TIAA
ERISA 403(b) VOLUME SUBMITTER PLAN

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TIAA
ERISA 403(b) VOLUME SUBMITTER PLAN
BASIC PLAN DOCUMENT #20

TIAA, in its capacity as Volume Submitter Practitioner, sponsors this Volume Submitter Plan intended to conform to and qualify under §403(b) of the Internal Revenue Code of 1986, as amended. An Employer establishes a Plan under this Volume Submitter Plan by executing an Adoption Agreement. When any provisions of this Volume Submitter Plan or the Adoption Agreement is marked "RESERVED," that means that the provision was deliberately omitted but section numbering was retained to help maintain consistency.

ARTICLE 1. DEFINITIONS

1.01 Account. Account means the account(s) maintained for the benefit of any Participant, Beneficiary, or Alternate Payee under one or more Investment Arrangements. Unless required due to an Investment Arrangement, the term "separate Account" means a separate accounting for recordkeeping purposes.

1.02 Account Balance. Account Balance means the total benefit to which a Participant, Beneficiary, or Alternate Payee is entitled under an Investment Arrangement, taking into account all contributions made to the Investment Arrangement and all earnings or losses (including expenses) that are allocable to the Account, any Rollover Contributions or transfers held under the Account, and any distribution made to the Participant, the Beneficiary, or an Alternate Payee. The Account Balance includes any part of the Account that is treated under the Plan as a separate contract to which Code §403(c) (or another applicable provision of the Code) applies. In the case of an Annuity Contract that provides additional benefits, to the extent required under the Code, such term also will include the actuarial value of the Participant's vested interest in such other benefits as determined by the Vendor.

1.03 Accumulated Benefit. Accumulated Benefit means the sum of a Participant's, Beneficiary's or Alternate Payee's Account Balances under all Investment Arrangements under the Plan.

1.04 Adoption Agreement. Adoption Agreement means the document executed by each Employer adopting this Plan. References to Adoption Agreement within this basic plan document are to the Adoption Agreement as completed and executed by a particular Employer unless the context clearly indicates otherwise. An adopting Employer's Adoption Agreement and this basic plan document together constitute a single Plan of the Employer. The Plan also includes any Investment Arrangement and Investment Arrangement Documentation, and such other list(s), policies and procedures, or written document(s) (such as loan policies or service contracts), which, when properly executed or otherwise put into effect fully describe the Plan and practice of the Employer with respect to the Plan from and after the later of the initial Effective Date or restated Effective Date as set forth in the Adoption Agreement, to the extent such items do not conflict with the terms of this basic plan document and the Adoption Agreement. Each elective provision of the Adoption Agreement corresponds (by its parenthetical section reference) to the section of the Plan which grants the election. All "Section" references within an Adoption Agreement are to the basic plan document. All "Election" references within an Adoption Agreement are Adoption Agreement references. The Employer or Plan Administrator to facilitate Plan administration or to generate written policies or forms for use with the Plan may maintain one or more administrative checklists as an attachment to the Adoption Agreement or otherwise. Any such checklists are not part of the Plan.

1.05 Advisory Letter. Advisory Letter means an IRS issued advisory letter as to the acceptability of the form of a Volume Submitter Plan. For further description of advisory letters, see IRS Rev. Proc. 2013-22.

1.06 Annuity Contract. Annuity Contract means a nontransferable group or individual contract as defined in Code §§403(b)(1) and 401(g), established for each Participant by the Employer, or by each Participant individually, that is issued by an Insurance Company qualified to issue annuities in a State and that includes payment in the form of an annuity. See Section 8.03. In the case of an Annuity Contract, the term "Individual Account" when used under the Plan will include individual annuity certificates issued on behalf of a Participant or Beneficiary, in addition to individual Annuity Contracts.

1.07 Appendix. Appendix means one of the Appendices to an Adoption Agreement designated as "A", "B", "C", or "D" which are expressly authorized by the Plan and as part of the Plan, are covered by the Plan's Advisory Letter. The Appendices are part of the Adoption Agreement.

1.08 Beneficiary. Beneficiary means a person or entity designated by a Participant, by the Plan or, in the absence of designation by the Participant or the Plan, under an Investment Arrangement, who is or may become entitled to a benefit under the Plan upon the Participant's death, as identified under the terms governing each Investment Arrangement or in other records maintained under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Vendor has fully distributed to the Beneficiary his/her Plan benefit. A Beneficiary's right to (and the Plan Administrator's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.09 Church. Church means an organization described in Code §3121(w)(3)(A), and generally refers to a church, a convention or association of churches, or an elementary, secondary school or seminary that is controlled, operated, or principally supported by a church or a convention or association of churches. A Church also includes a QCCO, as defined under Code §3121 (w)(3)(B). Church does not include

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Non-QCCO, whether or not that organization is controlled or associated with a Church, as so defined. All Churches using this Plan will either have formally elected to be covered by ERISA or are voluntarily choosing to be subject to the provisions of ERISA.

(A) Church-Related Organization. A Church-Related Organization means a church or convention or association of churches or other organization described in Code §414(e)(3)(A).

(B) Church Plan. Church Plan means a plan described in Code §414(e).

(C) Qualified Church-Controlled Organization or QCCO. "Qualified Church-Controlled Organization" (QCCO) means an organization described in Code §3121(w)(3)(B), and generally refers to any church controlled, tax-exempt organization described in Code §501(c)(3), other than an organization which:

(1) Offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(2) Normally receives more than 25% of its support from either: (a) governmental sources, or (b) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.

(D) Non-Qualified Church-Controlled Organization or Non-QCCO. Non-Qualified Church-Controlled Organization (Non-QCCO) means a church-controlled, tax-exempt organization described in Code §501(c)(3) that is not a Church or a QCCO.

1.10 Code. Code means the Internal Revenue Code of 1986, as amended and includes applicable IRS Guidance.

1.11 Compensation.

(A) Uses and Context. Any reference in the Plan to Compensation is a reference to the definition in this Section 1.11 unless the Plan reference, or the Employer in its Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. The Employer in its Adoption Agreement may elect to allocate contributions based on Compensation within a specified 12 month period which ends within a Plan Year.

(B) Base Definitions and Modifications. The Employer in its Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in its Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article 3. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(1) **W-2 Wages.** W-2 Wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)). The Employer in Appendix B to its Adoption Agreement may elect to exclude from W-2 Compensation certain Employer paid or reimbursed moving expenses as described therein.

(2) **Code §3401(a) Wages (income tax wage withholding).** Code §3401(a) Wages means 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 the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) **Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415(c)-2(d)(2)).** Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).
Code §415 Compensation does not include:

(a) **Deferred compensation/SEP/SIMPLE.** Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a SIMPLE retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the

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Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) **Option exercise.** Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

(c) **Sale of option stock.** Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

(d) **Other amounts that receive special tax benefits.** Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125).

(e) **Other similar items.** Other items of remuneration which are similar to any of the items in Sections (3)(a) through (d).

(4) **Alternative (general) 415 Compensation.** The Employer in Appendix B to its Adoption Agreement may elect to apply the 415 definition of Compensation in Treas. Reg. §1.415(c)-2(a). Under this definition, Compensation means as defined in Section (3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(h) but only to the extent that these amounts are includible in the Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to the Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b); and (e) amounts that are includible in the Employee's gross income under Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 Wages or Code §3401(a) Wages, then Compensation already includes the amounts described in clause (e).]

(C) Deemed 125 Compensation. Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage. Compensation under this Section 1.11 does not include Deemed 125 Compensation, unless the Employer in Appendix B to its Adoption Agreement elects to include Deemed 125 Compensation under this Section 1.11.

(D) Elective Deferrals. Compensation under Section 1.11 includes Elective Deferrals unless the Employer in its Adoption Agreement elects to exclude Elective Deferrals. In addition, for purposes of making Elective Deferrals, Compensation means as defined in Section 1.11 and as the Employer elects in its Adoption Agreement.

(E) Compensation Dollar Limitation. For any Plan Year, the Plan Administrator in allocating contributions under Article 3 or in testing the Plan for nondiscrimination, cannot take into account more than $270,000 (or for years after 2017, such larger amount as the IRS may prescribe pursuant to an adjustment made in the same manner as under Code §415(d)) of any Participant's Compensation. Notwithstanding the foregoing, an Employee under a 403(b) Plan may make Elective Deferrals with respect to Compensation which exceeds the Plan Year Compensation limitation, provided such Elective Deferrals otherwise satisfy the Elective Deferral Limit and other applicable Plan limitations. In applying any Plan limitation on the amount of Matching Contributions or any Plan limit on Elective Deferrals which are subject to Matching Contributions, where such limits are expressed as a percentage of Compensation, the Plan Administrator may apply the Compensation limit under this Section (E) annually to Matching Contributions, even if the Matching Contribution formula is applied on a per pay period basis or is applied over any other time interval which is less than the full Plan Year or the Plan Administrator may pro rate the Compensation limit. The limit under this Section (E) shall not apply to a plan maintained by a Church.

(F) Nondiscrimination. For purposes of determining whether the Plan discriminates in favor of HCEs, Compensation means as the Plan Administrator operationally determines provided that any such nondiscrimination testing definition which the Plan Administrator applies must satisfy Code §414(s) and the regulations thereunder, including the requirement of consistency in Treas. Reg. §1.414(s)-1(b). For this purpose the Plan Administrator may, but is not required, to apply for nondiscrimination testing purposes the Plan's allocation definition of Compensation under this Section 1.11 or Annual Additions Limit definition of Compensation under Section 4.05(D). The Employer's election in its Adoption Agreement relating to Participating Compensation for allocation purposes (to limit Compensation to Participating Compensation or to include Plan Year Compensation) is nondiscriminatory.

(G) Excluded Compensation. Excluded Compensation means such Compensation as the Employer in its Adoption Agreement elects to exclude for purposes of this Section 1.11. Regardless of the definition of Compensation selected in the Adoption Agreement, the Plan Administrator may adopt a uniform policy for purposes of determining the amount of a

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Participant's Elective Deferrals of excluding non-cash Compensation. For purposes of this Section (G), non-cash Compensation means tips, fringe benefits, and other items of Compensation not regularly paid in cash or cash equivalents, or for which the Employer does not or may not have the ability to withhold Elective Deferrals in cash for the purpose of transmitting the Elective Deferrals to the Plan pursuant to the Participant's Deferral Election. Unless otherwise specified, the Plan Administrator shall determine the amount of a Participant's Compensation (for purposes of allocations), by disregarding Excluded Compensation.

(H) Pre-Entry Compensation. The Employer in its Adoption Agreement for allocation purposes must elect Participating Compensation or Plan Year Compensation as to some or all Contribution Types.

(1) **Participating Compensation.** Participating Compensation means Compensation only for the period during the Plan Year in which the Participant is a Participant in the overall Plan, or under the plan resulting from disaggregation under the OEE or EP rules under Section 4.06(C)(1), or as to a Contribution Type as applicable. If the Employer in its Adoption Agreement elects Participating Compensation, the Employer will elect whether to apply the election to all Contribution Types or only to particular Contribution Type(s).

(2) **Plan Year Compensation.** Plan Year Compensation means Compensation for a Plan Year, including Compensation for any period prior to the Participant's Entry Date in the overall Plan or as to a Contribution Type as applicable. If the Employer in its Adoption Agreement elects Plan Year Compensation, the Employer will elect whether to apply the election to all Contribution Types or only to particular Contribution Type(s).

(I) Post-Severance Compensation. Compensation includes Post-Severance Compensation to the extent the Employer elects in its Adoption Agreement or as the Plan otherwise provides. Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section (I). As the Employer elects, Post-Severance Compensation may include any or all of regular pay, leave cash-outs, or deferred compensation paid within the time period described in Section (I), and may also include salary continuation for disabled Participants, all as defined below. Any other payment paid after Severance from Employment that is not described in this Section (I) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to Severance from Employment.

(1) **Timing.** Post-Severance Compensation includes regular pay, leave cash-outs, or deferred compensation only to the extent the Employer pays such amounts by the later of 2 1/2 months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

(a) **Regular pay.** Regular pay means the payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(b) **Leave cash-outs.** Leave cash-outs means payments 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 if Compensation would have included those amounts if they were paid prior to the Participant's severance from employment.

(c) **Deferred compensation.** As used in this Section (I), deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the deferred compensation if it had been paid prior to the Participant's Severance from Employment, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(2) **Salary continuation for disabled Participants.** Salary continuation for disabled Participants means Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). This Section will apply, as the Employer elects in its Adoption Agreement, either just to NHCEs (who are NHCEs immediately prior to becoming disabled) or to all Participants for a fixed or determinable period specified in the Adoption Agreement.

(J) [Reserved]

(K) Deemed Disability Compensation. The Plan does not include Deemed Disability Compensation under Code §415(c)(3)(C) unless the Employer in its Adoption Agreement elects to make Employer Contributions with respect to Deemed Disability Compensation under this Section (K). Deemed Disability Compensation is the Compensation the Participant would have received for the year if the Participant were paid at the same rate as applied immediately prior to the Participant becoming permanently and totally disabled (as defined in Code §22(e)(3)) if such deemed compensation is greater than actual Compensation as determined without regard to this Section (K). This Section (K) applies only if the affected Participant is an NHCE immediately prior to becoming disabled (or the Adoption Agreement election provides for the continuation of

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contributions on behalf of all such disabled participants for a fixed or determinable period) and all contributions made with respect to Compensation under this Section (K) are immediately Vested.

(L) Differential Wage Payments. Unless the Employer otherwise elects in Appendix B to its Adoption Agreement, the Plan will treat Differential Wage Payments as Compensation for all Plan contribution and benefit purposes.

(M) Includible Compensation. Includible Compensation means the Employee's Compensation received from the Employer that is includible in the Participant's gross income for Federal income tax purposes (computed without regard to Code §911, relating to United States citizens or residents living abroad), including Differential Wage Payments, for the most recent period that is a Year of 403(b) Service. Includible Compensation also includes any Elective Deferral or other amount contributed or deferred by the Employer at the election of the Employee that would be includible in the Employee's gross income but for the rules of Code §§125, 132(f)(4), 402(e)(2), 402(h)(1)(B), 402(k), or 457(b). Includible Compensation does not include any Compensation received during a period when the Employer is not an Eligible Employer or any Compensation, other than Post-Severance Compensation, paid after Severance of Employment. The amount of Includible Compensation is determined without regard to any community property laws. The amount of Includible Compensation of any Participant taken into account in determining contributions will not exceed $270,000, as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B) for periods after 2017.

(N) Deemed Includible Compensation. Deemed Includible Compensation is determined on a monthly basis. A former Employee's Deemed Includible Compensation for any month is 1/12 of the amount of Compensation the former Employee received from the Employer that is includible in gross income for the most recent period (ending not later than the close of the Taxable Year) which: (a) constitutes one Year of 403(b) Service; and (b) precedes the Taxable Year by not more than five years. Deemed Includible Compensation will be determined in accordance with the rules for determining Includible Compensation and in accordance with Treas. Reg. §1.403(b)-4(d). The first month in which a former Employee has Deemed Includible Compensation is the month after the Employee Separates from Service. The Deemed Includible Compensation shall continue until the last day of the fifth Taxable Year which begins after the Employee Separates from Service.

1.12 Contribution Types. Contribution Types means the contribution types required or permitted under the Plan as the Employer elects in its Adoption Agreement.

1.13 Custodial Account/Custodial Agreement. Custodial Account means the group or individual custodial account or accounts, as defined in Code §403(b)(7), established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan. A Custodial Agreement means a separate written agreement between the Participant (or Employer) and the Custodian which sets forth the terms of the Custodian's engagement. See Section 8.04.

1.14 Custodian. Custodian means a bank or person who qualifies as a non-bank custodian under Code §401(f)(2) and who accepts the position of Custodian by executing the Adoption Agreement or by executing a separate Custodial Agreement.

1.15 Defined Contribution Plan. Defined Contribution Plan means a retirement plan which provides for an individual account for each Participant and for benefits based solely on the amount contributed to the Participant's Account, and on any Earnings, expenses, and forfeitures which the Plan may allocate to such Participant's Account.

1.16 Defined Benefit Plan. Defined Benefit Plan means a retirement plan which does not provide for individual accounts for Employer contributions and which provides for payment of determinable benefits in accordance with the plan's formula.

1.17 Denominational Service. Except to the extent limited in the Adoption Agreement, Denominational Service means a person's completed years and months in the paid employment of a church or convention or association of churches with which the Employer is associated, and/or in the paid employment of an agency or organization that is exempt from tax under Code §501 and that is controlled by or associated with the church or convention or association of churches with which the Employer is associated. Denominational Service also includes all years of service by a duly ordained, commissioned, or licensed minister of a church. The Participant is responsible to inform the Employer of Denominational Service the Participant wishes the Plan to count.

1.18 Differential Wage Payment. Differential Wage Payment means differential wage payment as defined by Code §3401(h)(2).

1.19 Disability/Disabled. Disabled shall have the meaning provided in the Investment Arrangement. If not defined in the Investment Arrangement, Disabled means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long continued and indefinite duration. The permanence and degree of such impairment shall be supported by medical evidence. The Employer in Appendix B to its Adoption Agreement can specify a different definition of Disabled which is not inconsistent with the Code and which will apply in place of the definition in the second sentence of this Paragraph. A person who is Disabled has a "Disability."

(A) Administration. For purposes of this Plan, a Participant is disabled on the date the Plan determines the Participant satisfies the definition of Disability. The Plan may require a Participant to submit to a physical examination in order to confirm the Participant's Disability. The provisions of this Section 1.19 will be applied in a nondiscriminatory, consistent and uniform manner.

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1.20 DOL. DOL means the U.S. Department of Labor.

1.21 Earnings. Earnings means the net income, gain or loss earned by a particular Account or with respect to a contribution or to a distribution, as the context requires.

1.22 Educational Organization. Educational Organization means an organization described under Code §170(b)(1)(A)(ii), relating to educational organizations that normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance where the educational activities are regularly carried on.

1.23 Effective Date. The Effective Date of this Plan is the date the Employer elects in its Adoption Agreement. However, as to a particular provision, a different effective date may apply as this basic plan document may provide or as the Employer may elect in its Adoption Agreement, or a Participation Agreement, or in any other document which evidences the action taken. If this Plan restates a previously existing plan, the Effective Date of the provisions of this restatement does not need to be earlier than January 1, 2010. If this Plan is retroactively effective, the provisions of this Plan generally control.

1.24 Elective Deferrals. Elective Deferrals means a Participant's Pre-Tax Deferrals, Roth Deferrals, Automatic Deferrals and, as the context requires, Age 50 Catch-Up Deferrals and Qualified Organization Catch-Up Deferrals under the Plan, and which the Employer contributes to the Plan at the Participant's election (or automatically) in lieu of cash compensation. As to other plans, as may be relevant to the Plan, Elective Deferrals means amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457(b), and includes amounts included in the Employee's gross income under Code §402A, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) plan, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457(b) plan.

(A) Pre-Tax Deferral. Pre-Tax Deferral means an Elective Deferral (including a Catch-Up Deferral or an Automatic Deferral) which is not a Roth Deferral.

(B) Roth Deferral. Roth Deferral means an Elective Deferral (including a Catch-Up Deferral or an Automatic Deferral) which a Participant irrevocably designates as a Roth Deferral under Code §402A at the time of deferral and which is subject to income tax when made to the Plan. In the case of an Automatic Deferral, the Plan makes such irrevocable designation in accordance with Section 3.02(B).

(C) Automatic Deferral. See Section 3.02(B)(4)(a).

(D) Age 50 Catch-Up Deferral. See Section 3.02(E)(2).

(E) Qualified Organization Catch-Up Deferral. See Section 3.02(D)(1).

1.25 Eligible Employee. Eligible Employee means an Employee other than an Excluded Employee.

1.26 Eligible Employer. Eligible Employer means a Code §501(c)(3) organization as to any employee of the Code §501(c)(3) organization. The term "Employer" also includes any organization other than an organization described in Code §501(c)(3) that employs a minister described in Code §414(e)(5)(A)(i)(II), but solely with respect to the participation in the Plan by the minister, and only if such Employer's participation is approved by the Plan Administrator in accordance with rules and procedures adopted for such purposes.

1.27 Employee. Employee means any common law employee of the Employer. Employee includes, if the Plan is a Church Plan, a minister described in Code §414(e)(5)(A)(i)(II). Employee does not include an independent contractor. See Section 1.44 regarding Leased Employees. See also Section 1.26 with regard to Employers of ministers which are not otherwise Eligible Employers.

(A) Differential Wage Payment. An individual receiving a Differential Wage Payment from the Employer is treated as an Employee of the Employer.

1.28 Employee Contribution. Employee Contribution means a Participant's after-tax contribution to an Investment Arrangement which the Participant designates as an Employee Contribution at the time of contribution. Neither an Elective Deferral (Pre-Tax or Roth) nor a Mandatory Employee Contribution is an Employee Contribution.

1.29 Employer. Employer means each Signatory Employer, Lead Employer, Related Employer, and Participating Employer as the Plan indicates or as the context requires. The Employer also includes any successor to a Signatory Employer, Lead Employer, or Participating Employer if such Employer agrees to continue to maintain the Plan. Only an Eligible Employer may be the Signatory Employer or Participating Employer.

(A) Signatory Employer. The Signatory Employer is the Employer who establishes a Plan under this Volume Submitter Plan by executing an Adoption Agreement. The Employer for purposes of acting as Plan Administrator, making Plan amendments, restating the Plan, terminating the Plan or performing ERISA settlor functions, means the Signatory Employer and does not include any Related Employer or Participating Employer. The Signatory Employer also may terminate the participation in the

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Plan of any Participating Employer upon written notice. The Signatory Employer will provide such notice not less than 30 days prior to the date of termination unless the Signatory Employer determines that the interest of Plan Participants requires earlier termination.

(B) Related Group/Related Employer. A Related Group is a controlled group of corporations (as defined in Code §414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code §414(c)), an affiliated service group (as defined in Code §414(m)) or an arrangement otherwise described in Code §414(o). If the Employer is a Church, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23. Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service and Hours of Service, determining Years of Service and Breaks in Service under Articles 2 and 5, determining Separation from Service, applying the coverage test under Code §410(b), applying the Annual Additions Limit to 403(b) plans and nondiscrimination testing in Article 4, applying the definitions of Employee, HCE, Compensation (except as the Employer may elect in its Adoption Agreement relating to allocations) and Leased Employee, applying the Safe Harbor 403(b) provisions of Article 3, and for any other purpose the Code or the Plan require.

(C) Participating Employer. Participating Employer means a Related Employer (to the Signatory Employer or another Related Employer) which signs the Execution Page of the Adoption Agreement or a Participation Agreement to the Adoption Agreement. Only a Participating Employer (or Employees thereof) may contribute to the Plan. A Participating Employer is an Employer for all purposes of the Plan except as provided in Sections 1.29(A). If Article 10 applies, a Participating Employer includes an unrelated Employer who executes a Participation Agreement. See Section 10.02.

1.30 Employer Contribution. Employer Contribution means a Nonelective Contribution or a Matching Contribution, as the context may require.

1.31 Entry Date. Entry Date means the date(s) the Employer elects in its Adoption Agreement upon which an Eligible Employee who has satisfied the Plan's eligibility conditions and who remains employed by the Employer on the Entry Date commences participation in the Plan or in a part of the Plan. An Employee's Entry Date with regard to Elective Deferrals is the date the Employee becomes a Participant with regard to Elective Deferrals under Article 2.

1.32 EPCRS. EPCRS means the IRS' Employee Plans Compliance Resolution System for resolving plan defects, or any successor program.

1.33 ERISA. ERISA means the Employee Retirement Income Security Act of 1974, as amended, and includes applicable DOL regulations.

1.34 [Reserved]

1.35 Excluded Employee. Excluded Employee means, as the Employer elects in its Adoption Agreement, any Employee, or class of Employees, not eligible to participate in the Plan with regard to a specific Contribution Type. The Employer must elect any Excluded Employees in accordance with the Adoption Agreement limitations. The Employer in the Adoption Agreement may designate different groups of Excluded Employees for each Contribution Type.

