on the last day of such Plan Year.
- (c) **Special rule for short period.** An Employee may not be treated as a Qualified Participant if Plan Compensation for less than a full plan year or other 12-month period is regularly taken into account in determining allocations to the Employee's Account for the Plan Year unless, under all of the facts and circumstances, such arrangement is not a device to avoid the imposition of FICA taxes. For example, an arrangement under which Plan Compensation taken into account under AA §5-3 is limited to the contribution base described in section 3121(x)(1) is not considered a device to avoid FICA taxes by reason of such limitation.

SECTION 5  
LIMITS ON CONTRIBUTIONS

**5.01 Limits on Employer Contributions.** Any contributions the Employer makes under the Plan are subject to the limitations set forth in this Section 5.

- (a) **Limitation on total Employer Contributions.** All Employer Contributions the Employer makes under the Plan are subject to the Code §415 Limitation, as described in Section 5.02 below. For purposes of applying the Code §415 Limitation, Employer Contributions include any Employer Contributions, Matching Contributions, or Salary Deferrals made under the Plan. See the definition of Annual Additions under Section 5.02(c)(1) below.
- (b) **Limitation on Salary Deferrals.** If the Employer adopts the Grandfathered 401(k) Arrangement, any Salary Deferrals made under the Plan are subject to the Elective Deferral Dollar Limit, as described in Section 5.03 below.

**5.02 Code §415 Limitation.**

- (a) **No other plan participation.** If the Participant does not participate in, and has never participated in another qualified retirement plan, a welfare benefit fund (as defined under Code §419(e)), an individual medical account (as defined under Code §415(l)(2)), or a SEP (as defined under Code §408(k)) maintained by the Employer which provides an Annual Addition as defined in subsection (c)(1), then the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan.

If an Employer Contribution that would otherwise be contributed or allocated to a Participant's Account will cause that Participant's Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount to be contributed or allocated to such Participant will be reduced so that the Annual Additions allocated to such Participant's Account for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2013-12.

- (b) **Participation in another plan.** This subsection (b) applies if, in addition to this Plan, the Participant receives an Annual Addition during any Limitation Year from another Defined Contribution Plan, a welfare benefit fund (as defined under Code §419(e)), an individual medical account (as defined under Code §415(l)(2)), or a SEP (as defined under Code §408(k)) maintained by the Employer.
  - (1) **This Plan's Code §415 Limitation.** The Annual Additions that may be credited to a Participant's Account under this Plan for any Limitation Year will not exceed the Maximum Permissible Amount (defined in subsection (c)(6) below) reduced by the Annual Additions credited to a Participant's Account under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the Employer for the same Limitation Year.
  - (2) **Annual Additions reduction.** If the Annual Additions with respect to the Participant under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the Employer are less than the Maximum Permissible Amount and the Annual Additions that would otherwise be contributed or allocated to the Participant's Account under this Plan would exceed the Code §415 Limitation for the Limitation Year, the amount contributed or allocated will be reduced so that the Annual Additions under all such Plans and funds for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2013-12.
  - (3) **No Annual Additions permitted.** If the Annual Additions with respect to the Participant under such other Defined Contribution Plan(s), welfare benefit fund(s), individual medical account(s), or SEP(s) in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2013-12.

(c) **Definitions.**

- (1) **Annual Additions.** The amounts credited to a Participant's Account for the Limitation Year that are taken into account in applying the Code §415 Limitation, including:
- (i) Employer Contributions, including Matching Contributions and Salary Deferrals;
  - (ii) After-Tax Employee Contributions;
  - (iii) Forfeitures;
  - (iv) Amounts allocated to an individual medical account (as defined in Code §415(l)(2)), which is part of a pension or annuity plan maintained by the Employer;
  - (v) Amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the Employer ; and
  - (vi) Allocations under a SEP (as defined in Code §408(k)).

An Annual Addition is credited to a Participant's Account for a particular Limitation Year if such amount is allocated to the Participant's Account as of any date within that Limitation Year. An Annual Addition will not be deemed credited to a Participant's Account for a particular Limitation Year unless such amount is actually contributed to the Plan no later than 30 days after the time prescribed by law for filing the Employer's income tax return (including extensions) for the taxable year with or within which the Limitation Year ends. In the case of After-Tax Employee Contributions, such amount shall not be deemed credited to a Participant's Account for a particular Limitation Year unless the contributions are actually contributed to the Plan no later than 30 days after the close of that Limitation Year.

- (2) **Defined Contribution Dollar Limitation.** \$40,000, as adjusted under Code §415(d).
- (3) **Employer.** For purposes of this Section 5.02, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in §414(b) of the Code as modified by §415(h)), all commonly controlled trades or businesses (as defined in §414(c) of the Code as modified by §415(h)) or affiliated service groups (as defined in §414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under §414(o) of the Code.
- (4) **Excess Amount.** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.
- (5) **Limitation Year.** The Plan Year, unless the Employer elects another 12-consecutive month period under AA §11-2(a). If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. If the Plan has an initial Plan Year that is less than 12 months, the Limitation Year for such first Plan Year is the 12-month period ending on the last day of that Plan Year, unless otherwise specified in AA §11-2(a).

If an Employer has multiple Limitation Years (e.g., due to the maintenance of multiple Defined Contribution Plans by a group of Related Employers), and a Participant is credited with Annual Additions in only one Defined Contribution Plan, the Code §415 Limitation is applied only with respect to that Plan. If a Participant is credited with Annual Additions in more than one Defined Contribution Plan, each such Plan satisfies the Code §415 Limitation based on Annual Additions for the Limitation Year with respect to such plan, plus any amounts credited to the Participant's Account under all other plans required to be aggregated pursuant to Code §415(f).

- (6) **Maximum Permissible Amount.** For Limitation Years beginning on or after January 1, 2002, the maximum Annual Additions that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
- (i) the Defined Contribution Dollar Limitation, or
  - (ii) 100 percent of the Participant's Total Compensation for the Limitation Year.

The Total Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of Code §401(h) or §419A(f)(2)) which is otherwise treated as an Annual Addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

If a short Limitation Year is created because the Plan has an *initial* Plan Year that is less than 12 months, no proration of the Defined Contribution Dollar Limitation is required, unless provided otherwise under AA §11-2(d). (See subsection (5) above for the rule allowing the use of a full 12-month Limitation Year for the first year of the Plan, thereby avoiding the need to prorate the Defined Contribution Dollar Limitation.)

- (7) **Total Compensation.** The amount of compensation as defined under Section 1.89, subject to the Employer's election under AA §5-2.
- (i) **Self-Employed Individuals.** For a Self-Employed Individual, Total Compensation is such individual's Earned Income.
- (ii) **Total Compensation actually paid or made available.** For purposes of applying the limitations of this Section 5.02, Total Compensation for a Limitation Year is the Total Compensation actually paid or made available to an Employee during such Limitation Year. However, if elected in AA §5-4(c), the Employer may include in Total Compensation for a Limitation Year amounts earned but not paid in the Limitation Year because of the timing of pay periods and pay days, but only if:
- (A) the amounts are paid during the first few weeks of the next Limitation Year,
- (B) such amounts are included on a uniform and consistent basis with respect to all similarly-situated employees, and
- (C) no amounts are included in Total Compensation in more than one Limitation Year.
- (iii) **Disabled Participants.** Total Compensation does not include any imputed compensation for the period a Participant is Disabled. However, the Employer may elect under AA §11-2(b) to include under the definition of Total Compensation, the amount a terminated Participant who is permanently and totally Disabled (as defined in Section 1.28) would have received for the Limitation Year if the Participant had been paid at the rate of Total Compensation paid immediately before becoming permanently and totally Disabled. If the Employer elects under AA §11-2(b) to include imputed compensation for a Disabled Participant, a Disabled Participant will receive an allocation of any Employer Contribution the Employer makes to the Plan based on the Employee's imputed compensation for the Plan Year. Any Employer Contributions made to a Disabled Participant under this subsection (iii) are fully vested when made and will be made only to Non-Highly Compensated Employees. Any modifications made to the definition of Disabled (under AA §9-4(b)) will not apply to this section.
- (d) **Restorative payments.** Restorative payments are not considered Annual Additions for any Limitation Year. For this purpose, restorative payments are payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary for which there is a reasonable risk of liability under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments.
- (e) **Corrective provisions.** The Plan is amended to eliminate any specific correction methods for correcting excess annual additions. If the Plan is eligible for self-correction under Rev. Proc. 2013-12 (or successive guidance), the Employer may use reasonable correction methods (including the correction methods described in § 1.415-6(b)(6) of the 1981 IRS regulations) to the extent permitted under the IRS correction program.
- (f) **Change of Limitation Year.** Where there is a change of Limitation Year, a "short" Limitation Year exists for the period beginning with the first day of the Limitation Year and ending on the day before the change in Limitation Year is effective. For this purpose, if the Plan is terminated effective as of a date other than the last day of the Limitation Year, the Plan is treated as if it were amended to change its Limitation Year.

**5.03 Elective Deferral Dollar Limit.** The Elective Deferral Dollar Limit under this Section 5.03 applies with respect to Salary Deferrals under the Grandfathered 401(k) Arrangement. Under this Elective Deferral Dollar Limit, an Employee may not make Elective Deferrals under this Plan (and any other plan, contract or arrangement maintained by the Employer) during any calendar year in an amount that exceeds the Elective Deferral Dollar Limit in effect for the Participant's

taxable year beginning in such calendar year. Additional restrictions apply if a Participant participates in a plan maintained by an unrelated employer. (See subsection (b)(6) below.)

The Elective Deferral Dollar Limit is \$17,500 for taxable years beginning in 2013 and 2014. For taxable years beginning after 2014, the Elective Deferral Dollar Limit will be adjusted for cost-of-living increases under Code §402(g)(4). Any such adjustments will be in multiples of \$500.

If a Participant is aged 50 or over by the end of the taxable year, the Elective Deferral Dollar Limit is increased by the Catch-Up Contribution Limit (as defined in Section 3.02(c)(2)(iv)(A)). If the Plan does not provide for Catch-up Contributions, the Elective Deferral Dollar Limit is not increased by the Catch-Up Contribution Limit.

- (a) **Excess Deferrals.** Excess Deferrals are Elective Deferrals made during the Participant's taxable year that exceed the Elective Deferral Dollar Limit (as described above) for such year; counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer. (See subsection (b)(6) below for provisions that apply when a Participant makes Elective Deferrals to a plan of an unrelated Employer.)
- (b) **Correction of Excess Deferrals.** If a Participant makes Excess Deferrals (i.e., Elective Deferrals in excess of the Elective Deferral Dollar Limit) under this Plan and any other plan maintained by the Employer, such Excess Deferrals (plus allocable income or loss) shall be distributed to the Participant. A distribution of Excess Deferrals may be made at any time (subject to the correction provisions under the IRS voluntary correction program as described in Rev. Proc. 2013-12 or subsequent guidance). If the corrective distribution of Excess Deferrals is made by April 15 of the calendar year following the year the Excess Deferrals are made to the Plan, such amounts will be taxable in the year of deferral but not in the year of distribution. If a corrective distribution of Excess Deferrals is made after April 15 of the following calendar year, such amounts will be taxable in both the year of deferral and the year of distribution. See subsection (3) below.
- (1) **Amount of corrective distribution.** The amount to be distributed from this Plan as a correction of Excess Deferrals equals the amount of Elective Deferrals the Participant contributes during the taxable year to this Plan and any other plan maintained by the Employer in excess of the Elective Deferral Dollar Limit, reduced by any corrective distribution of Excess Deferrals the Participant receives during the calendar year from this Plan or other plan(s) maintained by the Employer. If a Participant has both a Pre Tax-Deferral Account and a Roth Deferral Account, the Participant may designate the extent to which the corrective distribution of Excess Deferrals is taken from the Pre-Tax Deferral Account or from the Roth Deferral Account under AA §6A-5. If a Participant does not designate the Account(s) from which the distribution will be made, the corrective distribution will be made first from the Participant's Pre-Tax Deferral Account.
- (2) **Allocable gain or loss.** A corrective distribution of Excess Deferrals must include any allocable gain or loss for the taxable year in which the Excess Deferrals are contributed to the Plan. The gain or loss allocable to Excess Deferrals may be determined in any reasonable manner, provided the manner used to determine allocable gain or loss is applied consistently for all Participants and in a manner that is reasonably reflective of the method used by the Plan for allocating income to Participants' Accounts. A corrective distribution of Excess Deferrals will not include any income or loss allocable to the period between the end of the taxable year and the date of distribution.
- (3) **Taxation of corrective distribution.** If a corrective distribution of Excess Deferrals is made by April 15 of the following calendar year, amounts attributable to the Excess Deferrals will be includible in the Participant's gross income in the taxable year in which such amounts are deferred under the Plan and amounts attributable to income or loss on the Excess Deferrals will be includible in gross income in the year of distribution. However, a corrective distribution of Excess Deferrals will not be included in gross income to the extent such distribution is comprised of Roth Deferrals. A Roth Deferral is treated as an Excess Deferral only to the extent that the total amount of Roth Deferrals for an individual exceeds the applicable limit for the taxable year or the Roth Deferrals are identified as Excess Deferrals and the individual receives a distribution of the Excess Deferrals and allocable income under this paragraph.

If a corrective distribution of Excess Deferrals is made after April 15, the amount of the corrective distribution attributable to Excess Deferrals will be includible in the Participant's gross income in both the taxable year in which such amounts are deferred under the Plan and the taxable year in which such amounts are distributed. (See Section 7.11(b)(2) for a discussion of the ordering rules for determining the Accounts from which the corrective distribution is made where a Participant has both a Pre-Tax Deferral Account and a Roth Deferral Account.)

If a corrective distribution of Excess Deferrals made after April 15 of the following calendar year apply to Excess Deferrals that are Roth Deferrals, such amounts are includible in gross income (without adjustment for

any return of investment in the contract under Code §72(e)(8)). In addition, such distribution cannot be a “qualified distribution” as described in Code §402A(d)(2) and is not an Eligible Rollover Distributions (within the meaning of Code §402(c)(4)). For this purpose, if a Roth Deferral account includes any Excess Deferrals, any distributions from the Roth Deferral account are treated as attributable to those Excess Deferrals until the total amount distributed from the Roth Deferral account equals the total of such Excess Deferrals and attributable income.

- (4) **Coordination with other provisions.** A corrective distribution of Excess Deferrals made by April 15 of the following calendar year may be made without consent of the Participant or the Participant’s Spouse, and without regard to any distribution restrictions applicable under Section 7. A corrective distribution of Excess Deferrals made by the appropriate April 15 also is not treated as a distribution for purposes of applying the required minimum distribution rules under Section 8.
- (5) **Suspension of Salary Deferrals.** If a Participant’s Salary Deferrals under this Plan, in combination with any Elective Deferrals the Participant makes during the calendar year under any other plan maintained by the Employer, equal or exceed the Elective Deferral Dollar Limit, the Employer may suspend the Participant’s Salary Deferrals under this Plan for the remainder of the calendar year without the Participant’s consent.
- (6) **Correction of Excess Deferrals under plans not maintained by the Employer.** The correction provisions under this subsection (b) apply only if a Participant makes Excess Deferrals under this Plan (or under this Plan and other plans maintained by the Employer). However, if a Participant has Excess Deferrals for a calendar year on account of making Elective Deferrals to a plan of an unrelated employer, the Participant may assign to this Plan any portion of his/her Elective Deferrals made under all plans during the calendar year to the extent such Elective Deferrals exceed the Elective Deferral Dollar Limit. The Participant must notify the Plan Administrator in writing on or before March 1 of the following calendar year of the amount of the Excess Deferrals to be assigned to this Plan. If any Roth Deferrals were made to a plan, the notification must also identify the extent to which, if any, the Excess Deferrals are comprised of Roth Deferrals.

Upon receipt of a timely notification, the Excess Deferrals assigned to this Plan will be distributed (along with any allocable income or loss) to the Participant in accordance with the corrective distribution provisions under this subsection (b). A Participant is deemed to notify the Plan Administrator of Excess Deferrals (including any portion of Excess Deferrals that are comprised of Roth Deferrals) to the extent such Excess Deferrals arise only under this Plan and any other plan maintained by the Employer.

**SECTION 6  
PARTICIPANT VESTING AND FORFEITURES**

- 6.01 Vesting of Contributions.** A Participant's vested interest in his/her Employer Contribution Account and Matching Contribution Account is determined based on the vesting schedule elected in AA §8. A Participant is always fully vested in his/her Employer Pick-Up Contribution Account, Salary Deferral Account, After-Tax Employee Contribution Account, and Rollover Contribution Account.
- 6.02 Vesting Schedules.** A Participant's vested interest in his/her Employer Contribution Account and/or Matching Contribution Account is determined by multiplying the Participant's vesting percentage (determined under the applicable vesting schedule selected in AA §8) by the total amount under the applicable Account.
- (a) **Full and immediate vesting schedule.** Under the full and immediate vesting schedule, the Participant is always 100% vested in his/her Account Balance.
- (b) **6-year graded vesting schedule.** Under the 6-year graded vesting schedule, an Employee vests in his/her Employer Contribution Account and/or Matching Contribution Account in the following manner:
- After 2 Years of Service – 20% vesting  
After 3 Years of Service – 40% vesting  
After 4 Years of Service – 60% vesting  
After 5 Years of Service – 80% vesting  
After 6 Years of Service – 100% vesting
- (c) **3-year cliff vesting schedule.** Under the 3-year cliff vesting schedule, an Employee is 100% vested after 3 Years of Service. Prior to the third Year of Service, the vesting percentage is zero.
- (d) **Modified vesting schedule.** Under the modified vesting schedule, the Employer may designate the vesting percentage that applies for each Year of Service.
- 6.03 Special vesting rules.**
- (a) **Normal Retirement Age.** Unless designated otherwise under AA §8-2(b), regardless of the Plan's vesting schedule, an Employee's right to his/her Account Balance is fully vested upon the date he/she attains Normal Retirement Age (as defined in AA §7-1), provided the Employee is still employed at such time.
- (b) **100% vesting upon death, disability, or Early Retirement Age.** The Employer may elect under AA §8-4 to allow a Participant's vesting percentage to automatically increase to 100% if the Participant dies, becomes Disabled, and/or attains Early Retirement Age while employed by the Employer.
- (c) **Vesting upon merger, consolidation or transfer.** No accelerated vesting will be required solely because a Defined Contribution Plan is merged with another Defined Contribution Plan, or because assets are transferred from a Defined Contribution Plan to another Defined Contribution Plan.
- (d) **Vesting schedules applicable to prior contributions.** If the Plan holds Employer Contributions and/or Matching Contributions that are subject to vesting, but the Plan no longer provides for such contributions, the Plan will continue to apply the vesting schedule applicable to those contributions as determined under the prior Plan document. See Section 6.11(e) for the rules applicable to forfeitures of such prior contributions. The Employer may document any prior vesting schedule in AA §A-7.
- 6.04 Year of Service.** An Employee's position on the vesting schedule is dependent on the Employee's Years of Service with the Employer. Generally, an Employee will earn a vesting Year of Service for each Vesting Computation Period (as defined in Section 6.05) during which the Employee completes at least 1,000 Hours of Service (or the Hours of Service designated under AA §8-5(a)). Alternatively, the Employer may elect to calculate Years of Service using the Elapsed Time method (as defined in subsection (b) below).
- (a) **Hours of Service.** Unless the Employer elects to use the Elapsed Time method under AA §8-5(c), vesting Years of Service will be determined based on an Employee's Hours of Service earned during the Vesting Computation Period.
- (1) **Actual Hours of Service.** In determining an Employee's vesting Years of Service, the Employer will credit an Employee with the actual Hours of Service earned during the Vesting Computation Period, unless the Employer elects under AA §8-5(d) to determine Hours of Service using the Equivalency Method.

- (2) **Equivalency Method.** Instead of counting actual Hours of Service in applying the Plan’s vesting schedules, the Employer may elect under AA §8-5(d) to determine Hours of Service based on the Equivalency Method. Under the Equivalency Method, an Employee receives credit for a specified number of Hours of Service based on the period worked with the Employer.
- (i) **Monthly.** Under the monthly Equivalency Method, an Employee is credited with 190 Hours of Service for each calendar month during which the Employee completes at least one Hour of Service with the Employer.
  - (ii) **Daily.** Under the daily Equivalency Method, an Employee is credited with 10 Hours of Service for each day during which the Employee completes at least one Hour of Service with the Employer.
  - (iii) **Weekly.** Under the weekly Equivalency Method, an Employee is credited with 45 Hours of Service for each week during which the Employee completes at least one Hour of Service with the Employer.
  - (iv) **Semi-monthly.** Under the semi-monthly Equivalency Method, an Employee is credited with 95 Hours of Service for each semi-monthly period during which the Employee completes at least one Hour of Service with the Employer.
- (3) **Employee need not be employed for entire Vesting Computation Period.** Unless provided otherwise under AA §8-5(e), if an Employee completes the required Hours of Service during a Vesting Computation Period, the Employee will receive credit for a Year of Service as of the end of such Vesting Computation Period, even if the Employee is not employed for the entire Vesting Computation Period.
- (b) **Elapsed Time method.** Instead of using Hours of Service in applying the Plan’s vesting schedules, the Employer may elect under AA §8-5(c) to apply the Elapsed Time method for calculating an Employee’s vesting service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee terminates employment with the Employer. If an Employee’s aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

In calculating an Employee’s aggregate period of service, the Employer may credit an Employee with service for any Period of Severance that lasts less than 12 consecutive months. For this purpose, a Period of Severance is any continuous period of time during which the Employee is not employed by the Employer. A Period of Severance begins on the date the Employee retires, quits or is discharged, or if earlier, the 12-month anniversary of the date on which the Employee is first absent from service for a reason other than retirement, quit or discharge. In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence:

- (1) by reason of the pregnancy of the Employee,
- (2) by reason of the birth of a child of the Employee,
- (3) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or
- (4) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

For purposes of applying the Elapsed Time method, unless otherwise provided, service will be credited for employment with any Related Employer.

- 6.05 Vesting Computation Period.** Generally, the Vesting Computation Period is the Plan Year. Alternatively, the Employer may elect under AA §8-5(b) to use the 12-month period commencing on the Employee’s date of hire (or reemployment date, if applicable) and each subsequent 12-month period commencing on the anniversary of such date or the Employer may elect to use any other 12-consecutive month period as the Vesting Computation Period.
- 6.06 Excluded service.** Generally, all service with the Employer counts for purposes of applying the Plan’s vesting schedules. However, the Employer may elect under AA §8-3 to exclude certain service with the Employer in calculating an Employee’s vesting Years of Service.



- (a) **Service before the Effective Date of the Plan.** The Employer may elect under AA §8-3(b) to exclude service earned during any period prior to the date the Employer established the Plan or a Predecessor Plan. For this purpose, a Predecessor Plan is a qualified plan maintained by the Employer that is terminated within the 5-year period immediately preceding or following the establishment of this Plan. A Participant's service under a Predecessor Plan must be counted for purposes of determining the Participant's vested percentage under this Plan.
- (b) **Service before a specified age.** The Employer may elect under AA §8-3(c) to exclude service before an Employee attains a specified age. An Employee will be credited with a Year of Service for the Vesting Computation Period during which the Employee attains the required age, provided the Employee satisfies all other conditions required for a Year of Service.
- 6.07 Service with Predecessor Employers.** To the extent provided, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the provisions of this Plan.
- 6.08 Break in Service Rules.** In addition to any service excluded under Section 6.06, the Employer may elect under AA §8-6 to disregard an Employee's vesting service with the Employer earned prior to a Break in Service. For this purpose, an Employee incurs a Break in Service for any Vesting Computation Period (as defined in Section 6.05) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects to require less than 1,000 Hours of Service to earn a vesting Year of Service, a Break in Service will occur for any Vesting Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn a vesting Year of Service.
- 6.09 Special Vesting Rule - In-Service Distribution When Account Balance is Less than 100% Vested.** If amounts are distributed from a Participant's Employer Contribution Account or Matching Contribution Account at a time when the Participant's vested percentage in such amounts is less than 100% and the Participant may increase the vested percentage in the Account Balance:
- (a) A separate Account will be established for the Participant's interest in the Plan as of the time of the distribution, and
- (b) At any relevant time the Participant's vested portion of the separate Account will be equal to an amount ("X") determined by the formula:
- $$X = P (AB + D) - D$$
- Where:
- P is the vested percentage at the relevant time;
- AB is the Account Balance at the relevant time; and
- D is the amount of the distribution.
- 6.10 Forfeiture of Benefits.** A Participant will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account upon the occurrence of any of the events described below or at any such time as the Plan Administrator determines. The Plan Administrator has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited pursuant to this Section 6.10, a Participant's entire Account must remain in the Plan and continue to share in gains and losses of the Trust. A Participant will not forfeit any of his/her nonvested Account until the occurrence of one of the following events.
- (a) **Cash-Out Distribution.** Following termination of employment, a Participant may receive a total distribution of his/her vested benefit under the Plan (a Cash-Out Distribution) in accordance with the distribution provisions under Section 7. If a Participant receives a Cash-Out Distribution upon termination of employment, the Participant's nonvested benefit under the Plan will be forfeited in accordance with subsection (1) below. If at the time of termination, a Participant is totally nonvested in his/her entire Account Balance, the Participant will be deemed to receive a total Cash-Out Distribution of his/her entire vested Account Balance (i.e., a deemed Cash-Out Distribution of zero dollars) as of the date of termination, subject to the forfeiture provisions under subsection (1) below.
- A Cash-Out Distribution does not occur until such time as the Participant receives a distribution of his/her entire vested Account Balance, including amounts attributable to Salary Deferrals. If a Participant receives a distribution of less than the entire vested portion of his/her Account Balance (including any additional amounts to be allocated under subsection (1)(ii) below), the Participant will not be treated as receiving a Cash-Out Distribution until such time as the Participant receives a distribution of the remainder of the vested portion of his/her Account Balance.

- (1) **Timing of forfeiture.** Unless elected otherwise under AA §8-8(b), if a Participant receives a Cash-Out Distribution of his/her vested Account Balance (as defined in subsection (a) above), the Participant will immediately forfeit the nonvested portion of such Account Balance, as of the date of the distribution or deemed distribution (as determined under subsection (i) or (ii) below, whichever applies). (See Section 6.11 below for a discussion of the treatment of forfeitures under the Plan.)
- (i) **No further allocations.** For purposes of applying the Cash-Out Distribution rules, a terminated Participant who receives a total distribution of his/her vested Account Balance will be treated as receiving the Cash-Out Distribution as of the date the Participant receives such distribution (or in the case of a deemed Cash-Out Distribution (as described in subsection (a) above) as of the date the Participant terminates employment), provided the Participant is not entitled to any further allocations under the Plan for the Plan Year in which the Participant terminates employment. The Participant will forfeit his/her nonvested benefit as of the date the Participant receives the Cash-Out Distribution, in accordance with the provisions under Section 6.11.
- (ii) **Additional allocations.** For purposes of applying the Cash-Out Distribution rules, if upon termination of employment, a Participant is entitled to an additional allocation for the Plan Year in which the Participant terminates, such Participant will not be deemed to receive a Cash-Out Distribution until such time as the Participant receives a distribution of his/her entire vested Account Balance, including any amounts that are still to be allocated under the Plan. Thus, a terminated Participant who is entitled to an additional allocation (e.g., an additional Employer Contribution) for the Plan Year of termination will not be deemed to have a total Cash-Out Distribution until the Participant receives a distribution of such additional amounts. In the case of a deemed Cash-Out Distribution (as described in subsection (a) above), if the Participant is entitled to an additional allocation under the Plan for the Plan Year in which the Participant terminates employment, the deemed Cash-Out Distribution is deemed to occur on the first day of the Plan Year following the Plan Year in which the termination occurs, provided the Participant is still totally nonvested in his/her Account Balance.
- (iii) **Modification of Cash-Out Distribution rules.** The Employer may elect under AA §8-8(a) to modify the Cash-Out Distribution provision under subsection (ii) above to provide that the Cash-Out Distribution and related forfeiture occur immediately upon distribution (or deemed distribution) of the terminated Participant's vested Account Balance, without regard to whether the Participant is entitled to an additional allocation under the Plan.
- (b) **Five-Year Forfeiture Break in Service.** If a Participant has five (5) consecutive one-year Breaks in Service (a Five-Year Forfeiture Break in Service), all Years of Service after such Breaks in Service will be disregarded for the purpose of vesting in the portion of the Participant's Employer Contribution Account and/or Matching Contribution Account that accrued before such Breaks in Service. A Participant who incurs a Five-Year Forfeiture Break in Service will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account as of the end of the Vesting Computation Period in which the Participant incurs the fifth consecutive Break in Service. Except as provided under Section 6.08, a Participant who is rehired after incurring a Five-Year Forfeiture Break in Service will be credited with both pre-break and post-break service for purposes of determining his/her vested percentage in amounts that accrue under the Plan after the Five Year Forfeiture Break in Service.
- (c) **Missing Participant or Beneficiary.** If a Participant or Beneficiary cannot be located within a reasonable period following a reasonable diligent search, the missing Participant's or Beneficiary's Account may be forfeited, as provided in subsection (2) below. An Employer will be deemed to have performed a reasonable diligent search if it performs the actions described in subsection (1) below. In determining whether a reasonable period has elapsed following a reasonable diligent search, the Employer or Plan Administrator may follow any applicable guidance provided under statute, regulation, or other IRS or DOL guidance of general applicability. However, the Employer or Plan Administrator will be deemed to have waited a reasonable period following a reasonable diligent search if the Employer or Plan Administrator waits at least 6 months following the completion of the actions described in subsection (1) below.
- (1) **Reasonable diligent search.** The Employer or Plan Administrator will be deemed to have performed a reasonable diligent search if it performs the following actions:
- (i) Send a certified letter to the Participant's or Beneficiary's last known address.
- (ii) Check related plan records of the Employer (e.g., health plan records) to determine if a more current address exists for the Participant or Beneficiary.

- (iii) If the Participant cannot be located, the Employer or Plan Administrator may attempt to identify and contact any individual that the Participant has designated as a Beneficiary under the Plan for updated information concerning the location of the missing Participant.
  - (iv) Utilize the Social Security Administration (SSA) letter-forwarding service for locating lost participants. Additional information regarding the SSA letter forwarding program can be located at [www.ssa.gov](http://www.ssa.gov).)
  - (v) In addition to the search methods discussed above, the Employer or Plan Administrator may use other search methods, including the use of Internet search tools, commercial locator services, and credit reporting agencies to locate the missing Participant.
- (2) **Forfeiture of Account of missing Participant or Beneficiary.** If a Participant or Beneficiary is deemed to be missing (as described in this subsection (c)), the Plan Administrator may forfeit the distributable amount attributable to such missing Participant or Beneficiary, as permitted under applicable laws and regulations. If, after an amount is forfeited under this subsection (2), the missing Participant or Beneficiary is located, the Plan will restore the forfeited amount (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time. However, if a missing Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable amount will be irrevocable.
- (3) **Expenses attributable to search for missing Participant.** Reasonable expenses attendant to locating a missing Participant may be charged to such Participant's Account, provided that the amount of such expenses is reasonable. The Plan Administrator may take into account the size of a Participant's Account in relation to the cost of the search when deciding how extensive a search is required before declaring such Participant as missing under subsection (c).
- (d) **Excess Deferrals.** If a Participant receives a distribution of Excess Deferrals, the portion of his/her Matching Contribution Account (whether vested or not) which is attributable to such distributed amounts will be forfeited. A forfeiture of Matching Contributions under this subsection (d) occurs in the Plan Year in which the Participant receives the distribution of Excess Deferrals.

**6.11 Allocation of Forfeitures.** The Employer may elect in AA §8-7 how it wishes to allocate forfeitures under the Plan. Forfeitures may be used in the Plan Year in which the forfeitures occur or in the Plan Year following the Plan Year in which the forfeitures occur. In applying the forfeiture provisions under the Plan, if there are any unused forfeitures as of the end of the Plan Year designated in AA §8-7(d) or (e), as applicable, any remaining forfeiture will be used (as designated in AA §8-7) in the immediately following Plan Year. The Employer may elect under AA §8-7 to allocate forfeitures in any manner permitted under this Section 6.11.

- (a) **Reallocation as additional contributions under Profit Sharing Plan Adoption Agreement.** The Employer may elect in AA §8-7 to reallocate forfeitures as additional contributions under the Plan. If the Employer elects under the Profit Sharing Plan Adoption Agreement to reallocate forfeitures as additional contributions, the Employer may allocate such amounts as additional Employer Contributions and/or additional Matching Contributions. If the forfeitures allocated under this subsection (a) relate to discretionary contributions, such amounts may be allocated in the same manner as selected under AA §6-3 with respect to the contribution type being allocated. If the forfeitures relate to fixed contributions, such amounts may be allocated in addition to such fixed contributions in the ratio that the Plan Compensation of each Participant bears to the Plan Compensation of all Participants. In allocating forfeitures under this subsection (a), the Employer may take into account any limits under AA §6B-4 in determining the amount of forfeitures to be allocated as additional Matching Contributions. In applying the provisions of this subsection (a), no allocation of forfeitures will be made to any Participant with respect to forfeitures that arise out of his/her own Account. A Participant may share in any additional forfeitures to the extent the Participant is eligible to receive an allocation of such forfeitures under AA §8-6.
- (b) **Reallocation as additional Employer Contributions under Money Purchase Plan Adoption Agreement.** The Employer may elect in AA §8-7 to reallocate forfeitures as additional Employer Contributions under the Plan. If the Employer elects under the Money Purchase Plan Adoption Agreement to reallocate forfeitures as additional Employer Contributions, such amounts will be allocated in the ratio that the Plan Compensation of each Participant bears to the Plan Compensation of all Participants. In applying the provisions of this subsection (b), no allocation of forfeitures will be made to any Participant with respect to forfeitures that arise out of his/her own Account.
- (c) **Reduction of contributions.** The Employer may elect in AA §8-7 to use forfeitures to reduce Employer Contributions and/or Matching Contributions under the Plan. If the Employer elects to use forfeitures to reduce contributions, the Employer may, in its discretion, use such forfeitures to reduce Employer Contributions, Matching Contributions, or both. The Employer may adjust its contribution deposits in any manner, provided the total Employer Contributions and/or Matching Contributions made for the Plan Year properly take into account the forfeitures that are to be used to

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reduce such contributions for that Plan Year. If contributions are allocated over multiple allocation periods, the Employer may reduce its contribution for any allocation periods within the Plan Year in which the forfeitures are to be allocated so that the total amount allocated for the Plan Year is proper. If the Plan provides for a discretionary Employer or Matching Contribution and the Employer elects not to make an Employer or Matching Contribution for the Plan Year, any forfeitures will be allocated to eligible Participants as an additional Employer or Matching Contribution, as provided under subsection (a) above.

- (d) **Payment of Plan expenses.** The Employer may elect under AA §8-7 to use forfeitures to pay Plan expenses for the Plan Year in which the forfeitures would otherwise be applied. If any forfeitures remain after the payment of Plan expenses under this subsection, the remaining forfeitures will be allocated as selected under AA §8-7. This subsection (d) only applies to the extent Plan expenses are paid by the Plan. Nothing herein affects the ability of the Employer to pay Plan expenses, as authorized under Section 11.04(a). In determining the Plan expenses that may be offset by Plan forfeitures, the Employer may use any reasonable method to determine the Plan expenses attributable to a particular year. In addition, the Employer may elect to use forfeitures first to reduce Employer and/or Matching Contributions or as an additional allocation (as set forth in AA §8-7) prior to using forfeitures to pay Plan expenses.
- (e) **Forfeiture rules for other contribution types.**
- (1) **Prior Employer and/or Matching Contributions.** If the Plan maintains Employer Contribution and/or Matching Contribution Accounts, but the Plan no longer provides for such contributions, such amounts will continue to vest under the vesting schedule applicable to such contributions under the prior Plan or under any vesting schedule designated under Appendix A of the Adoption Agreement. If there are any forfeitures related to such prior contributions, such amounts may be reallocated as an additional Employer Contribution or as an additional Matching Contribution in accordance with the provisions of subsection (a) or (b), to the extent such contributions are authorized under the Plan, or may be used to reduce any Employer Contribution or Matching Contribution, consistent with the provisions of subsection (c) above. If the Plan does not provide for either Employer Contributions or Matching Contributions, the Employer may reallocate forfeitures of prior contributions as an Employer Contribution (using the pro rata allocation formula) or as a discretionary Matching Contribution under the Profit Sharing Plan Adoption Agreement, as applicable, or as a fixed contribution under the Money Purchase Plan Adoption Agreement. Alternatively, the Employer may use such forfeitures to pay Plan expenses as authorized under subsection (d). The Employer may elect to use such forfeitures in the Plan Year the forfeiture occurs or in the following Plan Year.
- (2) **Other contributions.** If a Participant has any other amounts under the Plan which are treated as forfeited (e.g. a forfeiture for a missing Participant under Section 6.10(c)), and no selections are made under AA §8-7 regarding the treatment of forfeitures under the Plan, such amounts may be forfeited in accordance with any of the forfeiture options described in this Section 6.11.

SECTION 7  
PLAN DISTRIBUTIONS

A Participant may receive a distribution of his/her vested Account Balance at the time and in the manner provided under this Section 7. Upon reaching the Required Beginning Date (defined in Section 8.05(e)), a Participant must begin receiving distributions under the Plan (in accordance with the provisions of Section 8.)

**7.01 Available Forms of Distribution.** The Employer may elect under AA §9-1 the forms of distribution that are available to a Participant or Beneficiary under the Plan. Different distribution options may apply depending on whether a distribution is made upon termination of employment, death, disability or as an in-service withdrawal. Available distribution options under AA §9-1 may include a lump sum of all or a portion of the Participant's vested Account Balance, installments, annuity payments, or any other form designated in AA §9-1. In addition, distribution options may be available as provided under a guaranteed income product to the extent such distribution options are consistent with qualification requirements applicable to such distributions. Any distribution options selected under the Plan must comply with the required minimum distribution rules under Section 8.

If the Plan provides for installment payments as an optional form of distribution, such payments may be made in monthly, quarterly, semi-annual, or annual payments over a period not exceeding the life expectancy of the Participant and his/her designated Beneficiary. The Plan Administrator may permit a Participant or Beneficiary to accelerate the payment of all, or any portion, of an installment distribution. If the Plan provides for annuity payments, the Plan must purchase an annuity that provides for payments over a period that does not extend beyond either the life of the Participant (or the lives of the Participant and his/her designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and his/her designated Beneficiary). (The availability of installments and or annuity payments may be restricted under AA §9-1(e).)

**7.02 Amount Eligible for Distribution.** For purposes of determining the amount a Participant or Beneficiary may receive as a distribution from the Plan, a Participant's Account Balance is determined as of the Valuation Date (as specified in AA §11-1) immediately preceding the date the Participant or Beneficiary receives his/her distribution from the Plan. For this purpose, the Account Balance must be increased for any contributions allocated to the Participant's Account since the most recent Valuation Date and must be reduced for any distributions made from the Participant's Account since the most recent Valuation Date. A Participant or Beneficiary does not share in any allocation of gains or losses attributable to the period between the most recent Valuation Date and the date of the distribution, unless provided otherwise under uniform funding and valuation procedures established by the Plan Administrator. See Section 10.03.

**7.03 Participant Consent.** To the extent elected under AA §9-2, if the value of a Participant's entire vested Account Balance exceeds the Involuntary Cash-Out threshold (as defined in subsection (a) below), the Participant must consent to any distribution of such Account Balance prior to his/her Required Beginning Date (as defined in Section 8.05(e)) or, if so provided in AA §9-2(a)(3), as of the date the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62. A failure by the Participant (and Spouse, if applicable) to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

(a) **Involuntary Cash-Out threshold.** For purposes of determining whether a distribution is subject to the Participant consent requirements as described in Section 7.03, the Involuntary Cash-Out threshold is \$5,000 unless a different amount is designated under AA §9-2(a). (See Section 7.05 for a discussion of the Automatic Rollover rules that apply if a Participant does not consent to a distribution that is otherwise available without Participant consent.) For purposes of determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, the value of the Participant's vested Account Balance shall be determined without regard to that portion of the Account Balance that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Code §§402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16). The Employer may elect in AA §9-2(a)(4) to include Rollover Contributions (and earnings allocable thereto) in determining whether the Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold.

(b) **Participant notice.** If a distribution is subject to Participant consent, the Participant must consent in writing to the distribution within a reasonable period prior to the Annuity Starting Date (as defined in Section 1.09). For this purpose, any consent made within the 180-day period ending on the Annuity Starting Date will be deemed to be made within a reasonable period. If the distribution is subject to spousal consent under AA §9-2(b), the Participant's Spouse also must consent to the distribution in accordance with Section 9.02.

Prior to receiving a distribution from the Plan, a Participant must be notified of his/her right to defer any distribution from the Plan. The notification shall include a general description of the material features and the relative values of the optional forms of benefit available under the Plan (consistent with the requirements under Code §417(a)(3)). Effective for Plan Years beginning on or after January 1, 2007, the Participant notice must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution. The notice must be provided no less than 30 days and no more than 180 days prior to the Participant's Annuity Starting Date. However, distribution may

commence less than 30 days after the notice is given, if the Participant is clearly informed of his/her right to take 30 days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects to receive the distribution prior to the expiration of the 30-day minimum period. The notice requirements described in this paragraph may be satisfied by providing a summary of the required information, so long as the conditions described in applicable regulations for the provision of such a summary are satisfied, and the full notice is also provided (without regard to the 180-day period described in this subsection).

- (c) **Special rules.** The consent rules under this Section 7.03 apply to distributions made after the Participant's termination of employment and to distributions made prior to the Participant's termination of employment. However, the consent of the Participant (and the Participant's Spouse, if applicable) shall not be required to the extent that a distribution is required to satisfy the required minimum distribution rules under Section 8 or to satisfy the requirements of Code §415, as described in Section 5.02. A Participant also will not be required to consent to a corrective distribution of Excess Deferrals.

**7.04 Direct Rollovers.** Notwithstanding any provision in the Plan to the contrary, a Participant may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a Direct Rollover. If an Eligible Rollover Distribution is less than \$500, the Participant may not elect a Direct Rollover of only a portion of such distribution (i.e., a Participant must elect a complete Direct Rollover if the Eligible Rollover Distribution is less than \$500). For purposes of this Section 7.04, a Participant includes a Participant or former Participant. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving Spouse or to a Participant's Spouse or former Spouse who is the Alternate Payee under a QDRO, as defined in Section 1.76. For distributions made on or after January 1, 2007, this Section 7.04 also applies to distributions made to a Participant's non-Spouse beneficiary, as set forth in subsection (c) below.

(a) **Definitions.**

- (1) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's Account Balance, except an Eligible Rollover Distribution does not include:
- (i) 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 Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Beneficiary, or for a specified period of ten years or more;
  - (ii) any distribution to the extent such distribution is a required minimum distribution under Code §401(a)(9), as described under Section 8;
  - (iii) any Hardship distribution, as described in Section 7.10(e);
  - (iv) 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);
  - (v) any distribution if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than \$200;
  - (vi) a distribution made to satisfy the requirements of Code §415 (as described in Section 5.02) or a distribution to correct Excess Deferrals.
- (2) **Eligible Retirement Plan.** For purposes of applying the Direct Rollover provisions under this Section 7.04, an Eligible Retirement Plan is:
- (i) a qualified plan described in Code §401(a);
  - (ii) an individual retirement account described in Code §408(a);
  - (iii) an individual retirement annuity described in Code §408(b);
  - (iv) an annuity plan described in Code §403(a);
  - (v) an annuity contract described in Code §403(b); or

- (vi) an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan

The definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a QDRO.

To the extent any portion of an Eligible Rollover Distribution is attributable to Roth Deferrals (as defined in Section 3.02(c)(2)(v)), an Eligible Retirement Plan with respect to such portion of the distribution shall include only another designated Roth account of the Participant or a Roth IRA. To the extent any portion of an Eligible Rollover Distribution is attributable to After-Tax Employee Contributions, an Eligible Retirement Plan with respect to such portion of the distribution shall include only an individual retirement account or annuity described in Code §408(a) or (b) or a qualified Defined Contribution Plan described in Code §401(a) or §403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

- (3) **Direct Rollover.** A Direct Rollover is a payment made directly from the Plan to the Eligible Retirement Plan specified by the Participant. The Plan Administrator may develop reasonable procedures for accommodating Direct Rollover requests.
- (b) **Direct Rollover notice.** A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of his/her right to a Direct Rollover, the tax consequences of not making a Direct Rollover, and, if applicable, any available special income tax elections. The notice must be provided within 30 –180 days prior to the Participant's Annuity Starting Date in the same manner as described in Section 7.03(b). The Direct Rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

If a Participant terminates employment and is eligible for a distribution which is not subject to Participant consent, and the Participant does not respond to the Direct Rollover notice indicating whether a Direct Rollover is desired and the name of the Eligible Retirement Plan to which the Direct Rollover is to be made, the Plan Administrator may distribute the Participant's entire vested Account Balance in the form of an Automatic Rollover (pursuant to Section 7.05) . If a distribution would qualify for Automatic Rollover, the Direct Rollover notice must describe the procedures for making an Automatic Rollover, including the name, address, and telephone number of the IRA trustee and information regarding IRA maintenance and withdrawal fees and how the IRA funds will be invested. The Direct Rollover notice also must describe the timing of the Automatic Rollover and the Participant's ability to affirmatively opt out of the Automatic Rollover.

- (c) **Direct Rollover by non-Spouse beneficiary.** Effective for Plan Years beginning after December 31, 2009, the Plan must permit a non-Spouse beneficiary (as defined in Code §401(a)(9)(E)) to make a direct rollover of an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). A non-Spouse rollover made after December 31, 2009 will be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements under Code §3405(c).
- (d) **Direct Rollover of non-taxable amounts.** Notwithstanding any other provision of the Plan, effective for taxable years beginning on or after January 1, 2007, an Eligible Rollover Distribution may include the portion of any distribution that is not includible in gross income. For this purpose, an Eligible Retirement Plan includes a Defined Contribution or Defined Benefit Plan qualified under Code §401(a) and a tax-sheltered annuity plan under Code §403(b), provided the rollover is accomplished through a direct rollover and the recipient Eligible Retirement Plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.
- (e) **Rollovers to Roth IRA.** For distributions occurring on or after January 1, 2008, a Participant or beneficiary (including a non-spousal beneficiary to the extent permitted under subsection (c) above), may rollover an Eligible Rollover Distribution (as defined in subsection (a)(1)) to a Roth IRA, provided the Participant (or beneficiary) satisfies the requirements for making a Roth contribution under Code §408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code §408A(d)(3)(A)). For purposes of this subsection (e), the Plan Administrator is not responsible for assuring the Participant (or beneficiary) is eligible to make a rollover to a Roth IRA.

- 7.05** **Automatic Rollover.** The Automatic Rollover rules in this Section 7.05 are effective for distributions made on or after the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006.
- (a) **Automatic Rollover requirements.** If a Participant is entitled to an Involuntary Cash-Out Distribution (as defined in subsection (b)), and the Participant does not elect to receive a distribution of such amount (either as a Direct Rollover to an Eligible Retirement Plan or as a direct distribution to the Participant), then the Plan Administrator may pay the distribution in a Direct Rollover to an individual retirement plan (IRA) designated by the Plan Administrator. (The Automatic Rollover provisions under this subsection (a) apply to any Involuntary Cash-Out Distribution for which the Participant fails to consent to a distribution, without regard to whether the Participant can be located. See Section 6.10(c) for alternatives if the Participant cannot be located after a reasonable diligent search.)
  - (b) **Involuntary Cash-Out Distribution.** An Involuntary Cash-Out Distribution is any distribution that is made from the Plan without the Participant's consent. Unless elected otherwise under AA §9-2(a)(3), an Involuntary Cash-Out Distribution, for purposes of applying the Automatic Rollover requirements under this Section 7.05 does not include any amounts below \$1,000. (See Section 7.03 for the Participant consent requirements with respect to distributions under the Plan.)
  - (c) **Treatment of Rollover Contributions.** Unless elected otherwise under AA §9-2(a)(5), for purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the Participant's distribution attributable to any Rollover Contribution is excluded.
- 7.06** **Distribution Upon Termination of Employment.** Subject to the required minimum distribution provisions under Section 8, a Participant who terminates employment for any reason (other than death) is entitled to receive a distribution of his/her vested Account Balance in accordance with this Section 7.06. (See Section 7.07 for the applicable rules when a Participant dies before distribution of his/her vested Account Balance is completed.)
- (a) **Account Balance not exceeding Cash-Out threshold.** If a Participant's vested Account Balance does not exceed \$5,000 (or other Cash-Out threshold designated under AA §9-2(a)(2)) at the time of distribution, the only distribution option available under the Plan is a lump sum option. The Participant will be eligible to receive a distribution of his/her vested Account Balance as of the date selected in AA §9-3(b).
  - (b) **Account Balance exceeding Cash-Out threshold.** If a Participant's vested Account Balance exceeds \$5,000 (or other Cash-Out threshold designated under AA §9-2(a)(2)) at the time of distribution, the Participant may elect to receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1. The Participant will be eligible to receive a distribution of his/her vested Account Balance as of the date selected in AA §9-3(a). The Employer may elect to accelerate the distribution to Employees upon special circumstances, such as termination after attainment of Normal Retirement Age or other special circumstances.
- 7.07** **Distribution Upon Death.** Subject to the Required Minimum Distribution rules in Section 8, a Participant's vested Account Balance will be distributed to the Participant's Beneficiary(ies) in accordance with this Section 7.07. (See subsection (c) for rules regarding the determination of Beneficiaries upon the death of the Participant.) The form of benefit payable with respect to a deceased Participant will depend on whether the Participant dies before or after distribution of his/her Account Balance has commenced.
- (a) **Death after commencement of benefits.** If a Participant begins receiving a distribution of his/her benefits under the Plan, and subsequently dies prior to receiving the full value of his/her vested Account Balance, the remaining benefit will continue to be paid to the Participant's Beneficiary(ies) in accordance with the form of payment that has already commenced. If a Participant commences distribution prior to death only with respect to a portion of his/her Account Balance, then the rules in subsection (b) apply to the rest of the Account Balance.
  - (b) **Death before commencement of benefits.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the form and timing of any death benefits will depend on whether the value of the death benefit exceeds \$5,000 (or other threshold designated under AA §9-2(a)(2)).
    - (1) **Death benefit not exceeding \$5,000.** If the value of the death benefit does not exceed \$5,000, such benefit will be paid to the Participant's Beneficiary(ies) in a single sum as soon as administratively feasible following the Participant's death.
    - (2) **Death benefit exceeding \$5,000.** If the value of the death benefit exceeds \$5,000, will be paid in a lump sum as soon as administratively feasible following the Participant's death. However, the death benefit may be payable in a different form if prescribed by the Participant's Beneficiary designation, or the Beneficiary, before a lump



sum payment of the benefit is made, elects to receive the distribution in an alternative form of benefit permitted under Section 7.01.

In no event will any death benefit be paid in a manner that is inconsistent with the Required Minimum Distribution rules under Section 8. The Beneficiary of any pre-retirement death benefit described in this subsection (b) may postpone the commencement of the death benefit to a date that is not later than the latest commencement date permitted under Section 8.

- (c) **Determining a Participant's Beneficiary.** The determination of a Participant's Beneficiary(ies) to receive any death benefits under the Plan will be based on the Participant's Beneficiary designation under the Plan. If a Participant does not designate a Beneficiary to receive the death benefits under the Plan, distribution will be made to the default Beneficiaries, as set forth in subsection (3) below.
- (1) **Post-retirement death benefit.** If a Participant dies after commencing distribution of benefits under the Plan (but prior to receiving a distribution of his/her entire vested Account Balance under the Plan), the Beneficiary of any post-retirement death benefit is determined in accordance with the Beneficiary selected under the distribution option in effect prior to death.
  - (2) **Pre-retirement death benefit.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the surviving Spouse (determined at the time of the Participant's death) will be treated as the sole Beneficiary, unless:
    - (i) there is a valid contrary Beneficiary designation,
    - (ii) there is no surviving Spouse, or
    - (iii) the Spouse makes a valid disclaimer.
  - (3) **Default beneficiaries.** To the extent a Beneficiary has not been named by the Participant and is not designated under the terms of this Plan to receive all or any portion of the deceased Participant's death benefit, such amount shall be distributed to the Participant's surviving Spouse (if the Participant was married at the time of death). If the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant's surviving children, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant's estate. The Employer may modify the default beneficiary rules described in this subparagraph under AA §9-5.
  - (4) **Identification of Beneficiaries.** The Plan Administrator may request proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan in any form or manner the Plan Administrator may deem appropriate. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian, conservator recognized under state law, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator or Trustee will not be liable for any payments made in accordance with this subsection (4) and will not be required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan. (See Section 9.03 for a special one-year marriage rule that may apply under AA §9-5(b).)
  - (5) **Death of Beneficiary.** Unless specified otherwise in the Participant's Beneficiary designation form or under AA §9-5, if a Beneficiary does not predecease the Participant but dies before distribution of the death benefit is made to the Beneficiary, the death benefit will be paid to the Beneficiary's estate. If the Participant and the Participant's Beneficiary die simultaneously and the Participant's Beneficiary designation form does not address simultaneous death, the determination of the death beneficiary will be determined under any state simultaneous death laws, to the extent applicable. If no applicable state law applies, the death benefit will be paid to the any contingent beneficiaries named under the Participant's beneficiary designation. If there are no contingent beneficiaries, the death benefit will be paid to the Participant's default beneficiaries, as described in subsection (3).
  - (6) **Divorce from Spouse.** Unless designated otherwise under AA §9-5(c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded unless specifically provided otherwise under a divorce decree or QDRO, or unless the Participant enters into a new Beneficiary designation naming the prior Spouse as Beneficiary. In addition, the provisions under this subsection (6) will not apply if the Participant has entered into a Beneficiary designation that specifically overrides the provisions of this subsection

(6). For periods prior to the date this Plan is executed by the Employer, this subsection (6) also applies to situations where the Participant and Spouse are legally separated.

- 7.08 Distribution to Disabled Employees.** Unless elected otherwise under AA §9-4, no special distribution rules apply to Disabled Employees. However, the Employer may elect in AA §9-4 to permit a distribution at an earlier date for Disabled Employees.
- 7.09 Qualified Distributions for Retired Public Safety Officers.** A Participant who is an eligible retired public safety officer may elect, after separation from service, to have qualified health insurance premiums deducted from amounts to be distributed from the Plan that would otherwise be includible in gross income, and to have such amounts paid directly to the insurer or group health plan. The distribution shall be excluded from the Participant's gross income to the extent that the aggregate amount of the distribution does not exceed the lesser of the amount used to pay the qualified health insurance premiums of the Participant, the Participant's spouse, and the Participant's dependents (as defined in Code §152), or \$3,000, determined by aggregating all distributions with respect to the Participant that are used to pay qualified health insurance premiums from all eligible retirement plans of the Employer as defined in Code §414(d).
- (a) **Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Participant, the Participant's spouse, and the Participant's dependents (as defined in Code §152) by an accident or health insurance plan (including under a self-insured plan) or qualified long-term care insurance contract (within the meaning of Code §7702B(b)).
- (b) **Eligible retired public safety officer.** The term "eligible retired public safety officer" means an individual who separated from service, either by reason of disability or after attainment of Normal Retirement Age, as a public safety officer with the Employer. For this purpose, a public safety officer is an individual serving the Employer in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or a member of a rescue squad or ambulance crew.
- 7.10 In-Service Distributions.** The Employer may elect under AA §10 to permit in-service distributions under the Plan. Except to the extent provided under subsection (a) below, if an in-service distribution is not specifically permitted under AA §10, a Participant may not receive a distribution from the Plan until termination of employment, death or disability.
- (a) **After-Tax Employee Contributions and Rollover Contributions.** Unless designated otherwise under AA §10-2, a Participant may withdraw at any time, upon written request, all or any portion of his/her Account Balance attributable to After-Tax Employee Contributions or Rollover Contributions. No forfeiture will occur solely as a result of an Employer's withdrawal of After-Tax Employee Contributions.
- (b) **Employer Contributions and Matching Contributions.** The Employer may elect under AA §10 the extent to which in-service distributions will be permitted from Employer Contributions (including Matching Contributions, if applicable) under the Plan. If permitted under AA §10 of the Profit Sharing Plan Adoption Agreement, Employer Contributions may be withdrawn upon the occurrence of a specified event (such as attainment of a designated age or the occurrence of a Hardship, as defined in subsection (e) below). In addition, a Participant may take withdraw his/her Employer Contributions (and Matching Contributions, if applicable) upon the completion of a certain number of years, provided no distribution solely on account of years may be made with respect to Employer Contributions that have been accumulated in the Plan for less than 2 years, unless the Participant has been a Participant in the Plan for at least 5 years. (See Section 6.09 for special vesting rules that apply if a Participant takes an in-service distribution prior to becoming 100% vested in such contributions.)
- For Plan Years beginning after January 1, 2007, if the Plan is a pension plan (e.g., a money purchase plan or if the Plan holds transferred assets from a money purchase plan), a Participant may not receive an in-service distribution of his/her vested Account Balance prior to the earlier of the attainment of Normal Retirement Age or age 62 (to the extent permitted under AA §10-1 or AA §10-2).
- (c) **Salary Deferrals under Grandfathered 401(k) Arrangement.** If the Plan qualifies as a Grandfathered 401(k) Arrangement, as designated under AA §2-3 of the Profit Sharing Adoption Agreement, any Salary Deferrals (including any earnings on such amounts) generally may not be distributed prior to the Participant's severance from employment, death, or disability. However, the Employer may elect under AA §10 to permit an in-service distribution of such amounts upon attainment of a specified age (no earlier than age 59½, upon a Hardship (as defined in subsection (e)) or upon a Qualified Reservist Distribution, as defined under subsection (d)).

If Normal Retirement Age or Early Retirement Age is earlier than age 59½ and an in-service distribution is permitted upon attainment of Normal Retirement Age or Early Retirement Age from Salary Deferrals, the Normal Retirement Age and/or Early Retirement Age will be deemed to be age 59½ for purposes of determining eligibility to distribute Salary Deferrals.

- (d) **Penalty-free withdrawals for individuals called to active duty.** Effective September 11, 2001, the distribution provisions applicable to Salary Deferrals include a Qualified Reservist Distribution, as defined in subsection (1) below. If a Participant takes a Qualified Reservist Distribution, such distributions will not be subject to the 10% penalty tax under Code §72(t). A Qualified Reservist Distribution is only available if permitted under AA §10-1.
- (1) **Qualified Reservist Distribution.** For purposes of this subsection (d), a Qualified Reservist Distribution means any distribution to an individual if:
- (i) such distribution is from amounts attributable to elective deferrals described in Code §402(g)(3)(A) or (C) or Code §501(c)(18)(D)(iii),
  - (ii) such individual was (by reason of being a member of a reserve component (as defined in §101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and
  - (iii) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.
- (2) **Active duty.** A Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001
- (e) **Hardship distribution.** The Employer may elect under AA §10-1 or AA §10-2 of the Profit Sharing Plan Adoption Agreement to authorize an in-service distribution upon the occurrence of a Hardship event. A Hardship distribution of Salary Deferrals must meet the requirements of a safe harbor Hardship as described under subsection (1) below. For other contribution types, the Employer may elect to apply the safe harbor Hardship rules under subsection (1) or the non-safe harbor Hardship provisions under subsection (2) below.
- (1) **Safe harbor Hardship distribution.** To qualify for a safe harbor Hardship, a Participant must demonstrate an immediate and heavy financial need, as described in subsection (i), and the distribution must be necessary to satisfy such need, as described in subsection (ii).
- (i) **Immediate and heavy financial need.** To be considered an immediate and heavy financial need, the Hardship distribution must be made to satisfy one of the following financial needs:
    - (A) to pay expenses incurred or necessary for medical care (as described in Code §213(d)) of the Participant, the Participant's Spouse or dependents (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
    - (B) for the purchase (excluding mortgage payments) of a principal residence for the Participant;
    - (C) for payment of tuition and related educational fees (including room and board) for the next 12 months of post-secondary education for the Participant, the Participant's Spouse, children or dependents;
    - (D) to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;
    - (E) to pay funeral or burial expenses for the Participant's deceased parent, Spouse, child or dependent;
    - (F) to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165 (determined without regard to whether the loss exceeds the 10% of adjusted gross income limit); or
    - (G) for any other event that the IRS recognizes as a safe harbor Hardship distribution event under ruling, notice or other guidance of general applicability.

The payment of funeral or burial expenses under subsection (E) and the payment of expenses to repair damage to a principal residence under subsection (F) only apply to Plan Years beginning on or after January 1, 2006. For purposes of determining eligibility of a Hardship distribution under this subsection (i), a dependent is determined under Code §152. However, for taxable years beginning on or after January 1, 2005, the determination of dependent for purposes of tuition and education fees under subsection (C) above will be made without regard to Code §152(b)(1), (b)(2), and (d)(1)(B) and the

determination of dependent for purposes of funeral or burial expenses under subsection (E) above will be made without regard to Code §152(d)(1)(B).

A Participant must provide the Plan Administrator with a written request for a Hardship distribution. The Plan Administrator may require written documentation, as it deems necessary, to sufficiently document the existence of a proper Hardship event.

- (ii) **Distribution necessary to satisfy need.** A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant if:
- (A) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);
  - (B) The Participant has obtained all available distributions, other than Hardship distributions, and all nontaxable loans under the Plan and all plans maintained by the Employer; and
  - (C) The Participant is suspended from making Salary Deferrals (and After-Tax Employee Contributions) for at least 6 months after the receipt of the Hardship distribution.
- (2) **Non-safe harbor Hardship distribution.** The Employer may elect in AA §10-1(e) or AA §10-2(e) of the Profit Sharing Plan Adoption Agreement to permit Participants to take a Hardship distribution without satisfying the requirements of subsection (1) above.
- (i) **Immediate and heavy financial need.** For purposes of determining whether a Hardship exists under this subsection (2), the same Hardship distribution events described in subsection (1)(i) will qualify as a Hardship distribution event under this subsection (2). The Employer may modify the permissible Hardship distribution events under AA §10-3(f) of the Profit Sharing Plan Adoption Agreement.
- (ii) **Distribution necessary to satisfy need.** A Hardship distribution under this subsection (2) need not satisfy the requirements under subsection (1)(ii) above. Instead, all relevant facts and circumstances are considered to determine whether the Employee has other resources reasonably available to relieve or satisfy the need. For this purpose, resources include assets of the Employee's Spouse and minor children that are reasonably available to the Employee. In addition, the amount withdrawn for hardship may include amounts necessary to pay federal, state or local income taxes, or penalties reasonably anticipated to result from the distribution.
- The Employer or Plan Administrator may rely upon the Employee's written representation that the need cannot be reasonably relieved through the following sources:
- (A) Reimbursement or compensation by insurance;
  - (B) Liquidation of the Employee's assets;
  - (C) Cessation of Salary Deferrals or After-Tax Employee Contributions under the Plan;
  - (D) Other currently available distributions or nontaxable loans from the Plan or any other plan maintained by the Employer (or any other employer);
  - (E) Borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.
- The Employer or Plan Administrator may not rely upon the written representation under this subsection (ii) if the Employer has actual knowledge to the contrary.
- (3) **Amount available for Hardship distribution.** A Participant may receive a Hardship distribution of any portion of his/her vested Employer Contribution Account or Matching Contribution Account (including earnings thereon), as permitted under AA §10. A Participant may receive a Hardship distribution of Salary Deferrals provided such distribution, when added to other Hardship distributions from Salary Deferrals, does not exceed the total Salary Deferrals the Participant has made to the Plan (increased by income allocable to such Salary Deferrals as of the later of December 31, 1988 or the end of the last Plan Year ending before July 1, 1989).

- (4) **Availability to terminated Employees.** If a Hardship distribution is permitted under AA §10-1 or AA §10-2, a Participant may take such a Hardship distribution after termination of employment to the extent no other distribution is available from the Plan.
- (5) **Application of Hardship distributions rules with respect to primary beneficiaries.** If elected under AA §10-3(e), if the Plan otherwise permits Hardship distributions based on the safe harbor hardship provisions under subsection (1), the existence of an immediate and heavy financial need under subsection (1)(i) may be determined with respect to a primary beneficiary under the Plan. For this purpose, a primary beneficiary is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of a Participant's Account Balance upon the death of the Participant. Hardship distributions with respect to primary beneficiaries under this subsection (5) are limited to Hardship distributions on account of medical expenses, educational expenses and funeral expenses (as described in subsections (1)(i)(A), (1)(i)(C) and (1)(i)(E), above)). Any Hardship distribution with respect to a primary beneficiary must satisfy all the other requirements applicable to Hardship distributions under subsection (e).

**7.11 Sources of Distribution.** Unless provided otherwise in separate administrative provisions adopted by the Plan Administrator, in applying the distribution provisions under this Section 7, distributions will be made on a pro rata basis from all Accounts from which a distribution is permitted. Alternatively, the Plan Administrator may permit Participants to direct the Plan Administrator as to which Account the distribution is to be made. Regardless of a Participant's direction as to the source of any distribution, the tax effect of such a distribution will be governed by Code §72 and the regulations thereunder.

- (a) **Exception for Hardship withdrawals.** If the Plan permits a Hardship withdrawal from both Salary Deferrals (including Roth Deferrals) and Employer Contributions, a Hardship distribution will first be treated as having been made from a Participant's Employer Contribution Account and then from the Employer's Matching Contribution Account, to the extent such Hardship distribution is available with respect to such Accounts. Only when all available amounts have been exhausted under the Participant's Employer Contribution Account and/or Matching Contribution Account will a Hardship distribution be made from a Participant's Pre-Tax Salary Deferral Account and/or Roth Deferral Account. (See subsection (b) below for the ordering rules for distributions from the Pre-Tax Salary Deferral and Roth Deferral Accounts.) The Plan Administrator may modify the ordering rules under this subsection (a) under separate administrative procedures.
- (b) **Roth Deferrals.** If a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, withdrawals and loans from such Accounts will be made in accordance with this subsection (b).
- (1) **Distributions and withdrawals.** Unless designated otherwise under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement or separate administrative procedures, if a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, the Participant may designate the extent to which a distribution or withdrawal of Salary Deferrals will come from the Pre-Tax Salary Deferral Account or the Roth Deferral Account. Alternatively, the Employer may provide under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement (or under separate administrative procedures) that any distribution or withdrawal of Salary Deferrals will be made on a pro rata basis from the Pre-Tax Salary Deferral Account and the Roth Deferral Account. Alternatively, the Employer may designate any other order of distribution and withdrawals under AA §6A-5 or separate administrative procedures.
- (2) **Distribution of Excess Deferrals.** Unless designated otherwise under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement or separate administrative procedures, if a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, and the Plan is required to make a corrective distribution of Excess Deferrals to such Participant, the Participant may designate whether the Plan will make such corrective distribution of Excess Deferrals from the Pre-Tax Salary Deferral Account or the Roth Deferral Account. Alternatively, the Employer may elect under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement (or under separate administrative procedures) that corrective distributions of Salary Deferrals to correct Excess Deferrals will be made pro rata from the Pre-Tax Salary Deferral Account and Roth Deferral Account or first from the Pre-Tax Salary Deferral Account or first from the Roth Deferral Account.
- Unless designated otherwise under separate administrative procedures, if a Participant is permitted to designate the extent to which a corrective distribution is made from the Pre-Tax Salary Deferral Account or the Roth Deferral Account, and the Participant fails to designate the appropriate Account by the date the corrective distribution is made from the Plan, such corrective distribution may be withdrawn equally from both the Pre-Tax Salary Deferral Account and the Roth Deferral Account or the Employer may withdraw such amounts first from either the Pre-Tax Salary Deferral Account or the Roth Deferral Account.
- (c) **In-kind distributions.** Nothing in this Section 7 precludes the Plan Administrator from making a distribution in the form of property, or other in-kind distribution. An in-kind distribution is only available to the extent such investments

are held in the Participant's Account at the time of the distribution. This subsection (c) does not give any Participant the right to request an in-kind distribution if not otherwise authorized by the Plan Administrator.

- 7.12** **Correction of Qualification Defects.** Nothing in this Section 7 precludes the Plan Administrator from making a distribution to a Participant to correct a qualification defect consistent with the correction procedures under the IRS' voluntary compliance programs. Thus, for example, if an Employee is permitted to enter the Plan prior to his/her proper Entry Date under Section 2.03(b) and the Plan Administrator determines that a corrective distribution is a proper means of correcting the operational violation, nothing in this Section 7 would prevent the Plan from making such corrective distribution. Any such distribution must be made in accordance with the correction procedures applicable under the IRS' voluntary correction programs under Rev. Proc. 2013-12 (or successive guidance).

**SECTION 8  
REQUIRED MINIMUM DISTRIBUTIONS**

**8.01 Required Minimum Distributions.** Unless specified otherwise under Appendix A of the Adoption Agreement, the provisions of this Section apply to calendar years beginning on or after January 1, 2003. A Participant's entire interest under the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date (as defined in Section 8.05(e)). All distributions required under this Section 8 will be determined and made in accordance with the regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G). For purposes of applying the required minimum distribution rules under this Section 8, any distribution made in a form other than a lump sum must be made over one of the following periods (or a combination thereof):

- (a) the life of the Participant;
- (b) the life of the Participant and a Designated Beneficiary;
- (c) a period certain not extending beyond the life expectancy of the Participant; or
- (d) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and a Designated Beneficiary.

**8.02 Death of Participant before required distributions begin.** If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) **Surviving Spouse is sole Designated Beneficiary.** Unless designated otherwise under AA §10-4, if the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the surviving Spouse may elect to take distributions under the five-year rule (as described in Section 8.06(a) below) or under the life expectancy method. If the life expectancy method applies, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.
- (b) **Surviving Spouse is not the sole Designated Beneficiary.** Unless designated otherwise under AA §10-4, if the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary may elect to take distributions under the five-year rule (as described in Section 8.06(a) below) or under the life expectancy method. If the life expectancy method applies, 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. If the Designated Beneficiary does not elect to commence distributions by December 31 of the calendar year immediately following the calendar year in which the Participant dies, a complete distribution must be made by December 31 of the calendar year containing the fifth anniversary of the Participant's death. See Section 8.06(a) below.
- (c) **No Designated Beneficiary.** If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately 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) **Death of surviving Spouse.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 8.02 (other than subsection (a)) will apply as if the surviving Spouse were the Participant.

For purposes of this Section 8.02 and AA §10-4, unless subsection (d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under subsection (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 subsection (a)), the date distributions are considered to begin is the date distributions actually commence.

**8.03 Required Minimum Distributions during Participant's lifetime.**

- (a) **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:
  - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

- (2) 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 Treas. Reg. §1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.
- (b) **Lifetime Required Minimum Distributions continue through year of Participant's death.** Required Minimum Distributions will be determined under this subsection (b) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

#### 8.04 **Required Minimum Distributions After Participant's Death.**

(a) **Death on or after date required distributions begin.**

- (1) **Participant survived by Designated Beneficiary.** If the Participant dies on or after the date required 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 in accordance with the Single Life Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1, 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 using the Single Life Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1, 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 under the Single Life Table using the age of the Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) **No Designated Beneficiary.** If the participant dies on or after the date required distributions begin and there is no Designated Beneficiary as of the Participant's date of death who remains a 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 under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) **Death before date required distributions begin.**

- (1) **Participant survived by Designated Beneficiary.** Unless designated otherwise under AA §10-4, if the Participant dies before the date required 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 subsection (a).
- (2) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of the date of death of the Participant who remains a Designated Beneficiary as of September 30 of the year following the year of the Participant's death, 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) **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 8.02(a), this subsection (b) will apply as if the surviving Spouse were the Participant.



**8.05 Definitions.**

- (a) **Designated Beneficiary.** A Beneficiary designated by the Participant (or the Plan), whose life expectancy may be taken into account to calculate minimum distributions, pursuant to Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4.
- (b) **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 that 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 8.02. 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.
- (c) **Life expectancy.** For purposes of determining a Participant's Required Minimum Distribution amount, life expectancy is computed using one of the following tables, as appropriate: (1) Single Life Table, (2) Uniform Life Table, or (3) Joint and Last Survivor Table found in Treas. Reg. §1.401(a)(9)-9.
- (d) **Account Balance.** For purposes of determining a Participant's Required Minimum Distribution, the Participant's Account Balance is determined based on the Account Balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (the "valuation calendar year") increased by the amount of any contributions or forfeitures allocated to the Account Balance as of dates in the calendar year after the Valuation Date and decreased by distributions made in the 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.
- (e) **Required Beginning Date.** Unless designated otherwise under AA §10-4, a Participant's Required Beginning Date under the Plan is April 1 that follows the end of the calendar year in which the later of the following two events occurs:
- (1) the Participant attains age 70½ or
  - (2) the Participant terminates employment.

A Participant may begin in-service distributions prior to his/her Required Beginning Date only to the extent authorized under Section 7.10 and AA §10. However, if this Plan were amended to add the Required Beginning Date rules under this subsection (e), a Participant who attained age 70½ prior to January 1, 1999 (or, if later, January 1 following the date the Plan is first amended to contain the Required Beginning Date rules under this subsection (e)) may receive in-service minimum distributions in accordance with the terms of the Plan in existence prior to such amendment.

**8.06 Special Rules.**

- (a) **Election to apply 5-year rule to required distributions after death.** If the Participant dies before distributions begin and there is a Designated Beneficiary, the Employer may elect under AA §10-4, instead of applying the provisions of Sections 8.02 and 8.04, to require the Participant's entire interest to be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to either the Participant or the surviving Spouse begin, this election will apply as if the surviving Spouse were the Participant.
- (b) **Election to allow Participants or Beneficiaries to elect 5-year rule.** If a Participant or Designated Beneficiary is permitted under AA §10-4 to elect whether to apply the life expectancy rule under Section 8.02 above or the five year rule under subsection (a), the election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 8.02 or by September 30 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 the five year rule under subsection (a) above.
- (c) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 8.02 and 8.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the regulations.

- (d) **Waiver of Required Minimum Distributions.** For calendar year 2009, the Required Minimum Distribution rules will not apply. In applying the provisions of this Section 8 for the 2009 Distribution Calendar Year,
- (1) the Required Beginning Date with respect to any individual shall be determined without regard to this subsection for purposes of applying this paragraph for Distribution Calendar Years after 2009, and
  - (2) required distributions to a beneficiary upon the death of the Participant shall be determined without regard to calendar year 2009.

A Participant or beneficiary who would have been required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year but for the enactment of Code §401(a)(9)(H) (“2009 RMD”), may elect whether or not to receive the 2009 RMD (or any portion of such distribution). A distribution of the 2009 RMD or a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant’s designated beneficiary, or for a period of at least 10 years, will be treated as an Eligible Rollover Distribution. However, if all or any portion of a distribution during 2009 is treated as an Eligible Rollover Distribution but would not be so treated if the Required Minimum Distribution requirements under this Section 8 had applied during 2009, such distribution shall not be treated as an Eligible Rollover Distribution for purposes of Code §§401(a)(31), 402(f) or 3405(c). (See Notice 2009-82 for transitional rules that apply for purposes of applying the rollover rules to the distribution of 2009 RMDs.)

- (e) **Treatment of trust beneficiaries as Designated Beneficiaries.** If a trust is properly named as a Beneficiary under the Plan, the beneficiaries of the trust will be treated as the Designated Beneficiaries of the Participant solely for purposes of determining the distribution period under this Section 8 with respect to the trust’s interests in the Participant’s vested Account Balance. The beneficiaries of a trust will be treated as Designated Beneficiaries for this purpose only if, during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as Designated Beneficiaries, the following requirements are met:

- (1) the trust is a valid trust under state law, or would be but for the fact there is no corpus;
- (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the Participant;
- (3) the beneficiaries of the trust who are beneficiaries with respect to the trust’s interests in the Participant’s vested Account Balance are identifiable from the trust instrument; and
- (4) the Plan Administrator receives the documentation described in subsection (f)(1) below.

If the foregoing requirements are satisfied and the Plan Administrator receives such additional information as it may request, the Plan Administrator may treat such beneficiaries of the trust as Designated Beneficiaries.

- (f) **Special rules applicable to trust beneficiaries.**

- (1) **Information that must be supplied to Plan Administrator.**

- (i) **Required minimum distribution before death where Spouse is sole beneficiary.** If a Participant designates a trust as the beneficiary of his/her entire benefit and the Participant’s Spouse is the sole beneficiary of the trust, the Participant must provide the information under (A) or (B) below to satisfy the information requirements under subsection (e)(4) above.
  - (A) The Participant must provide to the Plan Administrator a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator a copy of each such amendment; or
  - (B) The Participant must:
    - (I) provide to the Plan Administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the Spouse is the sole beneficiary) for purposes of Code §401(a)(9);
    - (II) certify that, to the best of the Participant’s knowledge, the list under subsection (I) is correct and complete and that the requirements of subsection (e) above are satisfied;

- (III) agree that, if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator corrected certifications to the extent that the amendment changes any information previously certified; and
  - (IV) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.
- (ii) **Required minimum distribution after death.** In order to satisfy the documentation requirement of subsection (e)(4) above for required minimum distributions after the death of the Participant (or Spouse in a case to which Treas. Reg. §.401(a)(9)-3, Q&A-5 applies), the trustee of the trust must satisfy the requirements of subsection (A) or (B) by October 31 of the calendar year immediately following the calendar year in which the Participant died.
- (A) The trustee of the trust must:
    - (I) provide the Plan Administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the Participant's death;
    - (II) certify that, to the best of the trustee's knowledge, the list in subsection (I) is correct and complete and that the requirements of subsection (e) above are satisfied; and
    - (III) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.
  - (B) The trustee of the trust must provide the Plan Administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the Participant under the Plan as of the Participant's date of death.
- (2) **Relief for discrepancy.** If required minimum distributions are determined based on the information provided to the Plan Administrator in certifications or trust instruments described in subsection (1) above, the Plan will not fail to satisfy Code §401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the Plan Administrator, provided the Plan Administrator reasonably relied on the information provided and the required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

**8.07 Transitional Rule.** Notwithstanding the other requirements of this Section 8, distribution on behalf of any Employee may be made in accordance with all of the following requirements (regardless of when such distribution commences):

- (a) The distribution by the Plan is one that would not have disqualified the Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
- (b) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.
- (c) Such designation was in writing, was signed by the Participant or the beneficiary, and was made before January 1, 1984.
- (d) The Participant had accrued a benefit under the Plan as of December 31, 1983.
- (e) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority.