(A) Collective Bargaining Employees. If the Employer elects in its Adoption Agreement to exclude collective bargaining Employees from eligibility to participate, the exclusion applies to any Employee included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers if: (1) retirement benefits were the subject of good faith bargaining; and (2) two percent or fewer of the employees covered by the agreement are "professional employees" as defined in Treas. Reg. §1.410(b)-9, unless the collective bargaining agreement requires the Employee to be included within the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer. Regardless of the preceding, the Employer may elect in its Adoption Agreement to exclude collective bargaining Employees from eligibility to participate for purposes of making Elective Deferrals only if the Employer maintains another plan that satisfies the universal availability requirements of Code §403(b)(12).

(B) Nonresident Aliens. If the Employer elects in its Adoption Agreement to exclude nonresident aliens from eligibility to participate, the exclusion applies to any nonresident alien Employee who does not receive any earned income, as defined in Code §911(d)(2), from the Employer which constitutes United States source income, as defined in Code §861(a)(3).

(C) Student Employees. If the Employer elects in its Adoption Agreement to exclude Student Employees, the exclusion applies to students performing services described in Code §3121(b)(10).

(D) Reclassified Employees. A Reclassified Employee is an Excluded Employee for purposes of Employer Contributions (and for purposes of Elective Deferrals if the Employer is a Church) unless the Employer in Appendix B to its Adoption Agreement elects: (a) to include all Reclassified Employees as Eligible Employees; (b) to include one or more categories of Reclassified Employees as Eligible Employees; or (c) to include Reclassified Employees (or one or more groups of Reclassified

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Employees) as Eligible Employees as to one or more Contribution Types. A Reclassified Employee is any person the Employer erroneously did not treat as a common law employee and it is later determined (irrespective of a binding determination) that the person should have been treated as a common law employee. A person who is an independent contractor is not an Employee or, absent such later determination, a Reclassified Employee, and therefore may not be an Eligible Employee under this Plan.

(E) Employees who normally work less than 20 hours per week. The Employer in its Adoption Agreement may elect to exclude any Employee who normally works less than 20 hours per week. The Employer in the Adoption Agreement may select a lesser threshold than 20 hours per week. Under this election, in the case of Elective Deferrals only, an Employee is excluded from the Plan provided (1) for the Initial Eligibility Computation Period, the Employer reasonably expects the Employee to work less than 1,000 Hours of Service in such period; and (2) for each Subsequent Eligibility Computation Period, the Employee worked less than 1,000 Hours of Service in any preceding Eligibility Computation Period. The provisions of Section 2.02(C) apply by analogy to the determination of Eligibility Computation Periods and service within an Eligibility Computation Period. In that case, the 1,000 Hour of Service requirement will be adjusted pro rata. Any Employee who completes more than 1,000 Hours of Service during an Eligibility Computation Period will not be an Excluded Employee under this Section 1.35(E) for any subsequent Plan Year. For purposes of this exclusion, the Plan Administrator may use any reasonable, consistent method of crediting Hours of Service, regardless of the method elected in the Adoption Agreement for other purposes.

(F) Transition rules. Unless the Employer indicates otherwise in Appendix B to its Adoption Agreement, the Plan excludes for purposes of making Elective Deferrals employees described in Treas. Reg. §1.403(b)-11(d), to the extent and for the time periods specified therein. Under these rules, if the Plan excluded from deferring, on July 26, 2007, certain visiting professors, employees affiliated with a religious order who are under a vow of poverty, or employees who made a one-time election to participate in a Governmental Plan that is not a 403(b) plan, then the Plan may maintain that exclusion during the plan year which began in 2009. Additionally, if the Plan excluded from deferring, on July 26, 2007, certain collective bargaining employees, then the Plan may maintain that exclusion until July 26, 2010, or, if earlier, the date on which the related collective bargaining agreement terminates.

(G) Per Diem Employees. If the Employer elects in its Adoption Agreement to exclude Per Diem Employees, then Employees who are employed on an as-needed basis by the Employer are excluded.

1.36 401(m) Plan. 401(m) Plan means the portion, if any, of the 403(b) plan or another plan the Employer establishes, subject to the requirements of Code §401(m).

1.37 403(b) Plan. 403(b) Plan means this 403(b) plan.

1.38 [Reserved]

1.39 HCE. HCE means a highly compensated Employee, defined under Code §414(q) as an Employee who during the preceding Plan Year (or in the case of a short Plan Year, the immediately preceding 12 month period) had Compensation in excess of $80,000 (as adjusted by the IRS for the relevant year) and, if the Employer under its Adoption Agreement makes the top-paid group election, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

(A) Compensation Definition. For purposes of this Section 1.39, "Compensation" means Compensation as defined in Section 4.05(D).

(B) Top-paid Group/Calendar Year Data. The determination of who is an HCE, including the determinations of the number and identity of the top-paid 20% group, must be consistent with Code §414(q) and regulations issued under that Code section. The Employer in its Adoption Agreement may make a calendar year data election to determine the HCEs for the Plan Year, as prescribed by IRS Guidance. A calendar year data election must apply to all plans of the Employer which reference the HCE definition in Code §414(q). For purposes of this Section 1.39, if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

1.40 Hour of Service. Hour of Service means:

(A) Paid and duties. Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan credits Hours of Service under this Paragraph (A) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid;

(B) Back pay. Each Hour of Service for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Plan credits Hours of Service under this Paragraph (B) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made; and

(C) Payment but no duties. Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a computation period, such as leave of absence, vacation, holiday, sick leave,

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illness, incapacity (including disability), layoff, jury duty or military duty. The Plan will credit no more than 501 Hours of Service under this Paragraph (C) to an Employee on account of any single continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). The Plan credits Hours of Service under this Paragraph (C) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. §2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this Paragraph (C).

The Plan will not credit an Hour of Service under more than one of the above Paragraphs (A), (B) or (C). A computation period for purposes of this Section 1.40 is the Plan Year, Year of Service period, Break in Service period or other period, as determined under the Plan provision for which the Plan is measuring an Employee's Hours of Service. The Plan will resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.

(D) Method of Crediting Hours of Service. The Employer must elect in its Adoption Agreement the method the Plan will use in crediting an Employee with Hours of Service and the purpose for which the elected method will apply.

(1) **Actual Method.** Under the Actual Method as determined from records, an Employee receives credit for Hours of Service for hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

(2) **Equivalency Method.** Under an Equivalency Method, for each equivalency period for which the Plan would credit the Employee with at least one Hour of Service, the Plan will credit the Employee with: (1) 10 Hours of Service for a daily equivalency; (2) 45 Hours of Service for a weekly equivalency; (3) 95 Hours of Service for a semimonthly payroll period equivalency; and (4) 190 Hours of Service for a monthly equivalency.

(3) **Elapsed Time Method.** Under the Elapsed Time Method, an Employee receives credit for Service for the aggregate of all time periods (regardless of the Employee's actual Hours of Service) commencing with the Employee's Employment Commencement Date, or with his/her Re-employment Commencement Date, and ending on the date a Break in Service begins. An Employee's Employment Commencement Date or his/her Re-employment Commencement Date begins on the first day he/she performs an Hour of Service following employment or re-employment. In applying the Elapsed Time Method, the Plan will credit an Employee's Service for any Period of Severance of less than 12-consecutive months and will express fractional periods of Service in days.

(a) **Elapsed Time – Break in Service.** Under the Elapsed Time Method, a Break in Service is a Period of Severance of at least 12-consecutive months. 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 the Employee is otherwise absent from Service does not constitute a Break in Service.

(b) **Elapsed Time – Period of Severance.** A Period of Severance is a continuous period of time during which the Employee is not employed by the Employer. The continuous period begins on the date the Employee retires, quits, is discharged, or dies or if earlier, the first 12-month anniversary of the date on which the Employee otherwise is absent from Service for any other reason (including disability, vacation, leave of absence, layoff, etc.).

(E) Maternity/Paternity Leave/Family and Medical Leave Act. Solely for purposes of determining whether an Employee incurs a Break in Service under any provision of this Plan, the Plan must credit Hours of Service during the Employee's unpaid absence period: (1) due to maternity or paternity leave; or (2) as required under the Family and Medical Leave Act. An Employee is on maternity or paternity leave if the Employee's absence is due to the Employee's pregnancy, the birth of the Employee's child, the placement with the Employee of an adopted child, or the care of the Employee's child immediately following the child's birth or placement. The Plan credits Hours of Service under this Section 1.40(E) on the basis of the number of Hours of Service for which the Employee normally would receive credit or, if the Plan cannot determine the number of Hours of Service the Employee would receive credit for, on the basis of 8 hours per day during the absence period. The Plan will credit only the number (not exceeding 501) of Hours of Service necessary to prevent an Employee's Break in Service. The Plan credits all Hours of Service described in this Section 1.40(E) to the computation period in which the absence period begins or, if the Employee does not need these Hours of Service to prevent a Break in Service in the computation period in which his/her absence period begins, the Plan credits these Hours of Service to the immediately following computation period.

(F) Qualified Military Service. Hour of Service also includes any Service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u).

1.41 Insurance Company. Insurance Company means the insurance company which issues or provides an Annuity Contract used as an Investment Arrangement hereunder.

1.42 Investment Arrangement/Investment Arrangement Documentation. Investment Arrangement means an Annuity Contract or Custodial Account that satisfies the requirements of Treas. Reg. §1.403(b)-3 that is issued or established for funding amounts held under the Plan. Appendix "D" to the Employer's Adoption Agreement is a list of Vendors of Investment Arrangements approved for use under the Plan, including sufficient information to identify the approved Investment Arrangements. Investment Arrangement Documentation means

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the terms and agreements associated with an Investment Arrangement, such as a Custodial Agreement, an Annuity Contract, or other documents that Investment Arrangement Documentation may reference, such as a service agreement. The Investment Arrangement Documentation, excluding those terms that are inconsistent with the Plan or Code §403(b), is hereby incorporated by reference in the Plan. With respect to any Participant, an Investment Arrangement refers to the Investment Arrangement or Investment Arrangements which hold all or part of the Participant's Account.

1.43 IRS. IRS means the Internal Revenue Service. When discussing regulations or other guidance, IRS also includes the United States Treasury. IRS Guidance includes Treasury regulations and other guidance of general applicability appearing in the Internal Revenue Bulletin.

1.44 Leased Employee. A Leased Employee cannot be a Participant in his or her capacity as a Leased Employee, and Compensation the leasing organization pays to the Leased Employee is not Compensation for any purpose under this Plan except applying Sections 4.06 through 4.10. A Leased Employee means an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person (the "leasing organization"), has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code §414(n)(2). Except as described in Section 1.44(A), a Leased Employee is an Employee for purposes of nondiscrimination testing under Sections 4.06 through 4.10 of the Plan and the "Compensation" of the Leased Employee includes Compensation from the leasing organization which is attributable to services performed for the Employer.

(A) Safe Harbor Plan Exception. A Leased Employee is not an Employee if the leasing organization covers the employee in a safe harbor plan and, prior to application of this safe harbor plan exception, 20% or fewer of the NHCEs, excluding those NHCEs who do not satisfy the "substantially full-time" standard of Code §414(n)(2)(B), are Leased Employees. A safe harbor plan is a Money Purchase Pension Plan providing immediate participation, full and immediate vesting, and a nonintegrated contribution formula equal to at least 10% of the employee's compensation, without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the 10% contribution on the basis of compensation as defined in Code §415(c)(3) including Elective Contributions.

(B) Other Requirements. The Plan must apply this Section 1.44 in a manner consistent with Code §§414(n) and 414(o).

1.45 Limitation Year. The Limitation Year means the Calendar Year. However, if the Participant is in control of an Employer pursuant to Section 4.04, the Limitation Year shall be the Limitation Year in the Defined Contribution Plan controlled by the Participant.

1.46 Mandatory Employee Contributions. A Mandatory Employee Contribution is a pre-tax Employee contribution which the Employee agrees to make as a condition of employment. Mandatory Employee Contributions are treated as pretax Nonelective Contributions and are 100% Vested at all times.

1.47 Matching Contribution. Matching Contribution means a fixed or discretionary contribution the Employer makes on account of Elective Deferrals or on account of Employee Contributions. Matching Contributions are limited to contributions made on account of Elective Deferrals or Employee Contributions under this Plan unless otherwise specified by the Employer in its Adoption Agreement. Matching Contributions also include Participant forfeitures allocated on account of such Elective Deferrals or Employee Contributions.

(A) Fixed Matching Contribution. Fixed Matching Contribution means a Matching Contribution which the Employer, subject to satisfaction of allocation conditions, if any, must make pursuant to a formula in the Adoption Agreement. Under the formula, the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Elective Deferrals or Employee Contributions eligible for a match.

(B) Discretionary Matching Contribution. Discretionary Matching Contribution means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. The Employer retains discretion over the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "matching formula"), except as the Employer otherwise elects in its Adoption Agreement.

(C) Regular Matching Contribution. A Regular Matching Contribution is a Matching Contribution which is not a Safe Harbor Matching Contribution or an Additional Matching Contribution.

(D) Basic Matching Contribution. See Section 3.05(E)(4).

(E) Enhanced Matching Contribution. See Section 3.05(E)(6).

(F) Additional Matching Contribution. See Section 3.05(F)(1).

(G) QACA Basic Matching Contribution. See Section 3.05(E)(5).

(H) Safe Harbor Matching Contribution. See Section 3.05(E)(3).

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1.48 Nonelective Contribution. Nonelective Contribution means a fixed or discretionary Employer Contribution which is not a Matching Contribution.

(A) Fixed Nonelective Contribution. Fixed Nonelective Contribution means a Nonelective Contribution which the Employer, subject to satisfaction of allocation conditions, if any, must make pursuant to a formula (based on Compensation of Participants who will receive an allocation of the contributions or otherwise) in the Adoption Agreement. See Section 3.04(A)(2).

(B) Discretionary Nonelective Contribution. Discretionary Nonelective Contribution means a Nonelective Contribution which the Employer in its sole discretion elects to make to the Plan. See Section 3.04(A)(1).

(C) QNEC. QNEC means a qualified nonelective contribution which is 100% Vested at all times and which is subject to the distribution restrictions described in Section 6.01(E). Nonelective Contributions are not 100% Vested at all times if the Employee has a 100% Vested interest solely because of his/her Years of Service taken into account under a vesting schedule. Any Nonelective Contributions allocated to a Participant's QNEC Account under the Plan automatically satisfy and are subject to the QNEC definition.

(D) Safe Harbor Nonelective Contribution. See Section 3.05(E)(2).

1.49 NHCE. NHCE means a nonhighly compensated employee, which is any Employee who is not an HCE.

1.50 Participant. Participant means an Eligible Employee who becomes a Participant in accordance with the provisions of Section 2.01. Once an Eligible Employee becomes a Participant, he or she will remain a Participant so long as he or she has an Account in the Plan.

1.51 Participation Agreement. Participation Agreement means the Adoption Agreement page or pages or other separate agreement executed by one or more Related Employers (or in a multiple employer plan, other Eligible Employers) to become a Participating Employer.

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

1.52 Plan. Plan means the 403(b) Plan established or continued by the Employer in the form of this Volume Submitter Plan, including the Adoption Agreement under which the Employer has elected to establish this Plan. The Plan is not intended to be a Code §§401(a), 403(a) or 457(b) plan. The Employer must designate the name of the Plan in its Adoption Agreement. An Employer may execute more than one Adoption Agreement offered under this Plan, each of which will constitute a separate Plan established or continued by that Employer. The Plan created by each adopting Employer is a separate Plan, independent from the plan of any other employer adopting this Volume Submitter Plan. All section references within this basic plan document are Plan section references unless the context clearly indicates otherwise. The Plan includes any Appendix permitted by the basic plan document or by the Employer's Adoption Agreement and which the Employer attaches to its Adoption Agreement. The Plan Administrator or others, as described more fully in Section 1.53 may perform any action the Plan is to perform hereunder.

(A) Frozen Plan. See Section 3.01(F).

1.53 Plan Administrator. Plan Administrator means the person, committee, or organization selected in the Adoption Agreement to administer the Plan. If no Plan Administrator is identified in the Adoption Agreement, then the Employer is the Plan Administrator. Functions of the Plan Administrator, including those described in the Plan, may be performed by Vendors, designated agents of the Plan Administrator, or others (including Employees a substantial portion of whose duties is administration of the Plan) pursuant to the terms of Investment Arrangements, written service agreements or other documents under the Plan. For this purpose, an Employee is treated as having a substantial portion of his or her duties devoted to administration of the Plan if the Employee's duties with respect to administration of the Plan are a regular part of the Employee's duties and the Employee's duties relate to Participants and Beneficiaries generally (and the Employee only performs those duties for himself or herself as a consequence of being a Participant or Beneficiary). If the Employer is the Plan Administrator, any requirement under the Plan for communication between the Employer and the Plan Administrator automatically is deemed satisfied, and the Employer has discretion to determine the manner of documenting any decision deemed to be communicated under this provision. See Section 7.02(F) regarding delegation of authority.

1.54 Plan Year. Plan Year means the consecutive month period the Employer specifies in its Adoption Agreement.

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1.55 Practitioner. The Practitioner means the Volume Submitter Practitioner identified in the heading to the plan.

1.56 Protected Benefit. Protected Benefit means any accrued benefit described in Treas. Reg. §1.411(d)-4, including any optional form of benefit provided under the Plan which may not, except in accordance with such Regulations, be reduced, eliminated or made subject to Employer discretion.

1.57 [Reserved]

1.58 QDRO. QDRO means a qualified domestic relations order under Code §414(p). A "domestic relations order" is a judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights of a spouse or former spouse, child, or other dependent, made pursuant to the domestic relations law of any State.

1.59 Qualified Military Service. Qualified Military Service means qualified military service as defined in Code §414(u)(5). Notwithstanding any provision in the Plan to the contrary, as to Qualified Military Service, the Plan will credit Service under Section 1.40(C), the Employer will make contributions to the Plan and the Plan will provide benefits in accordance with Code §414(u).

1.60 Restated Plan. A Restated Plan means a plan the Employer adopts in substitution for, and in amendment of, an existing plan, as the Employer elects in its Adoption Agreement. The provisions of this Plan, as a Restated Plan, apply solely to an Employee whose employment with the Employer terminates on or after the restated Effective Date of the Plan, except as otherwise set forth in the Adoption Agreement.

1.61 [Reserved]

1.62 Rollover Contribution. A Rollover Contribution means an amount of cash or property (including a Participant loan from another plan subject to the rules of the Vendor) which the Code permits an Eligible Employee or Participant to transfer directly or indirectly to this Plan from another Eligible Retirement Plan (or vice versa) within the meaning of Code §402(c)(8)(B) and Section 6.08(F)(2), except that the Plan may permit an In-Plan Roth Rollover Contribution as provided in Section 3.08(E).

(A) In-Plan Roth Rollover Contribution. An In-Plan Roth Rollover Contribution means a Rollover Contribution to the Plan that consists of a distribution or transfer from a Participant's Plan Account, other than a Roth Deferral Account, that the Participant transfers to the Participant's In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4). In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth Deferral Accounts, subject to preservation of Protected Benefits in accordance with clause (c) of Section 3.08(E)(3)(d).

(B) In-Plan Roth Rollover Contribution Account. An In-Plan Roth Rollover Contribution Account is a sub-account the Plan Administrator or Vendor may establish to account for a Participant's Rollover Contributions attributable to the Participant's In-Plan Roth Rollover Contributions. The Plan Administrator has authority to establish such a sub-account, and to the extent necessary, may establish sub-accounts based on the source of the In-Plan Roth Rollover Contribution. The Plan Administrator will administer an In-Plan Roth Rollover Contribution Account in accordance with Code and the Plan provisions.

1.63 Safe Harbor Contribution/Additional Matching Contribution. Safe Harbor Contribution means a Safe Harbor Nonelective Contribution or a Safe Harbor Matching Contribution as the Employer elects in its Adoption Agreement. Additional Matching Contribution means as the Employer elects in its Adoption Agreement. See Section 3.05.

1.64 Salary Reduction Agreement. A Salary Reduction Agreement means a Participant's written election to reduce his or her Compensation (and have that amount contributed as Elective Deferrals to the Plan).

1.65 Separation from Service/Severance from Employment. "Severance from Employment" or "Separation from Service" occurs when an Employee ceases to be employed by the Employer maintaining the Plan or a Related Employer that is eligible to maintain a section 403(b) Plan under Treas. Reg. §1.403(b)-2(b)(8), even if the Employee remains employed with another entity that is a Related Employer where either (a) such Related Employer is not an Eligible Employer or (b) the Employee is employed or in a capacity that is not employment with an eligible employer.

1.66 Service. Service means any period of time the Employee is in the employ of the Employer, including any period the Employee is on an unpaid leave of absence authorized by the Employer under a uniform, nondiscriminatory policy applicable to all Employees. See Section 1.29(B) related to Service for Related Employers.

(A) Predecessor Employer. A Predecessor Employer is an employer that previously employed one or more of the Employees.

(B) Predecessor Employer Service. If the Employer maintains (by adoption, plan merger or transfer) the plan of a Predecessor Employer, service of the Employee with the Employer.

(C) Elective Service Crediting. Except as provided in Section 1.66(B), the Plan does not credit Service with the Predecessor Employer unless the Employer, in its Adoption Agreement (or in a Participation Agreement, if applicable) elects to credit

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designated Predecessor Employer Service and specifies the purposes for which the Plan will credit service with that Predecessor Employer. Unless the Employer under its Adoption Agreement provides for this purpose specific Entry Dates, an Employee who satisfies the Plan's eligibility condition(s) by reason of the crediting of Predecessor Employer Service will enter the Plan in accordance with the provisions of Article 2 as if the Employee were a re-employed Employee on the first day the Plan credits Predecessor Employer Service. The Service crediting under this provision will comply with Treas. Reg. §1.401(a)(4)-11(d)(3).

1.67 [Reserved]

1.68 Successor Plan. Successor Plan means a plan in which at least 50% of the Eligible Employees of the first Plan Year were eligible under another 403(b) Plan maintained by the Employer in the prior Plan Year.

1.69 Taxable Year. Taxable Year means the taxable year of a Participant.

1.70 Vested. Vested means a Participant or a Beneficiary has an unconditional claim, legally enforceable against the Plan, to the Participant's Accumulated Benefit or to a portion thereof if not 100% vested.

1.71 USERRA. USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

1.72 Vendor. Vendor means the provider of an Annuity Contract or Custodial Account, as the context requires. With regard to an Investment Arrangement, the Vendor is the provider of that Investment Arrangement. With regard to a Participant, the Vendor is the provider of any Investment Arrangement holding an Account for the Participant.

1.73 Year of 403(b) Service. For purposes of determining Includible Compensation or Special Catch-Up Contributions, Year of 403(b) Service means each full year during which an individual is a full-time Employee of the Employer, plus fractional credit for each part of a year during which the individual is either a full-time Employee of the Employer for a part of a year or a part-time Employee of the Employer, determined under Treas. Reg. §1.403(b)-4(e). An Employee's number of Years of 403(b) Service equals the aggregate of such years or parts of years. The work period is the Employer's annual work period.

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ARTICLE 2. ELIGIBILITY AND PARTICIPATION

2.01 ELIGIBILITY. Each Eligible Employee becomes a Participant in the Plan in accordance with the eligibility conditions the Employer elects in its Adoption Agreement. The Employer may elect different age and service conditions for different Contribution Types under the Plan.

(A) Elective Deferrals/Universal Availability. The provisions of this Section 2.01(A) apply if the Employer is not a Church or if the Employer does not maintain another plan that satisfies the universal availability requirements of Code §403(b)(12). An Employee, other than an Excluded Employee with regard to Elective Deferrals, becomes a Participant in the Elective Deferral portion of the Plan on the date the Employer provides the Employee a participant notice of the right to defer. The Employer will provide such a notice to the Employee within 30 days after commencement of employment (or, if later, 30 days after the date the Employee ceases to be an Excluded Employee). If the Plan places any restrictions on a Participant's right to make a deferral election, the Participant, at a minimum, must have the right to make an initial deferral election within a 30-day period following the date the notice is provided. In no event may a Participant's deferral election be effective prior to the Effective Date of the Plan. For purposes of this Paragraph, an Employee of a Related Employer that is not a Participating Employer is an Excluded Employee with respect to Elective Deferrals.