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

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a) - (e) above.

If a designation is revoked any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must

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distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the proposed regulations thereunder, but for the TEFRA §242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treas. Reg. §1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

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**SECTION 9**  
**SPOUSAL CONSENT RULES**

- 9.01** **Application of Joint and Survivor Annuity Rules.** As a Governmental Plan, the Qualified Joint and Survivor Annuity rules under Code §§401(a)(11) and 417 do not apply to the Plan. The Employer may elect to require spousal consent for Plan distributions under AA §9-2(b).
- 9.02** **Spousal consent.** If the Employer elects under AA §9-2(b) to require spousal consent to a Plan distribution, the Spouse's consent will be required with respect to a distribution as designated in AA §9-2(b). A Spouse's consent, if required, must be provided pursuant to a Qualified Election. For this purpose, a Qualified Election is a written election signed by both the Participant and the Participant's Spouse that specifically acknowledges the effect of the election. The Spouse's consent must be witnessed by a plan representative or notary public. If the Qualified Election permits the Participant to change a payment form or Beneficiary designation without any further consent by the Spouse, the Qualified Election must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit, as applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights.
- 9.03** **One-year marriage rule.** The Employer may elect under AA §9-5(b), for purposes of identifying a Beneficiary under Section 7.07(c) and for purposes of applying the spousal consent rules under this Section 9, that an individual will not be considered the surviving Spouse of the Participant if the Participant and the surviving Spouse have not been married for the entire one-year period ending on the date of the Participant's death.

SECTION 10  
PLAN ACCOUNTING AND INVESTMENTS

**10.01 Participant Accounts.** The Plan Administrator will maintain a separate Account for each Participant to reflect the Participant's entire interest under the Plan. The Plan Administrator may maintain any (or all) of the following separate sub-Accounts:

- Employer Contribution Account
- Matching Contribution Account
- After-Tax Employee Contribution Account
- Rollover Contribution Account
- Transfer Account.

In addition, if this Plan qualifies as a Grandfathered 401(k) Arrangement (as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement), the Plan Administrator may also maintain the following separate Accounts:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Roth Rollover Contribution Account

The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

**10.02 Valuation of Accounts.** A Participant's portion of the Trust assets is determined as of each Valuation Date under the Plan. The value of a Participant's Account consists of the fair market value of the Participant's share of the Trust assets. The Trustee must value Plan assets at least annually. The Trustee's determination of the value of Trust assets shall be final and conclusive.

- (a) **Periodic valuation.** The Employer may elect under AA §11-1 or may elect operationally to value assets on a periodic basis. The Trustee and the Plan Administrator may adopt reasonable procedures for performing such valuations.
- (b) **Daily valuation.** The Employer may elect under AA §11-1 or may elect operationally to value assets on a daily basis. The Plan Administrator may adopt reasonable procedures for performing such valuations. Unless otherwise set forth in the written procedures, a daily valued Plan will have its assets valued at the end of each business day during which the New York Stock Exchange is open. The Plan Administrator has authority to interpret the provisions of this Plan in the context of a daily valuation procedure. This includes, but is not limited to, the determination of the value of the Participant's Account for purposes of Participant loans, distribution and consent rights, and corrective distributions.
- (c) **Interim valuations.** The Plan Administrator may request the Trustee to perform interim valuations.

**10.03 Adjustments to Participant Accounts.** Unless the Plan Administrator adopts other reasonable administrative procedures, as of each Valuation Date under the Plan, each Participant's Account is adjusted in the following manner.

- (a) **Distributions and forfeitures from a Participant's Account.** A Participant's Account will be reduced by any distributions, forfeitures and other reductions from the Account since the previous Valuation Date.
- (b) **Life insurance premiums and dividends.** A Participant's Account will be reduced by the amount of any life insurance premium payments under the Plan made for the benefit of the Participant since the previous Valuation Date. The Account will be credited with any dividends or credits paid on any life insurance policy held by the Trust for the benefit of the Participant.
- (c) **Contributions and forfeitures allocated to a Participant's Account.** A Participant's Account will be credited with any contribution, forfeiture or other additions allocated to the Participant since the previous Valuation Date.
- (d) **Net income or loss.** A Participant's Account will be adjusted for any net income or loss in accordance with any reasonable procedures that the Plan Administrator may establish. Such procedures may be reflected in a funding agreement governing the applicable investments under the Plan. To the extent the Plan Administrator does not establish separate written procedures, net income or loss will be allocated to Participants' Accounts in accordance with the following provisions.
  - (1) **Net income or loss attributable to General Trust Account.** To the extent a Participant's Account is invested as part of a General Trust Account, such Account is adjusted for its allocable share of net income or loss experienced by the General Trust Account. The net income or loss of the General Trust Account is allocated to the Participant Accounts in the ratio that each Participant's Account bears to all Accounts, based on the value of each Participant's Account as of the prior Valuation Date, as adjusted in subsections (a) - (c) above. In determining Participant Account Balances as of the prior Valuation Date, the Employer may apply a weighted

average method that credits each Participant's Account with a portion of the contributions made since the prior Valuation Date. The Plan's investment procedures may designate the specific type(s) of contributions eligible for a weighted allocation of net income or loss and may designate alternative methods for determining the weighted allocation. If the Employer elects to apply a weighted average method, such method will be applied uniformly to all Participant Accounts under the General Trust Account.

- (2) **Net income or loss attributable to a Directed Account.** If the Participant or Beneficiary is entitled to direct the investment of all or part of his/her Account (see Section 10.07), the Account (or the portion of the Account which is subject to such direction) will be maintained as a Directed Account, which reflects the value of the directed investments as of any Valuation Date. The assets held in a Directed Account may be (but are not required to be) segregated from the other investments held in the Trust. Net income or loss attributable to the investments made by a Directed Account is allocated to such Account in a manner that reasonably reflects the investment experience of such Directed Account. Where a Directed Account reflects segregated investments, the manner of allocating net income or loss shall not result in a Participant (or Beneficiary) being entitled to distribution from the Directed Account that exceeds the value of such Account as of the date of distribution.

**10.04 Share or unit accounting.** The Plan's investment procedures may provide for share or unit accounting to reflect the value of Accounts, if such method is appropriate for the investments allocable to such Accounts.

**10.05 Suspense accounts.** The Plan's investment procedures also may provide for special valuation procedures for suspense accounts that are properly established under the Plan.

**10.06 Investments under the Plan.**

- (a) **Investment options.** The Trustee or other person(s) responsible for the investment of Plan assets is authorized to invest Plan assets in any prudent investment. Investment options include, but are not limited to, the following:

- common and preferred stock or other equity securities (including stock bought and sold on margin);
- corporate bonds;
- open-end or closed-end mutual funds (including funds for which a Volume Submitter Sponsor, Trustee, or affiliate serves as investment advisor or other capacity);
- money market accounts;
- certificates of deposit;
- debentures;
- commercial paper;
- put and call options;
- limited partnerships;
- mortgages;
- U.S. Government obligations, including U.S. Treasury notes and bonds;
- real and personal property having a ready market;
- life insurance or annuity policies;
- commodities;
- savings accounts;
- notes; and
- securities issued by the Trustee and/or its affiliates, as permitted by law.

- (b) **Common/collective trusts and collectibles.** Plan assets may also be invested in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100 (as modified by Rev. Rul. 2004-67 and Rev. Rul. 2011-1). All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for this Plan. No portion of any voluntary, tax deductible Employee contributions being held under the Plan (or any earnings thereon) may be invested in life insurance contracts or, as with any Participant-directed investment, in tangible personal property characterized by the IRS as a collectible.

**10.07 Participant-directed investments.** If the Plan (by election in AA §C-1 or under separate investment procedures) permits Participant direction of investments, each Participant shall have the exclusive right, in accordance with the provisions of the Plan, to direct the investment by the Trustee of all or a portion of the amounts allocated to the separate Accounts of the Participant under the Plan. All investment directions by Participants shall be timely furnished to the Trustee by the Plan Administrator, except to the extent such directions are transmitted electronically or otherwise by Participants directly to the Trustee or its delegate in accordance with rules and procedures established and approved by the Plan Administrator and communicated to the Trustee. In

making any investment of Plan assets, the Trustee shall be fully entitled to rely on such directions furnished to it by the Plan Administrator or by Participants in accordance with the Plan Administrator's approved rules and procedures, and shall be under no duty to make any inquiry or investigation with respect thereto. Except as otherwise provided in this Plan, neither the Trustee, the Employer, nor any other fiduciary of the Plan will be liable to the Participant for any loss resulting from action taken at the direction of the Participant. (A reference to Participant under this Section 10.07 also applies to any Beneficiary or Alternate Payee eligible to direct investments under the Plan.)

- (a) **Limits on participant investment direction.** The Employer may elect under AA §C-1 or under separate investment procedures to limit Participant direction of investment to specific types of contributions or with respect to specific investment options. If Participant investment direction is limited to specific investment options, it shall be the sole and exclusive responsibility of the Employer or Plan Administrator to select the investment options, and the Trustee shall not be responsible for selecting or monitoring such investment options, unless the Trustee has otherwise agreed in writing. In no case may Participants direct that investments be made in collectibles, other than U.S. Government or State issued gold and silver coins. (See Section 10.03(d)(2) for rules regarding allocation of net income or loss to a Directed Account.)
- (b) **Failure to direct investment.** If Participant direction of investments is permitted, the Plan Administrator will designate how accounts will be invested in the absence of proper affirmative direction from the Participant. The Plan or Plan Administrator may designate a default fund under the Plan in which the Trustee shall deposit contributions to the Trust on behalf of Participants who have been identified by the Plan Administrator as having not specified investment choices under the Plan. If the Trustee receives any contribution under the Plan that is not accompanied by instructions directing its investment, the Trustee shall immediately notify the Plan Administrator of that fact, and the Trustee may, in its discretion, hold all or a portion of the contribution uninvested without liability for loss of income or appreciation pending receipt of proper investment directions.
- (c) **Trustee to follow Participant direction.** To the extent the Plan allows Participant direction of investment, the Trustee is authorized to follow the Participant's written direction (or other form of direction deemed acceptable by the Trustee). A Directed Account will be established for the portion of the Participant's Account that is subject to Participant direction of investment. The Trustee may decline to follow a Participant's investment direction to the extent such direction would:
- (1) result in a prohibited transaction;
  - (2) cause the assets of the Plan to be maintained outside the jurisdiction of the U.S. courts;
  - (3) jeopardize the Plan's tax qualification;
  - (4) be contrary to the Plan's governing documents;
  - (5) cause the assets to be invested in collectibles within the meaning of Code §408(m);
  - (6) generate unrelated business taxable income; or
  - (7) result (or could result) in a loss exceeding the value of the Participant's Account.

The Trustee will not be responsible for any loss or expense resulting from a failure to follow a Participant's direction in accordance with the requirements of this paragraph. Participant directions will be processed as soon as administratively practicable following receipt of such directions by the Trustee. The Trustee, Plan Administrator, or Employer will not be liable for a delay in the processing of a Participant direction that is caused by a legitimate business reason (including, but not limited to, a failure of computer systems or programs, failure in the means of data transmission, the failure to timely receive values or prices, or other unforeseen problems outside of the control of the Trustee, Plan Administrator, or Employer).

- 10.08 Investment in Life Insurance.** A group or individual life insurance policy purchased by the Plan may be issued on the life of a Participant, a Participant's Spouse, a Participant's child or children, a family member of the Participant, or any other individual with an insurable interest. If this Plan is a money purchase plan, a life insurance policy may only be issued on the life of the Participant. A life insurance policy includes any type of policy, including a second-to-die policy, provided that the holding of a particular type of policy is not prohibited under rules applicable to qualified plans.

Any premiums on life insurance held for the benefit of a Participant will be charged against such Participant's vested Account Balance. Unless directed otherwise, the Plan Administrator will reduce each of the Participant's Accounts under the Plan equally to pay premiums on life insurance held for such Participant's benefit. Any premiums paid for life insurance policies must satisfy the incidental life insurance rules under subsection (a).



- (a) **Incidental Life Insurance Rules.** Any life insurance purchased under the Plan must meet the following requirements:
- (1) **Ordinary life insurance policies.** The aggregate premiums paid for ordinary life insurance policies (i.e., policies with both nondecreasing death benefits and nonincreasing premiums) for the benefit of a Participant must be at any time less than 50% of the aggregate amount of Employer Contributions (including Salary Deferrals) and forfeitures that have been allocated to the Account of such Participant.
  - (2) **Life insurance policies other than ordinary life.** The aggregate premiums paid for term, universal or other life insurance policies (other than ordinary life insurance policies) for the benefit of a Participant shall not at any time exceed 25% of the aggregate amount of Employer Contributions (including Salary Deferrals) and forfeitures that have been allocated to the Account of such Participant.
  - (3) **Combination of ordinary and other life insurance policies.** The sum of one-half (½) of the aggregate premiums paid for ordinary life insurance policies plus all the aggregate premiums paid for any other life insurance policies for the benefit of a Participant shall not at any time exceed 25% of the aggregate amount of Employer Contributions (including Salary Deferrals) and forfeitures which have been allocated to the Account of such Participant.
  - (4) **Exception for certain Profit Sharing Plans.** If the Plan is a Profit Sharing Plan, the limitations in this Section do not apply to the extent life insurance premiums are paid only with Employer Contributions and forfeitures that have been accumulated in the Participant's Account for at least two years or are paid with respect to a Participant who has been a Participant for at least five years. For purposes of applying this special limitation, Employer Contributions do not include any Salary Deferrals, QMACs, QNECs or Safe-Harbor Contributions under a 401(k) plan.
  - (5) **Exception for After-Tax Employee Contributions and Rollover Contributions.** The Plan Administrator also may invest, with the Participant's consent, any portion of the Participant's After-Tax Employee Contribution Account or Rollover Contribution Account in a group or individual life insurance policy for the benefit of such Participant, without regard to the incidental life insurance rules under this Section.
- (b) **Ownership of Life Insurance Policies.** The Trustee is the owner of any life insurance policies purchased under the Plan. Any life insurance policy purchased under the Plan must designate the Trustee as owner and beneficiary under the policy. The Trustee will pay all proceeds of any life insurance policies to the Beneficiary of the Participant for whom such policy is held in accordance with the distribution provisions under Section 7. In no event shall the Trustee retain any part of the proceeds from any life insurance policies for the benefit of the Plan.
- (c) **Evidence of Insurability.** Prior to purchasing a life insurance policy, the Plan Administrator may require the individual whose life is being insured to provide evidence of insurability, such as a physical examination, as may be required by the Insurer.
- (d) **Distribution of Insurance Policies.** Life insurance policies under the Plan, which are held on behalf of a Participant, must be distributed to the Participant or converted to cash upon the later of the Participant's Annuity Starting Date (as defined in Section 1.09) or termination of employment. Any life insurance policies that are held on behalf of a terminated Participant must continue to satisfy the incidental life insurance rules under subsection (a). If a life insurance policy is purchased on behalf of an individual other than the Participant, and such individual dies, the Participant may withdraw any or all life insurance proceeds from the Plan, to the extent such proceeds exceed the cash value of the life insurance policy determined immediately before the death of the insured individual.
- (e) **Discontinuance of Insurance Policies.** Investments in life insurance may be discontinued at any time, either at the direction of the Trustee or other fiduciary responsible for making investment decisions. If the Plan provides for Participant direction of investments, life insurance as an investment option may be eliminated at any time by the Plan Administrator. Where life insurance investment options are being discontinued, the Plan Administrator, in its sole discretion, may offer the sale of the insurance policies to the Participant, or to another person, provided that the prohibited transaction exemption requirements prescribed by the Department of Labor are satisfied.
- (f) **Protection of Insurer.** An Insurer (as defined in Section 1.58) that issues a life insurance policy under the terms of this Section 10.08, shall not be responsible for the validity of this Plan and shall be protected and held harmless for any actions taken or not taken by the Trustee or any actions taken in accordance with written directions from the Trustee or the Employer (or any duly authorized representatives of the Trustee or Employer). An Insurer shall have no obligation to determine the propriety of any premium payments or to guarantee the proper application of any payments made by the insurance company to the Trustee.

The Insurer is not and shall not be considered a party to this Plan and is not a fiduciary with respect to the Plan solely as a result of the issuance of life insurance policies under this Section 10.08.

- (g) **No Responsibility for Act of Insurer.** Neither the Employer, the Plan Administrator nor the Trustee shall be responsible for the validity of the provisions under a life insurance policy issued under this Section 10.08 or for the failure or refusal by the Insurer to provide benefits under such policy. The Employer, the Plan Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the life insurance policy or which renders the policy invalid or unenforceable in whole or in part.

SECTION 11  
PLAN ADMINISTRATION AND OPERATION

- 11.01 Plan Administrator.** The Employer is the Plan Administrator, unless the Employer designates in writing an alternative Plan Administrator. The Plan Administrator has the responsibilities described in this Section 11.
- 11.02 Designation of Alternative Plan Administrator.** The Employer may designate another person or persons as the Plan Administrator by name, by reference to the person or group of persons holding a particular position, by reference to a procedure under which the Plan Administrator is designated, or by reference to a person or group of persons charged with the specific responsibilities of Plan Administrator.
- (a) **Acceptance of responsibility by designated Plan Administrator.** If the Employer designates an alternative Plan Administrator, the designated Plan Administrator must accept its responsibilities in writing. The Employer and the designated Plan Administrator jointly will determine the time period for which the alternative Plan Administrator will serve.
  - (b) **Multiple alternative Plan Administrators.** If the Employer designated more than one person as an alternative Plan Administrator, such Plan Administrators shall act by majority vote, unless the group delegates particular Plan Administrator duties to a specific person.
  - (c) **Resignation or removal of designated Plan Administrator.** A designated Plan Administrator may resign by delivering a written notice of resignation to the Employer. The Employer may remove a designated Plan Administrator by delivering a written notice of removal. If a designated Plan Administrator resigns or is removed, and no new alternative Plan Administrator is designated, the Employer is the Plan Administrator.
  - (d) **Employer responsibilities.** If the Employer designates an alternative Plan Administrator, the Employer will provide in a timely manner all appropriate information necessary for the Plan Administrator to perform its duties. This information includes, but is not limited to, Participant compensation data, Employee employment, service and termination information, and other information the Plan Administrator may require. The Plan Administrator may rely on the accuracy of any information and data provided by the Employer.
  - (e) **Indemnification of Plan Administrator.** The Employer will indemnify, defend and hold harmless the Plan Administrator (including the individual members of any administrative committee appointed by the Employer to handle administrative functions of the Plan or any Employees who have administrative responsibility for the Plan) with respect to any liability, loss, damage or expense resulting from any act or omission (except willful misconduct or gross negligence) in their official capacities in the administration of this Trust or Plan, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.
- 11.03 Duties, Powers and Responsibilities of the Plan Administrator.** The Plan Administrator will administer the Plan for the exclusive benefit of the Plan Participants and Beneficiaries, and in accordance with the terms of the Plan. If the terms of the Plan are unclear, the Plan Administrator may interpret the Plan, provided such interpretation is consistent with the rules of Code §40. This right to interpret the Plan is an express grant of discretionary authority to resolve ambiguities in the Plan document and to make discretionary decisions regarding the interpretation of the Plan's terms, including who is eligible to participate under the Plan, and the benefit rights of a Participant or Beneficiary. Unless an interpretation or decision is determined to be arbitrary and capricious, the Plan Administrator will not be held liable for any interpretation of the Plan terms or decision regarding the application of a Plan provision.
- (a) **Delegation of duties, powers and responsibilities.** The Plan Administrator may delegate its duties, powers or responsibilities to one or more persons. Such delegation must be in writing and accepted by the person or persons receiving the delegation. The Employer must agree to such delegation by an alternative Plan Administrator.
  - (b) **Specific Plan Administrator responsibilities.** The Plan Administrator has the general responsibility to control and manage the operation of the Plan. This responsibility includes, but is not limited to, the following:
    - (1) To interpret and enforce the provisions of the Plan, including those related to Plan eligibility, vesting and benefits;
    - (2) To communicate with the Trustee and other responsible persons with respect to the crediting of Plan contributions, the disbursement of Plan distributions and other relevant matters;
    - (3) To develop separate procedures (if necessary) consistent with the terms of the Plan to assist in the administration of the Plan, including the adoption of a separate or modified loan policy (see Section 13), procedures for direction of investment by Participants (see Section 10.07), procedures for determining whether domestic

relations orders are QDROs, and procedures for the determination of investment earnings to be allocated to Participants' Accounts (see Section 10.03(d));

- (4) To maintain all records necessary for tax and other administration purposes;
- (5) To furnish and to file all appropriate notices, reports and other information to Participants, Beneficiaries, the Employer, the Trustee and government agencies (as necessary);
- (6) To provide information relating to Plan Participants and Beneficiaries;
- (7) To retain the services of other persons, including investment managers, attorneys, consultants, advisers and others, to assist in the administration of the Plan;
- (8) To review and decide on claims for benefits under the Plan; and
- (9) To correct any defect or error in the operation of the Plan;

#### 11.04 **Plan Administration Expenses.**

- (a) **Reasonable Plan administration expenses.** All reasonable expenses related to plan administration will be paid from Plan assets, except to the extent the expenses are paid (or reimbursed) by the Employer. For this purpose, Plan expenses include, but are not limited to, all reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Trust (including such reasonable compensation to the Trustee as may be agreed upon from time to time between the Employer or Plan Administrator and the Trustee and any fees for legal services rendered to the Trustee). If liquid assets of the Trust are insufficient to cover the fees of the Trustee or the Plan Administrator, then Trust assets shall be liquidated to the extent necessary for such fees. In the event any part of the Trust becomes subject to tax, all taxes incurred will be paid from the Trust.
- (b) **Plan expense allocation.** The Plan Administrator will allocate plan expenses among the accounts of Plan Participants. The Plan Administrator has authority to allocate these expenses either proportionally based on the value of the Account Balances or pro rata based on the number of Participants in the Plan. The Plan Administrator will determine the proper method for allocating expenses in accordance with such reasonable nondiscriminatory rules as the Plan Administrator deems appropriate under the circumstances. Unless the Plan Administrator decides otherwise, the following expenses will be allocated to the Participant's Account relative to which the expense is incurred: distribution expenses, including those relating to lump sums, installments, QDROs, hardship, in-service and required minimum distributions; loan expenses; participant direction expenses, including brokerage fees; and benefit calculations.
- (c) **Expenses related to administration of former Employee or surviving Spouse.** If the Plan is making distributions to a former Employee or surviving Spouse, the Plan may charge reasonable Plan administrative expenses to the Account of that former Employee or surviving Spouse, but only if the administrative expenses are on a pro rata basis. Under the pro rata basis, the expenses are based on the amount in each account of a former Employee or surviving Spouse receiving benefits from the Plan. The Plan Administrator may use another reasonable basis for charging the expenses.

#### 11.05 **Qualified Domestic Relations Orders (QDROs).**

- (a) **In general.** Upon receipt of an order which appears to be a QDRO, the Plan Administrator will notify the Participant involved and each Alternate Payee under the order. The Plan Administrator will determine whether the order is a QDRO and will notify each affected individual of such determination. The Plan Administrator may use the default QDRO procedures set forth in subsection (h) below or may develop separate QDRO procedures for administering any QDROs submitted under the Plan.
- (b) **Definitions related to Qualified Domestic Relations Orders (QDROs).**
  - (1) **QDRO.** A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with respect to a Participant under the Plan. (See Code §414(p).) The QDRO must contain certain information and meet other requirements described in this Section 11.05.
  - (2) **Domestic relations order.** A domestic relations order is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law).
  - (3) **Alternate Payee.** An Alternate Payee must be a Spouse, former Spouse, child, or other dependent of a Participant.

- (c) **Recognition as a QDRO.** To be a QDRO, an order must be a domestic relations order (as defined in subsection (b)(2) above) that relates to the provision of child support, alimony payments, or marital property rights for the benefit of an Alternate Payee. The Plan Administrator is not required to determine whether the court or agency issuing the domestic relations order had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties, or whether an individual identified in an order as an Alternate Payee is a proper Alternate Payee under state law.

Effective April 6, 2007, a domestic relations order otherwise meeting the requirements to be a QDRO shall not fail to be treated as a QDRO solely because:

- (1) the order is issued after, or revises, another domestic relations order or QDRO; or
- (2) of the time at which the order is issued, including orders issued after the death of the Participant.

Any QDRO described in this Section 11.05 shall be subject to the same requirements and protections which apply to QDROs under Code §414(p)(7).

- (d) **Contents of QDRO.** A QDRO must contain the following information:

- (1) the name and last known mailing address of the Participant and each Alternate Payee;
- (2) the name of each plan to which the order applies;
- (3) the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee; and
- (4) the number of payments or time period to which the order applies.

- (e) **Impermissible QDRO provisions.**

- (1) The order must not require the Plan to provide an Alternate Payee or Participant with any type or form of benefit, or any option, not otherwise provided under the Plan;
- (2) The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value);
- (3) The order must not require the Plan to pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO; and
- (4) The order must not require the Plan to pay benefits to an Alternate Payee in the form of a Qualified Joint and Survivor Annuity for the lives of the Alternate Payee and his or her subsequent Spouse.

- (f) **Immediate distribution to Alternate Payee.** Even if a Participant is not eligible to receive an immediate distribution from the Plan, an Alternate Payee may receive a QDRO benefit immediately in a lump sum, provided such distribution is consistent with the QDRO provisions.

- (g) **Fee for QDRO determination.** The Plan Administrator may condition the making of a QDRO determination on the payment of a fee by a Participant or an Alternate Payee (either directly or as a charge against the Participant's Account).

- (h) **Default QDRO procedure.** If the Plan Administrator chooses this default QDRO procedure or if the Plan Administrator does not establish a separate QDRO procedure, this subsection (h) will apply as the procedure the Plan Administrator will use to determine whether a domestic relations order is a QDRO. This default QDRO procedure incorporates the requirements set forth below.

- (1) **Access to information.** The Plan Administrator will provide access to Plan and Participant benefit information sufficient for a prospective Alternate Payee to prepare a QDRO. Such information might include the summary plan description, other relevant plan documents, and a statement of the Participant's benefit entitlements. The disclosure of this information is conditioned on the prospective Alternate Payee providing to the Plan Administrator information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations order.

- (2) **Notifications to Participant and Alternate Payee.** The Plan Administrator will promptly notify the affected Participant and each Alternate Payee named in the domestic relations order of the receipt of the order. The Plan Administrator will send the notification to the address included in the domestic relations order. Along with the notification, the Plan Administrator will provide a copy of the Plan's procedures for determining whether a domestic relations order is a QDRO.
- (3) **Alternate Payee representative.** The prospective Alternate Payee may designate a representative to receive copies of notices and Plan information that are sent to the Alternate Payee with respect to the domestic relations order.
- (4) **Evaluation of domestic relations order.** Within a reasonable period of time, the Plan Administrator will evaluate the domestic relations order to determine whether it is a QDRO. A reasonable period will depend on the specific circumstances. The domestic relations order must contain the information described in subsection (d). If the order is only deficient in a minor respect, the Plan Administrator may supplement information in the order from information within the Plan Administrator's control or through communication with the prospective Alternate Payee.
- (i) **Separate accounting.** Upon receipt of a domestic relations order, the Plan Administrator will separately account for and preserve the amounts that would be payable to an Alternate Payee until a determination is made with respect to the status of the order. During the period in which the status of the order is being determined, the Plan Administrator will take whatever steps are necessary to ensure that amounts that would be payable to the Alternate Payee, if the order were a QDRO, are not distributed to the Participant or any other person. The separate accounting requirement may be satisfied, at the Plan Administrator's discretion, by a segregation of the assets that are subject to separate accounting.
- (ii) **Separate accounting until the end of 18 month period.** The Plan Administrator will continue to separately account for amounts that are payable under the QDRO until the end of an 18-month period. The 18-month period will begin on the first date following the Plan's receipt of the order upon which a payment would be required to be made to an Alternate Payee under the order. If, within the 18-month period, the Plan Administrator determines that the order is a QDRO, the Plan Administrator must pay the Alternate Payee in accordance with the terms of the QDRO. If, however, the Plan Administrator determines within the 18-month period that the order is not a QDRO, or, if the status of the order is not resolved by the end of the 18-month period, the Plan Administrator may pay out the amounts otherwise payable under the order to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order will apply only prospectively; that is, the Alternate Payee will be entitled only to amounts payable under the order after the subsequent determination.
- (iii) **Preliminary review.** The Plan Administrator will perform a preliminary review of the domestic relations order to determine if it is a QDRO. If this preliminary review indicates the order is deficient in some manner, the Plan Administrator will allow the parties to attempt to correct any deficiency before issuing a final decision on the domestic relations order. The ability to correct is limited to a reasonable period of time.
- (iv) **Notification of determination.** The Plan Administrator will notify in writing the Participant and each Alternate Payee of the Plan Administrator's decision as to whether a domestic relations order is a QDRO. In the case of a determination that an order is not a QDRO, the written notice will contain the following information:
- (A) references to the Plan provisions on which the Plan Administrator based its decision;
- (B) an explanation of any time limits that apply to rights available to the parties under the Plan (such as the duration of any protective actions the Plan Administrator will take); and
- (C) a description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.
- (v) **Treatment of Alternate Payee.** If an order is accepted as a QDRO, the Plan Administrator will act in accordance with the terms of the QDRO as if it were a part of the Plan. Except as designated otherwise under this subsection (v), an Alternate Payee will be considered a Beneficiary under the Plan and be afforded the same rights as a Beneficiary. The Plan Administrator will provide any appropriate

disclosure information relating to the Plan to the Alternate Payee. In determining the rights of an Alternate Payee, unless designated otherwise under AA §C-4(b), the following rules apply:

- (A) **Loans.** An Alternate Payee is not permitted to take a loan from the Plan.
- (B) **Death benefits.** If an Alternate Payee dies prior to receiving the entire amount designated under the QDRO, such benefits will be paid in accordance with Section 7.07, treating the Alternate Payee as the Beneficiary. If the Alternate Payee dies without a designated Beneficiary, the benefits will be paid to the Alternate Payee's estate. Any death benefit will be paid in a single sum as soon as administratively feasible after the Alternate Payee's death.
- (C) **Direction of investments.** An Alternate Payee has the right to direct the investment of the portion of the Participant's benefit that is segregated for the Alternate Payee's benefit pursuant to a QDRO in the same manner as the Participant.

**11.06 Claims Procedure.** The Plan Administrator may establish procedures for administering benefit claims. Such benefit claims procedures should provide claimants with a reasonable opportunity to have a full and fair review of a denied claim. The Plan Administrator is authorized to conduct an examination of the relevant facts to determine the merits of a Participant's or Beneficiary's claim for Plan benefits. Any claims procedure will incorporate the guidelines under this Section 11.06. To the extent any of the time periods specified in this Section 11.06 are amended by law or Department of Labor regulations, the time frames specified herein shall automatically be changed in accordance with such law or regulation.

SECTION 12  
TRUST PROVISIONS

**12.01** **Establishment of Trust.** In conjunction with the establishment of this Plan, the Employer and the Trustee agree to establish and maintain a domestic Trust in the United States consisting of such sums as shall from time to time be paid to the Trustee under the Plan and such earnings, income and appreciation as may accrue thereon. The Trustee shall carry out the duties and responsibilities herein specified, but shall be under no duty to determine whether the amount of any contribution by the Employer or any Participant is in accordance with the terms of the Plan.

The Trust shall be held, invested, reinvested and administered by the Trustee in accordance with the terms of the Plan and this Agreement solely in the interest of Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Except as provided in Section 15.02, no assets of the Plan shall inure to the benefit of the Employer.

**12.02** **Types of Trustees.** The Trustee identified in the Trustee Declaration page under the Adoption Agreement shall act either as a Directed Trustee or as a Discretionary Trustee, as designated on the Trustee Declaration page.

(a) **Directed Trustee.** A Directed Trustee is subject to the direction of the Plan Administrator, the Employer, a properly appointed investment manager, or Plan Participant. A Directed Trustee does not have any discretionary authority with respect to the investment of Plan assets. In addition, a Directed Trustee is not responsible for the propriety of any directed investment made pursuant to this Section and shall not be required to consult or advise the Employer regarding the investment quality of any directed investment held under the Plan.

(1) **Delegation of powers.** The Directed Trustee shall be advised in writing regarding the retention of investment powers by the Employer or the appointment of an investment manager with power to direct the investment of Plan assets. Any such delegation of investment powers will remain in force until such delegation is revoked or amended in writing. The Employer is deemed to have retained investment powers under this subsection to the extent the Employer directs the investment of Participant Accounts for which affirmative investment direction has not been received.

(2) **Direction of Trustee.** Any investment direction shall be made in writing by the Employer, investment manager, as applicable. A Directed Trustee must act solely in accordance with the direction of the Plan Administrator, the Employer, any employees or agents of the Employer, a properly appointed investment manager or other authorized person, or Plan Participants. (See Section 10.07 for a discussion of the Trustee's responsibilities with regard to Participant directed investments.)

(3) **Restriction on Trustee.** The Employer may direct the Directed Trustee to invest in any media in which the Trustee may invest, as described in Section 12.03(b). However, the Employer may not borrow from the Trust or pledge any of the assets of the Trust as security for a loan to itself; buy property or assets from or sell property or assets to the Trust; charge any fee for services rendered to the Trust; or receive any services from the Trust on a preferential basis.

(b) **Discretionary Trustee.** A Discretionary Trustee has exclusive authority and discretion with respect to the investment, management or control of Plan assets. Notwithstanding a Trustee's designation as a Discretionary Trustee, a Trustee's discretion is limited, and the Trustee shall be considered a Directed Trustee, to the extent the Trustee is subject to the direction of the Plan Administrator, the Employer, a properly appointed investment manager, under an agreement between the Plan Administrator and the Trustee. A Trustee also is considered a Directed Trustee to the extent the Trustee is subject to investment direction of Plan Participants. (See Section 10.07 for a discussion of the Trustee's responsibilities with regard to Participant-directed investments.)

**12.03** **Responsibilities of the Trustee.** In addition to the powers, rights and responsibilities enumerated under this Section, the Trustee has all powers necessary to carry out its duties in a prudent manner. The Trustee's powers, rights and responsibilities may be modified, supplemented or limited by a separate trust agreement, investment policy, funding agreement, or other binding document entered into between the Trustee and the Plan Administrator or Employer. Such binding document must designate the Trustee's responsibilities with respect to the Plan. A separate trust agreement, investment policy, funding agreement, or other binding document must be consistent with the terms of this Plan and must comply with all qualification requirements under the Code and regulations. To the extent the exercise of any power, right or responsibility is subject to discretion, such exercise by a Directed Trustee must be made at the direction of the Plan Administrator, the Employer, an investment manager, or Plan Participant.



**(a) Responsibilities regarding administration of Trust.**

- (1) The Trustee, the Employer and the Plan Administrator shall each discharge their assigned duties and responsibilities under this Agreement and the Plan solely in the interest of Participants and their Beneficiaries in the following manner:
  - (i) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
  - (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
  - (iii) by diversifying the available investments under the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- (2) The Trustee will receive all contributions, earnings and other amounts made to and under the terms of the Plan. The Trustee is not obligated in any manner to ensure that such amounts are correct in amount or that such amounts comply with the terms of the Plan or the Code. The Trustee is not liable for the manner in which such amounts are deposited or the allocation between Participant's Accounts, to the extent the Trustee follows the written direction of the Plan Administrator or Employer.
- (3) The Trustee will make distributions from the Trust in accordance with the written directions of the Plan Administrator or other authorized representative. To the extent the Trustee follows such written direction, the Trustee is not obligated in any manner to ensure a distribution complies with the terms of the Plan, that a Participant or Beneficiary is entitled to such a distribution, or that the amount distributed is proper under the terms of the Plan. If there is a dispute as to a payment from the Trust, the Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or the Trustee has been indemnified to its satisfaction.
- (4) The Trustee may employ agents, attorneys, accountants and other third parties to provide counsel on behalf of the Plan, where the Trustee deems advisable. The Trustee may reimburse such persons from the Trust for reasonable expenses and compensation incurred as a result of such employment. The Trustee shall not be liable for the actions of such persons, provided the Trustee acted prudently in the employment and retention of such persons. In addition, the Trustee will not be liable for any actions taken as a result of good faith reliance on the advice of such persons.
- (5) The Trustee shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the Employer and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Trustee or the Plan Administrator. A Participant may examine only those individual account records pertaining directly to him.
- (6) Except as provided in Section 15.02, at no time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under the Plan shall any part of the corpus or income of the Fund be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, or for defraying reasonable expenses of administering the Plan.

**(b) Responsibilities regarding investment of Plan assets.**

- (1) The Trustee shall be responsible for holding the assets of the Trust in accordance with the provisions of this Plan.
- (2) The Trustee may invest and reinvest, manage and control the Plan assets in a manner that is consistent with the Plan's funding policy and investment objectives of the Plan. The Trustee may invest in any investment, as authorized under this subsection (b), which the Trustee deems advisable and prudent, subject to the proper written direction of the Plan Administrator, the Employer, a properly appointed investment manager, or a Plan Participant. The Trustee is not liable for the investment of Plan assets to the extent the Trustee is following the proper direction of the Plan Administrator, the Employer, a Participant, an Investment manager, or other person or persons duly appointed by the Employer to provide investment direction. In addition, the Trustee does not guarantee the Trust in any manner against investment loss or depreciation in asset value, or guarantee the adequacy of the Trust to meet and discharge any or all liabilities of the Plan.

- (3) The Trustee may hold any securities or other property in the name of the Trustee or in the name of the Trustee's nominee, and may hold any investments in bearer form, provided the books and records of the Trustee at all times show such investment to be part of the Trust.
- (4) The Trustee may retain such portion of the Plan assets in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon.
- (5) The Trustee may collect and receive any and all moneys and other property due the Plan and to settle, compromise, or submit to arbitration any claims, debts, or damages with respect to the Plan, and to commence or defend on behalf of the Plan any lawsuit, or other legal or administrative proceedings.
- (6) The Trustee may pay expenses out of Plan assets as necessary to administer the Trust and as authorized under the Plan.
- (7) The Trustee may borrow or raise money on behalf of the Plan in such amount, and upon such terms and conditions, as the Trustee deems advisable. The Trustee may issue a promissory note as Trustee to secure the repayment of such amounts and may pledge all, or any part, of the Trust as security.
- (8) The Trustee is authorized to execute, acknowledge and deliver all documents of transfer and conveyance, receipts, releases, and any other instruments that the Trustee deems necessary or appropriate to carry out its powers, rights and duties hereunder.
- (9) The Trustee, upon the written direction of the Plan Administrator, is authorized to enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any Employee of the Employer. The Trustee is also authorized, upon the written direction of the Plan Administrator, to transfer some or all of a Participant's vested Account Balance to another qualified retirement plan on behalf of such Participant. A transfer agreement entered into by the Trustee does not affect the Plan's status as a Volume Submitter Plan.
- (10) If the Employer maintains more than one Plan, the assets of such Plans may be commingled for investment purposes. The Trustee must separately account for the assets of each Plan. A commingling of assets does not cause the Trusts maintained with respect to the Employer's Plans to be treated as a single Trust, except as provided in a separate document authorized in the first paragraph of this Section 12.03.
- (11) If the Trustee is a bank or similar financial institution, the Trustee is authorized to invest in any type of deposit of the Trustee (including its own money market fund) at a reasonable rate of interest.
- (12) The Trustee is authorized to invest Plan assets in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100, as clarified by Revenue Ruling 2004-67. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for this Plan. The assets in a group trust may be pooled with the assets of a custodial account under Code §403(b)(7), a retirement income account under Code §403(b)(9), and Code §401(a)(24) governmental plans without affecting the tax status of the group trust, subject to the requirements under Rev. Rul. 2011-1 (as modified by Notice 2012-6).

**12.04** **Responsibilities of the Employer.** The Employer will provide to the Trustee written notification of the appointment of any person or persons as Plan Administrator or investment manager and the names, titles and authorities of any individuals who are authorized to act on behalf of such persons. The Trustee shall be entitled to rely upon such information until it receives written notice of a change in such appointments or authorizations.

The Employer may authorize the Trustee to enter into a merger agreement with the Trustee of another plan to effect such merger or consolidation. A merger agreement entered into by the Trustee is not part of this Plan and does not affect the assets transferred to this Plan from another plan.

**12.05** **Effect of Plan Amendment.** Any amendment that affects the rights, duties or responsibilities of the Trustee or Plan Administrator may only be made with the Trustee's or Plan Administrator's written consent. Any amendment to the Plan must be in writing and a copy of the resolution (or similar instrument) setting forth such amendment (with the applicable effective date of such amendment) must be delivered to the Trustee.

**12.06** **More than One Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement. The Trustees may agree to make decisions by a majority vote or may permit any one of the Trustees to make any decision, undertake any action or execute any documents affecting this Trust without the approval of

the remaining Trustees. The Trustees may agree to the allocation of responsibilities in a separate trust agreement or other binding document.

- 12.07 Annual Valuation.** The Plan assets will be valued at least on an annual basis. The Employer may designate more frequent Valuation Dates under AA §11-1. Notwithstanding any election under AA §11-1, the Trustee and Plan Administrator may agree to value the Trust on a more frequent basis, and/or to perform an interim valuation of the Trust.
- 12.08 Reporting to Plan Administrator and Employer.** Within a reasonable time after the end of each Plan Year or within a reasonable time after its removal or resignation, the Trustee shall file with the Plan Administrator a written account of the administration of the Trust showing all transactions effected by the Trustee from the last preceding accounting to the end of such Plan Year or date of removal or resignation. The accounting will include a statement of cash receipts, disbursements and other transactions effected by the Trustee since the date of its last accounting, and such further information as the Trustee and/or Employer deems appropriate. Upon approval of such accounting by the Plan Administrator, neither the Employer nor the Plan Administrator shall be entitled to any further accounting by the Trustee. The Trustee shall have a reasonable time following its receipt of a written disapproval from the Employer to provide the Employer with a written explanation of the terms in question. If the Employer again disapproves of the accounting, the Trustee may file its accounting with a court of competent jurisdiction for audit and adjudication.
- 12.09 Reasonable Compensation.** The Trustee shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Trustee. The Trustee also will be reimbursed for any reasonable expenses or fees incurred in its function as Trustee. An individual Trustee who is already receiving full-time pay as an Employee of the Employer may not receive any additional compensation for services as Trustee. The Plan will pay the reasonable compensation and expenses incurred by the Trustee, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Trustee is not an Employer Contribution to the Plan.
- 12.10 Resignation and Removal of Trustee.** The Trustee may resign at any time by delivering to the Employer a written notice of resignation at least thirty (30) days prior to the effective date of such resignation, unless the Employer consents in writing to a shorter notice period. The Employer and Trustee may agree to a longer notification period prior to the resignation of the Trustee. The Employer may remove the Trustee at any time, with or without cause, by delivering written notice to the Trustee at least 30 days prior to the effective date of such removal. The Employer may remove the Trustee upon a shorter written notice period if the Employer reasonably determines such shorter period is necessary to protect Plan assets or to ensure the Plan is being operated for the exclusive benefit of Participants and their Beneficiaries. Upon the resignation, removal, death or incapacity of a Trustee, the Employer may appoint a successor Trustee which, upon accepting such appointment, will have all the powers, rights and duties conferred upon the preceding Trustee. In the event there is a period of time following the effective date of a Trustee's removal or resignation before a successor Trustee is appointed, the Employer is deemed to be the Trustee. During such period, the Trust continues to be in existence and legally enforceable, and the assets of the Plan shall continue to be protected by the provisions of the Trust.
- 12.11 Indemnification of Trustee.** Except to the extent that it is judicially determined that the Trustee has acted with gross negligence or willful misconduct, the Employer shall indemnify the Trustee (whether or not the Trustee has resigned or been removed) against any liabilities, losses, damages, and expenses, including attorney, accountant, and other advisory fees, incurred as a result of:
- (a) any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion given to the Trustee by the Employer, the Plan Administrator, investment manager, or legal counsel of the Employer, or any person or entity appointed by any of them and authorized to give any information, instruction, direction, or opinion to the Trustee;
  - (b) the failure of the Employer, the Plan Administrator, investment manager, or any person or entity appointed by any of them to make timely disclosure to the Trustee of information which any of them or any appointee knows or should know if it acted in a reasonably prudent manner; or
  - (c) any breach of fiduciary duty by the Employer, the Plan Administrator, investment manager, or any person or entity appointed by any of them, other than such a breach which is caused by any failure of the Trustee to perform its duties under this Trust.
- 12.12 Liability of Trustee.** The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by this Plan document and Trust or as subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee shall rest solely with the Plan Administrator and the Employer.

The Employer agrees that the Trustee shall have no liability with regard to the investment or management of illiquid Plan assets transferred from a prior Trustee, and shall have no responsibility for investments made before the transfer of Plan assets to it, or

for the viability or prudence of any investment made by a prior Trustee, including those represented by assets now transferred to the custody of the Trustee, or for any dealings whatsoever with respect to Plan assets before the transfer of such assets to the Trustee. The Employer shall indemnify and hold the Trustee harmless for any and all claims, actions or causes of action for loss or damage, or any liability whatsoever relating to the assets of the Plan transferred to the Trustee by any prior Trustee of the Plan, including any liability arising out of or related to any act or event, including prohibited transactions, occurring prior to the date the Trustee accepts such assets, including all claims, actions, causes of action, loss, damage, or any liability whatsoever arising out of or related to that act or event, although that claim, action, cause of action, loss, damage, or liability may not be asserted, may not have accrued, or may not have been made known until after the date the Trustee accepts the Plan assets. Such indemnification shall extend to all applicable periods, including periods for which the Plan is retroactively restated to comply with any tax law or regulation.

- 12.13 Appointment of Custodian.** The Plan Administrator may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the powers, rights and responsibilities similar to those of a Directed Trustee. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an investment manager, or other third party with authority to provide direction to the Custodian. The Custodian may designate its acceptance of the responsibilities and obligations described under this Plan document by executing the Trustee Declaration Page. The Employer also may enter into a separate agreement with the Custodian. Such separate agreement must be consistent with the responsibilities and obligations set forth in this Plan document. If there is no Custodian that will be executing the Trustee Declaration, the provisions of the Trustee Declaration addressing the Custodian (i.e., the Custodian signature provisions) may be removed from the Trustee Declaration Page.
- 12.14 Modification of Trust Provisions.** The Employer may amend the administrative trust or custodial provisions under this Plan (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the Plan and do not cause the Plan to fail to qualify under Code §401(a). The Employer may document any amendment modifying the trust or custodial provisions under this Plan or other overriding language in an Addendum to the Adoption Agreement.
- 12.15 Custodial Accounts, Annuity Contracts and Insurance Contracts.** As provided under Code §401(f), a custodial account, an annuity contract or a contract issued by an Insurer is treated as a qualified trust under the Plan if (i) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under Code §401(a) and (ii) in the case of a custodial account the assets thereof are held by a bank (as defined in Code §408(n)) or another person who demonstrates to the IRS that the manner in which the assets are held are consistent with the requirements of Code §401(a).

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

If this Plan is funded by individual contracts that provide a Participant's benefit under the Plan, such individual contracts shall constitute the Participant's Account Balance. If this Plan is funded by group contracts, under the group annuity or group insurance contract, premiums or other consideration received by the insurance company must be allocated to Participants' accounts under the Plan.

SECTION 13  
PARTICIPANT LOANS

**13.01** **Availability of Participant Loans.** The Employer may elect under Appendix B of the Adoption Agreement to permit Participants to take loans from their vested Account Balance under the Plan. Participant loans may be treated as a segregated investment on behalf of each individual Participant for whom the loan is made or may be treated as a general investment of the Plan. If the Employer elects to permit loans under the Plan, the Employer may elect to use the default loan policy under this Section 13, as modified under Appendix B of the Adoption Agreement, or an outside loan policy for purposes of administering Participant loans under the Plan. If a separate written loan policy is adopted, the terms of such separate loan policy will control over the terms of this Plan with respect to the administration of any Participant loans. Any separate written loan policy must satisfy the requirements under Code §72(p) and the regulations thereunder.

To receive a Participant loan, a Participant must sign a promissory note along with a pledge or assignment of the portion of the Account Balance used for security on the loan. The loan will be evidenced by a legally enforceable agreement which specifies the amount and term of the loan, and the repayment schedule.

**13.02** **Must be Available in Reasonably Equivalent Manner.** Participant loans must be made available to Participants in a reasonably equivalent manner. The Employer may elect under AA §B-7 to limit the availability of Participant loans to specified events. For example, the availability of Participant loans may be limited to the occurrence of a hardship event as described in Section 7.10(e)(1)(i).

**13.03** **Loan Limitations.** A Participant loan may not be made to the extent such loan (when added to the outstanding balance of all other loans made to the Participant) exceeds the lesser of:

- (a) \$50,000 (reduced by the excess, if any, of the Participant's highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which such loan is made, over the Participant's outstanding balance of loans from the Plan as of the date such loan is made) or
- (b) one-half (½) of the Participant's vested Account Balance, determined as of the Valuation Date coinciding with or immediately preceding such loan, adjusted for any contributions or distributions made since such Valuation Date.

If so elected under AA §B-4, a Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance. However, if a Participant takes a loan in excess of 50% of the Participant's vested Account Balance, such loan is still subject to the adequate security requirements under Section 13.06.

In applying the limitations under this Section 13.03, all plans maintained by the Employer are aggregated and treated as a single plan. In addition, any assignment or pledge of any portion of the Participant's interest in the Plan and any loan, pledge, or assignment with respect to any insurance contract purchased under the Plan will be treated as loan under this Section.

**13.04** **Limit on Amount and Number of Loans.** Unless elected otherwise under AA §B-5 and/or AA §B-6, or under a separate written loan policy, a Participant may not receive a Participant loan of less than \$1,000 nor may a Participant have more than one Participant loan outstanding at any time.

- (a) **Loan renegotiation.** Unless designated otherwise under AA §B-15, a Participant may be permitted to renegotiate a loan without violating the one outstanding loan requirement to the extent such renegotiated loan is a new loan (i.e., the renegotiated loan separately satisfies the reasonable interest rate requirement under Section 13.05, the adequate security requirement under Section 13.06, and the periodic repayment requirement under Section 13.07) and the renegotiated loan does not exceed the limitations under Section 13.03 above, treating both the replaced loan and the renegotiated loan as outstanding at the same time. However, if the term of the renegotiated loan does not end later than the original term of the replaced loan, the replaced loan may be ignored in applying the limitations under Section 13.03 above.
- (b) **Participant must be creditworthy.** The Plan Administrator may refuse to make a loan to any Participant who is determined to be not creditworthy. For this purpose, a Participant is not creditworthy if, based on the facts and circumstances, it is reasonable to believe that the Participant will not repay the loan. A Participant who has defaulted on a previous loan from the Plan and has not repaid such loan (with accrued interest) at the time of any subsequent loan will be treated as not creditworthy until such time as the Participant repays the defaulted loan (with accrued interest).

**13.05** **Reasonable Rate of Interest.** All Participant loans will be charged a reasonable rate of interest. Alternative methods for determining a reasonable rate of interest may be identified under AA §B-7 or under a separate written loan policy. The interest rate assumptions must be periodically reviewed to ensure the interest rate charged on Participant loans is reasonable.

If a Participant is in military service while he/she has an outstanding Participant loan, the applicable interest charged on such loan during the period while the Participant is in military service will not exceed 6% per year provided the Participant provides

written notice and a copy of his/her call-up or extension orders to the Plan Administrator within 180 days following the Participant's termination or release from military service. For this purpose, military service is as defined in the Soldier's and Sailor's Civil Relief Act of 1940 as modified by the Servicemembers Civil Relief Act of 2003. The Participant may voluntarily waive this 6% interest limitation and the Plan Administrator may petition the court to retain the original interest rate if the ability to repay is not affected by the Participant's activation to military duty.

- 13.06** **Adequate Security.** All Participant loans must be adequately secured. The Participant's vested Account Balance shall be used as security for a Participant loan provided the outstanding balance of all Participant loans made to such Participant does not exceed 50% of the Participant's vested Account Balance, determined immediately after the origination of each loan. The Plan Administrator (with the consent of the Trustee) may require a Participant to provide additional collateral to receive a Participant loan if the Plan Administrator determines such additional collateral is required to protect the interests of Plan Participants. A separate loan policy or written modifications to this loan policy may prescribe alternative rules for obtaining adequate security.
- 13.07** **Periodic Repayment.** A Participant loan must provide for level amortization with payments to be made not less frequently than quarterly. A Participant loan must be payable within a period not exceeding five (5) years from the date the Participant receives the loan from the Plan, unless the loan is for the purchase of the Participant's principal residence, in which case the loan may be payable within ten (10) years or such longer period that is commensurate with the repayment period permitted by commercial lenders for similar loans. Loan repayments must be made through payroll withholding, except to the extent the Plan Administrator determines payroll withholding is not practical given the level of a Participant's wages, the frequency with which the Participant is paid, or other circumstances.
- (a) **Leave of absence.** A Participant with an outstanding Participant loan may suspend loan payments to the Plan for up to 12 months for any period during which the Participant's pay is insufficient to fully repay the required loan payments. Upon the Participant's return to employment (or after the end of the 12-month period, if earlier), the Participant's outstanding loan will be reamortized over the remaining period of such loan to make up for the missed payments. The reamortized loan may extend beyond the original loan term so long as the loan is paid in full by whichever of the following dates comes first:
- (1) the date which is five (5) years from the original date of the loan (or the end of the suspension, if sooner), or
  - (2) the original loan repayment deadline (or the end of the suspension period, if later) plus the length of the suspension period.
- (b) **Military leave.** A Participant with an outstanding Participant loan also may suspend loan payments for any period such Participant is on military leave, in accordance with Code §414(u)(4). Upon the Participant's return from military leave (or the expiration of five years from the date the Participant began his/her military leave, if earlier), loan payments will recommence under the amortization schedule in effect prior to the Participant's military leave, without regard to the five-year maximum loan repayment period. Alternatively, the loan may be reamortized to require a different level of loan payment, as long as the amount and frequency of such payments are not less than the amount and frequency under the amortization schedule in effect prior to the Participant's military leave.
- 13.08** **Designation of Accounts.** A Participant loan will be treated as a segregated investment on behalf of the individual Participant for whom the loan is made or may be treated as a general investment of the Plan. Unless designated otherwise under AA §B-9 or under a separate loan procedure, loan amounts may be taken from any available contribution source under the Plan. The Plan Administrator may determine the contribution sources from which a loan is taken or may follow directions of the Participant.

Each payment of principal and interest paid by a Participant on his/her Participant loan shall be credited to the same Participant Accounts and investment funds within such Accounts from which the loan was taken.

- 13.09** **Procedures for Loan Default.** A Participant will be considered to be in default with respect to a loan if any scheduled repayment with respect to such loan is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. The Employer may apply a shorter cure period under AA §B-11.

If a Participant defaults on a Participant loan, the Plan may not offset the Participant's Account Balance until the Participant is otherwise entitled to an immediate distribution of the portion of the Account Balance which will be offset and such amount being offset is available as security on the loan, pursuant to Section 13.06. For this purpose, a loan default is treated as an immediate distribution event to the extent the law does not prohibit an actual distribution of the type of contributions which would be offset as a result of the loan default). The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

Pending the offset of a Participant's Account Balance following a defaulted loan, the following rules apply to the amount in default.

- (a) Interest continues to accrue on the amount in default until the time of the loan offset or, if earlier, the date the loan repayments are made current or the amount is satisfied with other collateral.
- (b) A subsequent offset of the amount in default is not reported as a taxable distribution, except to the extent the taxable portion of the default amount was not previously reported by the Plan as a taxable distribution.
- (c) The post-default accrued interest included in the loan offset is not reported as a taxable distribution at the time of the offset.

A separate loan policy or written modifications to this loan policy may modify the procedures for determining a loan default.

**13.10 Termination of Employment.**

- (a) **Offset of outstanding loan.** Unless elected otherwise under AA §B-13, a Participant loan becomes due and payable in full immediately upon the Participant's termination of employment. Upon a Participant's termination, the Participant may repay the entire outstanding balance of the loan (including any accrued interest) within a reasonable period following termination of employment. If the Participant does not repay the entire outstanding loan balance, the Participant's vested Account Balance will be reduced by the remaining outstanding balance of the loan to the extent such Account Balance is available as security on the loan, pursuant to Section 13.06, and the remaining vested Account Balance will be distributed in accordance with the distribution provisions under Section 7. If the outstanding loan balance of a deceased Participant is not repaid, the outstanding loan balance shall be treated as a distribution to the Participant and shall reduce the death benefit amount payable to the Beneficiary under Section 7.07.
- (b) **Direct Rollover.** Unless elected otherwise under AA §B-14, upon termination of employment, a Participant may request a Direct Rollover of the loan note (provided the distribution is an Eligible Rollover Distribution as defined in Section 7.04(a)(1)) to another qualified plan which agrees to accept a Direct Rollover of the loan note. A Participant may not engage in a Direct Rollover of a loan to the extent the Participant has already received a deemed distribution with respect to such loan. (See the rules regarding deemed distributions upon a loan default under Section 13.09.)

**13.11 Amendment of Plan to Eliminate Participant Loans.** The Plan may be amended at any time to eliminate Participant loans on a prospective basis. However, the elimination of a Participant loan feature may not result in the acceleration of payment of any existing Participant loans, unless the terms of the Participant loan permit such acceleration.

SECTION 14  
PLAN AMENDMENTS, TERMINATION, MERGERS AND TRANSFERS14.01 **Plan Amendments.**

- (a) **Amendment by the Volume Submitter practitioner.** The Volume Submitter practitioner may amend the Plan on behalf of all adopting Employers, including those Employers who adopt the Plan prior to or after the amendment, for changes in the Code, regulations, revenue rulings, and other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments will be applied to all Employers who have adopted the Plan.

However, for purposes of reliance on an advisory or determination letter, the Volume Submitter practitioner will no longer have the authority to amend the Plan on behalf of any adopting Employer as of either:

- (1) the date the Employer amends the Plan to incorporate a type of plan that is not permitted under the Volume Submitter program, as described in section 6.03 of Rev. Proc. 2011-49, or
- (2) the date the IRS notifies the Employer, in accordance with section 24.03 of Rev. Proc. 2011-49, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan.

If the Employer is required to obtain a determination letter for any reason in order to maintain reliance on the Favorable IRS Letter, the Volume Submitter practitioner's authority to amend the Plan on behalf of the adopting Employer is conditioned on the Plan receiving a favorable determination letter.

The Volume Submitter practitioner will maintain, or have maintained on its behalf, a record of the Employers that have adopted the Plan, and the Volume Submitter practitioner will make reasonable and diligent efforts to ensure that adopting Employers have actually received and are aware of all Plan amendments and that such Employers adopt new documents when necessary.

- (b) **Amendment by the Employer.** The Employer shall have the right at any time to amend the Adoption Agreement in the following manner without affecting the Plan's status as a Volume Submitter Plan. (The ability to amend the Plan as authorized under this subsection (b) applies only to the Employer that executes the Employer Signature Page of the Adoption Agreement. Any amendment to the Plan by the Employer under this subsection (b) also applies to any other Employer that participates under the Plan as a Participating Employer.)

- (1) The Employer may change any optional selections under the Adoption Agreement.
- (2) The Employer may add overriding language to the Adoption Agreement when such language is necessary to satisfy Code §415 because of the required aggregation of multiple plans.
- (3) The Employer may change the administrative selections under Appendix C of the Adoption Agreement by replacing the appropriate page(s) within the Adoption Agreement. Such amendment does not require reexecution of the Employer Signature Page of the Adoption Agreement.
- (4) The Employer may amend administrative provisions of the trust or custodial document, including the name of the Plan, Employer, Trustee or Custodian, Plan Administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate.
- (5) The Employer may add certain sample or model amendments published by the IRS which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan.
- (6) The Employer may add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan.
- (7) The Employer may adopt any amendments that it deems necessary to satisfy the requirements for resolving qualification failures under the IRS' compliance resolution programs.

The Employer may amend the Plan at any time for any other reason. If such amendment is not deemed to be significant, the Plan will not lose its status as a Volume Submitter Plan. However, if the Employer modifies the language of the Plan or Adoption Agreement (other than the completion of optional selections (e.g., Describe lines), the Employer will not be able to rely on the Favorable IRS Letter issued with respect to the Plan and will need to submit the Plan to the IRS for a favorable determination letter to retain reliance. If an amendment to the Plan is deemed significant, such



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amendment could cause the Plan to lose its status as a Volume Submitter Plan and become an individually designed plan.

- (c) **Method of amendment.** An amendment to the Plan may be adopted as a modification to the Adoption Agreement and/or Basic Plan Document or as a separate snap-on amendment. An amendment to the Plan may be adopted as part of a properly executed board resolution. Any such amendment must be executed by the board of directors or a duly authorized officer of the Employer (if the Employer is a corporation or other similarly organized business entity), by a general partner or member of the Employer (if the Employer is a partnership or limited liability company), or by a sole proprietor (if the Employer is a sole proprietorship).
- (d) **Effective date of Plan Amendments.** If the Plan is restated or amended, such restatement or amendment is generally effective as of the Effective Date of the restatement or amendment (as designated on the Employer Signature Page with respect to such amendment), except where the context indicates a reference to an earlier Effective Date. The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A of the Adoption Agreement.
- (1) **Retroactive Effective Date.** If the Plan is amended retroactively (e.g., to add language required to comply with IRS guidance or law), the provisions of this Plan generally override the provisions of any prior Plan. However, if the provisions of this Plan are different from the provisions of the Employer's prior plan and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, the provisions of such prior plan are incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, regulations, or other IRS guidance.
- (2) **Retroactive effect of PPA, HEART and WRERA provisions.** This Plan is designed to comply with the Code, regulations, and general guidance applicable to qualified retirement plans, including the provisions of the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance And Relief Tax Act Of 2008 (HEART Act), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). If this Plan is being restated or amended to comply with the provisions of PPA, HEART and/or WRERA, the Plan contains special effective dates that apply with respect to such provisions. If the Plan is being restated within the remedial amendment period for retroactive compliance with the PPA, HEART and WRERA provisions, the special effective dates for such provisions (as described below) will apply, even if such special effective dates precede the Effective Date of the restatement designated on the Employer Signature Page of the Adoption Agreement. Thus, if the Plan is being restated or amended to comply with PPA, HEART and/or WRERA, and the Effective Date of this restatement or amendment is later than the special effective date applicable to any of the PPA, HEART or WRERA provisions described below, such special effective dates will apply and any prior plan being replaced by this Plan will be considered to have been timely amended for the PPA, HEART and WRERA provisions.

The following provisions contain special effective dates for purposes of complying with the requirements of PPA, HEART and WRERA:

- (i) **Hardship distributions.** Section 7.10(e)(5) of the Plan allows Hardship distributions to be determined with respect to primary beneficiaries. The Employer may elect to apply this provision under AA §10-2(d).
- (ii) **Direct rollovers by non-Spouse beneficiaries.** The provisions allowing for direct rollovers by non-Spouse beneficiaries as described in Section 7.04(c), are effective for distributions made on or after January 1, 2007.
- (iii) **Direct rollover of non-taxable amounts.** Effective for taxable years beginning on or after January 1, 2007, Section 7.04(d) expands the definition of Eligible Rollover Distribution to include the portion of a distribution that is not includible in gross income.
- (iv) **Rollovers to Roth IRA.** For distributions occurring on or after January 1, 2008, Section 7.04(e) permits Participants or beneficiaries to rollover a qualified Eligible Rollover Distribution to a Roth IRA.
- (v) **Distribution notice periods.** Effective for Plan Years beginning on or after January 1, 2007, the period for providing the Code §402(f) rollover notice under Section 7.04(b), and the period for providing the notice regarding the right to defer receipt of a distribution under Section 7.03(b) is increased to 180 days.
- (vi) **Content of notice of a Participant's right to defer receipt of a distribution.** Effective for Plan Years beginning on or after January 1, 2007, Section 7.03(b) requires the notice relating to a Participant's right

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to defer receipt of a distribution must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution.

- (vii) **Qualified Domestic Relations Orders (QDROs)**. Section 11.05(c) of the Plan expands the definition of a QDRO effective April 6, 2007 to include modified orders and orders issued after the Participant's death.
  - (viii) **In-service distributions from pension plans**. AA §10-1 permits a pension plan (e.g., a money purchase plan or a plan that holds transferred assets from a money purchase plan), to make an in-service distribution upon attainment of age 62. This provision is effective for Plan Years beginning on or after January 1, 2013.
  - (ix) **Penalty-free withdrawals for individuals called to active duty**. Effective September 11, 2001, Section 7.10(d) expands the distribution provisions applicable to elective deferrals to include a Qualified Reservist Distribution.
  - (x) **Benefit accruals for Participants on Qualified Military Service**. Section 15.04 of the Plan sets forth the HEART Act provisions addressing Participants on qualified military leave. These provisions are effective for Plan Years beginning on or after January 1, 2007.
  - (xi) **Differential Pay**. Effective for years beginning on or after January 1, 2009, Section 1.89(e) of the Plan permits the Employer to include Differential Pay as Total Compensation under the Plan.
  - (xii) **Waiver of Required Minimum Distributions**. Section 8.06(d) allows for the waiver of the Required Minimum Distribution rules for calendar year 2009 as prescribed under WRERA.
  - (xiii) **Final 415 regulations**. Sections 1.89 and 5.02 contain the provisions required by the final 415 regulations, effective for Limitation Years beginning on or after July 1, 2007.
- (3) **Merged plans**. Except for retroactive application of the provisions under this subsection (d), if one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the Effective Date of the Plan merger(s), unless provided otherwise under Appendix A of the Adoption Agreement.

**14.02 Plan Termination**. The Employer may terminate this Plan at any time by delivering to the Trustee and Plan Administrator written notice of such termination.

- (a) **Full and immediate vesting**. Upon a full or partial termination of the Plan (or in the case of a Profit Sharing Plan, the complete discontinuance of contributions), all amounts credited to an affected Participant's Account become 100% vested, regardless of the Participant's vested percentage determined under Section 6.02. The Plan Administrator has discretion to determine whether a partial termination has occurred.
- (b) **Distribution upon Plan termination**. Upon the termination of the Plan, the Plan Administrator shall direct the distribution of Plan assets to Participants in accordance with the provisions under Section 7. For purposes of applying the provisions of this subsection (b), distribution may be delayed until the Employer receives a favorable determination letter from the IRS as to the qualified status of the Plan upon termination, provided the determination letter request is made within a reasonable period following the termination of the Plan. Until all Plan assets have been distributed from the Plan, the Employer must amend the Plan in order to comply with current laws and regulations and may take any other actions necessary to retain the qualified status of the Plan.
- (c) **Missing Participants**. Upon termination of the Plan, if any Participant cannot be located after a reasonable diligent search (as defined in Section 6.10(c)(1)), the Plan Administrator may make a direct rollover to an IRA selected by the Plan Administrator. For this purpose, the Plan Administrator will adopt procedures similar to the procedures required under Section 7.05 for making Automatic Rollovers in applying the provisions under this subsection (c). An Automatic Rollover under this subsection (c) may be made on behalf of any missing Participant, regardless of the value of his/her vested Account Balance under the Plan.
- (d) **Partial Termination**. In determining whether a Plan has experienced a partial termination as described under Code §411(d)(3), the Plan Administrator will apply the principals set forth under IRS Revenue Ruling 2007-43.

**14.03 Merger or Consolidation**. In the event the Plan is merged or consolidated with another plan, each Participant must be entitled to a benefit immediately after such merger or consolidation that is at least equal to the benefit the Participant was entitled to immediately before such merger or consolidation (had the Plan terminated).

If the Employer amends the Plan from one type of Defined Contribution Plan (e.g., a Money Purchase Plan) into another type of Defined Contribution Plan (e.g., a Profit Sharing Plan) will not result in a partial termination or any other event that would require full vesting of some or all Plan Participants.

**14.04** **Transfer of Assets.** The Plan may accept a transfer of assets from another qualified retirement plan on behalf of any Employee, even if such Employee is not eligible to receive other contributions under the Plan. If a transfer of assets is made on behalf of an Employee prior to the Employee's becoming a Participant, the Employee shall be treated as a Participant for all purposes with respect to such transferred amount. Any assets transferred to this Plan from another plan must be accompanied by written instructions designating the name of each Employee for whose benefit such amounts are being transferred, the current value of such assets, and the sources from which such amounts are derived. The Plan Administrator will deposit any transferred assets in the appropriate Participant's Transfer Account. The Transfer Account will contain any sub-Accounts necessary to separately track the sources of the transferred assets. Each sub-Account will be treated in the same manner as the corresponding Plan Account.

If the Plan is a Profit Sharing Plan or a Grandfathered 401(k) Arrangement and the Plan accepts a transfer of assets from a money purchase plan (other than as a Qualified Transfer as defined in subsection (d) below), the amounts transferred (and any gains attributable to such transferred amounts) continue to be subject to the distribution restrictions applicable to money purchase plan assets under the transferor plan. Such amounts may not be distributed for reasons other than death, disability, attainment of Normal Retirement Age, attainment of age 62, or termination of employment, regardless of any distribution provisions under this Plan that would otherwise permit a distribution prior to such events.

The Plan Administrator may refuse to accept a transfer of assets if the Plan Administrator reasonably believes the transfer (1) is not being made from a proper qualified plan; (2) could jeopardize the tax-exempt status of the Plan; or (3) could create adverse tax consequences for the Plan or the Employer. Prior to accepting a transfer of assets, the Plan Administrator may require evidence documenting that the transfer of assets meets the requirements of this Section. The Trustee will have no responsibility to determine whether the transfer of assets meets the requirements of this Section; to verify the correctness of the amount and type of assets being transferred to the Plan; or to perform a due diligence review with respect to such transfer.

- (a) **Trustee's right to refuse transfer.** If the assets to be transferred to the Plan under this Section 14.04 are not susceptible to proper valuation and identification or are of such a nature that their valuation is incompatible with other Plan assets, the Trustee may refuse to accept the transfer of all or any specific asset, or may condition acceptance of the assets on the sale or disposition of any specific asset.
- (b) **Transfer of Plan to unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated employer.

SECTION 15  
MISCELLANEOUS

- 15.01 Exclusive Benefit.** Plan assets will not be used for, or diverted to, a purpose other than the exclusive benefit of Participants or their Beneficiaries.

No amendment may authorize or permit any portion of the assets held under the Plan to be used for or diverted to a purpose other than the exclusive benefit of Participants or their Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plan. An amendment also may not cause or permit any portion of the assets held under the Plan to revert to or become property of the Employer.

- 15.02 Return of Employer Contributions.** Upon written request by the Employer, the Trustee must return any Employer Contributions provided that the circumstances and the time frames described below are satisfied. The Trustee may request the Employer to provide additional information to ensure the amounts may be properly returned. Any amounts returned shall not include earnings, but must be reduced by any losses.

- (a) **Mistake of fact.** Any Employer Contributions made because of a mistake of fact must be returned to the Employer within one year of the contribution.
- (b) **Failure to initially qualify.** Employer Contributions to the Plan are made with the understanding, in the case of a new Plan, that the Plan satisfies the qualification requirements of Code §401(a) as of the Plan's Effective Date. In the event that the Internal Revenue Service determines that the Plan is not initially qualified under the Code, any Employer Contributions (and allocable earnings) made incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

- 15.03 Participants' Rights.** The adoption of this Plan by the Employer does not give any Participant, Beneficiary, or Employee a right to continued employment with the Employer and does not affect the Employer's right to discharge an Employee or Participant at any time. This Plan also does not create any legal or equitable rights in favor of any Participant, Beneficiary, or Employee against the Employer, Plan Administrator or Trustee. Unless the context indicates otherwise, any amendment to this Plan is not applicable to determine the benefits accrued (and the extent to which such benefits are vested) by a Participant or former Employee whose employment terminated before the effective date of such amendment, except where application of such amendment to the terminated Participant or former Employee is required by statute, regulation or other guidance of general applicability. Where the provisions of the Plan are ambiguous as to the application of an amendment to a terminated Participant or former Employee, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.

- 15.04 Military Service.** To the extent required under Code §414(u), an Employee who returns to employment with the Employer following a period of qualified military service will receive any contributions, benefits and service credit required under Code §414(u), provided the Employee satisfies all applicable requirements under the Code and regulations. In determining the amount of contributions under Code §414(u), Plan Compensation will be deemed to be the compensation the Employee would have received during the period while in military service based on the rate of pay the Employee would have received from the Employer but for the absence due to military leave. If the compensation the Employee would have received during the leave is not reasonably certain, Plan Compensation will be equal to the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the military leave or, if shorter, the Employee's actual period of employment with the Employer.

- (a) **Death benefits under qualified military service.** In the case of a Participant who dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007.
- (b) **Benefit accruals.** If elected under AA §11-3, for benefit accrual purposes, the Plan will treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service (as defined in Code §414(u)) with respect to the Employer, as if the individual has resumed employment in accordance with the individual's reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. This provision is effective with respect to deaths and disabilities occurring on or after January 1, 2007.

- (1) This subsection (b) shall apply only if all individuals performing qualified military service with respect to the Employer maintaining the Plan who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.
- (2) The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this subsection (b) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of:
- (i) the 12-month period of service with the Employer immediately prior to qualified military service, or
  - (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- (c) **Plan distributions.** Notwithstanding the provisions of Section 1.89(e) regarding the treatment of Differential Pay, an individual shall be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I). If an individual elects to receive a distribution while on military leave, the individual may not make Salary Deferrals or Employee After-Tax Employee Contributions under the Plan during the 6-month period beginning on the date of the distribution.
- (d) **Make-Up Contributions.** A Participant who is reemployed following a qualified military leave shall have the right to make up any Salary Deferrals or After-Tax Employee Contributions to which he/she would have been entitled but for the fact the Participant was on qualified military leave. To the extent a Participant returning from qualified military leave would have been required to make Employer Pick-Up Contributions, as described in Section 3.03, the Participant will be required to make such Employer Pick-Up Contributions upon his/her return to employment based on the amount that would have been contributed but for the fact the Participant was on qualified military leave. The Employer will also make any Employer Contributions and Matching Contributions the Participant would have earned during the period of qualified military leave had the Participant remained employed during such period. The Employer will only be required to make Matching Contributions if the reemployed Participant makes up the underlying contributions that were eligible for the Matching Contributions.

In determining the amount of Make-Up Contributions a Participant may make under this subsection (d), a Participant will be treated as earning Plan Compensation during the period the Participant was on qualified military leave equal to:

- (1) the rate of pay the Participant would have received from the Employer during such period had the Participant not been on qualified military leave, or
- (2) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average Plan Compensation during the 12-month period immediately preceding the qualified military leave (or the entire period of employment, if shorter).

If the Employer is required under this subsection (d) to make Employer Contributions for a reemployed Participant, the Employer must make such Employer Contributions not later than 90 days after the date of reemployment or the date the Employer Contributions are otherwise due for the year in which the military service was performed. For Salary Deferrals and After-Tax Employee Contributions, a Participant who is reemployed following a qualified military leave may make up such contributions during the period beginning on the date of reemployment and ending on the earlier of the date that is three times the length of the military service period or 5 years from the date of reemployment. Any required Matching Contributions must be made in the same manner as other Matching Contribution under the Plan following the Participant's contribution of the amounts eligible for the Matching Contributions.

Any make up contributions under this subsection (d) are subject to the Code §415 Limitation under Section 5.02 and the Elective Deferral Dollar Limitation under Section 5.03 for the year for which the make-up contribution would have been made had the Participant not been on qualified military leave.

**15.05 Annuity Contract.** Any annuity contract distributed under the Plan must be nontransferable. In addition, the terms of any annuity contract purchased and distributed to a Participant or to a Participant's Spouse must comply with all requirements under this Plan.

**15.06 Use of IRS Compliance Programs.** Nothing in this Plan document should be construed to limit the availability of the IRS' voluntary compliance programs. An Employer may take whatever corrective actions are permitted under the IRS voluntary compliance programs, as is deemed appropriate by the Plan Administrator or Employer. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this Volume Submitter Plan and will be considered an individually designed plan.