(B) Other Contributions. The provisions of this Section 2.01(B) apply to Employer Contributions and Employee Contributions, and do not apply to Elective Deferrals. However, if the Employer is a Church or if the Employer maintains another plan that satisfies the universal availability requirements of Code §403(b)(12), then the provisions of this Section 2.01(B) also apply to Elective Deferrals.

(1) **Eligibility Conditions.** The Employer in its Adoption Agreement will elect the age and service conditions applicable to Employer Contributions or Employee Contributions (or Elective Deferrals if the Employer is a Church or if the Employer maintains another plan that satisfies the universal availability requirements of Code §403(b)(12)), if any. For purposes of an Eligible Employee's participation in Employer Contributions or Employee Contributions, the Plan may not impose an age condition exceeding age 21 and may not require completion of more than one Year of Service, except as provided under Sections 2.02(E) or (G).

(2) **New Plan.** Any Eligible Employee who has satisfied the Plan's eligibility conditions and who has reached his/her Entry Date as of the Effective Date is eligible to participate as of the Effective Date, assuming the Employer continues to employ the Employee on that date. Any other Eligible Employee becomes eligible to participate: (1) upon satisfaction of the eligibility conditions and reaching his/her Entry Date; or (2) upon reaching his/her Entry Date if such Employee had already satisfied the eligibility conditions prior to the Effective Date.

(3) **Restated Plan.** If this Plan is a Restated Plan, each Employee who was a Participant in the Plan on the day before the restated Effective Date continues as a Participant in the Restated Plan, irrespective of whether he/she satisfies the eligibility conditions of the Restated Plan, unless the Employer provides otherwise in its Adoption Agreement.

(4) **Special Eligibility Effective Date (Dual Eligibility).** The Employer in its Adoption Agreement may elect to provide a special Effective Date for the Plan's eligibility conditions, with the effect that such conditions may apply only to Employees who are employed by the Employer after a specified date.

2.02 APPLICATION OF SERVICE CONDITIONS. The Plan Administrator will apply this Section 2.02 in administering the Plan's eligibility service condition(s) for Employer Contributions, Mandatory Employee Contributions and Employee Contributions (and, if the Employer is a Church or the Employer maintains another plan that satisfies the universal availability requirements, Elective Deferrals), if any.

(A) Definition of Year of Service. A Year of Service for purposes of an Employee's participation in the Plan, means the applicable Eligibility Computation Period under Section 2.02(C), during which the Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement, without regard to whether the Employer continues to employ the Employee during the entire Eligibility Computation Period.

(B) Counting Years of Service. For purposes of an Employee's participation in the Plan, the Plan counts all of an Employee's Years of Service, except as provided in Section 2.03.

(C) Initial and Subsequent Eligibility Computation Periods. If the Plan requires one Year of Service for eligibility and an Employee does not complete one Year of Service during the Initial Eligibility Computation Period, the Plan measures Subsequent Eligibility Computation Periods in accordance with the Employer's election in its Adoption Agreement. If the Plan measures Subsequent Eligibility Computation Periods on a Plan Year basis, an Employee who receives credit for the required number of Hours of Service during the Initial Eligibility Computation Period and also during the first applicable Plan Year receives credit for two Years of Service under Article 2.

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(1) **Definition of Eligibility Computation Period.** An Eligibility Computation Period is a 12-consecutive month period.

(2) **Definition of Initial Eligibility Computation Period.** The "Initial Eligibility Computation Period" is the Employee's Anniversary Year which begins on the Employee's Employment Commencement Date.

(3) **Definition of Anniversary Year.** An Employee's "Anniversary Year" is the 12-consecutive month period beginning on the Employee's Employment Commencement Date or on anniversaries thereof.

(4) **Definitions of Employment Commencement Date/Re-Employment Commencement Date.** An Employee's Employment Commencement Date is the date on which the Employee first performs an Hour of Service for the Employer. An Employee's Re-Employment Commencement Date is the date on which the Employee first performs an Hour of Service for the Employer after the Employer re-employs the Employee.

(5) **Definition of Subsequent Eligibility Computation Period.** A Subsequent Eligibility Computation Period is any Eligibility Computation Period after the Initial Eligibility Computation Period, as the Employer elects in its Adoption Agreement.

(D) Entry Date. The Employer in its Adoption Agreement elects the Entry Date(s) and elects whether such Entry Date(s) are retroactive, coincident with or next following an Employee's satisfaction of the Plan's eligibility conditions. The Employer may elect to apply different Entry Dates to different Contribution Types.

(1) **Definition of Entry Date.** See Section 1.31.

(2) **Maximum delay in participation.** An Entry Date may not result in an Eligible Employee who has satisfied the Plan's eligibility conditions being held out of Plan participation longer than six months, or if earlier, the first day of the next Plan Year, following completion of the maximum eligibility requirements.

(E) Alternative Service Conditions. The Employer in its Adoption Agreement may elect to impose for eligibility a condition of less than one Year of Service or of more than one Year of Service, but not exceeding two Years of Service. If the Employer elects an alternative Service condition to one Year of Service or two Years of Service, the Employer must elect in its Adoption Agreement the Hour of Service and other requirement(s), if any, after the Employee completes one Hour of Service. Under any alternative Service condition election, the Plan may not require an Employee to complete more than one Year of Service (1,000 Hours of Service in 12-consecutive months) or two Years of Service, if applicable.

(1) **Vesting requirement.** If the Employer elects to impose more than a one Year of Service eligibility condition, the Plan Administrator must apply 100% vesting on any Employer Contributions (and the resulting Accounts) subject to that eligibility condition.

(2) **One Year of Service maximum for specified Contributions.** The Plan may not require more than one Year of Service for eligibility for an Eligible Employee to receive Safe Harbor Contributions.

(3) **Months and days.** The Plan Administrator may, on a uniform and consistent basis, apply Plan provisions relating to months based on a 30-day month, or may adopt other reasonable conventions as it may deem beneficial for efficient Plan administration.

(F) Equivalency or Elapsed Time. If the Employer in its Adoption Agreement elects to apply the Equivalency Method or the Elapsed Time Method in applying the Plan's eligibility Service condition, the Plan Administrator will credit Service in accordance with Sections 1.40(D)(2) and (3).

(G) Maximum age for educational institution. If (1) this Plan is maintained exclusively for Employees of an educational organization as defined in Code §170(b)(1)(A)(ii); (2) the Plan does not require more than one Year of Service as a condition for entry; and (3) the Plan provides full vesting after no more than one Year of Service, the maximum age restriction of Section 2.01(B)(1) is applied by substituting "26" for "21."

2.03 BREAK IN SERVICE – PARTICIPATION. The Plan Administrator will apply this Section 2.03 if any Break in Service rule applies under the Plan. The Break in Service rules do not apply to Elective Deferrals.

(A) Definition of Break in Service. For purposes of this Article 2, an Employee incurs a Break in Service if during any applicable Eligibility Computation Period he/she does not complete more than 500 Hours of Service with the Employer. The Eligibility Computation Period under this Section 2.03(A) is the same as the Eligibility Computation Period the Plan uses to measure a Year of Service under Section 2.02. On a uniform and nondiscriminatory basis, the Plan Administrator may disregard a Break in Service for an Eligibility Computation Period if the Employee is in service on the last day of that period. If the Plan applies the Elapsed Time Method of crediting Service under Section 1.40(D)(3), a Participant incurs a "Break in Service" if the Participant has a Period of Severance of at least 12 consecutive months.

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(B) Two Year Eligibility. If the Employer under the Adoption Agreement elects a two Years of Service eligibility condition, an Employee who incurs a one year Break in Service prior to completing two Years of Service: (1) is a new Employee, on the date he/she first performs an Hour of Service for the Employer after the Break in Service; (2) the Plan disregards the Employee's Service prior to the Break in Service; and (3) the Employee establishes a new Employment Commencement Date for purposes of the Initial Eligibility Computation Period under Section 2.02(C).

(C) USERRA. An Employee who has completed Qualified Military Service and who the Employer has rehired under USERRA, does not incur a Break in Service under the Plan by reason of the period of such Qualified Military Service.

(D) One Year Hold-Out Rule-Participation. The Employer in its Adoption Agreement must elect whether to apply the "one year hold-out" rule under ERISA §202(b)(3). Under this rule, a Participant will incur a suspension of participation in the Plan after incurring a one year Break in Service and the Plan disregards a Participant's Service completed prior to a Break in Service until the Participant completes one Year of Service following the Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the Eligibility Computation Period following the Eligibility Computation Period in which the Participant incurs the Break in Service.

(1) **Completion of one Year of Service.** If a Participant completes one Year of Service following his/her Break in Service, the Plan restores the Participant's pre-break Service and the Participant resumes active participation in the Plan retroactively to the first day of the Eligibility Computation Period in which the Participant first completes one Year of Service following his/her Break in Service.

(2) **Eligibility Computation Period.** The Plan Administrator measures the Initial Eligibility Computation period under this Section 2.03(D) from the date the Participant first receives credit for an Hour of Service following the one year Break in Service. The Plan Administrator measures any Subsequent Eligibility Computation Periods, if necessary, in a manner consistent with the Employer's Eligibility Computation Period election in its Adoption Agreement, using the Re-Employment Commencement Date in determining the Anniversary Year if applicable.

(3) **Limited to separated Employees.** The one year hold-out rule will only apply to a Participant who has incurred a Separation from Service.

(4) **Application to Employee who did not enter.** The Plan Administrator also will apply the one year hold-out rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions, but who incurs a Separation from Service and a one year Break in Service prior to becoming a Participant.

(5) **No effect on vesting or Earnings.** This Section 2.03(D) does not affect a Participant's vesting credit under Article 5 and, during a suspension period, the Participant's Account continues to share fully in Earnings under Article 7.

(6) **No restoration under two year break rule.** The Plan Administrator in applying this Section 2.03(D) does not restore any Service disregarded under the Break in Service rule of Section 2.03(B).

(7) **No application to Elective Deferrals.** If the Employer in its Adoption Agreement elects to apply the Section 2.03(D) one year hold-out rule, the Plan Administrator will not apply such provisions to the Elective Deferral portion of the Plan.

(E) Rule of Parity – Participation. For purposes of Plan participation, the Plan does not apply the "rule of parity" under ERISA §202(b)(4), unless the Employer in Appendix B to its Adoption Agreement elects to apply the rule of parity.

2.04 PARTICIPATION UPON RE-EMPLOYMENT. The provisions of Paragraphs (A), (B), and (C) of this Section 2.04 apply to Employer Contributions, Employee Contributions and (if the Employer is a Church), Elective Deferrals. An Employee who incurs a Separation from Service will enter or re-enter the Plan as a Participant for purposes of Elective Deferrals on his/her Re-employment Commencement Date (provided he/she is not an Excluded Employee).

(A) Rehired Participant/Immediate Re-Entry. A Participant who incurs a Separation from Service will re-enter the Plan as a Participant on the date of his/her Re-Employment Commencement Date (provided he/she is not an Excluded Employee), subject to any Break in Service rule, if applicable, under Section 2.03.

(B) Rehired Eligible Employee Who Had Satisfied Eligibility. An Eligible Employee who satisfies the Plan's eligibility conditions, but who incurs a Separation from Service prior to becoming a Participant, subject to any Break in Service rule, if applicable, under Section 2.03, will become a Participant on the later of: (1) the Entry Date on which he/she would have entered the Plan had he/she not incurred a Separation from Service; or (2) his/her Re-Employment Commencement Date.

(C) Rehired Eligible Employee Who Had Not Satisfied Eligibility. An Eligible Employee who incurs a Separation from Service prior to satisfying the Plan's eligibility conditions, becomes a Participant in accordance with the Employer's Adoption

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Agreement elections. The Plan Administrator, for purposes of applying any shift in the Eligibility Computation Period, takes into account the Employee's prior Service and the Employee is not treated as a new hire.

2.05 CHANGE IN EMPLOYMENT STATUS. The Plan Administrator will apply this Section 2.05 if the Employer in its Adoption Agreement elected to exclude any Employees as Excluded Employees. Although the provisions of this Section describe exclusion from the Plan as a whole, the Plan Administrator will apply the principles of this Section as appropriate to an individual excluded from one or more Contribution Types, as authorized in Section 1.35.

(A) Participant Becomes an Excluded Employee. If a Participant has not incurred a Separation from Service but becomes an Excluded Employee, during the period of exclusion the Excluded Employee: (i) will not share in the allocation of any Employer Contributions or Participant forfeitures, based on Compensation paid to the Excluded Employee during the period of exclusion; (ii) may not make Employee Contributions; and (iii) may not make Elective Deferrals as to Compensation paid to the Excluded Employee during the period of exclusion.

(1) **Vesting, accrual, Break in Service and Earnings.** A Participant who becomes an Excluded Employee under this Section 2.05(A) continues: (a) to receive Service credit for vesting under Article 5 for each included vesting Year of Service; (b) to receive Service credit for applying any allocation conditions under Section 3.06 as to Employer Contributions accruing for any non-excluded period; (c) to receive Service credit in applying the Break in Service rules; and (d) to share fully in Earnings under Article 7.

(2) **Resumption of Eligible Employee status.** If a Participant who becomes an Excluded Employee subsequently resumes status as an Eligible Employee, the Participant will participate in the Plan immediately upon resuming eligible status, subject to the Break in Service rules, if applicable, under Section 2.03.

(B) Excluded Employee Becomes Eligible. If an Excluded Employee who is not a Participant becomes an Eligible Employee, he/she will participate immediately in the Plan if he/she has satisfied the Plan's eligibility conditions and would have been a Participant had he/she not been an Excluded Employee during his/her period of Service. An Excluded Employee receives Service credit for eligibility, for allocation conditions under Section 3.06 (but the Plan disregards Compensation paid while excluded) and for vesting under Article 5 for each included vesting Year of Service, notwithstanding the Employee's Excluded Employee status.

2.06 TERMINATION OF PARTICIPATION. Once an Eligible Employee becomes a Participant, he or she will continue to be a Participant until the Plan distributes the Participant's entire Account Balance.

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ARTICLE 3. PLAN CONTRIBUTIONS AND FORFEITURES

3.01 CONTRIBUTION TYPES. The Employer in its Adoption Agreement will elect the Contribution Type(s) and any formulas, allocation methods, conditions and limitations applicable thereto, except where the Plan expressly reserves discretion to the Employer or to the Plan Administrator.

(A) Application of Limits. The Employer will not make a contribution to an Investment Arrangement for any Plan Year to the extent the contribution would exceed any Article 4 limit or other Plan limit.

(B) Compensation for Allocations/Limit. The Plan will allocate all Employer Contributions and Elective Deferrals based on the definition of Compensation the Employer elects in its Adoption Agreement for a particular Contribution Type. Except for a Plan maintained by a Church, the Plan Administrator in allocating such contributions must limit each Participant's Compensation in accordance with the provisions of Section 1.11(E). In determining Compensation from which a Participant may make Elective Deferrals, the Compensation dollar limitation described in Section 1.11(E) does not apply.

(C) Allocation Conditions. The Plan Administrator will allocate Employer Contributions only to those Participants who satisfy the Plan's allocation conditions under Section 3.06, if any, for the Contribution Type being allocated.

(D) Time of Payment of Contribution. The Employer may pay Employer Contributions for any Plan Year in one or more installments without interest. Unless otherwise required by the relevant Investment Arrangement Documentation or the Code, the Employer may make an Employer Contribution to the Plan for a particular Plan Year at such time(s) as the Employer in its sole discretion determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate the Plan Year for which the Employer is making the Employer Contribution. The Plan will allocate the contribution accordingly.

(E) Return of Employer Contribution. The Employer contributes to the Plan on the condition its contribution is not due to a mistake of fact.

(1) **Request for contribution return/timing.** The Vendor, upon written request from the Employer, must return to the Employer (or, if applicable, directly to the Participant) the amount of the Employer Contribution made by the Employer by mistake of fact. The Vendor will not return any portion of the Employer Contribution under the provisions of this Section 3.01(E) more than one year after the Employer made the contribution by mistake of fact.

(2) **Earnings.** The Vendor will adjust the amount of the Employer Contribution returnable under this Section 3.01(E) for any Earnings attributable to the contribution.

(3) **Evidence.** The Vendor may require the Employer to furnish the Vendor whatever evidence the Vendor deems necessary to enable the Vendor to confirm the amount the Employer has requested be returned can be returned consistent with the Code.

(F) Frozen Plans. The Employer in its Adoption Agreement (or in an Employer resolution) may elect to treat the Plan as a Frozen Plan. Under a Frozen Plan, the Employer and the Participants will not make any contributions to the Plan. The Plan provisions, other than those requiring contributions, continue in effect until the Employer terminates the Plan. An Eligible Employee will not become a Participant in a Frozen Plan after the date the Plan becomes a Frozen Plan.

3.02 ELECTIVE DEFERRALS. If the Employer in its Adoption Agreement elects to permit Elective Deferrals, the provisions of this Section 3.02 will apply. A Participant's Elective Deferrals will be made pursuant to a Salary Reduction Agreement unless the Employer elects in its Adoption Agreement to apply the Automatic Deferral provision under Section 3.02(B). The Participant prospectively may modify or revoke a Salary Reduction Agreement, or may file a new Salary Reduction Agreement following a prior revocation, at least once per Plan Year or more frequently as specified in the Plan's Salary Reduction Agreement.

(A) Administrative provisions. The Salary Reduction Agreement shall be made through a form provided by, and filed with, the Plan Administrator or its designated agent. The Employee's elections with respect to Investment Arrangements and allocations (and reallocations) among Accounts, if not included in the Salary Reduction Agreement, shall be included in other records maintained under the Plan.

(1) **Minimum/Maximum Amount.** The Salary Reduction Agreement may establish an annual minimum deferral amount no higher than $200, and may change such minimum to a different amount (but not in excess of $200) from time to time. The Salary Reduction Agreement may also establish a uniform maximum deferral limit in the Salary Reduction Agreement.

(2) **Termination.** Any election on a Salary Reduction Agreement shall remain in effect until a new election is filed or the election is revoked or cancelled. The termination of a Participant's employment automatically revokes the Participant's election with regard to Compensation earned after the Participant is rehired.

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(3) **Effective Date.** A Salary Reduction Agreement may not be effective earlier than the following date which occurs last: (1) under Article 2, the Participant's Entry Date or, in the case of a re-hired Employee, his/her re-participation date; (2) the execution date of the Salary Reduction Agreement; (3) the date the Employer adopts the 403(b) Plan; or (4) the Effective Date of the 403(b) Plan. Subject to these limitations, the Salary Reduction Agreement shall be effective as soon as administratively practical after execution.

(4) **Compensation.** A Salary Reduction Agreement must specify the dollar amount of Compensation or the percentage of Compensation the Participant wishes to defer. The Salary Reduction Agreement will apply: (1) only to Compensation which becomes currently available after the effective date of the Salary Reduction Agreement; and (2) to all or to such Elective Deferral Compensation as the Salary Reduction Agreement indicates, including any Participant elections made in the Salary Reduction Agreement. Also see Section 1.11(G) relating to non-cash Compensation. Participants may not make Elective Deferrals from amounts that are not Code §415 Compensation under Section 4.05(D). In addition, a Participant may not make Elective Deferrals from amounts which are not Compensation under Section 1.11 even if 415 Compensation is more inclusive. In determining Compensation from which a Participant may make Elective Deferrals, the Compensation dollar limitation described in Section 1.11(E) does not apply.

(5) **Additional Rules.** The Plan Administrator in the Plan's Salary Reduction Agreement form, or in a Salary Reduction Agreement policy will specify additional rules and restrictions applicable to a Participant's Salary Reduction Agreement, including but not limited to those regarding the timing, frequency and mechanics of changing or revoking a Salary Reduction Agreement or any uniform limitations with regard to deferrals in addition to those otherwise provided in the Plan. Any such rules and restrictions must be consistent with the Plan and with the Code. The Plan Administrator may provide more than one Salary Reduction Agreement form for use in specific situations.

(B) Automatic Deferrals. The Employer in its Adoption Agreement will elect whether to apply or not apply the Automatic Deferral provisions. The Employer may elect the Automatic Deferral provisions under Section 3.02(B)(1) (an ACA), Section 3.02(B)(2) (an EACA), or Section 3.02(B)(3) (a QACA). If the QACA provisions apply, the safe harbor provisions of Section 3.05(J) and EACA provisions of Section 3.02(B)(2) also apply. The Plan Administrator will treat Automatic Deferrals as Elective Deferrals for all purposes under the Plan, including application of limitations, nondiscrimination testing and distributions. If the Employer in its Adoption Agreement has elected to permit Roth Deferrals, Automatic Deferrals are Pre-Tax Deferrals unless the Employer in Appendix B to its Adoption Agreement elects otherwise. Automatic Deferrals will not apply to a Participant until after the Participant has had a reasonable period of time after being informed of the automatic deferral procedure to make a Contrary Election (and, if applicable, an investment election).

(1) **Automatic Contribution Arrangement (ACA).** If the Employer elects in its Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as an Automatic Contribution Arrangement ("ACA"), effective as of the date the Employer elects in the Adoption Agreement, and the provisions of this Section 3.02(B)(1) will apply.

(a) **Participants subject to ACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the ACA Automatic Deferral on the Effective Date thereof, including some or all current Participants and those Employees who become Participants after the ACA Effective Date.

(b) **Effect of Contrary Election.** A Participant who makes a Contrary Election is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later modifies the Contrary Election. A Participant's Contrary Election continues in effect until the Participant subsequently changes his/her Salary Reduction Agreement or the Salary Reduction Agreement is revoked.

(2) **Eligible Automatic Contribution Arrangement (EACA).** If the Employer elects in its Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as an Eligible Automatic Contribution Arrangement ("EACA"), effective as of the date the Employer elects in its Adoption Agreement and the provisions of this Section 3.02(B)(2) will apply.

(a) **Participants subject to EACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the EACA Automatic Deferral on the Effective Date thereof which may include some or all current Participants or may be limited to those Employees who become Participants after the EACA Effective Date.

(i) **EACA Effective Date.** EACA Effective Date means the date on which the EACA goes into effect, either as to the overall Plan or as to an individual Participants as the context requires. An EACA becomes effective as to the Plan as of the date the Employer elects in its Adoption Agreement. A Participant's EACA Effective Date is as soon as practicable after the Participant is subject to Automatic Deferrals under the EACA, consistent with the objective of affording the Participant a reasonable period of time after receipt of the EACA notice to make a Contrary Election (and, if applicable, an investment election).

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

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

(ii) **No reduction from prior default percentage.** The Employer elects in the Adoption Agreement not to apply Automatic Deferrals to a Participant whose Elective deferrals immediately prior to the EACA's Effective Date were higher than the Automatic Deferral Percentage;

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

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

(v) **Disaggregated groups.** The Plan applies different Automatic Deferral Percentages to different groups if the groups can be disaggregated under Treas. Reg. §1.410(b)-7.

(c) **EACA notice.** The Plan Administrator annually will provide a notice to each Covered Employee within a reasonable period prior to each Plan Year the Employer maintains the Plan as an EACA ("EACA Plan Year").

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

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

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

(d) **EACA permissible withdrawal.** The Employer will elect in its Adoption Agreement whether a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable Earnings) under the provisions of this Section 3.02(B)(2)(d). Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

(i) **Amount.** If a Participant elects a permissible withdrawal under this Section 3.02(B)(2)(d), then the Plan must make a distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for Earnings to the date of the distribution). The Plan may account separately for Automatic Deferrals, in which case the Plan will distribute the entire Account. If the Plan does not account separately for the Automatic Deferrals, then the Plan must determine Earnings in a manner similar to the refund of Excess Aggregate Contributions as defined in Section 4.10(b)(3).