- 15.07 Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state in which the Trustee has its principal place of business. The foregoing provisions of this Section shall not preclude the Employer and the Trustee from agreeing to a different state law with respect to the construction, administration and enforcement of the Plan.
- 15.08 Waiver of Notice.** Any person entitled to a notice under the Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by law, regulation or other pronouncement.
- 15.09 Use of Electronic Media.** The Employer, Plan Administrator, Trustee and any other designated individual responsible for providing applicable notices or disclosures under the Plan, and any Participant or beneficiary making an election under the Plan may use telephonic or electronic media to satisfy any notice requirements required by this Plan. Any use of electronic medium under the Plan must comply with the requirements outlined in Treas. Reg. §1.401(a)-21 or other general guidance concerning the use of telephonic or electronic media. The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).
- 15.10 Severability of Provisions.** In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.
- 15.11 Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

SECTION 16  
PARTICIPATING EMPLOYERS

- 16.01 Participation by Participating Employers.** An Employer (other than the Employer that executes the Employer Signature Page of the Adoption Agreement) may elect to participate under this Plan by executing a Participating Employer Adoption Page under the Adoption Agreement. A Participating Employer (including a Related Employer defined in Section 1.78) may not contribute to this Plan unless it executes the Participating Employer Adoption Page.
- 16.02 Participating Employer Adoption Page.**
- (a) **Application of Plan provisions.** By executing a Participating Employer Adoption Page, a Participating Employer adopts all the provisions of the Plan, including the elective choices made by the signatory Employer under the Adoption Agreement. The Participating Employer may elect under the Participating Employer Adoption Page to modify the elective provisions under the Adoption Agreement as they apply to the Participating Employer.
  - (b) **Plan amendments.** In addition, unless provided otherwise under the Participating Employer Adoption Page, a Participating Employer is bound by any amendments made to the Plan in accordance with Section 14.01.
  - (c) **Trustee designation.** The Participating Employer agrees to use the same Trustee as is designated on the Trustee Declaration under the Agreement, except as provided in a separate trust agreement.
- 16.03 Compensation of Related Employers.** In applying the provisions of this Plan, Total Compensation (as defined in Section 1.89) includes amounts earned with a Related Employer, regardless of whether such Related Employer executes a Participating Employer Adoption Page. The Employer may elect under AA §5-3(h) to exclude amounts earned with a Related Employer that does not execute a Participating Employer Adoption Page for purposes of determining an Employee's Plan Compensation.
- 16.04 Allocation of Contributions and Forfeitures.** Unless selected otherwise under the Participating Employer Adoption Page, any contributions made by a Participating Employer (and any forfeitures relating to such contributions) will be allocated to all Participants employed by the Employer and Participating Employers in accordance with the provisions under this Plan. A Participating Employer may elect under the Participating Employer Adoption Page to allocate its contributions (and forfeitures relating to such contributions) only to the Participants employed by the Participating Employer making such contributions. If so elected, Employees of the Participating Employer will not share in an allocation of contributions (or forfeitures relating to such contributions) made by any other Participating Employer (except in such individual's capacity as an Employee of that other Participating Employer). Thus, for example, a Participating Employer may make a different discretionary contribution and allocate such contribution only to its Employees. Where contributions are allocated only to the Employees of a contributing Participating Employer, a separate accounting must be maintained of Employees' Account Balances attributable to the contributions of a particular Participating Employer. This separate accounting is necessary only for contributions that are not 100% vested, so that the allocation of forfeitures attributable to such contributions can be allocated for the benefit of the appropriate Employees.
- 16.05 Discontinuance of Participation by a Participating Employer.** A Participating Employer may discontinue its participation under the Plan at any time. To document a Participating Employer's cessation of participation, the following procedures should be followed:
- (a) the Participating Employer should adopt a resolution that formally terminates active participation in the Plan as of a specified date,
  - (b) the Employer that has executed the Employer Signature Page of the Adoption Agreement should reexecute such page, indicating an amendment by page substitution through the deletion of the Participating Employer Adoption Page executed by the withdrawing Participating Employer, and
  - (c) the withdrawing Participating Employer should provide any notices to its Employees that are required by law.
- Discontinuance of participation means that no further benefits accrue after the effective date of such discontinuance with respect to employment with the withdrawing Participating Employer. The portion of the Plan attributable to the withdrawing Participating Employer may continue as a separate plan, under which benefits may continue to accrue, through the adoption by the Participating Employer of a successor plan (which may be created through the execution of a separate Adoption Agreement by the Participating Employer) or by spin-off of the portion of the Plan attributable to such Participating Employer followed by a merger or transfer into another existing plan, as specified in a merger or transfer agreement.
- 16.06 Operational Rules for Related Employer Groups.** If an Employer has one or more Related Employers, the Employer and such Related Employer(s) constitute a Related Employer group. In such case, the following rules apply to the operation of the Plan.

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Section 16 – Participating Employers**

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- (a) If the term Employer is used in the context of administrative functions necessary to the operation, establishment, maintenance, or termination of the Plan, only the Employer executing the Employer Signature Page under the Adoption Agreement, and any Related Employer executing a Participating Employer Adoption Page, is treated as the Employer.
- (b) Hours of Service are determined by treating all members of the Related Employer group as the Employer.
- (c) The term Excluded Employee is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.
- (d) Compensation is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.
- (e) An Employee is not treated as terminated from employment if the Employee is employed by any member of the Related Employer group.
- (f) The Code §415 Limitation described in Section 5.02 are applied by treating all members of the Related Employer group as the Employer.

In all other contexts, the term Employer generally means a reference to all members of the Related Employer group, unless the context requires otherwise. If the terms of the Plan are ambiguous with respect to the treatment of the Related Employer group as the Employer, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.



**APPENDIX A**  
**ACTUARIAL FACTORS**  
**(For use with age-based contribution formula)**

**Actuarial Factor Table.** The following table sets forth Actuarial Factors based on a testing age of 65, an interest rate of 8.5% and a UP-1984 mortality table. The Actuarial Factors in this table must be modified if the Employer uses a testing age other than age 65 or selects a different interest rate or mortality table under the age-based contribution formula. To determine a Participant's Actuarial Factor, use the factor corresponding to the number of years to the Participant's testing age. The number of years to the testing age is determined by counting the number of years from the last day of the current plan year to the last day of the Plan Year in which the Participant reaches the testing age. If the Participant has reached the testing age as of the last day of the current Plan Year, the number of years is 0 for that year and all subsequent years.

<b>Years to Testing Age</b>	<b>Actuarial Factor</b>	<b>Years to Testing Age</b>	<b>Actuarial Factor</b>
0	0.07949	25	0.01034
1	0.07326	26	0.00953
2	0.06752	27	0.00878
3	0.06223	28	0.00810
4	0.05736	29	0.00746
5	0.05286	30	0.00688
6	0.04872	31	0.00634
7	0.04490	32	0.00584
8	0.04139	33	0.00538
9	0.03814	34	0.00496
10	0.03516	35	0.00457
11	0.03240	36	0.00422
12	0.02986	37	0.00389
13	0.02752	38	0.00358
14	0.02537	39	0.00330
15	0.02338	40	0.00304
16	0.02155	41	0.00280
17	0.01986	42	0.00258
18	0.01831	43	0.00238
19	0.01687	44	0.00219
20	0.01555	45	0.00202
21	0.01433	46	0.00186
22	0.01321	47	0.00172
23	0.01217	48	0.00158
24	0.01122	49	0.00146

**APPENDIX B  
INTERIM AMENDMENT #1  
IN-PLAN ROTH CONVERSIONS**

**B-1.01 In-Plan Roth Conversions.** Effective on or after January 1, 2013, the Employer may elect under AA §IA1-1 of the Profit Sharing/401(k) Plan Adoption Agreement to permit In-Plan Roth Conversions under the Plan. For this purpose, an In-Plan Roth Conversion is a conversion of amounts held in a Participant's Plan Account, other than a Roth Deferral Account or Roth Rollover Account, into the Participant's In-Plan Roth Conversion Account under the Plan, pursuant to Code §402A(c)(4). Any election to make an In-Plan Roth Conversion during a taxable year may not be changed after the In-Plan Roth Conversion is completed. (For In-Plan Roth Conversions completed prior to January 1, 2013, a Participant had to be eligible to receive a distribution of the converted amounts at the time of the In-Plan Roth Conversion. The provisions of this Section B-1.01 do not affect an In-Plan Roth Conversion completed prior to January 1, 2013.)

An In-Plan Roth Conversion may be elected by a Participant, a Spousal beneficiary, or an Alternate Payee who is a Spouse or former Spouse. To the extent the term "Participant" is used for purposes of determining eligibility to make an In-Plan Roth Conversion, such term will also include a Spousal beneficiary and an Alternate Payee who is a Spouse or former Spouse.

To permit In-Plan Roth Conversions on or after January 1, 2013, AA §IA1-1(a) of the Profit Sharing/401(k) Plan Adoption Agreement must be completed. In addition, the Plan must provide for Roth Deferrals under AA §6A-5(a) as of the date the In-Plan Roth Conversion is permitted under the Plan. If In-Plan Roth Conversions are not specifically authorized under AA §6A-5(a) of the Profit Sharing 401(k) Plan Adoption Agreement, Participants may not make an In-Plan Roth Conversion.

(b) **Amounts Eligible for In-Plan Roth Conversion.** If permitted under AA §IA1-1 of the Profit Sharing/401(k) Adoption Agreement, a Participant may convert any portion of his/her vested Account Balance (other than amounts attributable to Roth Deferrals or Roth Deferral rollovers) to an In-Plan Roth Conversion Account. Unless elected otherwise under AA §IA1-1(b), a Participant need not be eligible to receive a distribution from the Plan at the time of the In-Plan Roth Conversion.

In addition, an In-Plan Roth Conversion will not be treated as a distribution for the following purposes:

- (1) **Participant loans.** A Participant loan directly transferred in an In-Plan Roth Conversion without changing the repayment schedule is not treated as a new loan. The Employer may elect in AA §IA1-1(d)(3) to not permit Participant loans to be distributed as part of an In-Plan Roth Conversion.
- (2) **Spousal consent.** An In-Plan Roth Conversion is not treated as a distribution for purposes of applying the spousal consent requirements under Code §401(a)(11). Thus, a married Plan Participant is not required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion, even if the Plan is otherwise subject to the spousal consent requirements under Code §401(a)(11).
- (3) **Participant consent.** An In-Plan Roth Conversion is not treated as a distribution for purposes of applying the participant consent requirements under Code §411(a)(11). Thus, amounts that are converted as part of an In-Plan Roth Conversion continue to be taken into account in determining whether the Participant's vested Account Balance exceeds \$5,000 for purposes of applying the Involuntary Cash-Out provisions and will not trigger the requirement for a notice of the Participant's right to defer receipt of the distribution.
- (4) **Protected benefits.** An In-Plan Roth Conversion is not treated as a distribution under Code §411(d)(6)(B)(ii). Thus, a Participant who had a distribution right (such as a right to an immediate distribution) prior to the In-Plan Roth Conversion cannot have that distribution right eliminated solely as a result of the election to make an In-Plan Roth Conversion. The Employer may have to maintain separate accounts with respect to different contribution sources within the In-Plan Roth Conversion Account in order to protect distribution options related to such different contribution sources.
- (5) **Mandatory withholding.** An In-Plan Roth Conversion is not subject to 20% mandatory withholding under Code §3405(c).
- (6) **Distribution restrictions.** Generally, a distribution will be permitted from the In-Plan Roth Conversion Account to the extent permitted for regular Roth Deferrals under AA §10-1. However, as described in subsection (6) above, additional distribution options may need to be protected with respect to specific contribution sources. The distribution restrictions normally applicable to Roth Deferrals, as described in Section 7.10(c) of the Plan, do not apply to the extent the conversion is from a contribution source that is not otherwise subject to the distribution restrictions applicable to Roth Deferrals. In addition, distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted to Roth Deferrals. For example, if Safe Harbor Contributions are converted to Roth Deferrals, such amounts may not be distributed

on account of hardship or other event not otherwise permitted under Section 7.10(c) of the Plan, unless permitted otherwise under IRS guidance.

- (c) **Effect of In-Plan Roth Conversion.** A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion. For this purpose, the taxable amount of an In-Plan Roth Conversion is the fair market value of the distribution reduced by any basis in the converted amounts. If the distribution includes Employer securities, the fair market value includes any net unrealized appreciation within the meaning of Code §402(e)(4). If an outstanding loan is rolled over as part of an In-Plan Roth Conversion, the amount includible in gross income includes the balance of the loan.

Generally, the taxable amount of an In-Plan Roth Conversion is includible in gross income in the taxable year in which the conversion occurs.

- (d) **Application of Early Distribution Penalty under Code §72(t).** An In-Plan Roth Conversion is not subject to the early distribution penalty under Code §72(t) at the time of the conversion. However, if an amount allocable to the taxable amount of an In-Plan Roth Conversion is subsequently distributed within the 5-taxable-year period beginning with the first day of the Participant's taxable year in which the conversion was made, the amount distributed is treated as includible in gross income for purposes of applying the Code §72(t) early distribution penalty. For this purpose, the 5-taxable-year period ends on the last day of the Participant's fifth taxable year in the period. This subsection (d) will not apply to the extent the distribution is rolled over to a Roth account in another qualified plan or is rolled over to a Roth IRA. However, the rule under this subsection (d) will apply to any subsequent distributions made from such other Roth account or Roth IRA within the 5-taxable-year period.
- (e) **Contribution Sources.** Unless elected otherwise under AA §IA1-1(c), an In-Plan Roth Conversion may be made from any contribution source under the Plan, other than a Roth Deferral Account or Roth Rollover Account. The Employer may elect in AA §IA1-1(c) to limit the contribution sources that are eligible for In-Plan Roth Conversion. In addition, the Employer may elect in AA §IA1-1(d)(1) to limit In-Plan Roth Conversions to contribution accounts that are 100% vested.

**APPENDIX C**  
**INTERIM AMENDMENT #2**  
**CODE §401(a)(9), SAME-SEX MARRIAGE AND VALID ROLLOVER CONTRIBUTIONS**

**C-1.01 Modification of Minimum Distribution Rules Relating to Longevity Annuity Contracts.** The following provisions modify the required minimum distribution rules under Section 8 of the Plan to conform the rules to final Treasury Regulation §1.401(a)(9)-6 relating to the purchase of Qualifying Longevity Annuity Contracts (QLACs). The Plan will apply the provisions consistent with the requirements under the Treas. Reg. §§1.401(a)(9)-5 and 1.401(a)(9)-6, as amended.

**C-1.02 Effective/Applicability Dates.**

- (a) **General effective dates.** This Section C-1 applies to contracts purchased on or after July 2, 2014. If on or after July 2, 2014, an existing contract is exchanged for a contract that satisfies the requirements of this Section C-1, the new contract will be treated as purchased on the date of the exchange and the fair market value of the contract that is exchanged for a QLAC will be treated as a premium paid with respect to the QLAC.
- (b) **Delayed applicability date for requirement that contract state that it is intended to be QLAC.** An annuity contract purchased before January 1, 2016, will not fail to be a QLAC merely because the contract does not satisfy the requirement of Section C-1.04(a)(6) below, provided that:
- (1) When the contract (or a certificate under a group annuity contract) is issued, the Employee is notified that the annuity contract is intended to be a QLAC; and
  - (2) The contract is amended (or a rider, endorsement or amendment to the certificate is issued) no later than December 31, 2016, to state that the annuity contract is intended to be a QLAC.

**C-1.03 Account Balance for Determining Minimum Distributions.** For purposes of determining a Participant's Required Minimum Distribution as described under Section 8 of the Plan, the Participant's Account Balance as defined under Section 8.05(d) of the Plan does not include the value of any QLAC described under Section C-1.04 of this amendment and Treas. Reg. §1.401(a)(9)-6, A-17, that is held under the Plan.

**C-1.04 Rules Applicable to Qualifying Longevity Annuity Contracts.**

- (a) **Definition of Qualifying Longevity Annuity Contracts.** A Qualifying Longevity Annuity Contract (QLAC) is an annuity contract that is purchased from an insurance company for an Employee and that, in accordance with the rules of application of this Article II and Treas. Reg. §1.401(a)(9)-6, A-17, satisfies each of the following requirements:
- (1) Premiums for the contract satisfy the requirements of subsection (b) of this Section C-1.04;
  - (2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the 85<sup>th</sup> anniversary of the Employee's birth;
  - (3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of this Article and Treas. Reg. §1.401(a)(9) (other than the requirement that annuity payments commence on or before the required beginning date);
  - (4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature;
  - (5) No benefits are provided under the contract after the death of the employee other than the benefits described in subsection (c) of this Section C-1.04;
  - (6) When the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and
  - (7) The contract is not a variable contract under Code §817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner of the Internal Revenue Service in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.
- (b) **Limitations on premiums.**
- (1) **In general.** The premiums paid with respect to the contract on a date satisfy the requirements of this subsection (b) if they do not exceed the lesser of the dollar limitation in subsection (b)(2) or the percentage limitation in subsection (b)(3).

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- (2) **Dollar limitation.** The dollar limitation is an amount equal to the excess of:
- (i) \$125,000 (as adjusted under Treas. Reg. §1.401(a)(9)-6, A-17(d)(2)), over
  - (ii) The sum of:
    - (A) The premiums paid before that date with respect to the contract, and
    - (B) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the Employee under the Plan, or any other plan, annuity, or account described in Code §§ 401(a), 403(a), 403(b), or 408 or eligible governmental plan under Code §457(b).
- (3) **Percentage limitation.** The percentage limitation is an amount equal to the excess of:
- (i) 25 percent of the Employee's Account Balance under the Plan (including the value of any QLAC held under the Plan for the Employee) as of that date, determined in accordance with Treas. Reg. §1.401(a)(9)-6, A-17 (d)(1)(iii), over
  - (ii) The sum of:
    - (A) The premiums paid before that date with respect to the contract, and
    - (B) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the Employee under the Plan.
- (c) **Payments after death of the Employee.**
- (1) **Surviving spouse is sole beneficiary.**
- (i) **Death on or after annuity starting date.** If the Employee dies on or after the annuity starting date for the contract and the Employee's surviving spouse is the sole beneficiary under the contract then, except as provided in Treas. Reg. §1.401(a)(9)-6, A-17(c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that is payable to the Employee.
  - (ii) **Death before annuity starting date.**
    - (A) **Amount of annuity.** If the Employee dies before the annuity starting date and the Employee's surviving spouse is the sole beneficiary under the contract then, except as provided in Treas. Reg. §1.401(a)(9)-6, A-17(c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that would have been payable to the Employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a Qualified Preretirement Survivor Annuity.
    - (B) **Commencement date for annuity.** Any life annuity payable to the surviving spouse under subsection (c)(1)(ii)(a) must commence no later than the date on which the annuity payable to the Employee would have commenced under the contract if the Employee had not died.
- (2) **Surviving spouse is not sole beneficiary.**
- (i) **Death on or after annuity starting date.** If the Employee dies on or after the annuity starting date for the contract and the Employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in Treas. Reg. §1.401(a)(9)-6, A-17(c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under Treas. Reg. §1.401(a)(9)-6, A-17(c)(2)(iii)) of the periodic annuity payment that is payable to the Employee.
  - (ii) **Death before annuity starting date.**

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- (A) **Amount of annuity.** If the Employee dies before the annuity starting date and the Employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in Treas. Reg. §1.401(a)(9)-6, A-17(c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under Treas. Reg. §1.401(a)(9)-6, A-17(c)(2)(iii)) of the periodic annuity payment that would have been payable to the Employee as of the date that benefits to the designated beneficiary commence under this subsection (c)(2)(ii).
- (B) **Commencement date for annuity.** In any case in which the Employee dies before the annuity starting date, any life annuity payable to a designated beneficiary under this subsection (c)(2)(ii) must commence by the last day of the calendar year immediately following the calendar year of the Employee's death.
- (d) **Rules of application.**
- (1) **Rules relating to premiums.**
- (i) **Reliance on representations.** For purposes of the limitation on premiums described in subsections (b)(2) and (b)(3), unless the Plan Administrator has actual knowledge to the contrary, the Plan Administrator may rely on an Employee's representation (made in writing or such other form as may be prescribed by the Commissioner of the Internal Revenue Service) of the amount of the premiums described in subsections (b)(2)(ii)(B) and (b)(3)(ii)(B), but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the Employer or Related Employer.
- (ii) **Consequences of excess premiums.**
- (A) **General rule.** If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under subsection (b), then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the Employee's account in accordance with Treas. Reg. §1.401(a)(9)-6, A-17(d)(1)(ii)(B). If the contract fails to be a QLAC, then the value of the contract may not be disregarded under A-3(d) of Treas. Reg. §1.401(a)(9)-5 as of the date on which the contract ceases to be a QLAC.
- (B) **Correction in year following year of excess.** If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the Employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under subsection (b) at any time, and the value of the contract will not be included in the Employee's Account Balance. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the Employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the Employee's Account Balance for that calendar year must be increased to reflect that excess premium in the same manner as an Employee's Account Balance is increased under Treas. Reg. §1.401(a)(9)-7, A-2 to reflect a rollover received after the last valuation date.
- (C) **Return of excess premium not a commutation benefit.** If the excess premium is returned to the non-QLAC portion of the Employee's account as described in Treas. Reg. §1.401(a)(9)-6, A-17(d)(1)(ii)(B), it will not be treated as a violation of the requirement in subsection (a)(4) that the contract not provide a commutation benefit.
- (iii) **Application of 25-percent limit.** For purposes of the 25-percent limit under subsection (b)(3), an Employee's Account Balance on the date on which premiums for a contract are paid is the Account Balance as of the last valuation date preceding the date of the premium payment, adjusted as follows:
- (A) The Account Balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and
- (B) The Account Balance is decreased for distributions made from the account during that period.

Governmental Volume Submitter Defined Contribution Plan  
Appendix C: Code §401(a)(9), Same-Sex Marriage and Valid Rollover Contributions

- (2) **Dollar and age limitations subject to adjustments.**
- (i) **Dollar limitation.** In the case of calendar years beginning on or after January 1, 2015, the \$125,000 amount under subsection (b)(2)(i) will be adjusted at the same time and in the same manner as the limits are adjusted under Code §415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this subsection that is not a multiple of \$10,000 will be rounded to the next lowest multiple of \$10,000.
- (ii) **Age limitation.** The maximum age set forth in subsection (a)(2) may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner of the Internal Revenue Service in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.
- (iii) **Prospective application of adjustments.** If a contract fails to be a QLAC because it does not satisfy the dollar limitation in subsection (b)(2) or the age limitation in subsection (a)(2), any subsequent adjustment that is made pursuant to subsections (d)(2)(i) or (d)(2)(ii) will not cause the contract to become a QLAC.
- (3) **Determination of whether contract is intended to be a QLAC.** If a contract fails to be a QLAC at any time for a reason other than an excess premium described in Treas. Reg. §1.401(a)(9)-6, A-17(d)(1)(ii), then as of the date of purchase the contract will not be treated as a QLAC (for purposes of A-3(d) of Treas. Reg. §1.401(a)(9)-5) or as a contract that is intended to be a QLAC as of the date of purchase.
- (4) **Group annuity contract certificates.** The requirement under subsection (a)(6) that the contract state that it is intended to be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the Employee's interest under the group annuity contract is intended to be a QLAC.

**C-2.01 Application of Same-Sex Marriage Rules to Plan.** This Section C-2 is a clarifying amendment relating to the application of same-sex marriage rules to the Plan as provided under *United States v. Windsor* (*Windsor*), IRS Revenue Ruling 2013-17, IRS Notice 2014-19, IRS Notice 2014-37 and *Obergefell v. Hodges* (*Obergefell*).

**C-2.02 Definition of Spouse under the Plan.**

- (a) **Current Plan terms not inconsistent with same-sex rules.** The current terms of the Plan are not inconsistent with the outcome of the *Windsor* or the *Obergefell* decisions and the guidance in Revenue Ruling 2013-17 and Notice 2014-19 in that the term Spouse as used in the Plan does not distinguish between a same-sex Spouse and an opposite-sex Spouse. However, as suggested under Notice 2014-19, the Plan may add a clarifying amendment for purposes of Plan administration.
- (b) **Operation of the Plan to reflect same-sex rules.** The Plan will not be treated as failing to meet the requirements of Code §401(a) merely because it did not recognize the same-sex Spouse of a Participant as a Spouse before June 26, 2013. Effective as of September 16, 2013 (as provided under IRS Revenue Ruling 2013-17), the Plan recognizes a marriage of same-sex individuals that is validly entered into in a state or foreign jurisdiction whose laws authorize the marriage of two individuals of the same sex, even if the individuals are domiciled in a state that does not recognize the validity of same-sex marriages. However, the Plan does not treat as married, individuals (whether part of an opposite-sex or same-sex couple) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state. Accordingly, the Plan will not be treated as failing to meet the requirements of Code §401(a) merely because the Plan, prior to September 16, 2013, recognized the same-sex Spouse of a Participant only if the Participant was domiciled in a state that recognized same-sex marriages.

**C-2.03 Operation of the Plan to Reflect Obergefell Decision.** To the extent the Employer was not subject to the *Windsor* decision, but is subject to the *Obergefell* decision that requires States to allow and recognize same-sex marriage, the Plan must be operated in compliance with the *Obergefell* decision.

**C-2.04 Amendments to Reflect Retroactive Application of Windsor Decision.** As provided under IRS Notice 2014-19, the Plan will not lose its qualified status due to an amendment to reflect the outcome of *Windsor* for some or all purposes as of a date prior to June 26, 2013, if the amendment complies with applicable qualification requirements. The deadline to adopt such a Plan amendment is the later of:

- (a) the otherwise applicable deadline under Section 5.05 of Rev. Proc. 2007-44, or its successor, or
- (b) December 31, 2014.

**Governmental Volume Submitter Defined Contribution Plan**  
**Appendix C: Code §401(a)(9), Same-Sex Marriage and Valid Rollover Contributions**

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In the case of a governmental plan, any amendment need not be adopted before the close of the first regular legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014. An Employer may use Adoption Agreement Appendix A - Special Effective Dates - for this amendment.

**C-2.05** **Mid-Year Amendments to Safe Harbor Plans Pursuant to IRS Notice 2014-19 with Respect to the Windsor Decision.** As provided under IRS Notice 2014-37, the Plan will not fail to satisfy the requirements of Code §401(k)(12) relating to Safe Harbor 401(k) plans because of the adoption during the Plan Year of a provision relating to the *Windsor* decision pursuant to IRS Notice 2014-19.

**C-3.01** **Acceptance of Rollover Contributions by Plan Administrator.** Under Section 3.07 of the Plan, the Plan Administrator may determine whether an Employee may make a Rollover Contribution into the Plan. This Section C-3 provides clarifying guidance, as provided under IRS Revenue Ruling 2014-9, to assist the Plan Administrator in determining whether a Rollover Contribution is valid and the course of action needed to correct an invalid rollover.

**C-3.02** **General Rules.** Under Treas. Reg. §1.401(a)(31)-1, A-14, if the Plan accepts an invalid Rollover Contribution, the contribution will be treated, for purposes of applying the qualification requirements of Code §401(a) to the Plan, as if it were a valid Rollover Contribution if two conditions are satisfied:

- (a) When accepting the amount from the Employee as a Rollover Contribution, the Plan Administrator must reasonably conclude that the contribution is a valid Rollover Contribution; and
- (b) If the Plan Administrator later determines that the contribution was an invalid Rollover Contribution, the Plan Administrator must distribute the amount of the invalid Rollover Contribution, plus any earnings attributable thereto, to the Employee within a reasonable time after such determination.

**C-3.03** **Reasonable Criteria for Determining Valid Rollover.** The Plan Administrator may use the criteria set forth in IRS Revenue Ruling 2014-9, as well as other evidence, in reasonably determining whether a Rollover Contribution is valid. Thus, the Plan Administrator may access the EFAST2 database maintained by the Department of Labor to assist in determining whether a potential Rollover Contribution was distributed by a plan intended to be a qualified plan. If the Plan Administrator later determines that the Rollover Contribution was not valid, the Plan Administrator must have the amount rolled over plus any attributable earnings distributed within a reasonable period of time after such determination.



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**APPENDIX D**  
**INTERIM AMENDMENT #3**  
**DISASTER RELIEF AND ROLLOVERS TO SIMPLE IRAS**

- D-1.01** **Relief for Victims of Certain Qualified Natural Disasters.** Notwithstanding other provisions of the Plan, the Employer may operate the Plan to provide relief from certain qualification rules relating to hardship distributions and loans for Participants who are victims of certain Qualified Natural Disasters, as set forth under applicable IRS or legislative guidance.
- D-1.02** **Qualified Natural Disasters.** For purposes of this section, Qualified Natural Disasters include:
- (a) Louisiana storms, as provided under IRS Announcement 2016-30.
  - (b) Hurricane Matthew, as provided under IRS Announcement 2016-36.
  - (c) Hurricane Harvey, as provided under IRS Announcement 2017-11.
  - (d) Hurricane Irma, as provided under IRS Announcement 2017-13.
  - (e) Hurricane Maria and the California Wildfires, as provided under IRS Announcement 2017-15.
  - (f) Any other natural disaster for which the IRS or Congress provides relief from certain qualification rules.
- D-1.03** **General Rules.** If the Employer and the Plan Administrator make good-faith efforts to apply the Plan provisions in conformance with the relief provided under applicable guidance, the Plan will not be treated as failing to satisfy the requirements of the Code or regulations. In general, the following rules apply:
- (a) In order to make a loan or distribution (including a hardship distribution), the Plan must provide for loans or distributions, as applicable.
  - (b) Participants (victims) for whom the relief is available are determined under the appropriate IRS or legislative guidance.
  - (c) The amount available for hardship distribution is limited to the maximum amount that would be available for a hardship distribution under the Plan. However, the relief provided applies to any hardship of the Participant and no post-distribution contribution restrictions apply.
  - (d) To qualify for relief under this section, a hardship distribution must be made on account of a hardship resulting from the applicable Qualified Natural Disaster and within the time frame provided under the applicable guidance relating to the Qualified Natural Disaster.
  - (e) The Plan will not be treated as failing to follow Plan procedural requirements for loans or distributions during the periods provided under guidance relating to the applicable Qualified Natural Disaster.
- D-2.01** **Rollover into a SIMPLE IRA.** Effective for rollover distributions made from the Plan after December 18, 2015, a Participant may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to a SIMPLE IRA as defined under Code §408(p), provided the Participant satisfies the requirements (i.e., after the expiration of the two-year period following the date the Participant first participated in the SIMPLE IRA) under Code §408(p)(1)(B).

**GOVERNMENTAL VOLUME SUBMITTER PLAN  
ADOPTION AGREEMENT**

By executing this Governmental Volume Submitter Plan Adoption Agreement (the "Agreement"), the undersigned Employer agrees to establish or continue a Governmental Plan for its Employees. The Plan adopted by the Employer consists of the Governmental Defined Contribution Volume Submitter Plan and Trust Basic Plan Document #05 (the "BPD") and the elections made under this Agreement (collectively referred to as the "Plan"). An Employer may jointly co-sponsor the Plan by signing a Participating Employer Adoption Page, which is attached to this Agreement. **This Plan is effective as of the Effective Date identified on the Signature Page of this Agreement.**

**SECTION 1  
EMPLOYER INFORMATION**

*The information contained in this Section 1 is informational only. The information set forth in this Section 1 may be modified without amending this Agreement. Any changes to this Section 1 may be accomplished by substituting a new Section 1 with the updated information. The information contained in this Section 1 is not required for qualification purposes and any changes to the provisions under this Section 1 will not affect the Employer's reliance on the IRS Favorable Letter.*

**1-1 EMPLOYER INFORMATION:**

Name: Florida Polytechnic University

Address:

4700 Research Way  
Lakeland, Florida 33805

Telephone: (863) 583-9050 Fax: \_\_\_\_\_

**1-2 EMPLOYER IDENTIFICATION NUMBER (EIN):** 46-0764837

**1-3 FORM OF BUSINESS:**

- State or political subdivision of a State
- State agency or instrumentality
- Indian Tribal Government
- Describe other Employer qualified to adopt a Governmental Plan: \_\_\_\_\_

**1-4 EMPLOYER'S TAX YEAR END:** The Employer's tax year ends June 30

**1-5 RELATED EMPLOYERS:** Is the Employer part of a group of Related Employers (as defined in Section 1.78 of the Plan)?

- Yes
- No

If yes, Related Employers may be listed below. A Related Employer must complete a Participating Employer Adoption Page for Employees of that Related Employer to participate in this Plan.

\_\_\_\_\_  
[Note: This AA §1-5 is for informational purposes. The failure to identify all Related Employers will not jeopardize the qualified status of the Plan.]

**SECTION 2  
PLAN INFORMATION**

**2-1 PLAN NAME:** Florida Polytechnic University Retirement Plan

**2-2 PLAN NUMBER:** 001

2-3 **TYPE OF PLAN:** This Plan is a Profit Sharing Defined Contribution Plan.

The Plan is intended to be a FICA Replacement Plan (as defined under Section 4.03 of the Plan).

2-4 **PLAN YEAR:**

(a) Calendar year.

(b) The 12-consecutive month period ending on June 30 each year.

(c) The Plan has a Short Plan Year running from \_\_\_\_ to \_\_\_\_.

2-5 **FROZEN PLAN:** Check this AA §2-5 if the Plan is a frozen Plan to which no contributions will be made.

This Plan is a frozen Plan effective \_\_\_\_\_. (See Section 3.02(a)(1)(iv) of the Plan.)

*[Note: As a frozen Plan, the Employer will not make any contributions with respect to Plan Compensation earned after such date and no Participant will be permitted to make any contributions to the Plan after such date. In addition, no Employee will become a Participant after the date the Plan is frozen.]*

2-6 **PLAN ADMINISTRATOR:**

(a) The Employer identified in AA §1-1.

(b) Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

**SECTION 3  
ELIGIBLE EMPLOYEES**

3-1 **ELIGIBLE EMPLOYEES:** In addition to the Employees identified in Section 2.02 of the Plan, the following Employees are excluded from participation under the Plan with respect to the contribution source(s) identified in this AA §3-1. See Sections 2.02(d) and (e) of the Plan for rules regarding the effect on Plan participation if an Employee changes between an eligible and ineligible class of employment.

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions
<input type="checkbox"/>	<input type="checkbox"/>	(b) Collectively Bargained Employees
<input type="checkbox"/>	<input type="checkbox"/>	(c) Non-resident aliens who receive no compensation from the Employer which constitutes U.S. source income
<input type="checkbox"/>	<input type="checkbox"/>	(d) Leased Employees
<input type="checkbox"/>	<input type="checkbox"/>	(e) Employees paid on an hourly basis
<input type="checkbox"/>	<input type="checkbox"/>	(f) Employees paid on a salaried basis
<input type="checkbox"/>	<input type="checkbox"/>	(g) Employees in an elected or appointed position.
<input type="checkbox"/>	<input type="checkbox"/>	(h) Part-Time Employees (as defined in Section 1.68 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	(i) Seasonal Employees (as defined in Section 1.84 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	(j) Temporary Employees (as defined in Section 1.88 of the Plan)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	(k) Other: <u>All Employees other than the President of the Employer</u>

*[Note: The elections under the ER column apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions authorized under AA §6-6, unless elected otherwise under subsection (k).]*

**SECTION 4**  
**MINIMUM AGE AND SERVICE REQUIREMENTS**

4-1 **ELIGIBILITY REQUIREMENTS – MINIMUM AGE AND SERVICE:** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service conditions under this AA §4-1 will be eligible to participate under the Plan as of his/her Entry Date (as defined in AA §4-2 below).

(a) **Service Requirement.** An Eligible Employee must complete the following minimum service requirements to participate in the Plan.

- | <b>Match</b>             | <b>ER</b>                           |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (1) There is no minimum service requirement for participation in the Plan.   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (2) ___ Year(s) of Service (as defined in Section 2.03(a)(1) of the Plan and AA §4-3).   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (3) The completion of at least ___ Hours of Service during the first ___ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier. <ul style="list-style-type: none"> <li><input type="checkbox"/> (i) An Employee who completes the required Hours of Service satisfies eligibility at the end of the designated period, regardless if the Employee actually works for the entire period.</li> <li><input type="checkbox"/> (ii) An Employee who completes the required Hours of Service must also be employed continuously during the designated period of employment. See Section 2.03(a)(2) of the Plan for rules regarding the application of this subsection (ii).</li> </ul>   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (4) The completion of ___ Hours of Service during an Eligibility Computation Period. [ <i>An Employee satisfies the service requirement immediately upon completion of the designated Hours of Service rather than at the end of the Eligibility Computation Period.</i> ]   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (5) Full-time Employees are eligible to participate as set forth in subsection (i). Employees who are “part-time” Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a full-time Employee is any Employee not defined in subsection (ii). <ul style="list-style-type: none"> <li>(i) Full-time Employees must complete the following minimum service requirements to participate in the Plan:               <ul style="list-style-type: none"> <li><input type="checkbox"/> (A) There is no minimum service requirement for participation in the Plan.</li> <li><input type="checkbox"/> (B) The completion of at least ___ Hours of Service during the first ___ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier.</li> <li><input type="checkbox"/> (C) Under the Elapsed Time method as defined in AA §4-3(c) below.</li> <li><input type="checkbox"/> (D) Describe: _</li> </ul> </li> <li>(ii) Part-time Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than:               <ul style="list-style-type: none"> <li><input type="checkbox"/> (A) ___ hours per week.</li> <li><input type="checkbox"/> (B) ___ hours per month.</li> <li><input type="checkbox"/> (C) ___ hours per year.</li> </ul> </li> </ul> |
| <input type="checkbox"/> | <input type="checkbox"/>            | (6) Under the Elapsed Time method as defined in AA §4-3(c) below.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (7) Describe eligibility conditions: _____   |

(b) **Minimum Age Requirement.** An Eligible Employee (as defined in AA §3-1) must have attained the following age with respect to the contribution source(s) identified in this AA §4-1(b).

- | Match                    | ER                                  |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (1) There is no minimum age for Plan eligibility. |
| <input type="checkbox"/> | <input type="checkbox"/>            | (2) Age 21.                                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | (3) Age ____.                                     |

(c) **Special eligibility rules.** The following special eligibility rules apply with respect to the Plan: \_\_\_\_\_

*[Note: Any elections under the ER column under this AA §4-1 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions authorized under AA §6-6, unless elected otherwise under subsection (c). Subsection (c) may be used to apply the eligibility conditions selected under this AA §4-1 separately with respect to different Employee groups or different contribution formulas under the Plan. Any special rules under subsection (c) must be definitely determinable.]*

4-2 **ENTRY DATE:** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service requirements in AA §4-1 shall be eligible to participate in the Plan as of his/her Entry Date. For this purpose, the Entry Date is the following date with respect to the contribution source(s) identified under this AA §4-2.

- | Match                    | ER                                  |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (a) <b>Immediate.</b> The date the minimum age and service requirements are satisfied (or date of hire, if no minimum age and service requirements apply). |
| <input type="checkbox"/> | <input type="checkbox"/>            | (b) <b>Semi-annual.</b> The first day of the 1st and 7th month of the Plan Year.   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (c) <b>Quarterly.</b> The first day of the 1st, 4th, 7th and 10th month of the Plan Year.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (d) <b>Monthly.</b> The first day of each calendar month.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (e) <b>Payroll period.</b> The first day of the payroll period.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (f) <b>The first day of the Plan Year.</b>   |

An Eligible Employee’s Entry Date (as defined above) is determined based on when the Employee satisfies the minimum age and service requirements in AA §4-1. For this purpose, an Employee’s Entry Date is the Entry Date:

- | Match                    | ER                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | (g) <b>next following</b> satisfaction of the minimum age and service requirements.                    |
| <input type="checkbox"/> | <input type="checkbox"/> | (h) <b>coinciding with or next following</b> satisfaction of the minimum age and service requirements. |
| <input type="checkbox"/> | <input type="checkbox"/> | (i) <b>nearest</b> the satisfaction of the minimum age and service requirements.                       |
| <input type="checkbox"/> | <input type="checkbox"/> | (j) <b>preceding</b> the satisfaction of the minimum age and service requirements.                     |

This section may be used to describe any special rules for determining Entry Dates under the Plan. For example, if different Entry Date provisions apply for the same contribution sources with respect to different groups of Employees, such different Entry Date provisions may be described below.

- | Match                    | ER                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | (k) <b>Describe</b> any special rules that apply with respect to the Entry Dates under this AA §4-2: _____ |

*[Note: The elections under the ER column under this AA §4-2 apply to any Pick-Up Contributions selected under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (k). Any special rules under subsection (k) must be definitely determinable.]*

4-3 **DEFAULT ELIGIBILITY RULES.** In applying the minimum age and service requirements under AA §4-1 above, the following default rules apply with respect to all contribution sources under the Plan:

- **Year of Service.** An Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service during an Eligibility Computation Period. Hours of Service are calculated based on actual hours worked during the Eligibility Computation Period. (See Section 1.56 of the Plan for the definition of Hours of Service.)
- **Eligibility Computation Period.** If one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years. (See Section 2.03(a)(3)(i) of the Plan.) If more than one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Anniversary Years. (See Section 2.03(a)(3)(ii) of the Plan.)

To override the default eligibility rules, complete the applicable sections of this AA §4-3. **If this AA §4-3 is not completed for a particular contribution source, the default eligibility rules apply.**

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ Hours of Service during an Eligibility Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	(b) <b>Eligibility Computation Period (ECP).</b> The Plan will use Anniversary Years, unless more than one Year of Service is required under AA §4-1(a), in which case the Plan will shift to Plan Years if the Employee does not earn a Year of Service during the first Eligibility Computation Period. (See Section 2.03(a)(3)(ii) of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	(c) <b>Elapsed Time method.</b> Eligibility service will be determined under the Elapsed Time method. An Eligible Employee (as defined in AA §3-1) must complete a ____ period of service to participate in the Plan. (See Section 2.03(a)(6) of the Plan.)  <i>[Note: Under the Elapsed Time method, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Eligibility Computation Period designated in Section 2.03(a)(3) of the Plan.]</i>
<input type="checkbox"/>	<input type="checkbox"/>	(d) <b>Equivalency Method.</b> For purposes of determining an Employee's Hours of Service for eligibility, the Plan will use the Equivalency Method (as defined in Section 2.03(a)(5) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) All Employees.</li> <li><input type="checkbox"/> (2) Only Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, eligibility will be determined based on actual hours worked.  Hours of Service for eligibility will be determined under the following Equivalency Method.</li> <li><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.</li> <li><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.</li> <li><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.</li> <li><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period worked.</li> </ul>
<input type="checkbox"/>	<input type="checkbox"/>	(e) <b>Special eligibility provisions.</b> _____

*[Note: The elections under the ER column under this AA §4-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (e). Any special rules under subsection (e) must be definitely determinable.]*

4-4 **EFFECTIVE DATE OF MINIMUM AGE AND SERVICE REQUIREMENTS.** The minimum age and/or service requirements under AA §4-1 apply to all Employees under the Plan. An Employee will participate with respect to all contribution sources under the Plan as of his/her Entry Date, taking into account all service with the Employer, including service earned prior to the Effective Date.

To allow Employees hired on a specified date to enter the Plan without regard to the minimum age and/or service conditions, complete this AA §4-4.

**Match      ER**

- An Eligible Employee who is employed by the Employer on the following date will become eligible to enter the Plan without regard to minimum age and/or service requirements (as designated below):
- (a) the Effective Date of this Plan (as designated in the Employer Signature Page).
  - (b) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
  - (c) \_\_\_\_\_ [insert date]

An Eligible Employee who is employed on the designated date will become eligible to participate in the Plan without regard to the minimum age and service requirements under AA §4-1. If both minimum age and service conditions are not waived, select (d) or (e) to designate which condition is waived under this AA §4-4.

- (d) This AA §4-4 only applies to the minimum service condition.
- (e) This AA §4-4 only applies to the minimum age condition.

The provisions of this AA §4-4 apply to all Eligible Employees employed on the designated date unless designated otherwise under subsection (f) or (g) below.

- (f) The provisions of this AA §4-4 apply to the following group of Employees employed on the designated date: \_\_\_\_\_
- (g) Describe special rules: \_\_\_\_\_

*[Note: An Employee who is employed as of the date described in this AA §4-4 will be eligible to enter the Plan as of such date unless a different Entry Date is designated under subsection (g). The elections under the ER column apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (g). Any special rules under subsection (g) must be definitely determinable.]*

4-5 **SERVICE WITH PREDECESSOR EMPLOYER.** Service with the following Predecessor Employers will be counted for purposes of determining eligibility, vesting and allocation conditions under this Plan, unless designated otherwise under subsection (a) or (b) below. (See Sections 2.06, 3.07(b) and 6.07 of the Plan.)

- (a) The Plan will count service with the following Predecessor Employers:

Name of Predecessor Employer	Eligibility	Vesting	Allocation Conditions
<input type="checkbox"/> (1) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (b) Describe any special provisions applicable to Predecessor Employer service: \_\_\_\_\_

4-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for eligibility purposes, complete this AA §4-6. (See Section 2.07 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate.
- (b) If an Employee incurs at least \_\_\_\_\_ Breaks in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate. [Enter "0" if prior service will be disregarded for all rehired Employees.]
- (c) Describe: \_\_\_\_\_

SECTION 5  
COMPENSATION DEFINITIONS

- 5-1 **TOTAL COMPENSATION.** Total Compensation is based on the definition set forth under this AA §5-1. See Section 1.89 of the Plan for a specific definition of the various types of Total Compensation.
- (a) W-2 Wages
  - (b) Code §415 Compensation
  - (c) Wages under Code §3401(a)
- [For purposes of determining Total Compensation, each definition includes Elective Deferrals as defined in Section 1.35 of the Plan, pre-tax contributions to a Code §125 cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4).]*
- 5-2 **POST-SEVERANCE COMPENSATION.** Total Compensation includes post-severance compensation, to the extent provided in Section 1.89(b) of the Plan.
- (a) **Exclusion of post-severance compensation from Total Compensation.** The following amounts paid after a Participant's severance of employment are excluded from Total Compensation.
    - (1) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.
    - (2) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

*[Note: Plan Compensation (as defined in Section 1.72 of the Plan) includes any post-severance compensation amounts that are includible in Total Compensation. The Employer may elect to exclude all compensation paid after severance of employment from the definition of Plan Compensation under AA §5-3(j) or may elect to exclude specific types of post-severance compensation from Plan Compensation under AA §5-3(l).]*
  - (b) **Continuation payments for disabled Participants.** Unless designated otherwise under this subsection (b), Total Compensation does not include continuation payments for disabled Participants.
    - Payments to disabled Participants.** Total Compensation shall include post-severance compensation paid to a Participant who is permanently and totally disabled, as provided in Section 1.89(c) of the Plan.
- 5-3 **PLAN COMPENSATION:** Plan Compensation is **Total Compensation** (as defined in AA §5-1 above) with the following exclusions described below.
- | Match                    | ER                                  |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | (a) No exclusions.   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (b) Elective Deferrals (as defined in Section 1.35 of the Plan), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4) are excluded. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (c) All fringe benefits (cash and noncash), reimbursements or other expense allowances, moving expenses, deferred compensation, and welfare benefits are excluded.                                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | (d) Compensation above \$___ is excluded.  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (e) Amounts received as a bonus are excluded.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (f) Amounts received as commissions are excluded.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (g) Overtime payments are excluded.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (h) Amounts received for services performed for a non-signatory Related Employer are excluded. (See Section 2.02(c) of the Plan.)  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (i) "Deemed §125 compensation" as defined in Section 1.89(d) of the Plan.  |



- | Match                    | ER                       |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | (j) Amounts received after termination of employment are excluded. (See Section 1.89(b) of the Plan.) |
| <input type="checkbox"/> | <input type="checkbox"/> | (k) Differential Pay (as defined in Section 1.89(e) of the Plan).                                     |
| <input type="checkbox"/> | <input type="checkbox"/> | (l) Describe adjustments to Plan Compensation: _____  |

[*Note: Any modification under subsection (l) must be definitely determinable and preclude Employer discretion. The elections under the ER column under this AA §5-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (l).*]

#### 5-4 PERIOD FOR DETERMINING COMPENSATION.

- (a) **Compensation Period.** Plan Compensation will be determined on the basis of the following period(s) for the contribution sources identified in this AA §5-4. [*If a period other than the Plan Year applies for any contribution source, any reference to the Plan Year as it refers to Plan Compensation for that contribution source will be deemed to be a reference to the period designated under this AA §5-4.*]

- | Match                    | ER                                  |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (1) The Plan Year.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (2) The calendar year ending in the Plan Year.                          |
| <input type="checkbox"/> | <input type="checkbox"/>            | (3) The Employer's fiscal tax year ending in the Plan Year.             |
| <input type="checkbox"/> | <input type="checkbox"/>            | (4) The 12-month period ending on ____ which ends during the Plan Year. |

- (b) **Compensation while a Participant.** Unless provided otherwise under this subsection (b), in determining Plan Compensation, only compensation earned while an individual is a Participant under the Plan with respect to a particular contribution source will be taken into account.

To count compensation for the entire Plan Year for a particular contribution source, including compensation earned while an individual is not a Participant with respect to such contribution source, check below. (See Section 1.72(b) of the Plan.)

- | Match                    | ER                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | All compensation earned during the Plan Year will be taken into account, including compensation earned while an individual is not a Participant. |

- (c) **Few weeks rule.** The few weeks rule (as described in Section 5.02(c)(7)(ii) of the Plan) will not apply unless designated otherwise under this subsection (c).
- Amounts earned but not paid during a Limitation Year solely because of the timing of pay periods and pay dates shall be included in Total Compensation for the Limitation Year, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no amounts are included in more than one Limitation Year.

### SECTION 6

#### EMPLOYER AND EMPLOYEE CONTRIBUTIONS

- 6-1 **EMPLOYER / EMPLOYEE CONTRIBUTIONS.** The Employer/Employee may make the following contributions under the Plan:

- (a) Employer Contributions under AA §6-2
- (b) Voluntary After-Tax Employee Contributions under AA §6-6(a)
- (c) Mandatory After-Tax Employee Contributions under AA §6-6(b)
- (d) Employer Pick-Up Contributions under AA §6-6(c)
- (e) N/A. No Employer/Employee Contributions are permitted under the Plan [*Skip to Section 6A*]

6-2 **EMPLOYER CONTRIBUTION FORMULA.** For the period designated in AA §6-4(a) below, the Employer will make the following Employer Contributions on behalf of Participants who satisfy the allocation conditions designated in AA §6-5 below. Any Employer Contribution authorized under this AA §6-2 will be allocated in accordance with the allocation formula selected under AA §6-3.

- (a) **Discretionary contribution.** The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.
- (b) **Fixed contribution.**
- (1) **Fixed percentage.** 15 % of each Participant's Plan Compensation.
- (2) **Fixed dollar.** \$\_\_\_ for each Participant.
- (3) **Determined in accordance with the terms of the Employment contract** between an Eligible Employee and the Employer. *[If this subsection (3) is checked, the provisions of an Employment contract addressing retirement benefits will override any selection under this AA §6-2.]*
- (c) **Service-based contribution.** The Employer will make the following contribution:
- (1) **Discretionary.** A discretionary contribution determined as a uniform percentage of Plan Compensation or a uniform dollar amount for each period of service designated below.
- (2) **Fixed percentage.** \_\_\_% of Plan Compensation paid for each period of service designated below.
- (3) **Fixed dollar.** \$\_\_\_ for each period of service designated below.
- The service-based contribution will be based on the following periods of service:
- (4) Each Hour of Service
- (5) Each week of employment
- (6) Describe period: \_\_\_\_\_
- The service-based contribution is subject to the following rules.
- (7) Describe any special provisions that apply to service-based contribution: \_\_\_\_\_
- (d) **Describe special rules for determining contributions under Plan:** \_\_\_\_\_
- [Note: Any special rules under subsection (d) must be definitely determinable.]*

6-3 **ALLOCATION FORMULA.**

- (a) **Pro rata allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated:
- (1) as a uniform percentage of Plan Compensation.
- (2) as a uniform dollar amount.
- (b) **Fixed contribution.** The fixed Employer Contribution under AA §6-2(b) will be allocated in accordance with the selections made under AA §6-2(b).
- (c) **Permitted disparity allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated under the two-step method (as defined in Section 3.02(a)(1)(i)(B)(I) of the Plan), using the Taxable Wage Base (as defined in Section 1.87 of the Plan) as the Integration Level.
- To modify these default rules, complete the appropriate provision(s) below.
- (1) **Integration Level.** Instead of the Taxable Wage Base, the Integration Level is:
- (i) \_\_\_% of the Taxable Wage Base, increased (but not above the Taxable Wage Base) to the next higher:
- |                                    |                                      |
|------------------------------------|--------------------------------------|
| <input type="checkbox"/> (A) N/A   | <input type="checkbox"/> (B) \$1     |
| <input type="checkbox"/> (C) \$100 | <input type="checkbox"/> (D) \$1,000 |
- (ii) \$\_\_\_ (not to exceed the Taxable Wage Base)
- (iii) 20% of the Taxable Wage Base
- [Note: See Section 3.02(a)(1)(i)(B)(IV) of the Plan for rules regarding the Maximum Disparity Rate that may be used where an Integration Level other than the Taxable Wage Base is selected.]*
- (2) **Describe special rules for applying permitted disparity allocation formula:** \_\_\_\_\_
- [Note: Any special rules under subsection (2) must be definitely determinable.]*

- (d) **Uniform points allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated to each Participant in the ratio that each Participant's total points bears to the total points of all Participants. A Participant will receive the following points:
- (1) \_\_\_ point(s) for each \_\_\_ year(s) of age (attained as of the end of the Plan Year).
  - (2) \_\_\_ points for each \$\_\_\_ of Plan Compensation.
  - (3) \_\_\_ point(s) for each \_\_\_ Year(s) of Service. For this purpose, Years of Service are determined:
    - (i) In the same manner as determined for eligibility.
    - (ii) In the same manner as determined for vesting.
    - (iii) Points will not be provided with respect to Years of Service in excess of \_\_\_.
- (e) **Employee group allocation.** The Employer may make a separate discretionary Employer Contribution to the Participants in the following allocation groups. The Employer must notify the Trustee in writing of the amount of the contribution to be allocated to each allocation group.
- (1) A separate discretionary Employer Contribution may be made to each Participant of the Employer (i.e., each Participant is in his/her own allocation group).
  - (2) A separate discretionary or fixed Employer Contribution may be made to the following allocation groups. If no fixed amount is designated for a particular allocation group, the contribution made for such allocation group will be allocated as a uniform percentage of Plan Compensation or as a uniform dollar amount to all Participants within that allocation group.
- [Note: The Employee allocation groups designated above must be clearly defined in a manner that will not violate the definite allocation formula requirement of Treas. Reg. §1.401-1(b)(1)(ii).]*
- (3) **Special rules.**
- (i) **More than one Employee group.** Unless designated otherwise under this subsection (i), if a Participant is in more than one allocation group described in (2) above during the Plan Year, the Participant will receive an Employer Contribution based on the Participant's status on the last day of the Plan Year. (See Section 3.02(a)(1)(i)(D) of the Plan.)
    - Determined separately for each Employee group.** If a Participant is in more than one allocation group during the Plan Year, the Participant's share of the Employer Contribution will be based on the Participant's status for the part of the year the Participant is in each allocation group.
  - (ii) **Describe:** \_\_\_\_\_
- [Note: Any special rules under subsection (ii) must be definitely determinable.]*
- (f) **Age-based allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated under the age-based allocation formula so that each Participant receives a pro rata allocation based on adjusted Plan Compensation. For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor (as described in Section 1.03 of the Plan).
- A Participant's Actuarial Factor is determined based on a specified interest rate and mortality table. Unless designated otherwise under (1) or (2) below, the Plan will use an applicable interest rate of 8.5% and a UP-1984 mortality table.
- (1) **Applicable interest rate.** Instead of 8.5%, the Plan will use an interest rate of \_\_\_% (must be between 7.5% and 8.5%) in determining a Participant's Actuarial Factor.
  - (2) **Applicable mortality table.** Instead of the UP-1984 mortality table, the Plan will use the following mortality table in determining a Participant's Actuarial Factor: \_\_\_\_\_
  - (3) **Describe special rules applicable to age-based allocation:** \_\_\_\_\_
- [Note: See Exhibit A of the Plan for sample Actuarial Factors based on an 8.5% applicable interest rate and the UP-1984 mortality table. If an interest rate or mortality table other than 8.5% or UP-1984 is selected, appropriate Actuarial Factors must be calculated.]*
- (g) **Service-based allocation formula.** The service-based Employer Contribution selected in AA §6-2(c) will be allocated in accordance with the selections made in AA §6-2(c).
- (h) **Describe special rules for determining allocation formula:** \_\_\_\_\_
- [Note: Any special rules under subsection (h) must be definitely determinable.]*

6-4 **SPECIAL RULES.** No special rules apply with respect to Employer/Employee Contributions under the Plan, except to the extent designated under this AA §6-4. Unless designated otherwise, in determining the amount of the Employer/Employee Contributions to be allocated under this AA §6, the contribution will be based on Plan Compensation earned during the Plan Year.

(a) **Period for determining Employer/Employee Contributions.** Instead of the Plan Year, Employer/Employee Contributions will be determined based on Plan Compensation earned during the following period: *[The Plan Year must be used if the permitted disparity allocation method is selected under AA §6-3(c) above.]*

(1) Plan Year quarter

(2) calendar month

(3) payroll period

(4) Other: \_\_\_\_\_

*[Note: Although Employer Contributions are determined on the basis of Plan Compensation earned during the period designated under this subsection (a), this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Employer Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this subsection (a).]*

(b) **Limit on Employer Contributions.** The Employer Contribution elected in AA §6-2 may not exceed:

(1) \_\_\_\_% of Plan Compensation

(2) \$\_\_\_\_

(3) Describe: \_\_\_\_\_

(c) **Offset of Employer Contribution.**

(1) A Participant's allocation of Employer Contributions under AA §6-2 of this Plan is reduced by contributions under \_\_\_\_\_ *[insert name of plan(s)]*. (See Section 3.02(a)(1) of the Plan.)

(2) In applying the offset under this subsection (c), the following rules apply: \_\_\_\_\_

(d) **Special rules:** \_\_\_\_\_

*[Note: Any special rules under subsection (d) must be definitely determinable.]*

6-5 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6-5 to receive an allocation of Employer Contributions under the Plan. *[Note: No allocation conditions apply to After-Tax Employee Contributions or Employer Pick-Up Contributions under AA §6-6.]*

(a) **No allocation conditions** apply with respect to Employer Contributions under the Plan.

(b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.

(c) **Minimum service condition.** An Employee must be credited with at least:

(1) \_\_\_\_ Hours of Service during the Plan Year.

(i) Hours of Service are determined using actual Hours of Service.

(ii) Hours of Service are determined using the following Equivalency Method (as defined under Section 2.03(a)(5) of the Plan):

(A) Monthly

(B) Weekly

(C) Daily

(D) Semi-monthly

(2) \_\_\_\_ consecutive days of employment with the Employer during the Plan Year.

(d) **Exceptions.**

(1) The above allocation condition(s) will **not** apply if the Employee:

(i) dies during the Plan Year.

(ii) terminates employment due to becoming Disabled.

(iii) terminates employment after attaining Normal Retirement Age.

(iv) terminates employment after attaining Early Retirement Age.

(v) is on an authorized leave of absence from the Employer.

(2) The exceptions selected under subsection (1) will apply even if an Employee has not terminated employment at the time of the selected event(s).

- (3) The exceptions selected under subsection (1) do not apply to:
- (i) an employment condition under subsection (b) above.
  - (ii) a minimum service condition under subsection (c) above.
- (e) **Describe** any special rules governing the allocation conditions under the Plan: \_\_\_\_\_
- [Note: Any special rules under subsection (e) must be definitely determinable.]*

## 6-6 AFTER-TAX EMPLOYEE CONTRIBUTIONS AND EMPLOYER PICK-UP CONTRIBUTIONS.

- (a) **Voluntary After-Tax Employee Contributions.** If permitted under this subsection (a), a Participant may contribute any amount as Voluntary After-Tax Employee Contributions up to the Code §415 Limitation (as defined in Section 5.02 of the Plan), except as limited under this subsection (a).
- (1) **Limits on Voluntary After-Tax Employee Contributions.** If this subsection (1) is checked, the following limits apply to Voluntary After-Tax Employee Contributions:
- (i) **Maximum limit.** A Participant may make Voluntary After-Tax Employee Contributions up to:
    - (A) \_\_\_\_\_% of Plan Compensation
    - (B) \$\_\_\_\_\_
 for the following period:
    - (C) the entire Plan Year.
    - (D) the portion of the Plan Year during which the Employee is eligible to participate.
    - (E) each separate payroll period during which the Employee is eligible to participate.
  - (ii) **Minimum limit.** The amount of Voluntary After-Tax Employee Contributions a Participant may make for any payroll period may not be less than:
    - (A) \_\_\_\_\_% of Plan Compensation
    - (B) \$\_\_\_\_\_
- (2) **Change or revocation of Voluntary After-Tax Employee Contributions.** In addition to the Participant's Entry Date under the Plan, a Participant's election to change or resume Voluntary After-Tax Employee Contributions will be effective as of the dates designated under the Voluntary After-Tax Employee Contribution election form or other written procedures adopted by the Plan Administrator. Alternatively, the Employer may designate under this subsection (2) specific dates as of which a Participant may change or resume Voluntary After-Tax Employee Contributions. (See Section 3.04 of the Plan.)
- (i) The first day of each calendar quarter.
  - (ii) The first day of each Plan Year.
  - (iii) The first day of each calendar month.
  - (iv) The beginning of each payroll period.
  - (v) Other: \_\_\_\_\_
- [Note: A Participant must be permitted to change or revoke a Voluntary After-Tax Employee Contribution election at least once per year. Unless designated otherwise under subsection (v), a Participant may revoke an election to make Voluntary After-Tax Employee Contributions (on a prospective basis) at any time. This subsection (2) also applies to any Employer Pick-Up Contributions selected under subsection (c) below, unless designated otherwise under subsection (c)(2).]*
- (3) **Other limits or special rules relating to Voluntary After-Tax Employee Contributions:** \_\_\_\_\_
- [Note: Any limits described under this subsection (3) must be consistent with the provisions of Section 3.04 of the Plan.]*

- (b) **Mandatory After-Tax Employee Contributions.** If this subsection (b) is checked, Employees are required to make Mandatory After-Tax Employee Contributions in order to participate under the Plan.
- (1) **Amount of Mandatory After-Tax Employee Contributions.** Employees are required to contribute the following amount in order to participate in the Plan:
- (i) \_\_\_\_\_% of each Employee’s Total Compensation.
- (ii) \$\_\_\_\_\_ for each Participant.
- (iii) Describe rate or amount: \_\_\_\_\_
- (2) **Special rules** applicable to Mandatory After-Tax Employee Contributions: \_\_\_\_\_
- (c) **Employer Pick-Up Contributions.** Each Participant will be required to make a Pick-up Contribution to the Plan equal to the amount specified under this subsection (c). Any amounts contributed pursuant to this subsection (c) will be picked up by the Employer pursuant to Code §414(h) and will be treated as Employer Contributions under the Plan. Such contributions and earnings thereon will be 100% vested at all times. (See Section 3.03 of the Plan.)
- (1) The following amounts will be contributed to the Plan as an Employer Pick-Up Contribution:
- (i) \_\_\_\_\_% of Plan Compensation.
- (ii) \$\_\_\_\_\_ per pay period.
- (iii) Any amount from \_\_\_\_\_% to \_\_\_\_\_% of Plan Compensation, as designated by the Participant.
- (2) Special rules applicable to Employer Pick-Up Contributions: \_\_\_\_\_
- [Note: Any Employer Pick-Up Contributions made under this subsection (c) must satisfy the requirements of Section 3.03 of the Plan. See AA §11-4 for an Employee’s ability to elect out of making Employer Pick-Up Contributions.]*

**SECTION 6A  
MATCHING CONTRIBUTIONS**

6A-1 **MATCHING CONTRIBUTIONS.** Is the Employer authorized to make Matching Contributions under the Plan? *[Note that this Section 6A only applies if the Employer is matching Elective Deferral made under another plan maintained by the Employer or with respect to Pick-Up Contributions or After-Tax Employee Contributions under this Plan.]*

- Yes.**
- No.** *[If “No” is checked, skip to Section 7.]*

6A-2 **MATCHING CONTRIBUTION FORMULA:** For the period designated in AA §6A-5 below, the Employer will make the following Matching Contribution on behalf of Participants who satisfy the allocation conditions under AA §6A-6 below. *[See AA §6A-3 for the definition of Eligible Contributions for purposes of the Matching Contributions under the Plan.]*

- (a) **Discretionary match.** The Employer will determine in its sole discretion how much, if any, it will make as a Matching Contribution. Such amount can be determined either as a uniform percentage of deferrals or as a flat dollar amount for each Participant.
- (b) **Fixed match.** The Employer will make a Matching Contribution for each Participant equal to:
- (1) \_\_\_\_\_% of Eligible Contributions made for each period designated in AA §6A-5 below.
- (2) \$\_\_\_\_\_ for each period designated in AA §6A-5 below.
- (c) **Tiered match.** The Employer may make a Matching Contribution to all Participants based on the following tiers of Eligible Contributions as a percentage of Plan Compensation.

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (1) Up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (2) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>

Eligible Contributions	Fixed Match	Discretionary Match
------------------------	-------------	---------------------

(3) From \_\_\_% up to \_\_\_% of Plan Compensation \_\_\_\_\_%

(4) From \_\_\_% up to \_\_\_% of Plan Compensation \_\_\_\_\_%

- (d) **Year of Service match.** The Employer will make a Matching Contribution as a uniform percentage of Eligible Contributions (as defined in AA §6A-3) to all Participants based on Years of Service with the Employer.

Years of Service	Matching %
------------------	------------

(1) From \_\_\_ up to \_\_\_ Years of Service \_\_\_\_\_%

(2) From \_\_\_ up to \_\_\_ Years of Service \_\_\_\_\_%

(3) From \_\_\_ up to \_\_\_ Years of Service \_\_\_\_\_%

(4) From \_\_\_ up to \_\_\_ Years of Service \_\_\_\_\_%

(5) Years of Service equal to and above \_\_\_ \_\_\_\_\_%

For this purpose, a Year of Service is each Plan Year during which an Employee completes at least 1,000 Hours of Service. Alternatively, a Year of Service is: \_\_\_\_\_

[*Note: Any alternative definition of a Year of Service must meet the requirements of a Year of Service as defined in Section 2.03(a)(1) of the Plan.*]

- (e) **Based on employment agreement.** The Employer will make a Matching Contribution determined in accordance with the terms of the Employment agreement between an Eligible Employee and the Employer. [*If this subsection (e) is checked, the provisions of an Employment agreement addressing retirement benefits will override any selection under this AA §6A-2.*]

- (f) **Describe special rules for determining Matching Contribution formula:** \_\_\_\_\_

6A-3 **ELIGIBLE CONTRIBUTIONS.** Unless designated otherwise under this AA §6A-3, the Matching Contribution described in AA §6A-2 will apply to all Eligible Contributions authorized under AA §6-6.

- (a) **Designated Eligible Contributions.** If this subsection (a) is checked, the Matching Contribution described in AA §6A-2 will apply only to the Eligible Contributions selected below:

(1) Voluntary After-Tax Employee Contributions under AA §6-6(a).

(2) Mandatory After-Tax Employee Contributions under AA §6-6(b).

(3) Employer Pick-Up Contributions under AA §6-6(c).

- (b) **Elective deferrals under another plan.** If this subsection (b) is checked, the Matching Contributions described in AA §6A-2 will apply to elective deferrals under the following plan maintained by the Employer: \_\_\_\_\_

- (c) **Special rules.** The following special rules apply for purposes of determining the Matching Contribution under this AA §6A-3: \_\_\_\_\_

*[Note: Subsection (c) may be used to describe any special provisions applicable to Matching Contributions provided with respect to Eligible Contributions under this Plan or elective deferrals made under another plan maintained by the Employer.]*

6A-4 **LIMITS ON MATCHING CONTRIBUTIONS.** In applying the Matching Contribution formula(s) selected under AA §6A-2 above, all Eligible Contributions designated under AA §6A-3 are eligible for Matching Contributions, unless elected otherwise under this AA §6A-4.

- (a) **Limit on amount of Eligible Contributions.** The Matching Contribution formula(s) selected in AA §6A-2 above apply only to Eligible Contributions under AA §6A-3 that do not exceed:

- (1) \_\_\_\_\_% of Plan Compensation.  
 (2) \$\_\_\_\_\_  
 (3) A discretionary amount determined by the Employer.

*[Note: If both (1) and (2) are selected, the limit under this subsection (a) is the lesser of the percentage selected in subsection (1) or the dollar amount selected in subsection (2).]*

- (b) **Limit on Matching Contributions.** The total Matching Contribution provided under the formula(s) selected in AA §6A-2 above will not exceed:

- (1) \_\_\_\_\_% of Plan Compensation.  
 (2) \$\_\_\_\_\_.

- (c) **Special limits applicable to Matching Contributions:** \_\_\_\_\_

6A-5 **PERIOD FOR DETERMINING MATCHING CONTRIBUTIONS.** The Matching Contribution formula(s) selected in AA §6A-2 above (including any limitations on such amounts under AA §6A-4) are based on Eligible Contributions under AA §6A-3 and Plan Compensation for the Plan Year. To apply a different period for determining the Matching Contributions and limits under AA §6A-2 and AA §6A-4, complete this AA §6A-5.

- (a) payroll period  
 (b) Plan Year quarter  
 (c) calendar month  
 (d) Other: \_\_\_\_\_

*[Note: Although Matching Contributions (and any limits on those Matching Contributions) will be determined on the basis of the period designated under this AA §6A-5, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Matching Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415-6, regardless of the period selected under this AA §6A-5.]*

*[Note: In determining the amount of Matching Contributions for a particular period, if the Employer actually makes Matching Contributions to the Plan on a more frequent basis than the period selected in this AA §6A-5, a Participant will be entitled to a true-up contribution to the extent he/she does not receive a Matching Contribution based on the Eligible Contributions under AA §6A-3 and/or Plan Compensation for the entire period selected in this AA §6A-5. If a period other than the Plan Year is selected under this AA §6A-5, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Plan Year was selected under this AA §6A-5. See Section 3.02(a)(2)(ii) of the Plan.]*

6A-6 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6A-6 to receive an allocation of Matching Contributions under the Plan.

- (a) **No allocation conditions** apply with respect to Matching Contributions under the Plan.
- (b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.
- (c) **Minimum service condition.** An Employee must be credited with at least:
- (1) \_\_\_\_\_ Hours of Service during the Plan Year.
- (i) Hours of Service are determined using actual Hours of Service.
- (ii) Hours of Service are determined using the following Equivalency Method (as defined under Section 2.03(a)(5) of the Plan):
- |                                      |   |
|--------------------------------------|---|
| <input type="checkbox"/> (A) Monthly | <input type="checkbox"/> (B) Weekly       |
| <input type="checkbox"/> (C) Daily   | <input type="checkbox"/> (D) Semi-monthly |



- (2) \_\_\_ consecutive days of employment with the Employer during the Plan Year.
- (d) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee:
- (i) dies during the Plan Year.
  - (ii) terminates employment as a result of becoming Disabled.
  - (iii) terminates employment after attaining Normal Retirement Age.
  - (iv) terminates employment after attaining Early Retirement Age.
  - (v) is on an authorized leave of absence from the Employer.
- (2) The exceptions selected under subsection (1) will apply even if an Employee has not terminated employment at the time of the selected event(s).
- (3) The exceptions selected under subsection (1) do not apply to:
- (i) an employment condition designated under subsection (b) above.
  - (ii) a minimum service condition designated under subsection (c) above.
- (e) **Describe** any special rules governing the allocation conditions under the Plan: \_\_\_\_\_

<b>SECTION 7</b>
<b>RETIREMENT AGES</b>

- 7-1 **NORMAL RETIREMENT AGE:** Normal Retirement Age under the Plan is:
- (a) Age 65 (not to exceed 65).
- (b) The later of age \_\_\_ (not to exceed 65) or the \_\_\_ (not to exceed 5<sup>th</sup>) anniversary of:
- (1) the Employee's participation commencement date (as defined in Section 1.64 of the Plan).
  - (2) the Employee's employment commencement date.
- (c) \_\_\_\_\_
- 7-2 **EARLY RETIREMENT AGE:** Unless designated otherwise under this AA §7-2, there is no Early Retirement Age under the Plan.
- (a) A Participant reaches Early Retirement Age if he/she is still employed after attainment of each of the following:
- (1) Attainment of age \_\_\_
  - (2) The \_\_\_ anniversary of the date the Employee commenced participation in the Plan, and/or
  - (3) The completion of \_\_\_ Years of Service, determined as follows:
    - (i) Same as for eligibility.
    - (ii) Same as for vesting.
- (b) **Describe.** \_\_\_\_\_

<b>SECTION 8</b>
<b>VESTING AND FORFEITURES</b>

- 8-1 **CONTRIBUTIONS SUBJECT TO VESTING.** Does the Plan provide for any Employer and/or Matching Contributions that are subject to a vesting schedule under AA §8-2?

- Yes
- No [If "No" is checked, skip to Section 9.]

*[Note: "Yes" should be checked under this AA §8-1 if the Plan provides for Employer Contributions and/or Matching Contributions that are subject to a vesting schedule, even if such contributions are always 100% vested under AA §8-2. "No" should be checked if the only contributions under the Plan are After-Tax Employee Contributions and/or Employer Pick-Up Contributions. If the Plan holds Employer Contributions and/or Matching Contributions that are subject to vesting but the Plan no longer provides for such contributions, see Sections 7.04(e) and 7.13(e) of the Plan for default rules for applying the vesting and forfeiture rules to such contributions.]*

8-2 **VESTING SCHEDULE.** The vesting schedule under the Plan is as follows for both Employer Contributions and Matching Contributions, to the extent authorized under the Plan. See Section 6.02 of the Plan for a description of the various vesting schedules under this AA §8-2.

(a) **Vesting schedule:**

Match	ER	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1) Full and immediate vesting.
<input type="checkbox"/>	<input type="checkbox"/>	(2) Three-year cliff vesting schedule
<input type="checkbox"/>	<input type="checkbox"/>	(3) Six-year graded vesting schedule
<input type="checkbox"/>	<input type="checkbox"/>	(4) Modified vesting schedule
		___% after 1 Year of Service
		___% after 2 Years of Service
		___% after 3 Years of Service
		___% after 4 Years of Service
		___% after 5 Years of Service
		___% after 6 Years of Service
		___% after 7 Years of Service
		___% after 8 Years of Service
		___% after 9 Years of Service
		100% after 10 Years of Service
<input type="checkbox"/>	<input type="checkbox"/>	(5) Other: vesting schedule: _____

(b) **Special provisions applicable to vesting schedule:** \_\_\_\_\_

*[Note: This subsection (b) may be used to apply a different vesting schedule for different contribution formulas or different Employee groups under the Plan.]*

8-3 **VESTING SERVICE.** In applying the vesting schedules under this AA §8, all service with the Employer counts for vesting purposes, unless designated otherwise under this AA §8-3.

- (a) Service before the original Effective Date of this Plan (or a Predecessor Plan) is excluded.
- (b) Service completed before the Employee's \_\_\_ birthday is excluded.
- (c) Describe vesting service exclusions: \_\_\_\_\_

*[Note: See Section 6.07 of the Plan and AA §4-5 for rules regarding the crediting of service with Predecessor Employers for purposes of vesting under the Plan.]*

8-4 **VESTING UPON DEATH, DISABILITY OR EARLY RETIREMENT AGE.** An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee

- (a) dies
- (b) becomes Disabled
- (c) reaches Early Retirement Age
- (d) Not applicable. No increase in vesting applies.

8-5 **DEFAULT VESTING RULES.** In applying the vesting requirements under this AA §8, the following default rules apply. *[Note: No election should be made under this AA §8-5 if all contributions are 100% vested.]*

- **Year of Service.** An Employee earns a Year of Service for vesting purposes upon completing 1,000 Hours of Service during a Vesting Computation Period. Hours of Service are calculated based on actual hours worked during the Vesting Computation Period. (See Section 1.56 of the Plan for the definition of Hours of Service.)
- **Vesting Computation Period.** The Vesting Computation Period is the Plan Year.

To override the default vesting rules, complete the applicable sections of this AA §8-5. If this AA §8-5 is not completed, the default vesting rules apply.

**Match            ER**

- | Match                    | ER                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | (a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ Hours of Service during a Vesting Computation Period.   |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) <b>Vesting Computation Period (VCP).</b> Instead of the Plan Year, the Vesting Computation Period is: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) The 12-month period beginning with the Employee’s date of hire and, for subsequent Vesting Computation Periods, the 12-month period beginning with the anniversary of the Employee’s date of hire.</li> <li><input type="checkbox"/> (2) Describe: _____</li> </ul> [Note: Any Vesting Computation Period described in (2) must be a 12-consecutive month period and must apply uniformly to all Participants.]  |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) <b>Elapsed Time Method.</b> Instead of determining vesting service based on actual Hours of Service, vesting service will be determined under the Elapsed Time Method. If this subsection (c) is checked, service will be measured from the Employee’s employment commencement date (or reemployment commencement date, if applicable) without regard to the Vesting Computation Period designated in Section 6.05 of the Plan. (See Section 6.04(b) of the Plan.)   |
| <input type="checkbox"/> | <input type="checkbox"/> | (d) <b>Equivalency Method.</b> For purposes of determining an Employee’s Hours of Service for vesting, the Plan will use the Equivalency Method (as defined in Section 6.04(a)(2) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) All Employees.</li> <li><input type="checkbox"/> (2) Only to Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, vesting will be determined based on actual hours worked.</li> </ul> Hours of Service for vesting will be determined under the following Equivalency Method. <ul style="list-style-type: none"> <li><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.</li> <li><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.</li> <li><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.</li> <li><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period.</li> </ul> |
| <input type="checkbox"/> | <input type="checkbox"/> | (e) <b>Special rules:</b> _____<br>[Note: Any special rules under subsection (e) must be definitely determinable.]   |

8-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for vesting purposes, complete this AA §8-6. (See Section 6.08 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining vesting under the Plan.
- (b) If an Employee incurs at least \_\_\_\_\_ consecutive Breaks in Service, the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of determining vesting under the Plan. [Enter “0” if prior service will be disregarded for all rehired Employees.]
- (c) Describe any special rules for applying the vesting Break in Service rules: \_\_\_\_\_  
[Note: Any special rules under subsection (c) must be definitely determinable.]

8-7 **ALLOCATION OF FORFEITURES.**

The Employer may decide in its discretion how to treat forfeitures under the Plan. Alternatively, the Employer may designate under this AA §8-7 how forfeitures occurring during a Plan Year will be treated. (See Section 6.11 of the Plan.)

- | Match                    | ER                       |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | (a) N/A. All contributions are 100% vested. [Do not complete the rest of this AA §8-7.]       |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) Reallocated as additional Employer Contributions or as additional Matching Contributions. |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) Used to reduce Employer and/or Matching Contributions.                                    |

**Match ER**

For purposes of subsection (b) or (c), forfeitures will be applied:

- (d) for the Plan Year in which the forfeiture occurs.
- (e) for the Plan Year following the Plan Year in which the forfeitures occur.

Prior to applying forfeitures under subsection (b) or (c):

- (f) Forfeitures may be used to pay Plan expenses. (See Section 6.11(d) of the Plan.)
- (g) Forfeitures may **not** be used to pay Plan expenses.

In determining the amount of forfeitures to be allocated under subsection (b), the same allocation conditions apply as for the source for which the forfeiture is being allocated, unless designated otherwise below.