(ii) **Fees.** Notwithstanding Section 3.02(B)(2)(d)(i), the Plan Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section 3.02(B)(2)(d)(ii), than applies to other distributions. The Plan Administrator may adopt a policy regarding charging such fees consistent with this Paragraph.

(iii) **Timing.** The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days, or such shorter period as the Employer specifies in its Adoption Agreement (but not less than 30 days), after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. For purposes of the preceding

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sentence, EACAs under the Plan are aggregated, except that the mandatory disaggregation rules of Code §410(b) apply. In addition, a Participant's withdrawal right is not restricted due to the Participant making a Contrary Election during the 90-day period (or shorter period as the Employer specifies in its Adoption Agreement).

(iv) **Rehired Employees.** For purposes of Section 3.02(B)(2)(b)(i), the Plan will treat an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA as having not had such contributions for any prior Plan Year as well.

(v) **Effective date of the actual withdrawal election.** The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of: (A) the pay date of the second payroll period beginning after the Participant makes the election; or (B) the first pay date that occurs at least 30 days after the Participant makes the election. The election also will be deemed to be the Participant's Contrary Election to have no Elective Deferrals made to the Plan. However, the Participant may subsequently make a deferral election hereunder.

(vi) **Related Matching Contributions.** The Plan Administrator will not take into account any deferrals withdrawn pursuant to this Section 3.02(B)(2)(d) in computing and allocating Matching Contributions. If the Employer already has allocated Matching Contributions to the Participant's account with respect to Elective Deferrals being withdrawn pursuant to this Section, the Plan must forfeit the Matching Contributions, as adjusted for Earnings.

(vii) **Treatment of withdrawals.** With regard to Elective Deferrals withdrawn pursuant to this Section 3.02(B)(2)(d): (A) the Plan Administrator will disregard such Deferrals for purposes of the Elective Deferral Limit under Section 4.10(A); and (B) such Deferrals are not subject to the consent requirements of ERISA §205. The Plan Administrator will disregard any Matching Contributions forfeited under Section 3.02(B)(2)(d)(vi) in the ACP test (if applicable) under Section 4.10(B).

(e) **Effect of Contrary Election/Covered Employee status.** A Participant's Contrary Election continues in effect until the Participant subsequently revokes or modifies his/her Salary Reduction Agreement, or the Contrary Election expires. A Participant who makes a Contrary Election is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes the Contrary Election or the Contrary Election expires, unless the Participant is a Covered Employee.

(i) **Covered Employee.** A Covered Employee is a Participant who is subject to the EACA. The Employer in its Adoption Agreement will elect whether a Participant who makes a Contrary Election is a Covered Employee. A Covered Employee must receive the annual EACA notice even though the Participant's Contrary Election remains in effect. In addition, a Covered Employee who revokes his/her Contrary Election or whose Contrary Election expires, is thereafter immediately subject to the EACA Automatic Deferral.

(3) **Qualified Automatic Contribution Arrangement (QACA).** If the Employer elects in its Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as a Qualified Automatic Contribution Arrangement ("QACA"), effective as of the date the Employer elects in its Adoption Agreement and the provisions of this Section 3.02(B)(3) and of Section 3.05(J) will apply. If this Plan is a QACA, then the Employer may elect in its Adoption Agreement to provide EACA permissible withdrawals, as described in Section 3.02(B)(2)(d).

(a) **Participants subject to QACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the QACA Automatic Deferral on the Effective Date thereof including some or all current Participants and those Employees who become Participants after the QACA Effective Date. The Employer must elect to apply the QACA Automatic Deferral at least to those Participants as of the QACA Effective Date who do not have in effect a Salary Reduction Agreement and may also elect to apply the QACA Automatic Deferral to such Participants who have an existing Salary Reduction Agreement in effect as provided in the Adoption Agreement.

(i) **QACA Effective Date.** QACA Effective Date means the date on which the QACA goes into effect, either as to the overall Plan or as to an individual Participant as the context requires. A QACA becomes effective as to the Plan as of the date the Employer elects in its Adoption Agreement. A Participant's QACA Effective Date is as soon as practicable after the Participant is subject to Automatic Deferrals under the QACA, consistent with the objective of affording the Participant a reasonable period of time after receipt of the QACA notice to make a Contrary Election (and, if applicable, an investment election). However, in no event will the Automatic Deferral be effective later than the earlier of: (1) the pay date for the second payroll period that begins after the date the QACA safe harbor notice (described in Section 3.05(H)) is provided to the Employee, or (2) the first pay date that occurs at least 30 days after the QACA safe harbor notice is provided to the Employee.

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(b) **QACA Automatic Deferral Percentage.** Except as provided in Section 3.02(B)(3)(c) (relating to uniformity requirements), the Plan must apply to all Participants subject to the QACA as described in Section 3.02(B)(3)(a), a uniform Automatic Deferral Percentage, as a percentage of each Participant's Compensation, which does not exceed 10%, and which is at least the following minimum amount:

(i) **Initial period.** 3% for the period that begins when the Participant first has contributions made pursuant to a default election under the QACA and ends on the last day of the following Plan Year;

(ii) **Third Plan Year.** 4% for the third Plan Year of QACA participation;

(iii) **Fourth Plan Year.** 5% for the fourth Plan Year of QACA participation; and

(iv) **Fifth and later Plan Years.** 6% for the fifth Plan Year of the Participant's participation in the QACA and for each subsequent Plan Year.

For purposes of this Section 3.02(B)(3)(b), the Plan will treat a Participant who for an entire Plan Year did not have Automatic Deferral contributions made under the QACA as not having made such contributions for any prior Plan Year.

(c) **Uniformity.** The uniformity provisions of Section 3.02(B)(2)(b) applicable to an EACA, also apply to a QACA.

(d) **QACA Notice.** See Section 3.05(H)(5) as to QACA notice provisions.

(e) **Effect of Contrary Election and termination of Election.** A Participant's Contrary Election continues in effect until a Participant modifies or revokes the Election, or until the Election expires. A Participant who revokes his/her Contrary Election or whose Contrary Election expires, is thereafter immediately subject to the QACA Automatic Deferral.

(4) **Automatic Contribution Definitions.** The following definitions apply to all Automatic Contribution Arrangements under this Section 3.02(B):

(a) **Automatic Deferral.** An Automatic Deferral is an Elective Deferral that results from the operation of Section 3.02(B)(1), Section 3.02(B)(2) or Section 3.02(B)(3). Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage or Amount the Compensation of each Participant subject to the Automatic Deferral, except those Participants who timely make a Contrary Election.

(b) **Automatic Deferral Percentage/Increases.** The Automatic Deferral Percentage is the percentage of Automatic Deferral which the Employer elects in its Adoption Agreement including any scheduled increase to the Automatic Deferral Percentage which the Employer may elect. If a Participant subject to the Automatic Deferral elected, before the Effective Date of the Automatic Deferral, to defer an amount which is less than the Automatic Deferral Percentage the Employer has elected in its Adoption Agreement, the Automatic Deferral Percentage includes only the incremental percentage amount necessary to increase the Participant's Elective Deferral to equal the Automatic Deferral Percentage, including any scheduled increases thereto. See Section 3.02(B)(3)(b) as to the QACA required Automatic Deferral Percentage.

(c) **Compensation.** Compensation means nondiscriminatory Compensation as described in Section 1.11(F) provided that the Employer in its Adoption Agreement may not elect to limit NHCE Compensation to a specified dollar amount.

(d) **Contrary Election.** A Contrary Election is a Participant's election made after the ACA, EACA or QACA Effective Date not to defer any Compensation or to defer an amount which is more or less than the Automatic Deferral Percentage.

(e) **Contrary Election Effective Date.** A Participant's Contrary Election generally is effective as of the first administratively feasible payroll period which follows the payroll period in which the Participant makes the Contrary Election. However, a Participant may make a Contrary Election which is effective: (i) for the first payroll period in which he/she becomes a Participant if the Participant makes a Contrary Election within a reasonable period following the Participant's Entry Date and before the Compensation to which the Election applies becomes currently available; or (ii) for the first payroll period following the Effective Date of the Automatic Deferral, if the Participant makes a Contrary Election not later than the Effective Date of the Automatic Deferral.

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(C) Elective Deferrals as Employer Contributions. Where the context requires under the Plan, Elective Deferrals are Employer Contributions except: (1) under Section 3.04 relating to allocation of Employer Contributions; (2) under Section 3.06 relating to allocation conditions; and (3) under Section 5.03 relating to vesting.

(D) Qualified Organization Catch-Up. If the Employer is a Qualified Organization, the Employer in its Adoption Agreement may elect to permit a Qualified Participant to make a Qualified Organization Catch-Up Deferral under this Section 3.02(D). Qualified Organization Catch-Up Deferrals are not subject to the Elective Deferral Limit of Section 4.10(A).

(1) **Definition of Qualified Organization Catch-Up Deferral.** For any calendar year in which an Employee has completed at least 15 Years of 403(b) Service with the Qualified Organization, the Elective Deferral Limit will increase by the lesser of (1) $3,000; (2) $15,000 reduced by all the Employee's Qualified Organization Catch-up Deferrals for prior Taxable Years; (3) or the excess of $5,000 multiplied by the number of Years of 403(b) Service of the Employee with the Qualified Organization, over the Employee's deferral contributions made for prior Taxable Years pursuant to Code §§401(k), 408(k)(6), 408(p) or 403(b) other than deferrals under Code §414(v).

(2) **Definition of Qualified Organization.** For purposes of this Section 3.02(D), a "Qualified Organization" has the same meaning as provided in Treas. Reg. §1.403(b)-4(c)(3)(ii). This includes an educational organization described in Code §170(b)(1)(A)(ii), a hospital, a health and welfare service agency (including a home health service agency), a Church- Related Organization, or any organization described in Code §414(e)(3)(B)(ii). All entities that are in a Church-Related Organization or an organization controlled by a Church-Related Organization under Code §414(e)(3)(B)(ii) are treated as a single Qualified Organization (so that Years of 403(b) Service and any Qualified Organization Catch-Up Deferrals previously made for a Qualified Participant for a church or other entity within a Church-Related Organization or an organization controlled by the Church-Related Organization are taken into account for purposes of applying this Section 3.02(D) to the Employee with respect to any other entity within the same Church-Related Organization or organization controlled by a Church-Related Organization).

(3) **Definition of Qualified Participant.** For purposes of this Section 3.02(D), a "Qualified Participant" means a Participant who has completed at least 15 Years of 403(b) Service with the Qualified Organization.

(4) **Application of Annual Additions Limit.** A Qualified Organization Catch-Up Deferral is subject to the Annual Additions Limit in Section 4.05(B).

(5) **Application of both Catch-Ups.** A Participant, subject to applicable limits, may contribute both a Qualified Organization Catch-Up Deferral and an Age 50 Catch-Up Deferral. The Plan Administrator will treat any amounts so contributed first as a Qualified Organization Catch-Up Deferral.

(6) **Denominational Service.** For purposes of this Section (D), if the Employer is a Church-Related Organization, Denominational Service counts as service with the Qualified Organization in determining a Year of 403(b) Service.

(E) Age 50 Catch-Up Deferrals. The Employer in its Adoption Agreement may elect to permit Catch-Up Eligible Participants to make Age 50 Catch-Up Deferrals to the Plan under this Section 3.02(E).

(1) **Definition of Catch-Up Eligible Participant.** A Catch-Up Eligible Participant is a Participant who is eligible to make Elective Deferrals and who has attained age 50 or who will attain age 50 before the end of the Taxable Year in which he/she will make a Catch-Up Deferral. A Participant who dies or who incurs a Separation from Service before actually attaining age 50 in such Taxable Year is a Catch-Up Eligible Participant.

(2) **Definition of Age 50 Catch-Up Deferral.** An Age 50 Catch-up Deferral is an Elective Deferral by a Catch-up Eligible Participant and which exceeds: (a) a Plan limit on Elective Deferrals under Section 3.02(A); (b) the Annual Additions Limit under Section 4.05(B); or (c) the Elective Deferral Limit under Section 4.10(A).

(3) **Limit on Age 50 Catch-Up Deferrals.** A Participant's Age 50 Catch-Up Deferrals for a Taxable Year may not exceed the lesser of: (a) 100% of the Participant's Compensation for the Taxable Year when added to the Participant's other Elective Deferrals; or (b) the Catch-Up Deferral dollar limit in effect for the Taxable Year ($6,000 for 2017).

(4) **Adjustment after 2017.** After the 2017 Taxable Year, the IRS will adjust the Age 50 Catch-Up Deferral dollar limit in multiples of $500 under Code §414(v)(2)(C).

(5) **Treatment of Age 50 Catch-Up Deferrals.** Age 50 Catch-Up Deferrals are not: (a) subject to the Annual Additions Limit under Section 4.05(B); or (b) subject to the Elective Deferral Limit under Section 4.10(A).

(6) **Universal availability.** If the Employer permits Age 50 Catch-Up Deferrals to its Plan, the right of all Catch-Up Eligible Participants to make Age 50 Catch-Up Deferrals must satisfy the universal availability requirement of Treas. Reg. §1.414(v)-1(e). If the Employer maintains more than one applicable plan within the meaning of Treas. Reg. §1.414(v)-1(g)(1), and any of the applicable plans permit Catch-Up Deferrals, then any Catch-up Eligible Participant in

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any such plans must be permitted to have the same effective opportunity to make the same dollar amount of Catch-Up Deferrals. Any Plan-imposed limit that is based on total Elective Deferrals including Catch-Up Deferrals may not be less than 75% of a Participant's gross Compensation. This Section 3.02(E)(6) will not apply if the Employer is a Church.

(F) Roth Deferrals. The Employer in its Adoption Agreement may elect to permit Roth Deferrals. The Employer must also elect to permit Pre-Tax Deferrals if the Employer elects to permit Roth Deferrals. The Plan Administrator will administer Roth Deferrals in accordance with this Section 3.02(F).

(1) **Treatment of Roth Deferrals.** The Plan Administrator will treat Roth Deferrals as Elective Deferrals for all purposes of the Plan, except where the Plan indicates otherwise.

(2) **Separate accounting.** The Plan will establish a Roth Deferral Account for each Participant who makes any Roth Deferrals and Earnings thereon in accordance with Section 7.04(A)(1). The Plan will establish a Pre-Tax Account for each Participant who makes any Pre-Tax Deferrals in accordance with Section 7.04(A)(1). The Plan will credit only Roth Deferrals and Earnings thereon (allocated on a reasonable and consistent basis) to a Participant's Roth Deferral Account. The Vendor will be responsible only for contributions made under the Vendor's Investment Arrangement. Any Roth Elective Deferrals under an Investment Arrangement will be allocated to a separate Account maintained under the Investment Arrangement for the Participant's Roth Elective Deferrals.

(3) **No re-classification.** An Elective Deferral contributed to the Plan either as a Pre-Tax Deferral or as a Roth Deferral may not be re-classified as the other type of Elective Deferral, provided; however, that a Pre-Tax Deferral may be converted to a Roth Deferral by means of an In-Plan Roth Rollover under Section 3.08(E).

(G) Automatic Escalation. The Employer in its Adoption Agreement will elect whether to apply the Automatic Escalation provisions of this Section 3.02(G) to Salary Reduction Agreements. Such provisions shall apply to affirmative deferral elections and will not apply to Participants for whom the Employer is withholding Automatic Deferrals under Section 3.02(B). In its Adoption Agreement, the Employer will specify the Participants to whom Automatic Escalation applies, the amount by which the Elective Deferrals will increase, and the timing of the increase.

3.03 MATCHING CONTRIBUTIONS. If the Employer elects in its Adoption Agreement to provide for Matching Contributions, the Plan Administrator will apply the provisions of this Section 3.03.

(A) Matching Formula: Type, Rate/Amount, Limitations and Time Period. The Employer in its Adoption Agreement must elect the type(s) of Matching Contributions (Fixed or Discretionary Matching Contributions), and as applicable, the Matching Contribution rate(s)/amount(s), the limit(s) on Elective Deferrals or Employee Contributions subject to match, the limit(s) on the amount of Matching Contributions, and the time period the Plan Administrator will apply in the computation of any Matching Contributions. If the Employer in its Adoption Agreement elects to apply any limit on Matching Contributions based on pay periods or on any other time period which is less than the Plan Year, the Plan Administrator will determine the limits in accordance with the time period specified and will not take into account any other Compensation or Elective Deferrals not within the applicable time period, even in the case of a Participant who becomes eligible for the match mid-Plan Year and regardless of the Employer's election as to Pre-Entry Compensation. Unless otherwise specified in Appendix B to the Adoption Agreement, the Plan Administrator will take Elective Deferrals into account in computing Matching Contributions only if the Elective Deferrals were made after the Participant became eligible for the match. An Employee becomes "eligible for the match" when the Employee becomes a Participant in the Matching Contribution portion of the Plan.

(1) **Fixed Match.** The Employer in its Adoption Agreement may elect to make a Fixed Matching Contribution to the Plan under one or more formulas.

(a) **Allocation.** The Employer may contribute on a Participant's behalf under a Fixed Matching Contribution formula only to the extent that the Participant makes Elective Deferrals or Employee Contributions which are subject to the formula and if the Participant satisfies the allocation conditions for Fixed Matching Contributions, if any, the Employer elects in its Adoption Agreement.

(2) **Discretionary Match.** The Employer in its Adoption Agreement may elect to make a Discretionary Matching Contribution to the Plan.

(a) **Allocation.** To the extent the Employer makes Discretionary Matching Contributions, the Plan Administrator will allocate the Discretionary Matching Contributions to the Account of each Participant entitled to the match under the Employer's discretionary matching allocation formula and who satisfies the allocation conditions for Discretionary Matching Contributions, if any, the Employer elects in its Adoption Agreement. The Employer under a Discretionary Matching Contribution retains discretion over the amount of its Matching Contributions, and, except as the Employer otherwise elects in its Adoption Agreement, the Employer also retains discretion over the matching formula or formulas. See Section 1.47(B).

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(3) **Roth Deferrals.** Unless the Employer elects otherwise in its Adoption Agreement, the Employer's Matching Contributions apply in the same manner to Roth Deferrals as they apply to Pre-Tax Deferrals.

(4) **Contribution timing.** Except as described in Section 3.05 regarding a Safe Harbor 403(b) Plan, the time period that the Employer elects for computing its Matching Contributions does not require that the Employer actually contribute the Matching Contribution at any particular time. As to Matching Contribution timing and the ACP test, see Section 4.10(B)(5)(d)(iii).

(5) **Participating Employers.** If any Participating Employers contribute Matching Contributions to the Plan, the Employer in its Adoption Agreement must elect whether the Plan Administrator will allocate Matching Contributions only to Participants directly employed by the contributing Employer or to all Participants regardless of which Employer contributes or how much any Employer contributes. The allocation of Matching Contributions under this Section 3.03(A)(5) also applies to the allocation of any forfeiture attributable to Matching Contributions and which the Plan allocates to Participants.

(B) Matching Catch-Up Deferrals. The Employer in its Adoption Agreement must elect whether or not to match any Catch-Up Deferrals if the Plan permits Catch-Up Deferrals. The Employer's election to match Catch-Up Deferrals will apply to all Matching Contributions or will specify the Fixed Matching Contributions or Discretionary Matching Contributions which apply to the Catch-Up Deferrals. The Employer's election to match Catch-Ups may apply to Age 50 Catch-Ups, or to Qualified Organization Catch-Ups, or to both. Regardless of the Employer's Adoption Agreement election, in a Safe Harbor 403(b) Plan, the Plan will match Catch-Up Deferrals.

3.04 NONELECTIVE CONTRIBUTIONS. This Section applies to Nonelective Contributions. Except as provided in Section 3.04(D), the provisions of this Section with regard to Nonelective Contributions for a Plan Year are limited to Participants who have Compensation for the Plan Year. Section 3.04(D) describes contributions for former Employees who have Deemed Includible Compensation.

(A) Amount and Type. The Employer in its Adoption Agreement must elect the type and amount of Nonelective Contributions.

(1) **Discretionary Nonelective Contribution.** The Employer in its Adoption Agreement may elect to make Discretionary Nonelective Contributions.

(2) **Fixed Nonelective.** The Employer in its Adoption Agreement may elect to make Fixed Nonelective Contributions. The Employer must specify the time period to which any fixed contribution formula will apply (which is deemed to be the Plan Year if the Employer does not so specify) and must elect the allocation method which may be the same as the contribution formula or may be a different allocation method under Section 3.04(B).

(3) **Mandatory Employee Contributions.** The Employer in its Adoption Agreement may require Mandatory Employee Contributions of some or all Participants. The Employer must specify the time period to which any Mandatory Employee Contribution formula will apply (which is deemed to be the Plan Year if the Employer does not so specify). Any such contribution will be allocated as a Nonelective Contribution to the Account of the Participant who made it. Such amounts will be fully Vested and will not be subject to the allocation conditions of Section 3.06.

(4) **Participating Employers.** If any Participating Employers contribute Nonelective Contributions to the Plan, the Employer in its Adoption Agreement must elect: (a) whether each Participating Employer will be subject to the same or different Nonelective Contribution formulas under Section 3.04(A) and allocation methods under Section 3.04(B) than the Signatory Employer; and (b) whether, under Section 3.04(B), the Plan Administrator will allocate Nonelective Contributions only to Participants directly employed by the contributing Employer or to all Participants regardless of which Employer contributes or how much any Employer contributes. The allocation of Nonelective Contributions under this Section 3.04(A)(4) also applies to the allocation of any forfeiture attributable to Nonelective Contributions and which the Plan allocates to Participants.

(B) Method of Allocation. The Employer in its Adoption Agreement must specify the method of allocating Nonelective Contributions to the Plan. The Plan Administrator will apply this Section 3.04(B) by including in the allocation only those Participants who have satisfied the Plan's allocation conditions under Section 3.06, if any, applicable to the contribution. The Plan Administrator, in allocating a contribution under any allocation formula which is based in whole or in part on Compensation, will take into account Compensation under Section 1.11 as the Employer elects in its Adoption Agreement and only will take into account the Compensation of the Participants entitled to an allocation. In addition, if the Employer has elected in its Adoption Agreement to define allocation Compensation over a time period which is less than a full Plan Year, the Plan Administrator will apply the allocation methods in this Section 3.04(B) based on Participant Compensation within the relevant time period.

(1) **Pro rata allocation formula.** The Employer in its Adoption Agreement may elect a pro rata allocation formula. Under a pro rata allocation formula, the Plan Administrator will allocate the Employer Contributions for a Plan Year in

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the same ratio that each Participant's Compensation for the Plan Year (or other applicable period) bears to the total Compensation of all Participants for the Plan Year (or other applicable period).

(2) **Permitted disparity allocation formula.** The Employer in its Adoption Agreement may elect a permitted disparity formula, providing allocations described in (a) below.

(a) **Two-tiered formula.**

(i) **Tier one.** Under the first tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation (as the Employer defines that term in its Adoption Agreement) for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this first tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (5.7%, 5.4%, or 4.3%) listed under Section 3.04(B)(2)(b).

(ii) **Tier two.** Under the second tier, the Plan Administrator will allocate any remaining Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(b) **Maximum disparity table.** For purposes of the permitted disparity allocation formulas under this Section 3.04(B)(2), the applicable percentage is:

Integration level % of Taxable Wage Base	Applicable %
100%	5.7%
More than 80% but less than 100%	5.4%
More than 20% (but not less than $10,001) and not more than 80%	4.3%
20% (or $10,000, if greater) or less	5.7%

For this purpose, the Taxable Wage Base is the contribution and benefit base under section 230 of the Social Security Act in effect at the beginning of the Plan Year. The integration level is the uniform amount specified in the Employer's Adoption Agreement.