- (h) Forfeitures are not subject to any allocation conditions.
- (i) Forfeitures are subject to a last day of employment allocation condition.
- (j) Forfeitures are subject to a \_\_\_\_ Hours of Service minimum service requirement.

In determining the treatment of forfeitures under this AA §8-7, the following special rules apply:

- (k) Describe: \_\_\_\_\_

**8-8 SPECIAL RULES REGARDING CASH-OUT DISTRIBUTIONS.**

- (a) **Additional allocations.** If a terminated Participant receives a complete distribution of his/her vested Account Balance while still entitled to an additional allocation, the Cash-Out Distribution forfeiture provisions do not apply until the Participant receives a distribution of the additional amounts to be allocated. (See Section 6.10(a)(1) of the Plan.)

To modify the default Cash-Out Distribution forfeiture rules, complete this AA §8-8(a).

- The Cash-Out Distribution forfeiture provisions will apply if a terminated Participant takes a complete distribution, regardless of any additional allocations during the Plan Year.

- (b) **Timing of forfeitures.** A Participant who receives a Cash-Out Distribution (as defined in Section 6.10(a) of the Plan) is treated as having an immediate forfeiture of his/her nonvested Account Balance.

To modify the forfeiture timing rules to delay the occurrence of a forfeiture upon a Cash-Out Distribution, complete this AA §8-8(b).

- A forfeiture will occur upon the completion of \_\_\_\_ consecutive Breaks in Service (as defined in Section 6.08 of the Plan).

**SECTION 9****DISTRIBUTION PROVISIONS – TERMINATION OF EMPLOYMENT****9-1 AVAILABLE FORMS OF DISTRIBUTION.**

**Lump sum distribution.** A Participant may take a distribution of his/her entire vested Account Balance in a single lump sum upon termination of employment. The Plan Administrator may, in its discretion, permit Participants to take distributions of less than their entire vested Account Balance provided, if the Plan Administrator permits multiple distributions, all Participants are allowed to take multiple distributions upon termination of employment. In addition, the Plan Administrator may permit a Participant to take partial distributions or installment distributions solely to the extent necessary to satisfy the required minimum distribution rules under Section 8 of the Plan.

**Additional distribution options.** To provide for additional distribution options, check the applicable distribution forms under this AA §9-1.

- (a) **Installment distributions.** A Participant may take a distribution over a specified period not to exceed the life or life expectancy of the Participant (and a designated beneficiary).
- (b) **Annuity distributions.** A Participant may elect to have the Plan Administrator use the Participant's vested Account Balance to purchase an annuity as described in Section 7.01 of the Plan.
- (c) **Describe distribution options:** \_\_\_\_\_

[*Note: Any distribution option described in (c) may not be subject to the discretion of the Employer or Plan Administrator.*]

## 9-2 PARTICIPANT AND SPOUSAL CONSENT.

- (a) **Involuntary Cash-Out Distribution.** A Participant who terminates employment with a vested Account Balance of \$5,000 or less will receive an Involuntary Cash-Out Distribution, unless elected otherwise under this AA §9-2. If a Participant's vested Account Balance exceeds \$5,000, the Participant generally must consent to a distribution from the Plan, except to the extent provided otherwise under this AA §9-2. See Sections 7.03 of the Plan for additional rules regarding the Participant consent requirements under the Plan.
- (1) **No Involuntary Cash-Out Distributions.** The Plan does not provide for Involuntary Cash-Out Distributions. A terminated Participant must consent to any distribution from the Plan. (See Section 14.02(b) of the Plan for special rules upon Plan termination.)
- (2) **Involuntary Cash-Out Distribution threshold.** A terminated Participant will receive an Involuntary Cash-Out Distribution only if the Participant's vested Account Balance is less than or equal to \$\_\_\_\_\_.
- (3) **Application of Automatic Rollover rules.** The Automatic Rollover rules described in Section 7.05 of the Plan do not apply to any Involuntary Cash-Out Distribution below \$1,000, unless elected otherwise under this subsection (3). If this subsection (3) is checked, the Automatic Rollover provisions apply to all Involuntary Cash-Out Distributions (including those below \$1,000).
- (4) **Distribution upon attainment of stated age.** Participant consent will not be required with respect to distributions made upon attainment of Normal Retirement Age (or age 62, if later), regardless of the value of the Participant's vested Account Balance.
- (5) **Treatment of Rollover Contributions.** Unless elected otherwise under this (5), Rollover Contributions will be excluded in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold for purposes of applying the distribution rules under this AA §9 and the Automatic Rollover provisions under Section 7.05 of the Plan. To include Rollover Contributions in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, check this (5).
- (b) **Spousal consent.** Spousal consent is not required for a Participant to receive a distribution or name an alternate beneficiary, unless designated otherwise under this subsection (b). See Section 9.02 of the Plan for rules regarding Spousal consent under the Plan.
- (1) **Distribution consent.** A Participant's Spouse must consent to any distribution or loan, provided the Participant's vested Account Balance exceeds \$\_\_\_\_\_.
- (2) **Beneficiary consent.** A Participant's Spouse must consent to naming someone other than the Spouse as beneficiary under the Plan.
- (c) **Describe** any special rules affecting Participant or Spousal consent: \_\_\_\_\_  
[*Note: Any special rules under subsection (c) must be definitely determinable.*]

## 9-3 TIMING OF DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.

- (a) **Distribution of vested Account Balances exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance exceeding \$5,000 may receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1 within a reasonable period following:
- (1) the date the Participant terminates employment.
- (2) the last day of the Plan Year during which the Participant terminates employment.
- (3) the first Valuation Date following the Participant's termination of employment.
- (4) the end of the calendar quarter following the date the Participant terminates employment.
- (5) attainment of Normal Retirement Age, death or becoming Disabled.
- (6) Describe: \_\_\_\_\_  
[*Note: Any special rules under subsection (6) must be definitely determinable.*]
- (b) **Distribution of vested Account Balances not exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance that does not exceed \$5,000 will receive a **lump sum** distribution of his/her vested Account Balance within a reasonable period following:
- (1) the date the Participant terminates employment.
- (2) the last day of the Plan Year during which the Participant terminates employment.
- (3) the first Valuation Date following the Participant's termination of employment.
- (4) the end of the calendar quarter following the date the Participant terminates employment.

(5) Describe: \_\_\_\_\_

[*Note: Any special rules under subsection (5) must be definitely determinable.*]

(c) **Alternate Cash-Out distribution threshold.** Instead of a vested Account Balance Cash-Out threshold of \$5,000, for purposes of applying the Cash-Out distribution provisions under this AA §9-3, the forms of distribution available under subsections (a) and (b) will be based on a vested Account Balance of \$\_\_\_\_\_.

(d) **Describe additional distribution options:** \_\_\_\_\_

[*Note: Any additional distribution option described in (d) may not be subject to the discretion of the Employer or Plan Administrator.*]

9-4 **DISTRIBUTION UPON DISABILITY.** Unless designated otherwise under this AA §9-4, a Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her vested Account Balance in the same manner as a regular distribution upon termination.

(a) **Termination of Disabled Employee.**

(1) **Immediate distribution.** Distribution will be made as soon as reasonable following the date the Participant terminates on account of becoming Disabled.

(2) **Following year.** Distribution will be made as soon as reasonable following the last day of the Plan Year during which the Participant terminates on account of becoming Disabled.

(3) **Describe:** \_\_\_\_\_

[*Note: Any distribution event described in subsection (3) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.*]

(b) **Definition of Disabled.** A Participant is treated as Disabled if such Participant satisfies the conditions in Section 1.28 of the Plan.

To override this default definition, check below to select an alternative definition of Disabled to be used under the Plan.

(1) The definition of Disabled is the same as defined in the Employer's Disability Insurance Plan.

(2) The definition of Disabled is the same as defined under Section 223(d) of the Social Security Act for purposes of determining eligibility for Social Security benefits.

(3) Alternative definition of Disabled: \_\_\_\_\_

9-5 **DETERMINATION OF BENEFICIARY.**

(a) **Default beneficiaries.** Unless elected otherwise under this subsection (a), the default beneficiaries described under Section 7.07(c)(3) of the Plan are the Participant's surviving Spouse, the Participant's surviving children, and the Participant's estate.

If this subsection (a) is checked, the default beneficiaries under Section 7.07(c)(3) of the Plan are modified as follows: \_\_\_\_\_

(b) **One-year marriage rule.** For purposes of determining whether an individual is considered the surviving Spouse of the Participant, the determination is based on the marital status as of the date of the Participant's death, unless designated otherwise under this subsection (b).

If this subsection (b) is checked, in order to be considered the surviving Spouse, the Participant and surviving Spouse must have been married for the entire one-year period ending on the date of the Participant's death. If the Participant and surviving Spouse are not married for at least one year as of the date of the Participant's death, the Spouse will not be treated as the surviving Spouse for purposes of applying the distribution provisions of the Plan. (See Section 9.03 of the Plan.)

(c) **Divorce of Spouse.** Unless elected otherwise under this subsection (c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded as set forth under Section 7.07(c)(6) of the Plan.

If this subsection (c) is checked, a Beneficiary designation will not be rescinded upon divorce of the Participant and Spouse.

[*Note: Section 7.07(c)(6) of the Plan and this subsection (c) will be subject to the provisions of a Beneficiary designation entered into by the Participant. Thus, if a Beneficiary designation specifically overrides the election under this subsection (c), the provisions of the Beneficiary designation will control. See Section 7.07(c)(6) of the Plan.*]

**SECTION 10**  
**IN-SERVICE DISTRIBUTIONS AND REQUIRED MINIMUM DISTRIBUTIONS**

10-1 **AVAILABILITY OF IN-SERVICE DISTRIBUTIONS.** A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of any of the event(s) selected under this AA §10-1. If more than one option is selected for a particular contribution source under this AA §10-1, a Participant may take an in-service distribution upon the occurrence of any of the selected events, unless designated otherwise under this AA §10-1.

- | <b>Match</b>             | <b>ER</b>                           |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | (a) No in-service distributions are permitted.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (b) Attainment of age 59½.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (c) Attainment of age ____.   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (d) A Hardship that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan.           |
| <input type="checkbox"/> | <input type="checkbox"/>            | (e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan.                         |
| <input type="checkbox"/> | <input type="checkbox"/>            | (f) Attainment of Normal Retirement Age.  |
| <input type="checkbox"/> | <input type="checkbox"/>            | (g) Attainment of Early Retirement Age.   |
| <input type="checkbox"/> | <input type="checkbox"/>            | (h) The Participant has participated in the Plan for at least ____ (cannot be less than 60) months. |
| <input type="checkbox"/> | <input type="checkbox"/>            | (i) The amounts being withdrawn have been held in the Trust for at least two years.                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | (j) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).                                |
| <input type="checkbox"/> | <input type="checkbox"/>            | (k) Describe: _____   |

10-2 **APPLICATION TO OTHER CONTRIBUTION SOURCES.** If the Plan allows for Rollover Contributions under AA §C-2 or After-Tax Employee Contributions under AA §6-6, unless elected otherwise under this AA §10-2, a Participant may take an in-service distribution from his/her Rollover Account and After-Tax Employee Contribution Account at any time. Employer Pick-Up Contributions will not be eligible for in-service distribution.

Alternatively, if this AA §10-2 is completed, the following in-service distribution provisions apply for Rollover Contributions, After-Tax Employee Contributions and/or Employer Pick-Up Contributions:

- | <b>Rollover</b>          | <b>After-Tax</b>         | <b>Pick-Up</b>           |   |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (a) No in-service distributions are permitted.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (b) Attainment of age 59½.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (c) Attainment of age ____.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (d) A Hardship (that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan). |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan.                 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (f) Attainment of Normal Retirement Age.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (g) Attainment of Early Retirement Age.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (h) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).                        |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (i) Describe: _____   |

- 10-3 **SPECIAL DISTRIBUTION RULES.** No special distribution rules apply, unless specifically provided under this AA §10-3.
- (a) In-service distributions will only be permitted if the Participant is 100% vested in the source from which the withdrawal is taken.
- (b) A Participant may take no more than \_\_\_\_ in-service distribution(s) in a Plan Year.
- (c) A Participant may not take an in-service distribution of less than \$ \_\_\_\_.
- (d) A Participant may not take an in-service distribution of more than \$ \_\_\_\_.
- (e) Unless elected otherwise under this subsection, the hardship distribution provisions of the Plan are not expanded to cover primary beneficiaries as set forth in Section 7.10(e)(5) of the Plan. If this subsection (e) is checked, the hardship provisions of the Plan will apply with respect to individuals named as primary beneficiaries under the Plan.
- (f) In determining whether a Participant has an immediate and heavy financial need for purposes of applying the non-safe harbor Hardship provisions under Section 7.10(e)(2) of the Plan, the following modifications are made to the permissible events listed under Section 7.10(e)(1) of the Plan: \_\_\_\_\_
- [*Note: This subsection (f) may only be used to the extent a non-safe harbor Hardship distribution is authorized under AA §10-1 or AA §10-2.*]
- (g) Other distribution rules: \_\_\_\_\_

10-4 **REQUIRED MINIMUM DISTRIBUTIONS.**

- (a) **Required distributions after death.** If a Participant dies before distributions begin and there is a Designated Beneficiary, the Participant or Beneficiary may elect on an individual basis whether the 5-year rule (as described in Section 8.06(a) of the Plan) or the life expectancy method described under Sections 8.02 of the Plan apply. See Section 8.06(b) of the Plan for rules regarding the timing of an election authorized under this AA §10-4.
- Alternatively, if selected under this subsection (a), any death distributions to a Designated Beneficiary will be made only under the 5-year rule.
- The five-year rule under Section 8.06(a) of the Plan applies (instead of the life expectancy method). Thus, the entire death benefit must be distributed by the end of the fifth year following the year of the Participant's death. Death distributions to a Designated Beneficiary may not be made under the life expectancy method.
- (b) **Waiver of Required Minimum Distribution for 2009.** For purposes of applying the Required Minimum Distribution rules for the 2009 Distribution Calendar Year, as described in Section 8.06(d) of the Plan, a Participant (including an Alternate Payee or beneficiary of a deceased Participant) who is eligible to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year may elect whether or not to receive the 2009 Required Minimum Distribution (or any portion of such distribution). If a Participant does not specifically elect to leave the 2009 Required Minimum Distribution in the Plan, such distribution will be made for the 2009 Distribution Calendar Year as set forth in Section 8 of the Plan.
- (1) **No Required Minimum Distribution for 2009.** If this box is checked, 2009 Required Minimum Distributions will not be made to Participants who are otherwise required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year under Section 8 of the Plan, unless the Participant elects to receive such distribution.
- (2) **Describe any special rules applicable to 2009 Required Minimum Distributions:** \_\_\_\_\_

**SECTION 11**  
**MISCELLANEOUS PROVISIONS**

11-1 **PLAN VALUATION.** The Plan is valued **annually**, as of the last day of the Plan Year.

- (a) **Additional valuation dates.** In addition, the Plan will be valued on the following dates:
- | Match                    | ER                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | (1) <b>Daily.</b> The Plan is valued at the end of each business day during which the New York Stock Exchange is open. |
| <input type="checkbox"/> | <input type="checkbox"/> | (2) <b>Monthly.</b> The Plan is valued at the end of each month of the Plan Year.                                      |



Match

ER

(3) **Quarterly.** The Plan is valued at the end of each Plan Year quarter.(4) **Describe:** \_\_\_\_\_

[*Note: The Employer may elect operationally to perform interim valuations, regardless of any selection in this subsection (a).*]

- (b) **Special rules.** The following special rules apply in determining the amount of income or loss allocated to Participants' Accounts: \_\_\_\_\_

11-2 **SPECIAL RULES FOR APPLYING THE CODE §415 LIMITATION.** The provisions under Section 5.02 of the Plan apply for purposes of determining the Code §415 Limitation.

Complete this AA §11-2 to override the default provisions that apply in determining the Code §415 Limitation under Section 5.02 of the Plan.

- (a) **Limitation Year.** Instead of the Plan Year, the Limitation Year is the 12-month period ending \_\_\_\_\_.

[*Note: If the Plan has a short Plan Year for the first year of establishment, the Limitation Year is deemed to be the 12-month period ending on the last day of the short Plan Year.*]

- (b) **Imputed compensation.** For purposes of applying the Code §415 Limitation, Total Compensation includes imputed compensation for a Nonhighly Compensated Participant who terminates employment on account of becoming Disabled. (See Section 5.02(e)(7)(iii) of the Plan.)

- (c) **Special rules:** \_\_\_\_\_

[*Note: Any special rules under this subsection (c) must be consistent with the requirements of Code §415.*]

11-3 **HEART ACT PROVISIONS -- BENEFIT ACCRUALS.** The benefit accrual provisions under Section 15.04 of the Plan do not apply. To apply the benefit accrual provisions under Section 15.04, check the box below.

- Eligibility for Plan benefits.** Check this box if the Plan will provide the benefits described in Section 15.04 of the Plan. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.

11-4 **ELECTION NOT TO PARTICIPATE (see Section 2.08 of the Plan).** All Participants share in any allocation under this Plan and no Employee may waive out of Plan participation.

To allow Employees to make a one-time irrevocable waiver, check below.

- (a) An Employee may make a one-time irrevocable election not to participate under the Plan.  
 (b) An Employee may make a one-time irrevocable election not to make Employer Pick-Up Contributions under the Plan.

**APPENDIX A  
SPECIAL EFFECTIVE DATES**

- A-1 **Eligible Employees.** The definition of Eligible Employee under AA §3 is effective as follows:  
\_\_\_\_\_
  
- A-2 **Minimum age and service conditions.** The minimum age and service conditions and Entry Date provisions specified in AA §4 are effective as follows:  
\_\_\_\_\_
  
- A-3 **Compensation definitions.** The compensation definitions under AA §5 are effective as follows:  
\_\_\_\_\_
  
- A-4 **Employer and Matching Contributions.** The Employer and Matching Contribution provisions under the Plan are effective as follows:  
\_\_\_\_\_
  
- A-5 **After-Tax Employee and Pick-Up Contributions.** The provisions of the Plan addressing Employee After-Tax Contributions and Pick-Up Contribution provisions under the Plan are effective as follows:  
\_\_\_\_\_
  
- A-6 **Retirement ages.** The retirement age provisions under AA §7 are effective as follows:  
\_\_\_\_\_
  
- A-7 **Vesting and forfeiture rules.** The rules regarding vesting and forfeitures under AA §8 are effective as follows:  
\_\_\_\_\_
  
- A-8 **Distribution provisions.** The distribution provisions under AA §9 are effective as follows:  
\_\_\_\_\_
  
- A-9 **In-service distributions and Required Minimum Distributions.** The provisions regarding in-service distribution and Required Minimum Distributions under AA §10 are effective as follows:  
\_\_\_\_\_
  
- A-10 **Miscellaneous provisions.** The provisions under AA §11 are effective as follows:  
\_\_\_\_\_
  
- A-11 **Special effective date provisions for merged plans.** If any qualified retirement plans have been merged into this Plan, the provisions of Section 14.04 of the Plan apply, as follows:  
\_\_\_\_\_
  
- A-12 **Other special effective dates:**  
\_\_\_\_\_

<b>APPENDIX B</b>
<b>LOAN POLICY</b>

Use this Appendix B to identify elections dealing with the administration of Participant loans. These elections may be changed without amending this Agreement by substituting an updated Appendix B with new elections. Any modifications to this Appendix B or any modifications to a separate loan policy describing the loan provisions selected under the Plan will not affect an Employer's reliance on the IRS Favorable Letter.

B-1 Are **PARTICIPANT LOANS** permitted? (See Section 13 of the Plan.)

- (a) Yes  
 (b) No

B-2 **LOAN PROCEDURES.**

- (a) Loans will be provided under the default loan procedures set forth in Section 13 of the Plan, unless modified under this Appendix B.  
 (b) Loans will be provided under a separate written loan policy. *[If this subsection (b) is checked, do not complete the rest of this Appendix B.]*

B-3 **AVAILABILITY OF LOANS.** Participant loans are available to all active Participants and Beneficiaries. Participant loans are not available to a former Employee or Beneficiary (including an Alternate Payee under a QDRO). To override this default provision, check (a) and/or (b) below:

- (a) A former Employee or Beneficiary (including an Alternate Payee) who has a vested Account Balance may request a loan from the Plan.  
 (b) A "limited participant" as defined in Section 3.05 of the Plan may not request a loan from the Plan.  
 (c) An officer or director of the Employer, as defined for purposes of the Sarbanes-Oxley Act, may **not** request a loan from the Plan.

B-4 **LOAN LIMITS.** The default loan policy under Section 13.03 of the Plan allows Participants to take a loan provided all outstanding loans do not exceed 50% of the Participant's vested Account Balance. To override the default loan policy to allow loans up to \$10,000, even if greater than 50% of the Participant's vested Account Balance, check this AA §B-4.

- A Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance. *[If this AA §B-4 is checked, the Participant may be required to provide adequate security as required under Section 13.06 of the Plan.]*

B-5 **NUMBER OF LOANS.** The default loan policy under Section 13.04 of the Plan restricts Participants to one loan outstanding at any time. To override the default loan policy and permit Participants to have more than one loan outstanding at any time, complete (a) or (b) below.

- (a) A Participant may have \_\_\_ loans outstanding at any time.  
 (b) There are no restrictions on the number of loans a Participant may have outstanding at any time.

B-6 **LOAN AMOUNT.** The default loan policy under Section 13.04 of the Plan provides that a Participant may not receive a loan of less than \$1,000. To modify the minimum loan amount or to add a maximum loan amount, complete this AA §B-6.

- (a) There is no minimum loan amount.  
 (b) The minimum loan amount is \$\_\_\_\_\_.  
 (c) The maximum loan amount is \$\_\_\_\_\_.

B-7 **INTEREST RATE.** The default loan policy under Section 13.05 of the Plan provides for an interest rate commensurate with the interest rates charged by local commercial banks for similar loans. To override the default loan policy and provide a specific interest rate to be charged on Participant loans, complete this AA §B-7.

- (a) The prime interest rate  
 plus \_\_\_ percentage point(s).  
 (b) Describe: \_\_\_\_\_

*[Note: Any interest rate described in this AA §B-7 must be reasonable and must apply uniformly to all Participants.]*

- B-8 **PURPOSE OF LOAN.** The default loan policy under Section 13.02 of the Plan provides that a Participant may receive a Participant loan for any purpose. To modify the default loan policy to restrict the availability of Participant loans to hardship events, check this AA §B-8.
- (a) A Participant may only receive a Participant loan upon the demonstration of a hardship event, as described in Section 7.10(e)(1)(i) of the Plan.
- (b) A Participant may only receive a Participant loan under the following circumstances: \_\_\_\_\_
- B-9 **APPLICATION OF LOAN LIMITS.** If Participant loans are not available from all contribution sources, the limitations under Code §72(p) and the adequate security requirements of the Department of Labor regulations will be applied by taking into account the Participant's entire Account Balance. To override this provision, complete this AA §B-9.
- The loan limits and adequate security requirements will be applied by taking into account only those contribution Accounts which are available for Participant loans.
- B-10 **CURE PERIOD.** The Plan provides that a Participant incurs a loan default if a Participant does not repay a missed payment by the end of the calendar quarter following the calendar quarter in which the missed payment was due. To override this default provision to apply a shorter cure period, complete this AA §B-10.
- The cure period for determining when a Participant loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed.
- B-11 **PERIODIC REPAYMENT – PRINCIPAL RESIDENCE.** If a Participant loan is for the purchase of a Participant's primary residence, the loan repayment period for the purchase of a principal residence may not exceed ten (10) years.
- (a) The Plan does not permit loan payments to exceed five (5) years, even for the purchase of a principal residence.
- (b) The loan repayment period for the purchase of a principal residence may not exceed \_\_\_\_\_ years (may not exceed 30).
- (c) Loans for the purchase of a Participant's primary residence may be payable over any reasonable period commensurate with the period permitted by commercial lenders for similar loans.
- B-12 **TERMINATION OF EMPLOYMENT.** Section 13.10(a) of the Plan provides that a Participant loan becomes due and payable in full upon the Participant's termination of employment. To override this default provision, complete this AA §B-12.
- A Participant loan will not become due and payable in full upon the Participant's termination of employment.
- B-13 **DIRECT ROLLOVER OF A LOAN NOTE.** Section 13.10(b) of the Plan provides that upon termination of employment a Participant may request the Direct Rollover of a loan note. To override this default provision, complete this AA §B-13.
- A Participant may **not** request the Direct Rollover of the loan note upon termination of employment.
- B-14 **LOAN RENEGOTIATION.** The default loan policy provides that a Participant may renegotiate a loan, provided the renegotiated loan separately satisfies the reasonable interest rate requirement, the adequate security requirement, the periodic repayment requirement and the loan limitations under the Plan. The Employer may restrict the availability of renegotiations to prescribed purposes provided the ability to renegotiate a Participant loan is available on a non-discriminatory basis. To override the default loan policy and restrict the ability of a Participant to renegotiate a loan, complete this AA §B-14.
- (a) A Participant may **not** renegotiate the terms of a loan.
- (b) The following special provisions apply with respect to renegotiated loans: \_\_\_\_\_
- B-15 **SOURCE OF LOAN.** Participant loans may be made from all available contribution sources, to the extent vested, unless designated otherwise under this AA §B-15.
- Participant loans will not be available from the following contribution sources: \_\_\_\_\_
- B-16 **MODIFICATIONS TO DEFAULT LOAN PROVISIONS.**
- The following special rules will apply with respect to Participant loans under the Plan: \_\_\_\_\_
- [*Note: Any provision under this AA §B-16 must satisfy the requirements under Code §72(p) and the regulations thereunder and will control over any inconsistent provisions of the Plan dealing with the administration of Participant loans.*]

<b>APPENDIX C</b> <b>ADMINISTRATIVE ELECTIONS</b>
--

*Use this Appendix C to identify certain elections dealing with the administration of the Plan. These elections may be changed without amending this Agreement by substituting an updated Appendix C with new elections. The provisions selected under this Appendix C do not create qualification issues and any changes to the provisions under this Appendix C will not affect the Employer's reliance on the IRS Favorable Letter.*

C-1 **DIRECTION OF INVESTMENTS.** Are Participants permitted to **direct investments**? (See Section 10.07 of the Plan.)

(a) No

(b) Yes

(c) Describe any special rules that apply for purposes of direction of investments: \_\_\_\_\_

C-2 **ROLLOVER CONTRIBUTIONS.** Does the Plan accept **Rollover Contributions**? (See Section 3.05 of the Plan.)

(a) No

(b) Yes

(1) If this subsection (1) is checked, an Employee may not make a Rollover Contribution to the Plan prior to becoming a Participant in the Plan.

(2) Check this subsection (2) if the Plan will not accept Rollover Contributions from former Employees.

(3) Describe any special rules for accepting Rollover Contributions: \_\_\_\_\_

*[Note: The Employer may designate in subsection (3) or in separate written procedures the extent to which it will accept rollovers from designated plan types. For example, the Employer may decide not to accept rollovers from certain designated plans (e.g., 403(b) plans, §457 plans or IRAs). Any special rollover procedures will apply uniformly to all Participants under the Plan.]*

C-3 **LIFE INSURANCE.** Are **life insurance** investments permitted? (See Section 10.08 of the Plan.)

(a) No

(b) Yes

C-4 **QDRO PROCEDURES.** Do the **default QDRO procedures** under Section 11.05 of the Plan apply?

(a) No

(b) Yes

The provisions of Section 11.05 are modified as follows: \_\_\_\_\_

**EMPLOYER SIGNATURE PAGE**

**PURPOSE OF EXECUTION.** This Signature Page is being executed to effect:

- (a) The adoption of a **new plan**, effective 7-1-2017 [*insert Effective Date of Plan*]. [**Note:** Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.]
- (b) The **restatement** of an existing plan, in order to comply with the requirements of PPA, pursuant to Rev. Proc. 2011-49.
  - (1) Effective date of restatement: \_\_\_\_\_. [**Note:** Date can be no earlier than January 1, 2007. Section 14.01(d)(2) of Plan provides for retroactive effective dates for all PPA provisions. Thus, a current effective date may be used under this subsection (1) without jeopardizing reliance.]
  - (2) Name of plan(s) being restated: \_\_\_\_\_
  - (3) The original effective date of the plan(s) being restated: \_\_\_\_\_
- (c) An **amendment or restatement** of the Plan (other than to comply with PPA). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
  - (1) Effective Date(s) of amendment/restatement: \_\_\_\_\_
  - (2) Name of plan being amended/restated: \_\_\_\_\_
  - (3) The original effective date of the plan being amended/restated: \_\_\_\_\_
  - (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: \_\_\_\_\_

**VOLUME SUBMITTER SPONSOR INFORMATION.** The Volume Submitter Sponsor (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Volume Submitter Sponsor (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the Favorable IRS Letter to the Volume Submitter Sponsor (or authorized representative) at the following location:

**Name of Volume Submitter Sponsor (or authorized representative):** Hill Ward & Henderson, Professional Association  
**Address:** Post Office Box 2231 Tampa, FL 33601-2231  
**Telephone number:** 813-222-8703

**IMPORTANT INFORMATION ABOUT THIS VOLUME SUBMITTER PLAN.** A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the National Office of the Internal Revenue Service to the Volume Submitter Sponsor as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2011-49. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2011-49. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer must apply to the office of Employee Plans Determinations of the Internal Revenue Service for a determination letter. See Section 1.50 of the Plan.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #05. The Employer understands that the Volume Submitter Sponsor has no responsibility or liability regarding the suitability of the Plan for the Employer’s needs or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

Florida Polytechnic University  
 (Name of Employer)

\_\_\_\_\_  
 (Name of authorized representative) (Title)

\_\_\_\_\_  
 (Signature) (Date)

## TRUSTEE DECLARATION

This Trustee Declaration may be used to identify the Trustees under the Plan. A separate Trustee Declaration may be used to identify different Trustees with different Trustee investment powers.

**Effective date of Trustee Declaration:** 7-1-2017

**The Trustee's investment powers are:**

- (a) **Discretionary.** The Trustee has discretion to invest Plan assets, unless specifically directed otherwise by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.
- (b) **Nondiscretionary.** The Trustee may only invest Plan assets as directed by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.
- (c) **Fully funded.** There is no Trustee under the Plan because the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts. (See Section 12.15 of the Plan.)
- (d) **Determined under a separate trust agreement.** The Trustee's investment powers are determined under a separate trust document which replaces (or is adopted in conjunction with) the trust provisions under the Plan.

**Name of Trustee:** \_\_\_\_\_

**Title of Trust Agreement:** \_\_\_\_\_

*[Note: To qualify as a Volume Submitter Plan, any separate trust document used in conjunction with this Plan must be approved by the Internal Revenue Service. Any such approved trust agreement is incorporated as part of this Plan and must be attached hereto. The responsibilities, rights and powers of the Trustee are those specified in the separate trust agreement.]*

**Description of Trustee powers.** This section can be used to describe any special trustee powers or any limitations on such powers. This section also may be used to impose any specific rules regarding the decision-making authority of individual trustees. In addition, this section can be used to limit the application of a trustee's responsibilities, e.g., by limiting trustee authority to only specific assets or investments.

**Describe Trustee powers:** \_\_\_\_\_

*[The addition of special trustee powers under this section will not cause the Plan to lose Volume Submitter status provided such language merely modifies the administrative provisions applicable to the Trustee (such as provisions relating to investments and the duties of the Trustee). Any language added under this section may not conflict with any other provision of the Plan and may not result in a failure to qualify under Code §401(a).]*

**Trustee Signature.** By executing this Adoption Agreement, the designated Trustee(s) accept the responsibilities and obligations set forth under the Plan and Adoption Agreement. By signing this Trustee Declaration Page, the individual(s) below represent that they have the authority to sign on behalf of the Trustee. If a separate trust agreement is being used, list the name of the Trustee. No signature is required if a separate trust agreement is being used under the Plan or if there is no named Trustee under the Plan.

TIAA, FSB

(Print name of Trustee)

(Signature of Trustee or authorized representative)

(Date)

**SECRETARY'S CERTIFICATE  
OF  
FLORIDA POLYTECHNIC UNIVERSITY**

**I HEREBY CERTIFY** that I am the duly appointed Secretary of The Florida Polytechnic University Board of Trustees (the "University") and the following is a true and correct copy of the resolutions duly adopted at a meeting of the Board of Trustees of the University held on \_\_\_\_\_, 2018, and I further certify that said resolutions remain in full force and effect as of the date hereof and have not been amended or revised in any respect:

**WHEREAS**, the University desires to establish a new retirement plan; and

**WHEREAS**, the University desires to appoint TIAA, FSB as Trustee under the new retirement plan; and

**WHEREAS**, pursuant to the terms of the Plan, the University desires to designate the Governance Committee of Florida Polytechnic University as Plan Administrator of the new retirement plan; and

**WHEREAS**, the Governance Committee of the Florida Polytechnic University Board of Trustees has agreed to accept the designation as Plan Administrator of the new retirement plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Florida Polytechnic University Retirement Plan (the "Plan") be, and it hereby is, approved and adopted in all respects to be effective as of July 1, 2017.

**BE IT FURTHER RESOLVED** that TIAA, FSB be, and hereby is, appointed as Trustee under the Plan, effective as of July 1, 2017.

**BE IT FURTHER RESOLVED** the Governance Committee of the Florida Polytechnic University Board of Trustees be, and hereby is, designated as Plan Administrator of the Plan, effective as of July 1, 2017.

**BE IT FURTHER RESOLVED** that the appropriate officers be, and they hereby are, authorized and directed to execute such documents and to take such further steps as deemed necessary or desirable to implement these resolutions.

**IN WITNESS WHEREOF**, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**THE FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

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



**RESOLUTIONS  
OF THE  
GOVERNANCE COMMITTEE OF THE  
FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

**I HEREBY CERTIFY** that I am the duly appointed Chairman of the Governance Committee of the Florida Polytechnic University Board of Trustees (the "Committee") and the following is a true and correct copy of the resolutions duly adopted at a meeting of the Committee held on \_\_\_\_\_, 2018, and I further certify that said resolutions remain in full force and effect as of the date hereof and have not been amended or revised in any respect:

**WHEREAS**, the Florida Polytechnic University Board of Trustees has adopted the Florida Polytechnic University Retirement Plan (the "Plan"); and

**WHEREAS**, pursuant to the terms of the Plan, the University has approved the designation of the Governance Committee of the Florida Polytechnic University Board of Trustees as the Plan Administrator of the Plan; and

**WHEREAS**, the Committee desires to accept the designation as Plan Administrator.

**NOW, THEREFORE, BE IT RESOLVED** that the Governance Committee of the Florida Polytechnic University Board of Trustees hereby accepts the designation of Plan Administrator of the Florida Polytechnic University Retirement Plan and further accepts its responsibilities as Plan Administrator under the Plan.

**BE IT FURTHER RESOLVED** that the appropriate officers be, and they hereby are, authorized and directed to execute such documents and to take such further steps as deemed necessary or desirable to implement these resolutions.

**IN WITNESS WHEREOF**, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Chairman of the Governance  
Committee



HILL WARD HENDERSON  
ATTORNEYS AT LAW

SENDER'S DIRECT DIAL:  
(813) 222-3138

SENDER'S E-MAIL:  
MELANIE.HANCOCK-BROWN@HWHLAW.COM

February 14, 2018

**Via Email**

Regina Deiulio, Vice President & General Counsel  
Florida Polytechnic University  
4700 Research Way  
Lakeland, FL 33805-8531

Re: Florida Polytechnic University Retirement Plan (the "Plan")  
Our File No.: 17079.001

Dear Ms. Deiulio:

Pursuant to our discussions, we have prepared and are enclosing a revised Secretary's Certificate of the Board of Trustees of Florida Polytechnic University, which contains resolutions authorizing the adoption of the new Plan, appointing TIAA as trustee under the Plan, and designating the Governance Committee as Plan Administrator of the new Plan.

According to the Plan, (section 11.02) the designated Plan Administrator must accept its responsibilities in writing. Therefore, we have also included Resolutions of the Governance Committee to accept the designation as Plan Administrator of the Plan and, further, to accept its responsibilities as Plan Administrator of the Plan.

Please have the Secretary's Certificate of the Board of Trustees and the Resolutions of the Governance Committee signed and dated by the appropriate parties along with the Adoption Agreement that was previously sent.

As we previously stated, once we receive the executed Adoption Agreement page from you, we will forward a copy of the Adoption Agreement to TIAA for execution as the Trustee. After we receive the executed Trustee Declaration page back from TIAA, we will send you an executed copy.

Please do not hesitate to call me should you have any questions regarding this matter.

Sincerely

HILL WARD HENDERSON

*Melanie Hancock Brown*

Melanie Hancock Brown

Enclosures

cc: Carolyn A. Dower (via e-mail, w/encs.)

10895120.1  
017079000001

3700 BANK OF AMERICA PLAZA, 101 E KENNEDY BLVD, TAMPA, FL 33602-5195  
TEL: 813-221-3900 FAX: 813-221-2900 WWW.HWHLAW.COM

**AGENDA ITEM: X. D. 2.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: Second Amended and Restated Bylaws**

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**Proposed Action**

Adopt Second Amended and Restated Bylaws.

**Background Information**

The existing Amended and Restated Bylaws were adopted by the Board on December 10, 2014. A periodic review of the Bylaws by staff resulted in a recommendation that the existing Bylaws be amended. A summary of the material changes reflected in the proposed Second Amended and Restated Bylaws is provided below:

1. Section 4.2 Selection of Officers and Terms of Office, memorialize past practice for electing officers. Chair and Vice Chair to be selected at last regular meeting prior to August 1 for a two year term to begin August 1.
2. Section 5.1 Committee Membership and Duties, remove the duplicative information covered in Section 6.7 regarding quorum for committee business.
3. Section 5.2 Standing Committees, remove the Housing Committee, which is no longer necessary because the Presidential Home was purchased, and add the Nominations Committee which has ongoing responsibilities.
4. Section 6.1 Notice and Agenda, add language allowing for a consent agenda for full Board meetings. Items that are routine, procedural, informational and self-explanatory, and action items unanimously approved by the appropriate committee(s) may be placed on a consent agenda. Provides trustees the ability to request that items be removed from the consent agenda and discussed prior to the Board vote.
5. Section 6.2 Special Notice Requirements, add new section to comply with Section **1009.24(20), Florida Statutes** by addressing the special notice requirements that must be met when the Board is considering increasing tuition or fees.
6. Section 6.3 Minutes, add language to comply with Section **1001.71, Florida Statutes** which requires the posting of the minutes on the University's website within two weeks after each Board or committee meeting.

7. Section 8.1 Amendments, provide that copies of the draft altered or amended bylaws being considered by the Board will be provided to the trustees via email.

8. Section 9.4 Service of Process, require that all suits against the Board be served on the Office of the General Counsel.

The existing Bylaws require the following steps be taken to amend the Bylaws:

1. Notice for the meeting must state a proposed alteration, amendment or repeal of the bylaws will be considered. (The notice posted for the February 28, 2018 meeting was in compliance with this requirement.)
2. Trustees must be sent a copy of the draft of the altered or amended bylaws at least seven (7) days prior to the meeting at which the alteration or amendment is to be voted on. (All trustees were sent a copy of the draft no later than February 21, 2018 via email and regular U.S. mail.)
3. The approval of the alteration, amendment or repeal of the BOT bylaws requires the affirmative vote of two-thirds (2/3) of the Board members voting in any regular or special meeting.

---

**Supporting Documentation:**

DRAFT Second Amended and Restated Bylaws

Pertinent sections of Florida Statutes Sections 1001.71 and 1009.24

**Prepared by: Gina DeJulio, VP & General Counsel**

## Pertinent Sections of Referenced Statutes

### **1001.71 University boards of trustees; membership.—**

(5) Each university board of trustees shall keep and, within 2 weeks after a board meeting, post prominently on the university's website detailed meeting minutes for all meetings, including the vote history and attendance of each trustee. The Board of Governors shall adopt regulations to implement this subsection.

### **1009.24 State university student fees.—**

(20) Each state university shall publicly notice and notify all enrolled students of any proposal to increase tuition or fees at least 28 days before its consideration at a board of trustees meeting. The notice must:

- (a) Include the date and time of the meeting at which the proposal will be considered.
- (b) Specifically outline the details of existing tuition and fees, the rationale for the proposed increase, and how the funds from the proposed increase will be used.
- (c) Be posted on the university's website and issued in a press release.

**FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

**SECOND AMENDED AND RESTATED BYLAWS**

DRAFT

Adopted: ~~December 10,~~  
~~2014~~February 28, 2018

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**ARTICLE I  
STATEMENT OF PURPOSE**

**Section 1.1  
PURPOSE**

The Florida Polytechnic University Board of Trustees (the "Board") is established as a public body corporate, with all the powers of a body corporate as provided by the Florida Constitution, Florida law and by delegation of the Florida Board of Governors (the "Board of Governors").

The Board has all the powers and authority to effectively govern and set policy for Florida Polytechnic University ("University") and has and exercises those powers and duties prescribed by law.

To more effectively discharge its responsibilities and duties, in connection with its governance of the University, the Florida Polytechnic University Board of Trustees has adopted the following bylaws.

**ARTICLE II  
THE BOARD**

**Section 2.1  
CORPORATE NAME**

The Board of Trustees is a public body corporate called "The Florida Polytechnic University Board of Trustees."

**Section 2.2  
COMPOSITION OF THE BOARD**

Article IX, Section 7 of the Florida Constitution establishes the composition of the Board. It provides that the Board consists of thirteen (13) Trustees, with six (6) Trustees appointed by the Governor, five (5) appointed by the Board of Governors and two (2) serving by virtue of their offices, the president of the Florida Polytechnic University Student Government Association and the president of the equivalent of the faculty senate. All appointed members are confirmed by the Senate of the State of Florida. All Board members are public officers subject to the requirements of the Florida Code of Ethics.

**Section 2.3  
POWERS AND DUTIES OF THE BOARD**

Article IX, Section 7 of the Florida Constitution posits in the Board of Governors the responsibility to establish the powers and duties of the boards of trustees of the state universities. By regulation, the Board of Governors delegated to the state universities' boards of trustees the power to administer each constituent university.

The Board serves as the governing body of the University and approves the University's mission. The Board selects the President of the University for ratification by the Board of Governors, evaluates the President's performance annually, and holds the President responsible for the University's operation and management, performance, fiscal accountability, and compliance with federal and state laws and rules and the Board of Governors' regulations. The Board is responsible for ensuring that the University has adequate financial resources to provide sound education program. The Board shall have the authority to carry out all lawful functions permitted by these bylaws, by delegation from the Board of Governors, or by law.

The Board is responsible for policy-making, planning and appraisal actions. Authority rests with the Board of Trustees as a whole in meetings of the board and not with individual board members. The Board is not controlled by a minority of Board members or by organizations separate from it. The Board of

Trustees shall work to preserve the University's and its own independence from undue political, religious, or outside influence; to ensure academic freedom; and to support the University President in discharging presidential responsibilities for the operation and administration of the University.

In order to effectively fulfill its obligations under the law, the Board may adopt resolutions, regulations, rules, and policies consistent with the University's mission, with law, and with the Board of Governors' resolutions, regulations, rules, and policies.

### **ARTICLE III THE TRUSTEES**

#### **Section 3.1 FIDUCIARIES**

Florida Statutes §112.311(6) provides that it is the declared policy of the state that public officers are agents of the people and hold their positions for the benefit of the public. Therefore, by virtue of their office, Trustees stand in a fiduciary relationship to the University and must serve the University's best interests at all times.

#### **Section 3.2 TERM OF OFFICE**

Appointed trustees shall serve for staggered 5-year terms, as provided by law and as specified in their appointment. The president of the University Student Government Association and the president of the equivalent of the faculty senate shall serve for terms equivalent to the terms of their respective offices.

#### **Section 3.3 VACANCIES**

The Board Chair shall report any vacancies in appointed trustee positions to the Governor and the Board of Governors. The appointing authority will fill the vacancies, subject to confirmation by the Senate of the State of Florida.

#### **Section 3.4 REMOVAL**

To the extent permitted by law, the governor or the Board of Governors, whichever is the appointing authority, may remove a Trustee for cause. Unexcused failure to attend three (3) consecutive regular board meetings in any fiscal year shall be grounds for removal.

#### **Section 3.5 COMPENSATION**

Members of the Board shall serve without compensation but may be reimbursed upon request for travel and per diem expenses in accordance with state law.

**ARTICLE IV  
OFFICERS OF THE BOARD**

**Section 4.1  
OFFICERS**

The Officers of the Board shall be the Chair, Vice-Chair, and University President who shall serve as the Executive Officer/Corporate Secretary.

**Section 4.2  
SELECTION OF OFFICERS AND TERMS OF OFFICE**

~~The Board shall elect the Chair and Vice-Chair from the appointed members of the Board shall be selected by the Board at its first last regular meeting prior to August 1 upon recommendation of the Nominating Committee and shall serve for a two year term to begin on August 1 immediately upon selection. Every two years thereafter, the Board shall select the Chair and Vice Chair through nomination and selection from the members of the Board.~~ The Chair and Vice-Chair shall be eligible for reselection for one additional consecutive term by vote of the Board, after which they may not be an officer for two years before being eligible for selection again. There shall not be automatic succession by virtue of holding an office, except as otherwise provided in Section 4.3. ~~Selection or reselection shall normally take place at the last regularly scheduled Board meeting of the fiscal year.~~

**Section 4.3  
PERMANENT VACANCIES IN CHAIR AND VICE-CHAIR OFFICES**

A permanent vacancy of the Chair shall be filled by the Vice-Chair for the remainder of the term. A permanent vacancy of the Vice-Chair shall be filled for the remainder of the term by a majority vote of the members of the Board at its next regular meeting. Assumption to an unfinished term created by a permanent vacancy shall not preclude that officer from being eligible to be selected and reselected as provided in Section 4.2. The Chair and Vice-Chair will continue to hold office until their successors have been selected. The Chair or Vice-Chair may be removed at any time by the affirmative vote of a majority of the members of the Board.

**Section 4.4  
CHAIR**

The duties of the Chair shall include presiding at all meetings of the Board, calling special meetings of the Board, determining the composition of all Board committees, appointing committee chairs, serving as an ex officio voting member on all Board committees, appointing representatives to the board of directors and the executive committees of the direct support organizations, signing and executing all documents and instruments on behalf of the Board, attesting to actions of the Board, serving as spokesperson for the Board, and fulfilling other duties as may be required by law or assigned by the Board or the Board of Governors. The Chair shall perform such duties in consultation with the University President. The Chair may delegate the authority to sign and execute documents and instruments on behalf of the Board to the Corporate Secretary. The Chair is responsible for causing the Board to conduct an annual evaluation of the University President.

**Section 4.5  
VICE-CHAIR**

The duty of the Vice-Chair is to perform the duties of the Chair with full authority during the absence or disability of the Chair and to fulfill other duties as may be assigned by the Board. In the absence of both the Chair and the Vice-Chair, the Corporate Secretary shall determine whether a quorum is present and, in that event, shall call for the election of a temporary presiding officer, who shall be elected by and from

the appointed membership of the Board upon a majority vote. Upon arrival of the Chair or Vice-Chair, the temporary chair shall relinquish the chair after concluding the business then before the Board.

#### Section 4.6

##### EXECUTIVE OFFICER/CORPORATE SECRETARY

The University President shall serve as Executive Officer of the University and Corporate Secretary of the Board. As Executive Officer, the University President shall serve as the principal liaison officer and official contact between the Board and the faculty, staff and students of the university. The University President shall exercise such powers as are appropriate to that position in promoting, supporting and protecting the interests of the University and in managing and directing its affairs and serve as the University's key spokesperson. The President shall have the authority to execute all documents on behalf of the University and the Board consistent with law, Board policies, and the best interests of the University. The University President may issue directives and executive orders not in contravention of existing Board policies. The University President shall be responsible for all educational, financial, business and administrative functions of the University consistent with the policies established by the Board and shall exercise such other powers, duties and responsibilities as are delegated or assigned by the Board, the Board of Governors, and Florida law.

As Corporate Secretary, the University President shall be responsible for giving notice of all meetings of the Board and its committees; setting the agenda and compiling supporting documents for the meetings in consultation with the Chair; recording and maintaining the minutes of the meetings, which shall include a record of votes cast; executing documents or attesting to the signatures of other officers of the Board; and being custodian of the corporate seal. The Corporate Secretary shall perform the duties customarily performed by the secretary to a public body corporate as well as such other duties as may be prescribed by the Board. The Corporate Secretary may designate an individual to serve as Assistant Secretary to the Board.

### ARTICLE V COMMITTEES

#### Section 5.1

##### COMMITTEE MEMBERSHIP AND DUTIES

The Chair shall appoint and remove committee members and their chairs and may make changes, at any time, unless otherwise provided by these bylaws or law. A member of a committee shall hold office until the Chair appoints a successor. The Chair shall determine the length of the term of service of committee members and chairs.

Each committee shall consist of no less than three members. The Chair and the Vice-Chair shall be ex-officio voting members of all standing committees, subcommittees, ~~or and~~ ad hoc committees. University staff with appropriate expertise in a committee's area of responsibility shall be appointed by the Chair in consultation with the University President to help the committee in its business.

~~A majority of the members of a committee shall constitute a quorum for purposes of transacting committee business. The Chair and the Vice-Chair may be counted for purposes of establishing a committee quorum.~~ All Trustees who are not members of a particular committee are invited to attend that committee meeting and may comment, but not vote, on matters before the committee.

The duty of each committee shall be to consider and to make recommendations to the Board upon matters under its jurisdiction or referred to it. Unless specifically delegated, or as otherwise provided in these bylaws, authority to act on all matters is reserved to the Board. All committee chairs shall perform their

duties in consultation with the University President and may appoint subcommittees to bring matters before the committee for further consideration.

Any committee of the Board may meet upon call of its chair to carry out its duties and responsibilities. Meetings shall be noticed under the procedure established for the Board.

**Section 5.2  
STANDING COMMITTEES**

The following committees are the standing committees of the Board until dissolved by the Board:

Academic and Student Affairs Committee

~~Housing Committee~~

Finance and Facilities Committee

Strategic Planning Committee

Audit and Compliance Committee

Governance Committee

Nominations Committee

The ~~Board Chair~~ may establish additional standing committees as it deems appropriate to discharge its responsibilities.

**Section 5.3  
AD-HOC COMMITTEES**

The Chair may appoint ad-hoc committees and determine the powers and duties and period of service for each such committee, provided that no ad-hoc committee shall be created to act upon any matter appropriate to be acted upon by a standing committee. The Chair shall appoint the chairs of any ad-hoc committees and the ad-hoc committee chairs shall perform their duties in consultation with the University President.

**Section 5.4  
AUTHORITY**

No committee has the power or authority to commit the Board to any policy or action unless specifically granted such power or authority by the Board. Committee chairs will report committee action as a recommendation for consideration and action by the Board. If the Board, however, authorized a committee to act on a matter referred to it, the committee chair will report the action taken to the Board at the Board's next scheduled meeting.

**Section 5.5  
PRESIDENTIAL SEARCH COMMITTEE**

It is the duty of the Board to select the University President, subject to ratification by the Board of Governors. Candidates for the position of University President shall be recommended to the Board by a presidential search committee. The members of the presidential search committee shall be appointed by the Board. The selection of the members of the committee may be delegated to the Chair of the Board.

**ARTICLE VI  
MEETINGS**

**Section 6.1  
NOTICE AND AGENDA**

Notice of regular meetings, committee meetings, and special meetings of the Board will be given not less than seven (7) days before the event and will include a statement of the general subject matter to be considered. Whenever an emergency meeting is scheduled, the Corporate Secretary will post a notice of the time, date, place, and purpose of the meeting on the Board of Trustees website. All meetings of the Board and its committees shall be noticed and open to the public at all times. No resolution, rule, or

formal action shall be considered binding except as taken or made at a public meeting in accordance with Florida Statutes § 286.011. However, these notice or public meeting requirements shall not apply where the matters being considered are exempt by law from the notice or open meetings requirements (for example, executive sessions to discuss pending litigation, collective bargaining, or evaluation of claims filed with a risk management program.) Notice of meetings that are required to be noticed will be posted on the Board of Trustee's webpage on the Florida Polytechnic University website at <https://floridapoly.edu/about/board-of-trustees/> <http://floridapolytechnic.org/board-of-trustees/public-notice/>.

Agenda items requiring action by Trustees must be submitted to the Corporate Secretary or his/her designee with sufficient time for the agenda and supporting information to be forwarded and received by the Trustees prior to the meeting requiring their vote. The Board may also consider agenda items not included in the published agenda.

Items that are routine, procedural, informational and self-explanatory may be placed on the consent agenda for the full Board meeting. Minutes from the prior Board meeting and unanimously approved action items from committee meetings may also be placed on the consent agenda. The items placed on the consent agenda may be voted on by the Board without discussion. However, prior to the full Board meeting, either the Board Chair or a committee chair may choose to have any specific item from a committee meeting that would normally be placed on the consent agenda placed instead on the discussion section of the agenda. Additionally, any trustee may request that a specific item on the consent agenda be moved to the discussion section of the agenda prior to a vote on the consent agenda.

#### **Section 6.2**

#### **SPECIAL NOTICE REQUIREMENTS**

In the event the Board will consider a proposal to increase tuition or fees at an upcoming board meeting, notice of such proposal shall be posted at least 28 days before its consideration at a board of trustees meeting. The notice must:

- (i) Include the date and time of the meeting at which the proposal will be considered.
- (ii) Specifically outline the details of existing tuition and fees, the rationale for the proposed increase, - and how the funds from the proposed increase will be used.
- (iii) Be posted on the University's website and issued in a press release.

#### **Section 6.32**

#### **MINUTES**

Minutes of the meetings of the Board or Board Committees shall be kept by the Corporate Secretary, who shall cause them to be printed and preserved and who shall transmit copies to the members of the Board. All lengthy reports shall be referred to in the minutes and shall be kept on file as part of the University records, but such reports need not be attached to the minutes except when so ordered by the Board.

Minutes shall be posted prominently on the University website within two (2) weeks after a Board or Board Committee meeting, including the vote history and attendance of each trustee.

#### **Section 6.43**

#### **REGULAR MEETINGS**

There shall be no fewer than five (5) regular meetings a year, or as otherwise determined by the Board. A regular meeting means business meetings and Board retreats held at regular intervals; provided that time shall be made available when needed for the conduct of business at or around the time of any Board retreats. For each fiscal year, the schedule of meetings shall be set no later than the last meeting of the prior fiscal year. Once established in accordance with these bylaws, the time and date of a regular meeting

may be changed only by an affirmative vote of a quorum of the Board, or where deemed a necessity by the Board Chair and the Corporate Secretary in consultation with each other.

**Section 6.54**

**SPECIAL MEETINGS**

The Board will meet in special meetings, including hearings and workshops, at a time and place designated by the Chair. Special meetings may be held by teleconference, at the discretion of the Chair.

**Section 6.65**

**EMERGENCY MEETINGS**

An emergency meeting of the Board may be called by the Chair, Vice-Chair or University President upon a finding by the Chair, Vice-Chair or University President, respectively, that immediate action is required to preserve the health, safety or welfare of the public. Whenever such emergency meeting is called, the Corporate Secretary will immediately notify either verbally or in writing each member of the Board stating the date, hour and place of the meeting and the purpose for which the meeting has been called. As provided by Florida Statutes §120.525, an emergency meeting shall also be noticed by any procedure that is fair under the circumstances. Only action necessary to protect the interest of the University and the community it serves shall be taken at such meeting.

**Section 6.76**

**QUORUM AND VOTING**

A quorum for the conduct of business by the full Board shall consist of seven (7) Trustees. A quorum having been established, no business shall be transacted without a majority vote of all Trustees present, except as otherwise provided in these bylaws. A majority vote of the full Board is required for appointing or removing the University President. A Trustee may abstain from voting only under those circumstances prescribed by law. Should a Trustee abstain from voting, the Trustee may be counted for purposes of computing a quorum for a vote on that question. Voting by proxy or mail shall not be permitted.

A majority of the regular (not ex-officio) committee members shall constitute a quorum for all committee meetings. The Chair and Vice-Chair may be counted for purposes of establishing a committee quorum. A quorum having been established, no business shall be transacted without a majority vote of all committee members present.

**Section 6.87**

**PROXIES**

The use of proxies for purposes of determining a quorum or for any other purposes is prohibited.

**Section 6.98**

**USE OF COMMUNICATION MEDIA TECHNOLOGY**

The Board may use telephone conference calls and other communications media technology (“communication media technology”) to conduct Board business in the same manner as if the proceeding were held in person.

A Trustee intending to attend a meeting of the Board by communication media technology shall provide the University President a written request to attend the board meeting by communication media technology at least seven (7) days in advance. A Trustee may attend a meeting by communication media technology provided the member can both hear and speak to all other members (allowing for simultaneous transmission). Participation by a Trustee by communication media technology shall constitute attendance in person at the meeting.



The Board may participate in and hold a meeting of which all members participating in the meeting are attending via communication media technology provided that seven (7) days' notice is given to the University President. Participation in such meeting shall constitute attendance in person at the meeting. The notice of any meeting which is to be conducted wholly by means of communication media technology will state where and how members of the public may gain access to the meeting.

**Section 6.109**

**RULES OF PROCEDURE**

At the hour appointed for the meeting, the chair shall call the meeting to order and call the roll. The latest edition of *Robert's Rules of Order* will be followed in conducting all meetings of the Board, unless otherwise provided by the Board.

**Section 6.110**

**APPEARANCES BEFORE THE BOARD**

The Board shall allow for a public comment period during each Board and committee meeting. Individuals or group representatives who desire to appear before the Board or committee regarding any item being considered on a meeting agenda ~~of the Board of Trustees may shall~~ submit their requests to the University President, as Corporate Secretary, specifying the agenda item about which they wish to speak. Such request, along with the requestor's name and contact information, any group or faction represented, and any supporting documentation, must be submitted at least twenty four (24) prior to the scheduled start of the meeting. The University President, in consultation with the Chair or Committee chair and complying with the law, will determine whether the item will be heard and when the item will be heard. A speaker's comments will be ~~subject to allotted~~ three (3) minutes ~~maximum time limitation to present information; however this time limit may be extended or shortened depending upon the number of speakers at the discretion of the chair.~~ Speakers shall confine their remarks to the agenda item being addressed.

~~There will be no more than three (3) minute time limit on any presentation; t~~The aggregate time for all public comments at a meeting need not exceed 15 minutes. If it appears that there are more speakers desiring to speak than may be accommodated, the ~~Board~~ chair or President may reduce the maximum amount of time allowed each speaker, may limit the number of speakers that may address an agenda item or topic, or may ask a group to designate a representative to speak on its behalf. The ~~Board~~ Chair or President may decline to hear any matter determined by the President or ~~Chair~~ chair not to relate to a particular agenda item or that is outside the Board's jurisdiction, or because it is not practicable for a particular meeting.

The ~~Chair~~ chair may recognize any individual or representative of a group to address the Board.

In order to proceed with the essential business of the Board in an orderly manner, any individual or group representative who attempts to disrupt a Board meeting will be subject to appropriate action (including removal) pursuant to law.

**ARTICLE VII  
CODE OF ETHICS**

**Section 7.1  
CODE OF ETHICS**

As appointed public officers, Trustees stand in a fiduciary relationship to the University and the people of the State of Florida. Therefore, Trustees shall act in good faith, with due regard to the interests of the University and shall be guided by the provisions set forth in Florida law for the conduct of public officers.



The Board has adopted a written ethics policy that also addresses conflicts of interest, ~~which includes a conflict of interest policy,~~ which will be reviewed periodically and revised as necessary.

## **ARTICLE VIII AMENDMENT OR SUSPENSION OF BYLAWS**

### **Section 8.1 AMENDMENTS**

Following initial adoption, these bylaws may be altered, amended or repealed by the affirmative vote of two-thirds (2/3) of the Board members voting in any regular or special meeting, provided the notice for the meeting states a proposed alteration, amendment or repeal of the bylaws will be considered, and provided the Trustees are ~~sent~~ provided a copy of the draft of the altered or amended bylaws via email at least seven (7) days prior to the meeting at which the alteration or amendment is to be voted on.

### **Section 8.2 SUSPENSION OF BYLAWS**

Any provision of these bylaws not required by law may be suspended in connection with the consideration of a matter before the Board by a majority vote of the Board members in attendance.

## **ARTICLE IX MISCELLANEOUS**

### **Section 9.1 INDEMNIFICATION**

The Board shall, to the extent legally permissible, indemnify and defend each of its Trustees, officers, employees, volunteers, and other agents against all liabilities and expenses incurred in connection with the disposition of defense of any action, suit or other proceeding, whether civil or criminal, in which such person may be involved by reason of University service, except with respect to any matter in which such person shall have been adjudicated in any proceeding to have acted unlawfully or not in good faith. Claims based on such actions or omissions may, in the discretion of the Board, be settled prior to or after the filing of suit.

### **Section 9.2 INSURANCE**

The Board may arrange for and pay the premium for appropriate insurance to cover all losses and expenses of actions referred to in Section 9.1.

### **Section 9.3 LIMITATION OF LIABILITY**

The Board is a public body corporate primarily acting as an instrumentality or agency of the state pursuant to Florida Statutes §768.28(2) for purposes of sovereign immunity.

### **Section 9.4 SERVICE OF PROCESS**

~~In all suits against the Board, S~~service of process ~~may shall~~ be made on the ~~Corporate Secretary or his or her designee~~ Office of the General Counsel located at the Florida Polytechnic University offices located on the Polk State College Campus- 3425 Winter Lake Road, LTB-2121, Lakeland, Florida 33803.

**Section 9.5**  
**FISCAL YEAR**

The fiscal year of the Board shall commence on July 1 of each year and end on June 30 of each year.

**Section 9.6**  
**CORPORATE SEAL**

The corporation shall have a seal on which shall be inscribed "Florida Polytechnic University." The corporate seal shall be used only in connection with the transaction of business of the Board and of the University. The University President may give permission for the use of the seal in the decoration of any University building or in other special circumstances.

*I HEREBY CERTIFY that the foregoing Second Amended and Restated Bylaws of the Florida Polytechnic University Board of Trustees were approved by an affirmative vote of not less than two-thirds (2/3) of the members of the Board of Trustees at a regular meeting of the Board held on*  
February 28, 2018.

\_\_\_\_\_  
Board Chair

**AGENDA ITEM: X. D. 3.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: FPU-6.005 Sick Leave**

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**Proposed Action**

Approve revised regulation **FPU-6.005 Sick Leave**

**Background Information**

University regulation **FPU-6.005 Sick Leave** was last amended by the Board of Trustees on September 14, 2016.

This regulation provides the information related to sick leave, including eligibility, accrual rate, authorized use, notice, transfer from other employers, and payment for unused sick leave. This regulation is being revised primarily to define family members for purposes of the regulation and to clarify that the number of hours of the employee's unused accrued Sick Leave shall not exceed a maximum of 480 hours of actual payment subject to and in accordance with Florida Statutes Section 110.122.

The Notice of Amendment to proposed regulation and the regulation were published on the University's website on January 26, 2018. No comments were received during the review and comment period.

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**Supporting Documentation:**

DRAFT revised regulation FPU-6.005

**Prepared by: Gina DeJulio, VP & General Counsel**

## THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

### FPU-6.005 Sick Leave.

(1) **Eligible Employees and Accrual Rate.** Sick Leave for full-time Executive Service, Faculty, Administrative and Support employees (collectively referred to as “Budgeted Employees”) will be as follows, with proportionate accrual for less than full-time. An academic year (39 weeks) employee, and an employee appointed for less than 9 months of each year will not accrue Sick Leave.

### Hours Accrued During Pay Period

	Semi-Monthly
Faculty	4.3334
Administrative	4.3334
Executive Service	5.4167
Support	4.3334

(2) **Accrual Prior to Use.** An employee must accrue Sick Leave before the leave can be used, unless available through the University’s Sick Leave Pool pursuant to the Sick Leave Pool Policy. There is no maximum on the amount of Sick Leave that can be accrued. During a leave of absence with pay an employee will continue to earn sick leave hours.

(3) **Authorized Use.** Sick Leave is authorized for only the following purposes:

- (a) The employee’s personal illness, injury, exposure to a contagious disease; a disability where the employee is unable to perform assigned duties, or employee’s appointments with health care providers.
- (b) The employee’s immediate family member’s relative’s illness, injury, appointments with health care providers, or death. For purposes of this regulation, immediate family member/relative is defined as the employee’s spouse, parents, children, grandparents, grandchildren, siblings, or individual for whom the employee is the current legal guardian; or the employee’s spouse’s parents, children, grandparents, grandchildren, or siblings.
- (c) The employee’s disability caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery thereafter.
- (d) The birth of employee’s child.
- (e) The placement of a child with employee for adoption or foster care.
- (f) The employee to care for the employee’s child following child birth or a newly placed child after adoption or foster care.
- (g) As otherwise provided by University regulation or law.

When possible, employees are expected to schedule planned medical appointments in a manner that minimizes disruption of the workflow.

Employees must use sick leave only for its intended purpose. An employee may be required by Human Resources Services or his or her supervisor to provide medical documentation to support the use of Sick Leave for three (3) or more absences in any 30 day period, when absences are

excessive or when a pattern has emerged. Abuse of paid sick leave will result in disciplinary action up to and including dismissal.

Upon return from sick leave due to illness or injury, an employee may be required by Human Resources Services or his or her supervisor to submit a Fitness for Duty form to establish whether the employee is fully recovered and capable of returning to his or her duties.

(4) **Notice of Absence.** An employee will give notice to his or her supervisor of the employee's absence due to illness, injury, disability, or exposure to a contagious disease on or before the first day of absence.

(5) **Transfer of Sick Leave from Other Employers.** The University accepts the transfer of a maximum of eighty (80) hours of Sick Leave accrued by the Budgeted Employee in another State university within Florida or New College for which payment has not been received by the employee provided no more than 31 days have elapsed between the last day of employment with the other State university or New College and the first day of the Budgeted Employee's employment with Florida Polytechnic University.

(6) **Separation from Employment.** Upon separation from employment with the University, an employee with ten (10) or more years of State service with the State of Florida will be paid ~~a maximum~~ one-fourth (1/4) of ~~480-the number of~~ hours of ~~the employee's unused~~ accrued Sick Leave, but shall not exceed a maximum of 480 hours of actual payment subject to and in accordance with Florida Statutes Section 110.122.

(7) **Reemployment by Florida Polytechnic.** If an employee is reemployed by Florida Polytechnic University as a Budgeted Employee within 60 days of separating employment with the University, unpaid Sick Leave will be restored. In the case of a layoff, the unpaid Sick Leave of the laid off employee will be restored if such employee is recalled by the University within one year of the date of layoff.

~~Effective date October 1, 2016, or when ERP Workday goes live, whichever date is later.~~

*Authority: FBOG regulation 1.001 and Florida Statutes §110.122*

*History: New: 8.28.13, Amended: -9.14.16, \_\_\_\_\_*

**AGENDA ITEM: X. D. 4.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: FPU-6.002 Personnel Code of Conduct and Ethics.**

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**Proposed Action**

Approve revised regulation **FPU-6.002 Personnel Code of Conduct and Ethics**.

**Background Information**

University regulation **FPU-6.002 Personnel Code of Conduct and Ethics** was initially approved by the Board of Trustees on December 11, 2014.

This regulation informs personnel of the various state, federal, Board of Governors, and University laws and regulations that must be complied with in order to ensure that University business is conducted in a manner exhibiting the highest degree of ethical standards and conduct.

This regulation is being revised primarily to reflect the role of the University Audit and Compliance Office as a resource in interpreting the requirements of compliance efforts and in receiving, investigating and handling reports of known or alleged violations of the code.

The Notice of Proposed Amended Regulation and the regulation were published on the University's website on January 26, 2018. No comments were received during the review and comment period.

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**Supporting Documentation:**

DRAFT revised regulation **FPU-6.002 Personnel Code of Conduct and Ethics**.

**Prepared by: Gina DeIulio, VP & General Counsel**

**DRAFT****THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES****FPU-6.002 Personnel Code of Conduct and Ethics**

- (1) **Purpose.** This regulation shall apply to all Florida Polytechnic University faculty, staff and representatives (hereinafter collectively “personnel”) and with the expectation that all of the University’s businesses, operations and interactions with those within and outside the University community will be executed in a manner exhibiting the highest degree of ethical standards and conduct.
- (2) **Introduction.** The Florida Polytechnic University’s Board of Trustees and the University’s administration value high ethical standards. Thus, it is expected that all of the University’s businesses, operations and interactions with those within and outside the University community will be executed in a manner exhibiting the highest degree of ethical standards and conduct. To provide the University faculty, staff and representatives guidance and notice of their obligations, this Code of Conduct and Ethics describes general expectations for achieving and maintaining an organizational culture that affirms the University’s responsibility to protect its resources, its employees, its students and its reputation.

The University, through its personnel, is entrusted by the public with financial resources and social responsibilities. All University personnel play a key role in assuring that high standards of ethical practice are utilized regarding the custody and use of these resources. To accomplish this, it is expected that University personnel observe and be faithful to the values embodied in this Code of Conduct and Ethics so that all in the University community will enjoy a professional and supportive work environment.

This Code is not intended to stand alone. Rather, it complements and serves as a link with state and federal laws and other rules and regulations that govern the University’s operations and its personnel’s ethical conduct. Further, this Code is described in a general manner and is not intended to address every circumstance of expected ethical behavior. As such, any member of the University community who may be confronted with an ethical dilemma should first contact his or her immediate supervisor or others in their supervisory chain to seek guidance in addressing issues that are not directly covered by this Code.

- (3) **Compliance with the Law.** All University personnel are required to observe and comply with all state and federal laws applicable to the University. Any questions regarding the application of law to situations, or the compliance requirements of the law, should be referred by University personnel to their immediate supervisor or any other individual in his or her supervisory chain. Should anyone in the supervisory chain require assistance in interpreting the ~~legal~~-requirements of compliance efforts, they may contact the Office of the General Counsel or the University Audit and Compliance Office, as appropriate.
- (4) **Discrimination, Harassment and Mistreatment.** The University is committed to providing and maintaining an environment that is free of discrimination, harassment or mistreatment based on one’s membership in a protected class. The University does

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not tolerate any form of prohibited discriminatory or harassing behavior directed toward another member of the University community.

See regulations: FPU-1.004 Non-Discrimination ~~and~~-Equal Opportunity, FPU-1.005 Discrimination and Harassment Complaint ~~Policy~~ and Investigation Procedures, and FPU-1.005P Sexual Harassment.

- (5) **Use of the University Resources.** The University’s resources and facilities are for official and authorized use only and in furtherance of the University’s mission and organizational culture. Thus, University personnel should not misuse the University’s resources and/or facilities and should not permit others to inappropriately use these resources and/or facilities. The University understands the occasional use of certain resources (e.g. computer and telephone) for personal reasons; however, such personal use by University personnel should not result in expense to the University or interfere with the performance of required duties or the University’s mission. Moreover, it is expected that University personnel will not use any of the University’s resources and facilities for any illegal or unauthorized commercial activities, or in any manner which is inconsistent with the University’s mission. University personnel shall not allow or assist others in illegal or unauthorized commercial use of these resources.

See regulations: FPU-1.009 Commercial Solicitation on University Property and FPU-1.003 Use of University Facilities and Property.

- (6) **Outside Employment and Activities.** All University employees have certain ethical and professional responsibilities as public employees, which include the requirements of the *Code of Ethics for Public Officers and Employees*, located in Chapter 112, Part III, Florida Statutes. Full-time personnel who wish to engage in outside employment or activities must report to their supervisor, in writing, the details of such proposed employment or outside activity and must obtain written approval prior to engaging in the employment/activity.

See regulation: FPU-6.008 Outside Employment ~~and~~ Outside Activities ~~Regulation~~.

- (7) **Confidential Information.** Florida Polytechnic University is subject to Florida’s “Government-in-the-Sunshine” law meaning that most University-related documents, in any form including e-mail, are subject to request and inspection by the public. However, certain personal and official information regarding students, faculty, staff and donors are confidential and cannot be disclosed to others pursuant to federal and/or state laws, including but not limited to the Family Educational Rights and Privacy Act (FERPA), the Americans with Disabilities Act (ADA) and state law regarding limited access to faculty evaluative information. As such, the University expects confidential information about its students, faculty, staff and donors to be protected in accordance with the provisions of these and other pertinent laws. Any questions regarding what constitutes “confidential” information and laws applicable to specific situations should be referred by University personnel to their immediate supervisor or any other individual in his or her supervisory chain. Similarly, should anyone in the supervisory chain require assistance regarding “confidential” information, questions should be directed to the Office of the General Counsel.



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See regulations: FPU-1.0123P Public Records Policy and FPU-3.001 Confidentiality of Student Records and Applicant Records and rule: 6C13-6.008 Personnel Records and Limited-Access Records.

- (8) **Using Organizational Status to Influence Business Decisions.** The University expects that its personnel who hold purchasing or other decision-making positions will not attempt to use their University status to influence business transactions which may result in their experiencing any personal, financial, or material gain on behalf of themselves or others.

See regulation: FPU-8.001 Purchasing.

- (9) **Nepotism/Reporting Structure.** University personnel should avoid situations where they may influence the decision to hire a family member at the University. A conflict of interest would exist, for example, if personnel serve on a selection committee or in a decision-making chain where a family member has applied for employment. In such a scenario, University personnel should disclose their familial status to the chair of the selection committee or the Director of Human Resources prior to the candidate's interview. Further, employees are not permitted to supervise family members as a conflict of interest would exist if a supervisor had to conduct a performance appraisal on a family member.

See regulation: FPU-6.009 Employment of Relatives.

- (10) **Purchase of Property from Board of Trustees.** No University personnel should enter into a personal agreement or a contract to purchase goods or services, except those available to the general public, from a member of the University's Board of Trustees or the Trustee's firm without first discussing the transaction with the University's Office of the General Counsel. Transactions of this type may have the appearance of impropriety and result in a conflict of interest that at the very least may reflect poorly on the individual, the Trustee and/or the University.

- (11) **Gifts and Honoraria.** In accordance with Florida law, certain University personnel are prohibited from giving, soliciting, or accepting certain gifts from vendors doing business with the University and must comply with the reporting requirements of the statute.

See: Florida Statutes Section 112.3148

- (12) **Use of University Intellectual Property, Copyright, Patents and Trademark.** The University observes all intellectual property, patent and copyright laws and expects all University personnel to comply with the laws regarding the use of such property. For example, the University's trademark, seal, and letterhead must only be used in relation to University-related activities and University business matters. Any other use of the University's intellectual property is strictly prohibited. Should University personnel have any questions regarding whether their intended use of the University's

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intellectual property may be in contradiction to “University-related activities and University business matters” the individual should consult their immediate supervisor or any other individual in his or her supervisory chain. Should anyone in the supervisory chain require assistance in interpreting whether the intended use of patents, copyrights or trademarks falls within accepted University activities or business matters, the supervisor should contact the University’s Office of the Provost or the Vice President of Advancement to seek guidance regarding any question that they may have regarding the intended use of the intellectual property.

- (13) **Professional Associations’ Codes of Ethics.** All University personnel who are members of professional associations external to the University are expected to abide by their association’s code of ethics and other membership guidelines. If University personnel are found to have violated an external association’s code of ethics or membership guidelines and such violation may negatively impact the University or the individual’s employment at the University, such personnel must report the alleged violation to their supervisor, or other in his or her supervisory chain so that the impact of the alleged violation may be evaluated by the appropriate University representatives.

- (14) **Procedures for Alleged Violations.** All personnel are responsible for complying with this Code and should report any known or alleged violations of this Code to his or her immediate supervisor, ~~or anyone in their supervisory chain,~~ or the Office of the General Counsel. Supervisory personnel aware of such known or alleged violations are required to report such incidents to University Audit and Compliance (UAC). Employees who knowingly fail to report fraudulent activity shall be subject to disciplinary action. However, an employee who does not feel comfortable reporting such concerns to supervisory personnel may report concerns directly to the UAC or anonymously through the Compliance Hotline. Reporting such concerns is a service to the University and University policy prohibits retaliation against individuals who make a good faith report of alleged or known violations. The General Counsel/Chief Audit Executive/Chief Compliance Officer (CAE/CCO) is responsible for conducting a review of the incident(s) in question and conducting investigations where warranted, and forwarding the information to the appropriate University representatives for review. In the absence of the CAE/CCO, or where allegations are made against the CAE/CCO, the General Counsel will serve as the official contact for reporting.

~~(14)~~ See: FPU-1.0125P Fraud Prevention and Detection, and FPU-1.015 Allegations of Waste, Fraud, Financial Management, Misconduct, and Other Abuses.

- (15) **Penalties for Violations.** University personnel who are determined by the University to have violated this Code are subject to disciplinary action. Disciplinary actions may include penalties such as: dismissal, suspension, demotion, reduction in salary, forfeiture of salary, restitution, public censure, and/or reprimand; other disciplinary actions as may be deemed appropriate by the University President/designee; and/or as specified by law or regulation.
- (16) **Conclusion.** All University personnel are required to become familiar with this Code and conduct themselves in an ethical manner in the performance of their University

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duties and responsibilities. Should any personnel require advice or clarification regarding their obligations pursuant to this Code, they should consult their supervisor or appropriate University representative in order to gain an understanding of the requirements of this Code so that the reputation of those covered by this Code, including the University, continues to be held in high regard by all those with whom we interact.

*Authority: BOG regulation 1.001*

*History: NEW 12-11-2014; Amended: \_\_\_\_\_.*

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**AGENDA ITEM: XI. A.**

**Florida Polytechnic University  
Board of Trustees  
February 28, 2018**

**Subject: Board of Trustees Meetings: September 12, 2018**

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**Proposed Committee Action**

Recommend discussion and approval of a new Board of Trustees meeting date in September, 2018.

**Background Information**

Due to a change in the Board of Governors meeting dates, the currently scheduled Board of Trustees meeting for September 12, 2018 is now in direct conflict with the new Board of Governors meeting. Recommend discussion and approval of a new meeting date in September, 2018.

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**Supporting Documentation:** N/A

**Prepared by:** Chair Frank T. Martin