(c) **Overall permitted disparity limits.**

(i) **Annual overall permitted disparity limit.** Notwithstanding Section 3.04(B)(2)(a), for any Plan Year the Plan benefits any Participant who benefits under another plan maintained by the Employer that provides for permitted disparity (or imputes disparity), the Plan Administrator will allocate Employer Contributions to the Account of each Participant in the same ratio that each Participant's Compensation bears to the total Compensation of all Participants for the Plan Year.

(ii) **Cumulative permitted disparity limit.** Effective for Plan Years beginning after December 31, 1994, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. "Total cumulative permitted disparity years" means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, the Plan Administrator will treat all years ending in the same calendar year as the same year. If the Participant has not benefited under a Defined Benefit Plan or under a target benefit plan of the Employer for any year beginning after December 31, 1993, the Participant does not have a cumulative permitted disparity limit.

For purposes of this Section 3.04(B)(2)(c), a Participant "benefits" under a plan for any Plan Year during which the Participant receives, or is deemed to receive, a contribution allocation in accordance with Treas. Reg. §1.410(b)-3(a).

(d) **Pro-ration of integration level.** In the event that the Plan Year is less than 12 months and the Plan Administrator will allocate the Employer Contribution based on Compensation for the short Plan Year, the Plan Administrator will pro rate the integration level based on the number of months in the short Plan Year. The Plan Administrator will not pro rate the integration level in the case of: (i) a Participant who participates in the Plan for less than the entire 12 month Plan Year and whose allocation is based on Participating Compensation; (ii) a new Plan established mid-Plan Year, but with an Effective Date which is as of the beginning of the Plan Year; or (iii) a terminating Plan which bases allocations on Compensation through the effective date of the termination, but where the Plan Year continues for the balance of the full 12 month Plan Year.

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(3) **Classifications allocation formula.** The Employer in its Adoption Agreement may elect to specify classifications of Participants to whom the Plan Administrator will allocate any Employer Contribution.

(a) **Classifications.** The Employer may elect to specify any number of classifications and a classification may consist of any number of Participants. The Employer also may elect to put each Participant in his/her own classification.

(b) **Allocation of contribution within classifications.** The Plan Administrator will apportion the Employer Contribution for a Plan Year to the classifications as the Employer designates in writing at the time that the Employer makes the contribution. If there is more than one Participant in a classification, the Plan Administrator will allocate the Employer Contribution for the Plan Year within each classification as the Employer elects in its Adoption Agreement which may be: (i) in the same ratio that each Participant's Compensation for the Plan Year bears to the total Plan Year Compensation for all Participants within the same classification (pro rata); or (ii) the same dollar amount to each Participant within a classification.

(c) **Shifting classifications within the Plan Year.** If a Participant during a Plan Year shifts from one classification to another, the Plan Administrator will apportion the Participant's allocation for each classification pro rata based on the Participant's Compensation for the part of the Plan Year the Participant was a member of the classification, unless the Employer in Appendix B to its Adoption Agreement: (i) specifies apportionment based on the number of months or days a Participant spends in a classification; or (ii) elects that the Employer in a nondiscriminatory manner will direct the Plan Administrator as to which classification the Participant will participate in during that entire Plan Year.

(4) **Age-based allocation formula.** The Employer in its Adoption Agreement may elect an age-based allocation formula. The Plan Administrator will allocate the Employer Contribution for the Plan Year in the same ratio that each Participant's Benefit Factor for the Plan Year bears to the sum of the Benefit Factors of all Participants for the Plan Year. As such, the total Employer Contribution will be allocated to each Participant sharing in the allocation such that the equivalent benefit accrual rate for each such Participant is identical.

(a) **Definition of Benefit Factor.** A Participant's Benefit Factor is his/her Compensation for the Plan Year multiplied by the Participant's Actuarial Factor.

(b) **Definition of Actuarial Factor.** A Participant's Actuarial Factor is the factor that the Plan Administrator establishes based on the interest rate and mortality table the Employer elects in its Adoption Agreement. If the Employer elects to use the UP-1984 table, a Participant's Actuarial Factor is the factor in Table I of Appendix C to the Adoption Agreement or is the product of the factors in Tables I and II of Appendix C to the Adoption Agreement if the Plan's Normal Retirement Age is not age 65. If the Employer in its Adoption Agreement elects to use a table other than the UP-1984 table, the Plan Administrator will determine a Participant's Actuarial Factor in accordance with the designated table (which the Employer will attach to the Adoption Agreement as a substituted Appendix C) and the Adoption Agreement elected interest rate.

(5) **Incorporation of fixed formula.** The Employer in its Adoption Agreement may elect to allocate Employer Contributions in accordance with the Plan's fixed Employer Contribution formula. In such event, the Plan Administrator will allocate the Employer Contributions for a Plan Year in accordance with the Fixed Nonelective or other Employer Contribution formula. See Section (A)(3) regarding the allocation of Mandatory Employee Contributions.

(C) QNEC. The provisions of this Section 3.04(C) apply to QNEC contributions other than Safe Harbor Nonelective Contributions described in Section 3.05(E)(2).

(1) **Plan-Designated QNEC.** The Employer in its Adoption Agreement will elect whether or not to treat some or all Nonelective Contributions as a QNEC ("Plan-Designated QNEC"). If the Employer elects any Plan-Designated QNECs, the Employer in its Adoption Agreement will elect whether to allocate a Plan-Designated QNEC to all Participants or only to NHCE Participants and the Employer in its Adoption Agreement also must elect a QNEC allocation method as follows: (a) pro rata in relation to Compensation; (b) in the same dollar amount without regard to Compensation (flat dollar); (c) under the reverse allocation method; or (d) under any other method subject to the testing limitations of Section 3.04(C)(5). The Plan Administrator will allocate a QNEC under this Section 3.04(C)(1) only to those Participants who have satisfied eligibility conditions under Article 2 to receive Nonelective Contributions (or if applicable, to QNECs) and who have satisfied any allocation conditions under Section 3.06 the Employer has elected in the Adoption Agreement as applicable to QNECs.

(2) **Operational QNEC.** The Employer, to facilitate the Plan Administrator's correction of test failures under Section 4.10 (or to lessen the degree of such failures), but only if the Plan is using Current Year Testing, also may make Discretionary Nonelective Contributions as QNECs to the Plan ("Operational QNEC"), irrespective of whether the Employer in its Adoption Agreement has elected to provide for any Nonelective Contributions or Plan-Designated QNECs. The Plan Administrator, in its discretion, will allocate the Operational QNEC, but will limit the allocation of any

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Operational QNEC only to some or all NHCE Participants who are ACP Participants under Section 4.11(A). The Plan Administrator operationally must elect whether to allocate an Operational QNEC to NHCE ACP Participants: (a) pro rata in relation to Compensation; (b) in the same dollar amount without regard to Compensation (flat dollar); (c) under the reverse allocation method; or (d) under any other method; provided, that any QNEC allocation is subject to the limitations of Section 3.04(C)(5). The Plan Administrator may allocate an Operational QNEC to any NHCE ACP Participants even if such Participants have not satisfied any eligibility conditions under Article 2 applicable to Nonelective Contributions (including QNECs) or have not satisfied any allocation conditions under Section 3.06 applicable to Nonelective Contributions (or to QNECs). Where the Plan Administrator disaggregates the Plan for coverage and for nondiscrimination testing under the "otherwise excludible employees" rule described in Section 4.06(C), the Plan Administrator also may limit the QNEC allocation to those NHCEs in any disaggregated "plan" which actually is subject to ACP testing (because there are HCEs in that disaggregated plan).

(3) **Reverse QNEC allocation.** Under the reverse QNEC allocation method, the Plan Administrator will allocate a QNEC first to the NHCE Participant(s) who are ACP Participants under Section 4.11(A) with the lowest Compensation for the Plan Year in an amount not exceeding the Annual Additions Limit for each Participant, with any remaining amounts allocated to the next highest paid NHCE Participant(s) not exceeding his/her Annual Additions Limit and continuing in this manner until the Plan Administrator has fully allocated the QNEC. The amount of the QNEC allocated to any Participant will not exceed the targeting limitations described in Sections 3.04(C)(5) and 4.10(C).

(4) **Separate Account.** The Plan Administrator will establish a separate QNEC Account for each Participant who receives an allocation of QNECs in accordance with Section 7.04(A)(1).

(5) **Anti-conditioning and targeting.** The Employer in its Adoption Agreement and the Plan Administrator in operation may not condition the allocation of any QNEC under this Section (C), on whether a Participant has made Elective Deferrals. The nondiscrimination testing of QNECs also is subject to the targeting limitations of Section 4.10(C). The Employer will not make an Operational QNEC in an amount which exceeds the targeting limitations.

(D) Former Employees. If the Employer elects in its Adoption Agreement, the Employer may make Nonelective Contributions with respect to one or more former Employees who have Separated from Service and have Deemed Includible Compensation. The Employer in its Adoption Agreement will determine the contribution and which Participants shall be entitled to receive the Nonelective Contribution. If the Employer elects the discretionary contribution, then the Plan Administrator will allocate the contribution in accordance with the principles of Section (B)(3), treating each such former Employee as being in a separate classification. The allocation conditions of Section 3.06 will not apply to contributions made pursuant to this Section and the former Employee will be fully Vested in such contributions. No former Employee will be eligible to receive such an allocation for a calendar year beginning more than the earlier of the Employee's death or five years after the Employee Separated from Service.

3.05 SAFE HARBOR 403(b) CONTRIBUTIONS. The Employer in its Adoption Agreement may elect to apply to its Plan the safe harbor provisions of this Section 3.05.

(A) Prior Election and Notice/12 Month Plan Year. Except as otherwise provided in this Plan an Employer: (i) prior to the beginning of the Plan Year to which the safe harbor provisions apply, must elect the safe harbor plan provisions of this Section 3.05; (ii) prior to the beginning of the Plan Year to which the safe harbor provisions apply, must satisfy the applicable notice requirements; and (iii) must apply the safe harbor provisions for the entire 12 month safe harbor Plan Year.

(1) **Short Plan Year.** An Employer's Plan may be a Safe Harbor 403(b) Plan in a short Plan Year: (a) as provided in Sections 3.05(I)(3) or (5), relating to the initial safe harbor Plan Year; (b) if the Employer creates a short Plan Year by changing its Plan Year, provided that the Employer maintains the Plan as a Safe Harbor 403(b) Plan in the Plan Years both before and after the short Plan Year as described in Treas. Reg. §1.401(k)-3(e)(3); or (c) if the short Plan Year is the result of the Employer's termination of the Plan under Section 3.05(I)(6).

(B) Effect/Remaining Terms/Testing Status. The provisions of this Section 3.05 apply to an electing Employer notwithstanding any contrary provision of the Plan and all other remaining Plan terms continue to apply to the Employer's Safe Harbor 403(b) Plan. An Employer which elects and operationally satisfies the safe harbor provisions of this Section 3.05 for a Plan Year is not subject to the nondiscrimination provisions of Section 4.10(B) (ACP test) for that Plan Year. If the Plan is a Safe Harbor 403(b) Plan, for purposes of testing in future (non-safe harbor) Plan Years, the Plan in the safe harbor Plan Year is deemed to be using Current Year Testing as to the ACP test. If a Safe Harbor 403(b) Plan is subject to Sections 3.05(I)(1) or (2), the Plan in such Plan Year is deemed to be using Current Year Testing for the ACP test.

(C) Compensation for Allocation. In allocating Safe Harbor Contributions and Additional Matching Contributions that satisfy the ACP test safe harbor under Section 3.05(G) and for Elective Deferral allocation under this Section 3.05, the following provisions apply:

(1) **Safe Harbor and Additional Matching allocation.** For purposes of allocating the Employer's Safe Harbor Contributions and ACP test safe harbor Additional Matching Contributions, if any, Compensation is limited as described

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in Section 1.11(E) and the Employer must elect under its Adoption Agreement a nondiscriminatory definition of Compensation as described in Section 1.11(F). The Employer in its Adoption Agreement may not elect to limit NHCE Compensation to a specified dollar amount, except as required under Section 1.11(E).

(2) **Deferral allocation.** An Employer in its Adoption Agreement may elect to limit the type of Compensation from which a Participant may make an Elective Deferral to any reasonable definition. The Employer in its Adoption Agreement also may elect to limit the amount of a Participant's Elective Deferrals to a whole percentage of Compensation or to a whole dollar amount, subject to the maximum $200 annual limit on 403(b) elective deferrals described in Section 3.02(A)(1), provided each Eligible NHCE Participant may make Elective Deferrals in an amount sufficient to receive the maximum Matching Contribution available under the Plan and may defer any lesser amount. However, a Participant may not make Elective Deferrals in the event that the Participant is suspended from doing so under Section 6.07(B)(1), relating to hardship distributions or to the extent that the allocation would exceed a Participant's Annual Additions Limit in Section 4.05(B) or the maximum Deferral Limit in Section 4.10(A). If the Plan permits Roth Deferrals in addition to Pre-Tax Deferrals, Elective Deferrals for purposes of Section 3.05 includes both Roth Deferrals and Pre-Tax Deferrals.

(D) "Early" Elective Deferrals/Delay of Safe Harbor Contribution. The Employer in its Adoption Agreement may elect to apply the OEE rule described in Section 4.06(C) to the Safe Harbor Contributions. If the Employer so elects, then (1) only those Participants who are Includible Employees will receive the Safe Harbor Contributions; (2) the disaggregated plan which covers the Includible Employees is a Safe Harbor 403(b) Plan under this Section 3.05; and (3) the Plan Administrator will perform the ACP test as necessary for the disaggregated plan which covers the Otherwise Excludible Employees, as provided in Section 4.06(B)(1). If the Employer in its Adoption Agreement has elected "Participating Compensation" for allocating Nonelective Contributions or Matching Contributions (as applicable), the Plan Administrator, in allocating the Safe Harbor Contribution for the Plan Year in which a Participant crosses over to the Includible Employees group, will count Compensation and Elective Deferrals only on and following the Cross-Over Date. See Section 4.06(C) for the definitions of "OEE rule", "Includible Employees," "Otherwise Excludible Employees," and "Cross-Over Date." Under this Section 3.05(D), eligibility for Additional Matching Contributions and for Nonelective Contributions which are not Safe Harbor Nonelective Contributions is controlled by the Employer's Adoption Agreement elections and is not necessarily limited to age 21 and one Year of Service as is the case for Safe Harbor Contributions. However, as to ACP test safe harbor treatment for Additional Matching Contributions, see Section 3.05(F)(2).

(E) Safe Harbor Contributions. An Employer which elects under this Section 3.05(E) to apply the safe harbor provisions, must make a Safe Harbor Contribution to the Plan. Except as otherwise provided in this Section 3.05, the Employer must make its Safe Harbor Contributions (and any Additional Matching Contributions which will satisfy the ACP test safe harbor), no later than twelve months after the end of the Plan Year to which such contributions are allocated.

(1) **Definition of Safe Harbor Contribution.** A Safe Harbor Contribution is a Safe Harbor Nonelective Contribution or a Safe Harbor Matching Contribution as the Employer elects in its Adoption Agreement and includes a QACA Safe Harbor Contribution.

(2) **Definition of Safe Harbor Nonelective Contribution.** A Safe Harbor Nonelective Contribution is a Fixed Nonelective Contribution in an amount the Employer elects in its Adoption Agreement, which must equal at least 3% of each Participant's Compensation unless the Employer elects to limit Safe Harbor Nonelective Contributions to NHCEs under Section 3.05(E)(9) or unless Section 3.05(D) applies. A Safe Harbor Nonelective Contribution is a QNEC, except that the Employer in its Adoption Agreement may elect to apply a QACA vesting schedule to a Safe Harbor Nonelective Contribution the Employer makes to a QACA.

(3) **Definition of Safe Harbor Matching Contribution.** A Safe Harbor Matching Contribution is a Basic Matching Contribution, a QACA Basic Matching Contribution, or an Enhanced Matching Contribution. Under a Safe Harbor Matching Contribution an HCE may not receive a greater rate of match at any level of Elective Deferrals than any NHCE. A Safe Harbor Matching Contribution is 100% Vested at all times and which is subject to the distribution restrictions described in Section 6.01(E)(1), except that the Employer in its Adoption Agreement may elect to apply a QACA vesting schedule to a QACA Basic Matching Contribution or to an Enhanced Matching Contribution the Employer makes to a QACA.

(4) **Definition of Basic Matching Contribution.** A Basic Matching Contribution is a Fixed Matching Contribution equal to 100% of a Participant's Elective Deferrals which do not exceed 3% of Compensation, plus 50% of Elective Deferrals which exceed 3%, but do not exceed 5% of Compensation.

(5) **Definition of QACA Basic Matching Contribution.** A QACA Basic Matching Contribution is a Fixed Matching Contribution equal to 100% of a Participant's Elective Deferrals which do not exceed 1% of Compensation, plus 50% of Elective Deferrals which exceed 1%, but do not exceed 6% of Compensation.

(6) **Definition of Enhanced Matching Contribution.** An Enhanced Matching Contribution is a Fixed Matching Contribution made in accordance with any formula the Employer elects in its Adoption Agreement under which: (a) at any rate of Elective Deferrals, a Participant receives a Matching Contribution which is at least equal to the match the

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Participant would receive under the Basic Matching Contribution formula or under the QACA Basic Matching Contribution formula, as applicable; and (b) the rate of match does not increase as the rate of Elective Deferrals increases.

(7) **Time period for computing/contributing Safe Harbor Matching Contribution.**

(a) **Computation.** The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's Safe Harbor Matching Contributions. If the Employer fails to so elect, the Employer is deemed to have elected to compute its Safe Harbor Matching Contribution based on the Plan Year.

(b) **Contribution deadline.** If the Employer elects to compute its Safe Harbor Matching Contribution based on a time period which is less than the Plan Year, the Employer must contribute the Safe Harbor Matching Contributions to the Plan no later than the end of the Plan Year quarter which follows the quarter in which the Elective Deferral that gave rise to the Safe Harbor Matching Contribution was made. If the Employer fails to contribute by the foregoing deadline, the Employer will correct the operational failure by contributing the Safe Harbor Matching Contribution as soon as is possible and also will contribute Earnings on the Contribution. See Section 7.08. If the time period for computing the Safe Harbor Matching Contribution is the Plan Year, the Employer must contribute the Safe Harbor Matching Contribution to the Plan no later than twelve months after the end of the Plan Year to which the Safe Harbor Contribution is allocated.

(8) **No allocation conditions.** The Plan Administrator must allocate the Employer's Safe Harbor Contribution without regard to the Section 3.06 allocation conditions, if any, the Employer has elected as to non-Safe Harbor Contributions.

(9) **NHCEs must receive allocation; further election of allocation group.** Subject to Section 3.05(D), the Plan Administrator must allocate the Safe Harbor Contribution to NHCE Participants, which for purposes of Section 3.05 means NHCEs who are eligible to make Elective Deferrals. The Employer in its Adoption Agreement, must elect whether to allocate Safe Harbor Contributions: (a) to all Participants; (b) only to NHCE Participants; or (c) to NHCE Participants and to designated HCE Participants. The Employer in its Adoption Agreement also may elect to exclude Collective Bargaining Employees from the allocation of Safe Harbor Contributions.

(10) **100% vesting/distribution restrictions.** A Participant's Account Balance attributable to Safe Harbor Contributions: (a) at all times is 100% Vested, unless the Employer maintains a QACA and elects in its Adoption Agreement to apply a QACA vesting schedule; and (b) is subject to the distribution restrictions described in Section 6.01(E). Under a QACA vesting schedule, a Participant is 100% Vested after completion of two Years of Service.

(11) **Application to other allocations/testing.** If the Employer elects in Appendix B to its Adoption Agreement, then except as described below as to permitted disparity, any Safe Harbor Nonelective Contributions will be applied toward (offset) any other allocation to a Participant of a non-Safe Harbor Nonelective Contribution. An Employer electing to apply the general nondiscrimination test under Section 4.06(C), may include Safe Harbor Nonelective Contributions in applying the general test. An Employer which has elected in its Adoption Agreement to apply permitted disparity in allocating the Employer's Nonelective Contributions made in addition to Safe Harbor Nonelective Contributions may not include within the permitted disparity formula allocation any of the Employer's Safe Harbor Nonelective Contributions.

(12) **Contribution to another plan.** An Employer in its Adoption Agreement may elect to make the Safe Harbor Contribution to another Defined Contribution Plan the Employer maintains provided: (a) this Plan and the other plan have the same Plan Years; (b) each Participant eligible for Safe Harbor Contributions under this Plan is eligible to participate in the other plan; and (c) the other plan provides that 100% vesting and the distribution restrictions under Section 6.01(E) apply to the Safe Harbor Contribution Account maintained within the other plan. An Employer cannot apply any Safe Harbor Contributions to satisfy the safe harbor requirements in more than one plan.

(F) Additional Matching Contributions. The Employer in its Adoption Agreement may elect to make Additional Matching Contributions to its safe harbor Plan under this Section 3.05(F).

(1) **Definition of Additional Matching Contributions.** Additional Matching Contributions are Fixed or Discretionary Matching Contributions ("Fixed Additional Matching Contributions" or "Discretionary Additional Matching Contributions") the Employer makes to its Safe Harbor 403(b) Plan (including a Safe Harbor 403(b) Plan the Employer elected into during the Plan Year under Section 3.05(I)(1)) and are not Safe Harbor Matching Contributions. Additional Matching Contributions are in addition to whatever type of Safe Harbor Contributions the Employer makes to satisfy the safe harbor under Section 3.05(E). If the Employer under Section 3.05(I)(1) does not elect into the safe harbor as of a Plan Year, any Matching Contributions for that Plan Year are not Additional Matching Contributions and as such cannot qualify for the ACP test safe harbor.

(2) **Eligibility, vesting, allocation conditions and distributions.** The Employer must elect in its Adoption Agreement the eligibility conditions, vesting schedule, and distribution provisions applicable to the Employer's Additional Matching Contributions. To satisfy the ACP test safe harbor under Section 3.05(G), any allocation conditions the Employer otherwise elects in its Adoption Agreement do not apply to Additional Matching Contributions. The Employer

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may elect: (a) to apply a vesting schedule to the Additional Matching Contributions; and (b) to treat the Additional Matching Contributions Account as not subject to the distribution restrictions under Section 6.01(E). The Employer must not elect eligibility conditions applicable to the Additional Matching Contribution which exceed age 21 and one Year of Service and the Employer must elect eligibility conditions which are the same as it elects for the Safe Harbor Contribution.

(3) **Time period for computing/contributing Additional Matching Contributions.**

(a) **Computation.** The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's Additional Matching Contributions. If the Employer fails to so elect, the Employer is deemed to have elected to compute its Additional Matching Contribution based on the Plan Year.

(b) **Contribution deadline.** If the Employer elects to compute its Additional Matching Contribution based on a time period which is less than the Plan Year, the Employer must contribute the Additional Matching Contributions to the Plan no later than the end of the Plan Year quarter which follows the quarter in which the Elective Deferral that gave rise to the Additional Matching Contribution was made. If the Employer fails to contribute by the foregoing deadline, the Employer will correct the operational failure by contributing the Additional Matching Contribution as soon as is possible and will also contribute Earnings on the Contribution. See Section 7.08. If the Employer elects the Plan Year as the time period for computing the Additional Matching Contribution, the Employer must contribute the Additional Matching Contribution to the Plan no later than twelve months after the end of the Plan Year to which the Additional Matching Contribution is allocated.

(G) ACP test safe harbor. The following limitations apply to each Matching Contribution formula under the Plan in a Plan Year in which the Plan is a Safe Harbor 403(b) Plan:

(1) **Amount limitations.** The Employer may not make Matching Contributions as to a Participant's Elective Deferrals which exceed 6% of the Participant's Plan Year Compensation. The amount of any Discretionary Additional Matching Contribution allocated to any Participant may not exceed 4% of the Participant's Plan Year Compensation. The rate of Matching Contributions may not increase as the rate of Elective Deferrals increases. An HCE may not receive a rate of match greater than any NHCE (taking into account HCE aggregation under Section 4.10(B)(6)).

(2) **Employee Contributions.** If the Employer in its Adoption Agreement has elected to permit Employee Contributions under the Plan: (a) any Employee Contributions do not satisfy the ACP test safe harbor and the Plan Administrator must test the Employee Contributions under Section 4.10(B) (ACP test) using Current Year Testing unless the Employer elects in its Adoption Agreement to apply Prior Year Testing; and (b) if the Employer in its Adoption Agreement elects to match the Employee Contributions, the Plan Administrator in applying the 6% amount limit in Section 3.05(G)(1) must aggregate a Participant's Elective Deferrals and Employee Contributions which are subject to the 6% limit.

(H) Safe Harbor Notice. The Plan Administrator must provide a safe harbor notice to each Participant within a reasonable period prior to each Plan Year for which the Employer in its Adoption Agreement has elected to apply the safe harbor provisions.

(1) **Deemed reasonable notice.** The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the safe harbor notice at least 30 days and not more than 90 days prior to the beginning of the safe harbor Plan Year.

(2) **Mid-year notice/new Participant or Plan.** If: (a) an Employee becomes eligible to participate in the Plan during a safe harbor Plan Year, but after the Plan Administrator has provided the annual safe harbor notice for that Plan Year; (b) the Employer adopts mid-year a new Safe Harbor 403(b) Plan; or (c) the Employer amends mid-year its existing Plan to add an elective deferral feature and also elects safe harbor status, the Plan Administrator must provide the safe harbor notice within a reasonable period (with 90 days being deemed reasonable) prior to and no later than the Employee's Entry Date. However, if it is not practicable for the Plan Administrator to provide the notice on or before the date an Employee becomes a Participant, then the Plan nonetheless will treat the notice as provided timely if the Plan Administrator provides the notice as soon as practicable after that date and the Participant is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(3) **Content.** The safe harbor notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant. The Plan Administrator's notice must satisfy the content requirements of Treas. Reg. §1.401(k)-3(d).

(4) **Election following notice.** A Participant may make or modify a Salary Reduction Agreement under the Employer's Safe Harbor 403(b) Plan for 30 days following receipt of the safe harbor notice, or if greater, for the period the Plan Administrator specifies in the Salary Reduction Agreement.

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(5) **Additional QACA notice requirements.** If the Plan is a QACA, in addition to the other requirements of this Section 3.05(H), the Employer must provide the initial QACA safe harbor notice sufficiently early so that a Participant has a reasonable period after receiving the notice and before the first Automatic Deferral (see Section 3.02(B)(3)(a)(i)) to make a Contrary Election and, as applicable, to make an election as to the investment of his/her Account. In addition, the notice will state: (a) the Automatic Deferral Percentage that will apply in absence of the Participant's Contrary Election; (b) the Participant's right under a Contrary Election to elect not to have any Automatic Deferral made on the Participant's behalf or to elect to make Elective Deferrals in a different amount or percentage of Compensation; and (c) how the Plan will invest the Automatic Deferrals, and the Participant does not make an investment election.

(I) Mid-Year Changes in Safe Harbor Status.

(1) **Contingent ("maybe") notice and supplemental notice-delayed election of Safe Harbor Nonelective Contributions.** The Employer during any Plan Year may elect for its Plan to become a Safe Harbor 403(b) Plan under this Section 3.05(I)(1) for that Plan Year, provided: (i) the Plan is using Current Year Testing; (ii) the Employer elects to satisfy the Safe Harbor Contribution requirement using the Safe Harbor Nonelective Contribution; (iii) the Employer amends the Plan to add such Safe Harbor Contribution not later than 30 days prior to the end of the Plan Year, computed with regard to the entire Plan Year; and (iv) the Plan Administrator provides a notice ("maybe notice") to Participants prior to the beginning of the Plan Year for which the safe harbor amendment may become effective, that the Employer later may elect to become a Safe Harbor 403(b) Plan for that Plan Year using the Safe Harbor Nonelective Contribution and that if the Employer does so, the Plan Administrator will provide a supplemental notice to Participants at least 30 days prior to the end of that Plan Year informing Participants of the Employer's election to provide the Safe Harbor Nonelective Contribution for that Plan Year. The Employer elects into the safe harbor by timely giving the supplemental notice and by amending the Plan as described above and thereby elects not to be subject to the ACP test, regardless of the Employer's Adoption Agreement Elections. Except as otherwise specified, the Participant notices described in this Section 3.05(I)(1) also must satisfy the requirements applicable to safe harbor notices under Section 3.05(H).

(2) **Exiting Safe Harbor Contributions.** The Employer may amend its Safe Harbor 403(b) Plan during a Plan Year to reduce or eliminate prospectively, any or all Safe Harbor Matching Contributions or Additional Matching Contributions, or Safe Harbor Nonelective Contributions, provided: (a) the Plan Administrator provides a notice to the Participants which explains the effect of the amendment, specifies the amendment's Effective Date and informs Participants they will have a reasonable opportunity to modify their Salary Reduction Agreements, and if applicable, Employee Contributions; (b) Participants have a reasonable opportunity and period prior to the Effective Date of the amendment to modify their Salary Reduction Agreements, and if applicable, Employee Contributions; (c) the amendment is not effective earlier than the later of: (i) 30 days after the Plan Administrator gives notice of the amendment; or (ii) the date the Employer adopts the amendment and (d) the Employer otherwise complies with Treas. Reg. §1.401(k)-3(g) and, if applicable, Treas. Reg. §1.401(m)-3(h). An Employer which amends its Safe Harbor 403(b) Plan to eliminate or reduce any Matching Contribution or the Nonelective Contribution under this Section 3.05(I)(2), effective during the Plan Year, must continue to apply all of the safe harbor requirements of this Section 3.05 until the amendment becomes effective and also must apply for the entire Plan Year, using Current Year Testing, the nondiscrimination test under Section 4.10(B) (ACP test).

(3) **Amendment of Plan into safe harbor status.** An Employer maintaining a Plan which does not provide for Elective Deferrals may amend prospectively its Plan to become a Safe Harbor 403(b) Plan provided: (a) the Employer's Plan is not a Successor Plan; (b) the Participants may make Elective Deferrals for at least three months during the Plan Year; (c) the Plan Administrator provides the safe harbor notice described in Section 3.05(H) within a reasonable time prior to and not later than the Effective Date of adding the elective deferral arrangement; and (d) the Plan commencing on the Effective Date of the amendment (or such earlier date as the Employer will specify in its Adoption Agreement), satisfies all of the safe harbor requirements of this Section 3.05.

(4) **Amendment to add Roth Deferrals.** The Employer during any Plan Year may amend its Safe Harbor 403(b) Plan to permit Participants to make Roth Deferrals, as defined in Section 1.24(B), and subject to Section 3.02(F) and other Plan provisions as applicable. The Employer may make other midyear amendments as permitted under IRS guidance.

(5) **New Plan/new Employer.** An Employer (including a new Employer) may establish a new Safe Harbor 403(b) Plan which is not a Successor Plan, provided; (a) the Plan Year is at least three months long; (b) the Plan Administrator provides the safe harbor notice described in Section 3.05(H) within a reasonable time prior to and not later than the Effective Date of the Plan; and (c) the Plan commencing on the Effective Date of the Plan satisfies all of the safe harbor requirements of this Section 3.05. If the Employer is new, the Plan Year may be less than three months provided the Plan is in effect as soon after the Employer is established and it is administratively feasible for the Employer to establish the Plan.

(6) **Plan termination.** An Employer may terminate its Safe Harbor 403(b) Plan mid-Plan Year in accordance with Article 9 and this Section 3.05(I)(6).

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(a) **Acquisition/disposition or substantial business hardship.** If the Employer terminates its Safe Harbor 403(b) Plan resulting in a short Plan Year, and the termination is on account of an acquisition or disposition transaction described in Code §410(b)(6)(C), or if termination is on account the Employer's substantial business hardship, within the meaning of Code §412(c), the Plan remains a Safe Harbor 403(b) Plan for the short Plan Year provided that the Employer satisfies this Section 3.05 through the Effective Date of the Plan termination.

(b) **Other termination.** If the Employer terminates its Safe Harbor 403(b) Plan for any reason other than as described in Section 3.05(I)(6)(a), and the termination results in a short Plan Year, the Employer must conduct the termination under the provisions of Section 3.05(I)(2), except that the Employer need not provide Participants with the right to change their Salary Reduction Agreements.

(J) Qualified Automatic Contribution Arrangement (QACA). If the Employer under Section 3.02(B)(3) elects in its Adoption Agreement to apply the QACA provisions, this Section 3.05(J) also applies. Except as modified in this Section 3.05(J), the safe harbor provisions of this Section 3.05 apply to the QACA.

(1) **QACA Safe Harbor Contributions.** The Employer will provide Safe Harbor Contributions as specified in its Adoption Agreement to the Participants specified in the Adoption Agreement. Compensation for purposes of allocating QACA Safe Harbor Contributions means as described in Section 3.05(C)(1).

(2) **Vesting and Distributions.** A Participant's Account Balance attributable to QACA Safe Harbor Contributions is subject to: (a) vesting as the Employer elects in its Adoption Agreement; and (b) the distribution restrictions under Section 6.01(E) that apply to Safe Harbor Contributions.

3.06 ALLOCATION CONDITIONS. The Employer in its Adoption Agreement will elect the allocation conditions, if any, which the Plan Administrator will apply in allocating Employer Contributions (except for those contributions described below) and in allocating forfeitures allocated as an Employer Contribution under the Plan.

(A) Contributions Not Subject to Allocation Conditions. The Employer may not elect to impose any allocation conditions on: (1) Elective Deferrals; (2) Safe Harbor Contributions; (3) Additional Matching Contributions; (4) Employee Contributions; or (5) Nonelective Contributions to former Employees under Section 3.04(D); or (6) Rollover Contributions. The Plan Administrator also may elect under Section 3.04(C)(2), not to apply to any Operational QNEC any allocation conditions otherwise applicable to Nonelective Contributions (including QNECs).

(B) Conditions. The Employer in its Adoption Agreement may elect to impose allocation conditions based on Hours of Service or employment at a specified time (or both), in accordance with this Section 3.06(B). The Employer may elect to impose different allocation conditions to different Employer Contribution Types under the Plan. A Participant does not accrue an Employer Contribution or forfeiture allocated as an Employer Contribution with respect to a Plan Year or other applicable period, until the Participant satisfies the allocation conditions for that Employer Contribution Type.

(1) **Hours of Service requirement.** The Plan Administrator will not allocate any portion of an Employer Contribution for a Plan Year to any Participant's Account if the Participant does not complete the applicable minimum Hours of Service (or consecutive calendar days of employment under the Elapsed Time Method) requirement the Employer specifies in its Adoption Agreement for the relevant period.

(a) **1,000 HOS in Plan Year/other HOS requirement.** The Employer may elect to require a Participant to complete: (i) 1,000 Hours of Service during the Plan Year (or to be employed for at least 182 consecutive calendar days under the Elapsed Time Method); (ii) a specified number of Hours of Service during the Plan Year which is less than 1,000 Hours of Service; or (iii) a specified number of Hours of Service within the time period the Employer elects in its Adoption Agreement, but not exceeding 1,000 Hours of Service in a Plan Year.

(b) **501 HOS/terminees.** The Employer in its Adoption Agreement may elect to require a Participant to complete during a Plan Year 501 Hours of Service (or to be employed for at least 91 consecutive calendar days under the Elapsed Time Method) to share in the allocation of Employer Contributions for that Plan Year where the Participant is not employed by the Employer on the last day of that Plan Year, including the Plan Year in which the Employer terminates the Plan.

(c) **Short Plan Year or allocation period.** This Section 3.06(B)(1)(c) applies to any Plan Year or to any other allocation time period under the Adoption Agreement which is less than 12 months, where in either case, the Employer creates a short allocation period on account of a Plan amendment, the termination of the Plan or the adoption of the Plan with an initial short Plan Year. In the case of any short allocation period, the Plan Administrator will prorate any Hour of Service requirement based on the number of days in the short allocation period divided by the number of days in the normal allocation period, using 365 days in the case of Plan Year allocation period. The Employer in Appendix B to its Adoption Agreement may elect not to pro-rate Hours of Service in any short allocation period or to apply a monthly pro-ration method.

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(2) **Last day requirement.** The Employer may elect to require a Participant to be employed by the Employer on the last day of the Plan Year or other specified period or on a specified date.

(C) Time Period. The Employer in its Adoption Agreement will elect the time period to which the Plan Administrator will apply any allocation condition. The Employer may elect to apply the same time period to all Contribution Types or to elect a different time period based on Contribution Type.

(D) Death, Disability or Retirement Age. The Employer in its Adoption Agreement will elect whether any elected allocation condition applies or is waived for a Plan Year if a Participant incurs a Separation from Service during the Plan Year on account of the Participant's death, Disability or attainment of Normal Retirement Age or Early Retirement Age in the current Plan Year or on account of the Participant's Disability or attainment of Normal Retirement Age or Early Retirement Age in a prior Plan Year. The Employer's election may be based on Contribution Type or may apply to all Contribution Types.

(E) No Other Conditions. In allocating Employer Contributions under the Plan, the Plan Administrator will not apply any other allocation conditions except those the Employer elects in its Adoption Agreement or otherwise as the Plan may require.

(F) Suspension of Allocation Conditions. The Employer in its Adoption Agreement will elect whether to apply the suspension provisions of this Section 3.06(F). If: (i) Section 3.06(F) applies; (ii) the Plan (or any component part of the Plan) in any Plan Year must perform coverage testing; and (iii) the Plan (or component part of the Plan) fails to satisfy coverage under the ratio percentage test under Treas. Reg. §1.410(b)-2(b)(2), the Plan suspends for that Plan Year any Plan (or component part of the Plan) allocation conditions in accordance with this Section 3.06(F). If the Plan Administrator must perform coverage testing, the Administrator will apply testing separately as required to each component part of the Plan after applying the aggregation and disaggregation rules under Treas. Reg. §§1.410(b)-6 and -7. This Paragraph will not apply if suspending the allocation condition will not result in the Plan (or component part) satisfying the coverage test.

(1) **No average benefit test.** If the Employer elects to apply this Section 3.06(F), the Plan Administrator may not apply the average benefit test under Treas. Reg. §1.410(b)-2(b)(3), to determine satisfaction of coverage or to correct a coverage failure, as to the Plan or to the component part of the Plan to which this Section 3.06(F) applies, unless the Plan or component still fails coverage after application of this Section 3.06(F). The restriction in this Section 3.06(F)(1) does not apply as to application of the average benefit test in performing nondiscrimination testing.

(2) **Methodology.** If this Section 3.06(F) applies for a Plan Year, the Plan Administrator, in the manner described herein, will suspend the allocation conditions for the NHCEs who are included in the coverage test and who are Participants in the Plan (or component part of the Plan) but who are not benefiting thereunder (within the meaning of Treas. Reg. §1.410(b)-3), such that enough additional NHCEs are benefiting under the Plan (or component part of the Plan) to pass coverage under the ratio percentage test. The ordering of suspension of allocation conditions is in the following priority tiers and if more than one NHCE in any priority tier satisfies the conditions for suspension (but all are not needed to benefit to pass coverage), the Plan Administrator will apply the suspension beginning first with the NHCE(s) in that suspension tier with the lowest Compensation during the Plan Year:

(a) **Last day.** Those NHCE(s) employed by the Employer on the last day of the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(F)(2)(b).

(b) **Latest Separation.** Those NHCE(s) who have the latest Separation from Service date during the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(F)(2)(c).

(c) **Most Hours of Service (more than 500).** Those NHCE(s) with the greatest number of Hours of Service during the Plan Year but who have more than 500 Hours of Service.

(3) **Appendix B.** The Employer in Appendix B to its Adoption Agreement may elect a different order of the suspension tiers, may elect to use Hours of Service (in lieu of Compensation) as a tiebreaker within any tier or may elect additional or other suspension tiers which are objective and not subject to Employer discretion.

(4) **Separate Application to Nonelective and Matching.** If applicable under the Plan, the Employer in its Adoption Agreement will elect whether to apply this Section 3.06(F): (a) to both Nonelective Contributions and to Matching Contributions if both components fail the ratio percentage test; (b) only to Nonelective Contributions if this component fails the ratio percentage test; or (c) only to Matching Contributions if this component fails the ratio percentage test.

(G) Conditions Apply to Re-Hired Employees. If a Participant incurs a Separation from Service and subsequently is re-hired and resumes participation in the same Plan Year as the Separation from Service or in any subsequent Plan Year, the allocation conditions under this Section 3.06, if any, continue to apply to the re-hired Employee/Participant in the Plan Year in which he/she is re-hired, unless the Employer elects otherwise in Appendix B to its Adoption Agreement.

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3.07 FORFEITURE ALLOCATION. The amount of a Participant's Account forfeited under the Plan is a Participant forfeiture. The Employer may direct the Plan Administrator to use Forfeitures to reinstate previously forfeited Account Balances of Participants, if any, in accordance with Section 5.07, or to satisfy any contribution that may be required pursuant to Section 7.07.

(A) Allocation Method. The Employer may elect to use forfeitures to pay Plan expenses. The Employer in its Adoption Agreement must specify other methods the Plan Administrator will apply to allocate forfeitures. Unless the Employer designates a specific ordering in its Adoption Agreement, the Plan Administrator may allocate the forfeitures by applying one or more of such elected methods in any order as the Plan Administrator operationally may determine, until the forfeitures are fully allocated to the applicable forfeiture allocation Plan Year.

(1) **Forfeiture source.** The Employer in its Adoption Agreement may elect a different allocation method based on the forfeiture source (from Nonelective Contributions or from Matching Contributions) or may elect to apply the same allocation method to all forfeitures.

(a) **Attributable to Matching.** A Participant's forfeiture is attributable to Matching Contributions if the forfeiture is: (i) from the non-Vested portion of a Matching Contribution Account forfeited in accordance with Section 5.07 or, if applicable, Section 7.07; (ii) a non-Vested Excess Aggregate Contribution (including Allocable Income) forfeited in correcting for nondiscrimination failures under Section 4.10(B); or (iii) an Associated Matching Contribution.

(b) **Definition of Associated Matching Contribution.** An Associated Matching Contribution includes any Vested or non-Vested Matching Contribution (including Allocable Income) made as to Elective Deferrals or Employee Contributions the Plan Administrator distributes under Section 4.02(E) (Excess Amount), Section 4.10(A) (Excess Deferrals), Section 4.10(B) (ACP test) or Section 7.08 relating to Plan correction.

(c) **Forfeiture or distribution of Associated Match.** An Employee forfeits an Associated Matching Contribution unless the Matching Contribution is a Vested Excess Aggregate Contribution distributed in accordance with Section 4.10(B) (ACP test). A forfeiture under this Section 3.07(A)(1)(c) occurs no later than the Plan Year following the Testing Year and the forfeiture is allocated in the Plan Year described in Section 3.07(B). See Section 3.07(B)(1) as to nondiscrimination testing of allocated forfeitures. In the event of correction under Section 7.08 resulting in forfeiture of Associated Matching Contributions, the forfeiture occurs in the Plan Year of correction.

(2) **Application of "reduce" option/excess forfeitures.** If the Employer elects to allocate forfeitures to reduce Nonelective or Matching Contributions and the allocable forfeitures for the forfeiture allocation Plan Year described in Section 3.07(B) exceed the amount of the applicable contribution for that Plan Year to which the Plan Administrator would apply the forfeitures (or there are no applicable contributions under the Plan), the Plan Administrator will allocate the remaining forfeitures in the forfeiture allocation Plan Year. In such event, the Plan Administrator will allocate the remaining forfeitures to pay Plan expenses, as an additional Discretionary Nonelective Contribution or as a Discretionary Matching Contribution, as the Plan Administrator determines.

(3) **Plan expenses.** If the Employer elects to first apply the forfeitures to the payment of Plan expenses, and the forfeitures exceed the Plan's expenses, the Plan Administrator will apply any remaining forfeitures under the additional method the Employer has elected in its Adoption Agreement. The Employer may elect not to apply forfeitures to the payment of Plan expenses which are allocated to specific Participant accounts under Section 7.04(C)(2)(b).

(4) **No allocation to Elective Deferral Accounts.** The Plan Administrator will not allocate forfeitures to any Participant's Elective Deferral Account, including his/her Roth Deferral Account.

(5) **Allocation under classifications.** If the Employer in its Adoption Agreement has elected to allocate its Nonelective Contributions based on classifications of Participants, the Plan Administrator will allocate any forfeitures which under the Plan are allocated as additional Nonelective Contributions: (a) first to each classification pro rata in relation to the Employer's Nonelective Contribution to that classification for the forfeiture allocation Plan Year described in Section 3.07(B); and (b) second, the total amount of forfeitures allocated to each classification under (a) are allocated in the same manner as are the Nonelective Contributions to be allocated to that classification.

(6) **Limitation on forfeiture uses.** Forfeitures cannot be used as Elective Deferrals. In addition, to the extent prohibited by Regulations, forfeitures cannot be used as QNECs, Elective Deferrals, or Safe Harbor Contributions.

(B) Timing (forfeiture allocation Plan Year). The Plan Administrator will allocate Participant forfeitures (including the Earnings thereon) no later than the last day of the Plan Year following the Plan Year in which the forfeiture occurs. See Sections 3.07(A)(1)(c), 5.07 and 7.07 as to when a forfeiture occurs. The Plan Administrator may apply forfeitures to pay Plan expenses which the Plan incurs in the forfeiture allocation Plan Year, but which the Plan Administrator pays within a reasonable time after the end of the forfeiture allocation Plan Year.

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(1) **Allocation timing and re-testing.** The Employer may elect different allocation timing based on the forfeiture source (from Nonelective Contributions or from Matching Contributions) or may elect to apply the same allocation timing to all forfeitures. If the Plan is subject to the ACP test and allocates any forfeiture as a Matching Contribution, the following re-testing rules apply. If, under the Plan, the Plan Administrator will allocate the forfeiture in the same Plan Year in which the forfeiture occurs and the Plan Administrator runs the ACP test before the forfeiture allocation occurs, the Plan Administrator will not re-run the ACP test for the forfeiture allocation Plan Year. If the Plan Administrator allocates the forfeiture in the Plan Year which follows the Plan Year in which the forfeiture occurs, the Plan Administrator will include the allocated forfeiture in the ACP test for the forfeiture allocation Plan Year. If the Plan allocates any forfeiture as a Nonelective Contribution, the allocation, in the forfeiture allocation Plan Year, is subject to any nondiscrimination testing which applies to Nonelective Contributions for that Plan Year.

(2) **Contribution amount and timing not relevant.** The forfeiture allocation timing rules in this Section 3.07(B) apply irrespective of when the Employer makes its Employer Contribution for the forfeiture allocation Plan Year, and irrespective of whether the Employer makes an Employer Contribution for that Plan Year.

(C) Administration of Account Pending/Incurring Forfeiture. The Plan Administrator will continue to hold the undistributed, non-Vested portion of the Account of a Participant who has incurred a Separation from Service solely for his/her benefit until a forfeiture occurs at the time specified in Section 5.07 or if applicable, until the time specified in Section 7.07.

(D) Participant Does Not Share in Own Forfeiture. A Participant will not share in the allocation of a forfeiture of any portion of his/her Account, even if the Participant otherwise is entitled to an allocation of Employer Contributions and forfeitures in the forfeiture allocation Plan Year described in Section 3.07(B). If the forfeiting Participant is entitled to an allocation of Employer Contributions and forfeitures in the forfeiture allocation Plan Year, the Plan Administrator only will allocate to the Participant a share of the allocable forfeitures attributable to other forfeiting Participants.

(E) Plan Merger. In the event that the Employer merges another plan into this Plan, and does not fully vest upon merger the participant accounts in the merging plan, the Plan Administrator will allocate any post-merger forfeitures attributable to the merging plan in accordance with the Employer's elections in its Adoption Agreement. The Employer may elect to limit any such forfeiture allocation only to those Participants who were also participants in the merged plan, but in the absence of such an election, all Participants who have satisfied any applicable allocation conditions under Section 3.06 will share in the forfeiture allocation.

3.08 ROLLOVER CONTRIBUTIONS. The Plan Administrator will apply this Section 3.08 in administering Rollover Contributions to the Plan, if any.

(A) Policy Regarding Rollover Acceptance. Unless it is prohibited in the Adoption Agreement, the Plan Administrator, operationally (except as to In-Plan Roth Rollover Contributions under Section 3.08(E)) and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan (even if the Plan is a Frozen Plan) or may elect to limit an Eligible Employee's right or a Participant's right to make a Rollover Contribution. The Plan Administrator also may adopt, amend or terminate any policy regarding the Plan's acceptance of Rollover Contributions. If the Employer in its Adoption Agreement elects to permit In-Plan Roth Rollover Contributions, the Plan Administrator will administer In-Plan Roth Rollover Contributions in accordance with Section 3.08(E) and the Employer's Adoption Agreement elections to the extent permitted by the Vendor and the Investment Arrangements.

(1) **Rollover documentation.** If the Plan Administrator permits Rollover Contributions, any Participant (or as applicable, any Eligible Employee), with the Plan Administrator's written consent and after filing with the Plan Administrator the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Plan. Before accepting a Rollover Contribution, the Plan Administrator may require a Participant (or Eligible Employee) to furnish satisfactory evidence the proposed rollover is in fact a permissible "rollover contribution" under the Code.

(B) Limited Testing. A Rollover Contribution is not an Annual Addition under Section 4.05(A) and is not subject to nondiscrimination testing except as a "right or feature" within the meaning of Treas. Reg. §1.401(a)(4)-4.

(C) Pre-Participation Rollovers. If an Eligible Employee makes a Rollover Contribution to the Plan prior to satisfying the Plan's eligibility conditions or prior to reaching his/her Entry Date, the Plan Administrator must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Participant forfeitures and may not make Elective Deferrals until he/she actually becomes a Participant in the Plan. If a limited Participant has a Separation from Service prior to becoming a Participant in the Plan, the Plan will distribute his/her Rollover Contributions Account to him/her in accordance with Section 6.01(B).

(D) May Include Employee Contributions and Roth Deferrals. A Rollover Contribution may include Employee Contributions and Roth Deferrals made to another plan, as adjusted for Earnings. In the case of Employee Contributions: (1) such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a), or is a 403(b) plan; and (2) the Plan must account separately for the Rollover Contribution, including the Employee Contribution and the Earnings thereon. In the case of Roth Deferrals: (1) such amounts must be directly rolled over into this Plan from another plan which is

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qualified under Code §401(a) or from a §403(b) plan; (2) the Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon; and (3) this Plan must permit Roth Deferrals.

(E) In-Plan Roth Rollover Contributions.

(1) **Employer Election.** The Employer in its Adoption Agreement in which the Employer has elected to permit Roth Deferrals also will elect whether to permit an In-Plan Roth Rollover Contribution in accordance with this Section 3.08(E) with regard to otherwise distributable amounts and/or otherwise nondistributable amounts. If the Employer elects to permit such contributions, the Employer in its Adoption Agreement will specify the Effective Date thereof which may not be earlier than distributions made after September 27, 2010, and may not be earlier than January 1, 2013 in the case of rollovers of otherwise nondistributable amounts.

(2) **Eligibility for Distribution and Rollover.** A Participant may not make an In-Plan Roth Rollover Contribution with regard to an otherwise distributable amount which is not an Eligible Rollover Distribution.

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

(b) **Distribution from partially Vested account.** In-Plan Roth Rollovers are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts unless the Employer elects otherwise in Appendix B to its Adoption Agreement. If a distribution is made to a Participant who has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account, then at any relevant time Section 5.03(C) will apply to determine the Participant's Vested portion of the Account.

(3) **Form and Source of Rollover.**

(a) **Direct Rollover.** An In-Plan Roth Rollover Contribution may be made only by a Direct Rollover.

(b) **Account source.** A Participant may make an In-Plan Roth Rollover from any account (other than a Roth account) unless the Employer otherwise elects in Appendix B to its Adoption Agreement. Also see Section 6.01(D)(7).

(c) **Cash or in-kind.** The Plan Administrator will effect an In-Plan Roth Rollover Contribution by rolling over the Participant's current investments to the In-Plan Roth Rollover Account. A Plan loan cannot be rolled over in an In-Plan Roth Rollover.

(d) **No Rollover or Distribution Treatment.** Notwithstanding any other Plan provision, an In-Plan Roth Rollover Contribution is not a Rollover Contribution for purposes of the Plan. Accordingly: (a) if the Employer in its Adoption Agreement has elected $5,000 as the Plan limit on Mandatory Distributions, the Plan Administrator will take into account amounts attributable to an In-Plan Roth Rollover Contribution, in determining if the $5,000 limit is exceeded, regardless of the Employer's election as to whether to count Rollover Contributions for this purpose; (b) no spousal consent is required for a Participant to elect to make an In-Plan Roth Rollover Contribution; (c) Protected Benefits with respect to the amounts subject to the In-Plan Roth Rollover are preserved; and (d) mandatory 20% federal income tax withholding does not apply to the In-Plan Roth Rollover Contribution.

(e) **Coordination with Vendor.** In-Plan Roth Rollovers are not permitted from a source or under circumstances not permitted by the Vendor's rules. For example, if a Vendor's rules do not permit in-Plan Roth Rollovers from otherwise nondistributable amounts, then the Participant cannot make such rollovers from Investment Arrangements that Vendor provides.

3.09 EMPLOYEE CONTRIBUTIONS. An Employer must elect in its Adoption Agreement whether to permit Employee Contributions. If the Employer elects to permit Employee Contributions, the Employer also must specify in its Adoption Agreement any limitations which apply to Employee Contributions. Employee Contributions will be accepted for an Investment Arrangement only to the extent permitted in the Investment Arrangement Documentation. If the Employer permits Employee Contributions, the Plan Administrator operationally will determine if a Participant will make Employee Contributions through payroll deduction or by other means.

(A) Testing. Employee Contributions must satisfy (or be exempt from) the nondiscrimination requirements of Section 4.10(B) (ACP test).

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(B) Matching. The Employer in its Adoption Agreement must elect whether the Employer will make Matching Contributions as to any Employee Contributions and, as applicable, the matching formula. Any Matching Contribution must satisfy the nondiscrimination requirements of Section 4.10(B) (ACP test), unless the Matching Contributions satisfy the ACP test safe harbor under a Safe Harbor 403(b) Plan.

(C) Administrative provisions. The Plan Administrator may prescribe one or more forms relating to Employee Contributions, and may adopt an Employee Contribution policy. The Employee Contribution form or policy may specify limits and conditions applicable to Employee Contributions, consistent with Code §403(b).

(1) **Minimum Amount.** The Plan Administrator may establish an annual minimum Employee Contribution, and may change such minimum to a different amount from time to time.

(2) **Termination.** Any election on an Employee Contribution form shall remain in effect until a new election is filed or the election is revoked or otherwise terminates. The termination of a Participant's employment automatically revokes the Participant's election with regard to periods after the Participant is rehired.

3.10 USERRA/HEART ACT CONTRIBUTIONS.

(A) Application. This Section 3.10 applies to an Employee who: (1) has completed Qualified Military Service under USERRA; (2) the Employer has rehired under USERRA; and (3) is a Participant entitled to make-up contributions under Code §414(u). This Section 3.10 also applies to an Employee who dies or becomes disabled while performing Qualified Military Service, as provided in Sections 3.10(K) and the Employer's Adoption Agreement elections.

(B) Employer Contributions. The Employer will make up any Employer Contribution the Employer would have made and which the Plan Administrator would have allocated to the Participant's Account had the Participant remained employed by the Employer during the period of Qualified Military Service.

(C) Compensation. For purposes of this Section 3.10, the Plan Administrator will determine an affected Participant's Compensation as follows. A Participant during his/her period of Qualified Military Service is deemed to receive Compensation equal to that which the Participant would have received had he/she remained employed by the Employer, based on the Participant's rate of pay that would have been in effect for the Participant during the period of Qualified Military Service. If the Compensation during such period would have been uncertain, the Plan Administrator will use the Participant's actual average Compensation for the 12 month period immediately preceding the period of Qualified Military Service, or if less, for the period of employment.

(D) Elective Deferrals/Employee Contributions. If the Plan provided for Elective Deferrals, Employee Contributions or Mandatory Employee Contributions during a Participant's period of Qualified Military Service, the Plan Administrator must allow a Participant under this Section 3.10 to make up such Elective Deferrals, Employee Contributions or Mandatory Employee Contributions to his/her Account. The Participant may make up the maximum amount of Elective Deferrals, Employee Contributions or Mandatory Employee Contributions which he/she under the Plan terms would have been able to contribute during the period of Qualified Military Service (less any such amounts the Participant actually contributed during such period) and the Participant must be permitted to contribute any lesser amount as the Plan would have permitted. The Participant must make up any contribution under this Section 3.10(D) commencing on his/her Re-Employment Commencement Date and not later than five years following reemployment (or if less, a period equal to three times the length of the Participant's Qualified Military Service triggering such make-up contribution).

(E) Matching Contributions. The Employer will make up any Matching Contribution that the Employer would have made and which the Plan Administrator would have allocated to the Participant's Account during the period of Qualified Military Service, but based on any make-up Elective Deferrals or make-up Employee Contributions that the Participant makes under Section 3.10(D).

(F) Limitations/Testing. Any contribution made under this Section 3.10 does not cause the Plan to violate and is not subject to testing under: (1) nondiscrimination requirements including under Code §401(a)(4), the ACP test, or the Safe Harbor 403(b) rules; or (2) coverage under Code §410(b). Contributions under this Section 3.10 are Annual Additions and are tested under Section 4.10(A) (Elective Deferral Limit) in the year to which such contributions are allocated, but not in the year in which such contributions are made.

(1) **Differential Wage Payments.** The Plan is not treated as failing to meet the requirements of any provision described in this Section 3.10(F) by reason of any contribution or benefit which is based on a Differential Wage Payment. The preceding sentence applies only if all Employees performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive Differential Wage Payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)). The Plan Administrator operationally may determine, for purposes of any provision described in this Section 3.10(F), whether to take into account any Elective Deferrals, and if applicable, any Matching Contributions, attributable to Differential Wage Payments.

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(G) No Earnings. A Participant receiving any make-up contribution under this Section 3.10 is not entitled to an allocation of any Earnings on any such contribution prior to the time that the Employer actually makes the contribution (or timely deposits the Participant's own make-up Elective Deferrals or Employee Contributions) to the Plan.

(H) No Forfeitures. A Participant receiving any make-up allocation under this Section 3.10 is not entitled to an allocation of any forfeitures allocated during the Participant's period of Qualified Military Service.

(I) Allocation Conditions. For purposes of applying any Plan allocation conditions under Section 3.06, the Plan Administrator will treat any period of Qualified Military Service as Service.

(J) HEART Act Death Benefits. If a Participant dies while performing Qualified Military Service, the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's Qualified Military Service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

(K) HEART Act Continued Benefit Accrual. This Section 3.10(K) does not apply unless the Employer in Appendix B to its Adoption Agreement elects to apply such provisions. If this Section 3.10(K) applies, then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled while performing Qualified Military Service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or Disability (as the case may be) and terminated employment on the actual date of death or Disability.

(1) **Determination of benefits.** The Plan will determine the amount of Employee Contributions and the amount of Elective Deferrals of an individual treated as reemployed under this Section 3.10(K) for purposes of applying Code §414(u)(8)(C) on the basis of the individual's average actual Employee Contributions or Elective Deferrals for the lesser of: (a) the 12-month period of service with the Employer immediately prior to Qualified Military Service; or (b) the actual length of continuous service with the Employer.

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ARTICLE 4. LIMITATIONS AND TESTING

4.01 ANNUAL ADDITIONS LIMIT. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Annual Additions Limit.

(A) Actions to Prevent Excess Amount. If the Annual Additions the Plan Administrator otherwise would allocate under the Plan to a Participant's Account for the Limitation Year would exceed the Annual Additions Limit, the Plan Administrator will not allocate the Excess Amount, but instead will take any reasonable, uniform and nondiscriminatory action the Plan Administrator determines necessary to avoid allocation of an Excess Amount. Such actions include, but are not limited to, those described in this Section 4.01(A). The Plan Administrator may apply this Section 4.01 in a manner which maximizes the allocation to a Participant of Employer Contributions (exclusive of the Participant's Elective Deferrals). Notwithstanding any contrary Plan provision, the Plan Administrator, for the Limitation Year, may: (1) suspend or limit a Participant's additional Employee Contributions or Elective Deferrals; (2) notify the Employer to reduce the Employer's future Plan contribution(s) as necessary to avoid allocation to a Participant of an Excess Amount; or (3) suspend or limit the allocation to a Participant of any Employer Contribution previously made to the Plan (exclusive of Elective Deferrals) or of any Participant forfeiture. If an allocation of Employer Contributions previously made (excluding a Participant's Elective Deferrals) or of Participant forfeitures would result in an Excess Amount to a Participant's Account, the Plan Administrator will allocate the Excess Amount to the remaining Participants who are eligible for an allocation of Employer Contributions for the Plan Year in which the Limitation Year ends. The Plan Administrator will make this allocation in accordance with the Plan's allocation method as if the Participant whose Account otherwise would receive the Excess Amount is not eligible for an allocation of Employer Contributions. If the Plan Administrator allocates to a Participant an Excess Amount, the Plan Administrator must dispose of the Excess Amount in accordance with Section 4.03.

(B) Estimated and Actual Compensation. Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Annual Additions Limit on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Annual Additions Limit on the basis of the Participant's actual Compensation for such Limitation Year.

4.02 ANNUAL ADDITIONS LIMIT CODE §415 AGGREGATED PLANS.

(A) Application of this Section. This Section 4.02 applies only to Participants who, in addition to this Plan, participate in one or more Code §415 Aggregated Plans.

(1) **Definition of Code §415 Aggregated Plans.** Code §415 Aggregated Plans means 403(b) plans maintained by the Employer or a Predecessor Employer and which provide an Annual Addition during the Limitation Year.

(B) Combined Plans Limitation. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Combined Plans Limitation.

(1) **Definition of Combined Plans Limitation.** The Combined Plans Limitation is the Annual Additions Limit, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under the Code §415 Aggregated Plans.

(2) **Prevention.** If the amount the Employer otherwise would allocate to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this Section 4.02(B) Combined Plans Limitation, the Employer will reduce the amount of its allocation to that Participant's Account in the manner described in Section 4.01, so the Annual Additions under all of the Code §415 Aggregated Plans for the Limitation Year will equal the Annual Additions Limit.

(3) **Correction.** If the Plan Administrator allocates to a Participant an amount attributed to this Plan under Section 4.02(D) which exceeds the Combined Plans Limitation, the Plan Administrator must dispose of the Excess Amount in accordance with Section 4.02(E).

(C) Estimated and Actual Compensation. Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Combined Plans Limitation on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan

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Administrator will determine the Combined Plans Limitation on the basis of the Participant's actual Compensation for such Limitation Year. See Section 4.05(D) regarding the definition of Compensation.

(D) Ordering Rules. If a Participant's Annual Additions under this Plan and the Code §415 Aggregated Plans result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. If the Plan Administrator allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, unless the Employer specifies otherwise in an Appendix B to its Adoption Agreement, the Excess Amount attributed to this Plan will equal the product of: (1) the total Excess Amount allocated as of such date, multiplied by (2) the ratio of (a) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (b) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the Code §415 Aggregated Plans.

(E) Disposition of Allocated Excess Amount Attributable to Plan. The Plan Administrator will dispose of any allocated Excess Amounts described in and attributed to this Plan under Section 4.02(D) as provided in Section 4.03.

(F) Override. The Employer in Appendix B to its Adoption Agreement may specify overriding provisions which will apply to satisfy the requirements of Code §415 and the applicable regulations if the Employer maintains more than one 403(b) plan.

4.03 DISPOSITION OF EXCESS ANNUAL ADDITIONS. If a Participant's Account exceeds the Annual Additions Limit for the Limitation Year, then the Plan Administrator will hold the Excess Amount in a separate account. The Excess Amount held in the separate account is includible in the Participant's gross income (to the extent vested) for the taxable year in which the Employer Contributions exceed the Annual Additions Limit. This separate account will be treated as a separate contract to which 403(c) (or another application provision of the Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan.

4.04 CONTROLLED EMPLOYER/QUALIFIED DEFINED CONTRIBUTION PLAN.

(A) Application of this Section. If a Participant in a 403(b) Plan owns or controls more than 50% of another employer maintaining a 401(a) or 401(k) plan, the 403(b) Plan is a Defined Contribution Plan maintained both by the controlled employer and by the Participant. In applying the Annual Additions Limit, the Participant must aggregate the 403(b) Plan contributions with all other contributions he/she receives under any qualified 401(a) or 401(k) Defined Contribution Plan the controlled employer maintains.

(B) Control. For purposes of applying the Annual Additions Limit under Section (A), the Plan Administrator determines control under Code §§414(b) or 414(c), as modified by Code §415(h), in accordance with the rules of Treas. Reg. §1.415(f)-1(f).

(C) Annual Additions. For purposes of this Section, Annual Additions include the following amounts in addition to amounts described in Section 4.05: (1) amounts allocated to an individual medical account (as defined in Code §415(l)(2)) included as part of a pension or annuity plan maintained by the Employer; (2) contributions paid or accrued 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 (3) allocations under a simplified employee pension (SEP) described in Code §408(k). However, the amounts described in (1) and (2) apply solely for purposes of the applying the dollar limitation of Section 4.05(B)(i) and do not apply for purposes of the percentage limitation of Section 4.05(B)(ii).

(D) Annual Notice to Participants. The Plan Administrator will provide written or electronic notice to Participants that explains the limitation in this Section 4.04 in a manner calculated to be understood by the average Participant and informs Participants of their responsibility to provide information to the Plan Administrator that is necessary to satisfy this Section. The notice will advise Participants that the application of the limitations in this Section will take into account information supplied by the Participant and that failure to provide necessary and correct information to the Plan Administrator could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code §403(b). The notice will be provided annually, beginning no later than the later of (1) the year in which the Employee becomes a Participant, or (2) the first Plan Year which begins after the Employer adopts this document.

4.05 DEFINITIONS: SECTIONS 4.01-4.04. The following definitions apply for purposes of Sections 4.01 through 4.04, and supersede any contrary definitions in Article 1:

(A) Annual Additions. Annual Additions means the sum of the following amounts allocated to a Participant's Account for a Limitation Year: (1) Employer Contributions (including Elective Deferrals); (2) forfeitures; (3) Employee Contributions; (4) Mandatory Employee Contributions; and (5) corrected (distributed) Excess Aggregate Contributions under Section 4.10(B)(8).

(1) **Exclusions.** Annual Additions do not include: (a) Catch-Up Contributions; (b) Excess Deferrals which the Plan Administrator corrects by distribution by April 15 of the following calendar year; (c) designated IRA contributions; (d) Restorative Payments; (e) transfers to this Plan; (f) Rollover Contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (g) In-Plan Roth Rollovers, (h) Repayments of loans made to a Participant from the Plan; and (i) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code

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§414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(2) **Date of tax-exempt Employer Contributions.** Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(B) Annual Additions Limit. Annual Additions Limit means the lesser of: (i) $40,000 (or, if greater, the $40,000 amount as adjusted under Code §415(d)), or (ii) 100% of the Participant's Compensation for the Limitation Year. If there is a short Limitation Year because of a change in Limitation Year, the Plan Administrator will multiply the $40,000 (as adjusted) limitation by the following fraction:

$$\frac{\text{Number of months (or fractional parts thereof) in the short Limitation Year}}{12}$$

The 100% Compensation limitation in clause (ii) above does not apply to any contribution for medical benefits within the meaning of Code §401(h) or Code §419A(f)(2) which otherwise is an Annual Addition.

(1) **Single plan treatment of 403(b) Plans.** For purposes of applying the Annual Additions Limit, the Plan Administrator must treat all 403(b) Plans (whether or not terminated) maintained by the Employer as a single plan.

(2) **Church plan.** For a Participant who is an Employee of a Church or a convention or association of churches, including an organization described in Code §414(e)(3)(B)(ii), the Annual Additions limit is not less than $10,000 regardless of the Participant's Includible Compensation in the Limitation Year. With respect to any Participant, the total amount of Annual Additions that, but for this Section 4.05(B)(2), would be in excess of the Annual Additions Limit cannot exceed $40,000. Thus, the aggregate of Annual Additions for all Limitation Years that would exceed the Annual Additions Limit but for this rule is limited to $40,000. In the case of a Participant described in Code §415(c)(7)(B) who is performing services outside the United States, the Participant's Annual Additions Limit shall not be less than $3,000, provided the Participant's adjusted gross income for the taxable year (determined separately and without regard to community property laws) exceeds $17,000.

(3) **Certain contributions treated as made to a Defined Contribution Plan.** Solely for purposes of Sections 4.01 through 4.04, the following contributions are treated as contributions to a Defined Contribution Plan: (i) mandatory employee contributions under Code §411(c)(2)(C) made to a Defined Benefit Plan maintained by the Employer, unless such contributions are "picked up" by the Employer under Code §414(h)(2); (ii) contributions to an individual medical account (as defined in Code §415(l)(2)) included as part of a Defined Benefit Plan or annuity plan under Code §401(h) maintained by the Employer; and (iii) a welfare benefit fund under Code §419(e) maintained by the Employer to the extent there are post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)).

(C) Cessation of Affiliation. A Cessation of Affiliation means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Treas. Reg. §§1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(D) Compensation. Compensation means Includible Compensation and includes Deemed Includible Compensation and Post-Severance Compensation. Compensation includes Elective Deferrals, irrespective of whether the Employer has elected in its Adoption Agreement to include these amounts as Compensation under Section 1.11. No Compensation exclusions the Employer has elected in Question 10 to its Adoption Agreement apply for determining Includible Compensation.

(1) **"First few weeks rule."** If the Employer elects in Appendix B to its Adoption Agreement, the Plan Administrator on a uniform and consistent basis as to similarly situated Participants, will include in Compensation for Code §415 purposes Compensation earned in such Limitation Year but which, solely because of pay period and pay date timing, is paid in the first few weeks of the next following Limitation Year as described in Treas. Reg. §1.415(c)-2(e)(2). This Section 4.05(D)(1) applies to Code §415 testing Compensation but does not affect Compensation for allocation purposes.

(2) **Differential Wage Payment.** The Plan treats a Differential Wage Payment to an Employee as Compensation for purposes of: (i) application of the Annual Additions Limit; (ii) determination of HCEs under Section 1.39; and (iii) application of the 5% Gateway Contribution requirement described in Section 4.07(A)).

(E) Employer. Employer means the Signatory Employer and any Related Employer. Solely for purposes of applying the Annual Additions Limit, the Plan Administrator will determine Related Employer status by modifying Code §§414(b) and (c) in

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accordance with Code §415(h) and Treas. Reg. §1.415(a)-1(f)(1) and will take into account tax-exempt organizations under Treas. Reg. §1.414(c)-5. For purposes of the limitation of Section 4.04(A), the Employer includes the controlled employer described in Section 4.04.

(F) Excess Amount. Excess Amount means the excess of the Participant's Annual Additions for the Limitation Year over the Annual Additions Limit.

(G) Formerly Affiliated Plan. Formerly Affiliated Plan means a plan that, immediately prior to the Cessation of Affiliation, was actually maintained by one or more of the entities that constitute the Employer (as determined under the employer affiliation rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the Employer (as determined under the employer affiliation rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2)).

(H) Limitation Year. See Section 1.45.

(I) Predecessor Employer. Predecessor Employer means a former employer with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the employer, but only if that benefit is provided under the plan maintained by the employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. §1.415(f)-1(b)(2) apply as if the Employer and Predecessor Employer constituted a single employer under the rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2) immediately prior to the Cessation of Affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2) immediately after the Cessation of Affiliation) and Cessation of Affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship. With respect to an Employer of a Participant, a former entity that antedates the Employer is a Predecessor Employer with respect to the Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(J) Restorative Payment. A Restorative Payment means a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are Restorative Payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to the Plan made pursuant to a DOL order, the DOL's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to the Plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not Restorative Payments and generally constitute contributions that are considered Annual Additions.

4.06 ANNUAL NONDISCRIMINATION AND COVERAGE TESTING ELECTIONS. The Plan Administrator may elect to test for coverage and nondiscrimination by applying, as applicable, annual testing elections under this Section 4.06. Plans sponsored by Churches do not need to test for coverage or nondiscrimination or ACP testing.

(A) Changes and Uniformity. In applying any testing election, the Plan Administrator may elect to apply or not to apply such election in any Testing Year, consistent with this Section 4.06. However, the Plan Administrator will apply the testing elections in effect within a Testing Year uniformly to all similarly situated Participants.

(B) Plan Specific Elections. The Employer in its Adoption Agreement must elect for the Plan Administrator to apply the following annual testing elections: (1) nondiscrimination testing under the ACP test as a traditional 403(b) Plan; (2) no nondiscrimination testing as a Safe Harbor 403(b) Plan; (3) the calendar year data election under Notice 97-45; (4) Current or Prior Year Testing as a traditional 403(b) Plan under Treas. Reg. §1.401(m)-2(a)(2)(ii) as applicable; and (5) any other testing election which the IRS in the future specifies in written guidance as being subject to a requirement of the Employer making a Plan (versus an operational) election.

(1) **Special Rules relating to ACP Testing.** If the Employer elects in its Adoption Agreement both safe harbor 403(b) status and nondiscrimination testing under the ACP test, the elections relating to Safe Harbor status will apply only to a disaggregated plan under Treas. Reg. §1.410(b)-7 which is a Safe Harbor 403(b) Plan under Section 3.05. If a disaggregated plan is a Safe Harbor 403(b) Plan and there are other disaggregated plans which are not Safe Harbor 403(b) Plans (such as through operation of the "otherwise excludible employees rule" (OEE) rule described in Section 4.06(C) and Section 3.05(D)), Current Year Testing will apply to the disaggregated plan covering Otherwise Excludible Employees unless the Employer otherwise elects in the Adoption Agreement. See Section 3.05(I)(1) regarding ACP testing in connection with the maybe notice. See Section 3.05(G) regarding the application of the ACP test to Employee Contributions if the Plan qualifies for the ACP test safe harbor.

(C) Operational Elections. The Plan Administrator operationally may apply any testing election available under IRS Guidance, other than those plan specific elections described in 4.06(B), including but not limited to: (i) the "otherwise excludible

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employees rule" ("OEE rule") under Code §410(b)(4)(B); (ii) the "early participation rule" ("EP rule") under Code §401(m)(5)(C); (iii) except as Section 4.07 may limit, the application of any Code §414(s) nondiscriminatory definition of compensation for nondiscrimination testing, regardless of the Plan's definitions of Compensation for any other purpose; (iv) application of the general nondiscrimination test under Treas. Reg. §1.401(a)(4)-2(c); (v) application of the "compensation ratio test" under Treas. Reg. §1.414(s)-1(d)(3); (vi) application of imputed permitted disparity under Treas. Reg. §1.401(a)(4)-7; (vii) application of restructuring under Treas. Reg. §1.401(a)(4)-9; (viii) application of the average benefit test under Code §410(b)(2), except as limited under Section 3.06(F); (ix) application of permissive aggregation under Code §410(b)(6)(B); or (x) application of the "qualified separate line of business rules" under Code §410(b)(5).

(1) **Application of otherwise excludible employees and early participation rules.** In applying the OEE and EP rules in clauses (i) and (ii) of Section 4.06(C) above, the Plan Administrator will apply the following provisions.

(a) **Definitions of Otherwise Excludible Employees and Includible Employees.** For purposes of this Section 4.06(C), an Otherwise Excludible Employee means a Participant who has not reached the Cross-Over Date. For purposes of this Section 4.06(C), an Includible Employee means a Participant who has reached the Cross-Over Date.

(b) **Satisfaction of coverage.** To apply the OEE or EP rules for nondiscrimination testing, the Plan must satisfy coverage as to the disaggregated plans under Code §410(b)(4)(B).

(c) **Definition of Cross-Over Date.** The Cross-Over Date under the OEE rule means the date on which an Employee changes status from the disaggregated plan benefiting the Otherwise Excludible Employees to the disaggregated plan benefiting the Includible Employees. The Cross-Over Date has the same meaning under the EP rule except it is limited only to NHCEs. Under the EP rule, all HCE Participants remain subject to nondiscrimination testing.

(d) **Determination of Cross-Over Date.** The Plan Administrator may elect to determine the Cross-Over Date for an Employee by applying any date which is not later than the maximum permissible entry date under Code §410(a)(4).

(e) **Amounts in testing in Cross-Over Plan Year.** For purposes of the OEE rule, the Plan Administrator will count the total Plan Year Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the Includible Employees plan test for the Employees who become Includible Employees at any time during such Plan Year. For purposes of applying the EP rule, the Plan Administrator will count the Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the single test for the Includible Employees, but only such of these items as are attributable to the period on and following the Cross-Over Date.

(f) **Application of other conventions.** Notwithstanding Sections 4.06(C)(1)(c), (d), and (e) the Plan Administrator under a Restated Plan operationally may apply the Plan terms commencing in the Plan Year beginning after the Employer executes the Restated Plan in lieu of applying the Plan terms retroactive to the Plan's restated Effective Date; and the Plan Administrator operationally may apply any other reasonable conventions, uniformly applied within a Plan Year.

(g) **Allocations not affected by testing.** The Plan Administrator's election to apply the OEE or EP rules for testing does not control the Plan allocations, or the Compensation or Elective Deferrals taken into account for Plan allocations. The Plan Administrator will determine Plan allocations, and Compensation and Elective Deferrals for Plan allocations, based on the Employer's Adoption Agreement elections, including elections relating to Participating Compensation or Plan Year Compensation. For this purpose, an election of Participating Compensation means Compensation and Elective Deferrals on and following the Cross-Over Date as to the allocations for the disaggregated plan benefiting the Includible Employees.

(D) Coverage Transition Rule. The Plan Administrator in determining the Plan's compliance with the coverage requirements of Code §410(b), to the extent applicable to the Plan, in the case of certain acquisitions or dispositions described in Code §410(b)(6)(C) and in the regulations thereunder, will apply the "coverage transition rule" described therein.

4.07 TESTING BASED ON BENEFITS. In applying the general nondiscrimination test under Section 4.06(C) to any non-uniform Plan allocation, the Plan Administrator may elect to test using allocation rates or using equivalent accrual (benefit) rates ("EBRs") as defined in Treas. Reg. §1.401(a)(4)-(8)(b)(2). If the Plan Administrator elects to test using EBRs, the Plan must comply with this Section 4.07. This Section 4.07 does not apply if the Employer is a Church.

(A) Gateway Contribution. Except as provided in Section 4.07(A)(2), if the Plan Administrator will perform nondiscrimination testing using EBRs, the Employer must make a Gateway Contribution.

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(1) **Definition of Gateway Contribution.** A Gateway Contribution is an additional Employer Contribution or Nonelective Contribution in an amount necessary to satisfy the minimum allocation gateway requirement described in Treas. Reg. §1.401(a)(4)-8(b)(1)(vi).

(2) **Exception to Gateway Contribution requirement.** An Employer is not required to make any Gateway Contribution in the event that the Employer's elected allocation under Section 4.07(A) satisfies; (a) the "broadly available allocation rate" requirements; (b) the "age-based allocation with a gradual age or service schedule" requirements; or (c) the uniform target benefit allocation requirements each as described in Treas. Reg. §1.401(a)(4)-8(b)(1)(B).

(B) Eligibility for Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution for a Plan Year to each NHCE Participant who receives an allocation of any Employer Contribution or Nonelective Contribution for such Plan Year. The Plan Administrator will allocate the Gateway Contribution without regard to any allocation conditions under Section 3.06 otherwise applicable to Employer Contributions or Nonelective Contributions under the Plan. However, if the Plan Administrator disaggregates the Plan for testing pursuant to the OEE rule under Section 4.06(C), the Otherwise Excludible Employees will not receive an allocation of any Gateway Contribution.

(C) Amount of Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution pro rata based on the Compensation of each Participant who receives a Gateway Contribution allocation for the Plan Year, but in no event will an allocation of the Gateway Contribution to any Participant exceed the lesser of: (1) 5% of Compensation; or (2) one-third (1/3) of the Highest Allocation Rate for the Plan Year. The Plan Administrator will reduce (offset) the Gateway Contribution allocation for a Participant under either the 5% or the 1/3 Gateway Contribution alternative, by the amount of any other Employer Contributions or Nonelective Contributions the Plan Administrator allocates (including forfeitures allocated as an Employer Contribution or Nonelective Contribution and Safe Harbor Nonelective Contributions, but excluding other QNECs, as defined under Section 1.48(C)) for the same Plan Year to such Participant; provided that if an NHCE is receiving only a QNEC and the QNEC amount equals or exceeds the Gateway Contribution, the QNEC satisfies the Gateway Contribution requirement as to that NHCE.

(D) Compensation for 5% Gateway Contribution. For allocation purposes under the 5% Gateway Contribution alternative, "Compensation" means Compensation described under Treas. Reg. §1.401(a)(4)-8(b)(1)(vi)(B).

(E) Compensation for Determination of Highest Rate and 1/3 Gateway Contribution. The Plan Administrator under the 1/3 Gateway Contribution alternative: (i) will determine the Highest Allocation Rate and the resulting Gateway Contribution rate for the NHCE Participants entitled to the Gateway Contribution; and (ii) will allocate the Gateway Contribution, based on Compensation the Employer elects in its Adoption Agreement, provided that such definition satisfies Code §414(s) and if it does not, the Plan Administrator will allocate the Gateway Contribution based on a Code §414(s) definition which the Plan Administrator operationally selects.

(1) **Definition of Highest Allocation Rate.** The Highest Allocation Rate means the greatest allocation rate of any HCE Participant and is equal to the Participant's total Employer Contribution or Nonelective Contribution allocation (including any QNECs, Safe Harbor Nonelective Contributions and forfeitures allocated as a Nonelective Contribution divided by his/her Compensation, as described in this Section 4.07(E)).

(F) Employer Contribution Excludes Match. For purposes of this Section 4.07, an Employer Contribution excludes Matching Contributions.

4.08 AMENDMENT TO PASS TESTING. In the event that the Plan fails to satisfy Code §§410(b) or 401(a)(4) in any Plan Year (and is required to do so), the Employer may elect to amend the Plan consistent with Treas. Reg. §1.401(a)(4)-11(g) to correct the failure, or as otherwise permitted in the regulation. The Employer may make such an amendment in any form or manner as the Employer deems reasonable, but otherwise consistent with Section 9.02. Any amendment under this Section 4.08 will not affect reliance on the Plan's Advisory Letter.

4.09 APPLICATION OF COMPENSATION LIMIT. The Plan Administrator in performing any nondiscrimination testing under this Article 4 will limit each Participant's Compensation to the amount described in Section 1.11(E).

4.10 403(b) TESTING. The Plan Administrator will test Elective Deferrals, Matching Contributions and Employee Contributions under the Plan, in accordance with this Section 4.10.

(A) Annual Elective Deferral Limitation. A Participant's Elective Deferrals for a Taxable Year may not exceed the Elective Deferral Limit. Qualified Organization Catch-up Deferrals and Age 50 Catch-up Deferrals are not subject to the Elective Deferral Limit. See Sections 3.02(D) and (E).

(1) **Definition of Elective Deferral Limit.** The Elective Deferral Limit is the Code §402(g) limitation on each Participant's Elective Deferrals for each Taxable Year as defined in Section 4.10(A)(3). If the Participant's Taxable Year is not a calendar year, the Plan Administrator must apply the Code §402(g) limitation in effect for the calendar year in which the Participant's Taxable Year begins.

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(2) **Definition of Excess Deferral.** A Participant's Excess Deferral is the amount of Elective Deferrals for a Taxable Year which exceeds the Elective Deferral Limit.

(3) **Elective Deferral Limit.** The Elective Deferral Limit is the amount as in effect under Code §402(g) ($18,000 in 2017), subject to adjustment by the IRS in multiples of $500 under Code §402(g)(4). However, in no event shall a Participant's Elective Deferrals exceed the Participant's Compensation for the Taxable Year.

(4) **Suspension after reaching limit.** If, pursuant to a Salary Reduction Agreement, the Employer determines a Participant's Elective Deferrals to the Plan for a Taxable Year would exceed the Elective Deferral Limit, the Employer will suspend the Participant's Elective Deferrals under his/her Salary Reduction Agreement, if any, until the following January 1 and will pay to the Participant in cash the portion of the Elective Deferrals which would result in the Participant's Elective Deferrals for the Taxable Year exceeding the Elective Deferral Limit.

(5) **Correction.** If the Plan Administrator determines a Participant's Elective Deferrals already contributed to the Plan for a Taxable Year exceed the Elective Deferral Limit, the Plan Administrator will distribute the Excess Deferrals as adjusted for Allocable Income, no later than April 15 of the following Taxable Year (or if later, the date permitted under Code §§7503 or 7508A).

(6) **415 interaction.** If the Plan Administrator distributes the Excess Deferrals by the April 15 deadline under Section 4.10(A)(5), the Excess Deferrals are not an Annual Addition under Section 4.05, and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. Elective Deferrals distributed to a Participant as an Excess Amount in accordance with Section 4.03 are not taken into account in determining the Participant's Elective Deferral Limit.

(7) **More than one plan.** If a Participant participates in another plan subject to the Code §402(g) limitation under which he/she makes elective deferrals pursuant to a 401(k) Plan, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a 403(b) plan (irrespective of whether the Employer maintains the other plan), the Participant may provide to the Plan Administrator a written claim for Excess Deferrals made to the Plan for a Taxable Year. The Participant must submit the claim no later than the March 1 following the close of the particular Taxable Year and the claim must specify the amount of the Participant's Elective Deferrals under this Plan which are Excess Deferrals. The Plan Administrator may require the Participant to provide reasonable evidence of the existence of and the amount of the Participant's Excess Deferrals. If the Plan Administrator receives a timely claim which it approves, the Plan Administrator will distribute the Excess Deferrals (as adjusted for Allocable Income under Section 4.11(B)(1)) the Participant has assigned to this Plan, in accordance with this Section 4.10(A). If a Participant has Excess Deferrals because of making Elective Deferrals to this Plan and other plans of the Employer (but where the Elective Deferral Limit is not exceeded based on Deferrals to any single plan), the Participant for purposes of this Section 4.10(A)(7) is deemed to have notified the Plan Administrator of this Plan of the Excess Deferrals.

(8) **Roth and Pre-Tax Deferrals.** If a Participant who will receive a distribution of Excess Deferrals, in the Taxable Year for which the corrective distribution is made, has contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Vendor to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Vendor will make the corrective distribution. However, the amount of a corrective distribution of Excess Deferrals to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.10(A)(8) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the Taxable Year of the correction.

(B) Actual Contribution Percentage (ACP) Test. If: (i) there are Employee Contributions or (ii) the Plan is not a Safe Harbor 403(b) Plan and the Plan includes Matching Contributions, a Participant's Aggregate Contributions may not exceed the ACP Limit. However, this Section 4.10(B) will not apply to a Plan Year if: (1) for the Plan Year no NHCE was an ACP Participant, (2) for the Plan Year no HCE was an ACP Participant, or (3) the Employer is a Church. In accordance with Treas. Reg. §1.401(m)-1(c)(2), it is impermissible for the Plan to use ACP testing for a Plan Year in which it is intended for the Plan through its written terms to use the ACP test safe harbor, even though the Plan fails to satisfy the requirements of such safe harbor for the Plan Year.

(1) **Definition of ACP Limit.** The ACP Limit is the maximum dollar amount of Aggregate Contributions each HCE Participant may receive or may make under the Plan such that the Plan passes the ACP test.

(2) **Definition of Aggregate Contributions.** Aggregate Contributions are Matching Contributions and Employee Contributions. Aggregate Contributions also include any QNECs the Plan Administrator includes in the ACP test.

(3) **Definition of Excess Aggregate Contributions.** Excess Aggregate Contributions are the amount of Aggregate Contributions allocated on behalf of the HCEs which exceed the ACP Limit.

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(4) **ACP test.** For each Plan Year, Aggregate Contributions satisfy the ACP test if they satisfy either of the following tests: (a) The ACP for the HCE Group does not exceed 1.25 times the ACP of the NHCE Group; or (b) The ACP for the HCE Group does not exceed the ACP for the NHCE Group by more than two percentage points and the ACP for the HCE Group is not more than twice the ACP for the NHCE Group.

(5) **Calculation of ACP.** The ACP for either group is the average of the separate ACRs calculated to the nearest one-hundredth of one percent for each ACP Participant who is a member of that group. The Plan Administrator will include in the ACP test as a zero an ACP Participant who for the Testing Year: (i) is eligible to make Employee Contributions but who does not do so; or (ii) is eligible to make Elective Deferrals and to receive an allocation of any Matching Contributions based on Elective Deferrals but who does not make any Elective Deferrals. An Employee who fails to satisfy an allocation condition applicable to Matching Contributions is excluded from the ACP test unless the Employee is eligible to make Employee Contributions or the Plan Administrator re-characterizes any of the Employee's Elective Deferrals as Employee Contributions.

(a) **Definition of ACR (actual contribution ratio).** An ACP Participant's ACR for a Plan Year is the ratio of the ACP Participant's Aggregate Contributions for the Plan Year to the ACP Participant's Compensation for the Plan Year.

(b) **Definitions of ACP Participant and HCE and NHCE Groups.** See Section 4.11(A), (E), and (F).

(c) **QNECs.** The Plan Administrator operationally may include in the ACP test QNECs, provided such amounts are not impermissibly targeted under Section 4.10(C).

(d) **Current/Prior Year Testing.**

(i) **Election.** In determining whether the Plan's 401(m) arrangement satisfies the ACP test, the Plan Administrator will use Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement. Any such election applies for such Testing Years as the Employer elects (and retroactively as the Employer elects in the case of a Restated Plan).

(ii) **Permissible changes.** The Employer may amend its Adoption Agreement to change from Prior Year Testing to Current Year Testing at any time, subject to Section 4.06(B). The Employer, under Section 4.06(B) may amend its Adoption Agreement to change from Current Year Testing to Prior Year Testing only: (A) if the Plan has used Current Year Testing in at least the five immediately preceding Plan Years (or if the Plan has not been in existence for five Plan Years, the number of Plan Years the Plan has been in existence); (B) the Plan is the result of aggregation of two or more plans and each of the aggregated plans used Current Year Testing for the period described in clause (A); or (C) a transaction occurs to which the coverage transition rule under Code §410(b)(6)(C) applies and as a result, the Employer maintains a plan using Prior Year Testing and a plan using Current Year Testing. Under clause (C), the Employer may make an amendment to change to Prior Year Testing at any time during the coverage transition period.

(iii) **Employee Contribution, Matching and QNEC deadline/limitation under Prior Year Testing.** The Plan Administrator includes Employee Contributions in the ACP test in the Testing Year in which the Employer withholds the Employee Contributions from the Participant's pay, provided such contributions are contributed to the Plan within a reasonable period thereafter. The Plan Administrator may include Matching Contributions and QNECs (as defined in Section 1.48(C)) in determining the HCE or NHCE ACP only if the Employer makes such contribution to the Plan within 12 months following the end of the Plan Year to which the Plan Administrator will allocate the Matching Contribution or QNEC. To be included in the ACP test, a Matching Contribution must be made on account of an Employee's Elective Deferrals or Employee Contributions for the Testing Year. Under Prior Year Testing, to count the QNEC in the ACP test, the Employer must contribute a QNEC by the end of the Testing Year. The Employer may not make an Operational QNEC if the Plan uses Prior Year Testing.

(iv) **First Plan Year under Prior Year Testing.** For the first Plan Year the Plan permits Matching Contributions or Employee Contributions, if the Plan is not a Successor Plan and is using Prior Year Testing, the prior year ACP for the NHCE Group is equal to the greater of 3% or the actual ACP for the NHCE Group in the first Plan Year. If the Plan continues to use Prior Year Testing in the second Plan Year, the Plan Administrator must use the actual first Plan Year ACP for the NHCE Group in the ACP test for the second Plan Year.

(v) **Plan coverage changes under Prior Year Testing.** If the Employer's Plan is using Prior Year Testing and the Plan experiences a plan coverage change under Treas. Reg. §1.401(m)-2(c)(4), the Plan Administrator will make any adjustments such regulations may require to the NHCEs' ACP for the prior year.

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(6) **Special aggregation rule for HCEs.** To determine the ACR of any HCE, the Plan Administrator must take into account any Aggregate Contributions allocated to the HCE under any other Plan tested under Code §401(m) maintained by the Employer. If the 401(m) Plans have different Plan Years, the Plan Administrator will determine the combined Aggregate Contributions on the basis of the Plan Years ending in the same calendar year. If the 401(m) Plans have different Plan Years, all Aggregate Contributions made during the Plan Year will be aggregated. Notwithstanding the foregoing, the Plan Administrator will not apply the aggregation rule of this Section 4.10(B)(6) to plans which may not be aggregated under Treas. Reg. §1.401(m)-2(a)(3)(ii)(B).

(7) **Aggregation of certain 401(m) plans.** If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(m) Plans under such plans to determine whether the plans satisfy the ACP test. This aggregation rule applies to the ACR determination for all ACP Participants (and ACP participants under the other plans), irrespective of whether an ACP Participant is an HCE or an NHCE. An Employer may not aggregate: (a) plans with different Plan Years; (b) a Safe Harbor 403(b) Plan with a non-Safe Harbor 403(b) Plan; (c) plans which use different testing methods (Current Year Testing versus Prior Year Testing); or (d) any other plans which must be disaggregated under Treas. Reg. §1.410(b)-7. If the Employer aggregating 401(m) Plans under this Section 4.10(B)(7) is using Prior Year Testing, the Plan Administrator must adjust the NHCE Group ACP for the prior year as provided in Section 4.10(B)(5)(d)(v).

(8) **Distribution of Excess Aggregate Contributions.** If the Plan Administrator determines the Plan fails to satisfy the ACP test for a Plan Year, the Vendor, as directed by the Plan Administrator, by the end of the Plan Year which follows the Testing Year (or any later date determined under Code §7508A), must distribute the Vested Excess Aggregate Contributions, as adjusted for Allocable Income under Section 4.11(B)(2).

(a) **Calculation of total Excess Aggregate Contributions.** The Plan Administrator will determine the total amount of the Excess Aggregate Contributions by starting with the HCE(s) who has the greatest ACR, reducing his/her ACR (but not below the next highest ACR), then, if necessary, reducing the ACR of the HCE(s) at the next highest ACR, including the ACR of the HCE(s) whose ACR the Plan Administrator already has reduced (but not below the next highest ACR), and continuing in this manner until the ACP for the HCE Group is equal to the ACP Limit. All reductions under this Section 4.10(B)(8)(a) are to the ACR only and do not result in any actual distributions.

(b) **Apportionment and distribution of Excess Aggregate Contributions.** After the Plan Administrator has determined the total Excess Aggregate Contribution amount, the Vendor, as directed by the Plan Administrator, then will distribute (to the extent Vested) to each HCE his/her respective share of the Excess Aggregate Contributions. The Plan Administrator will determine each HCE's share of Excess Aggregate Contributions by starting with the HCE(s) who has the highest dollar amount of Aggregate Contributions, reducing the amount of his/her Aggregate Contributions (but not below the next highest dollar amount of the Aggregate Contributions), then, if necessary, reducing the amount of Aggregate Contributions of the HCE(s) at the next highest dollar amount of Aggregate Contributions, including the Aggregate Contributions of the HCE(s) whose Aggregate Contributions the Plan Administrator already has reduced (but not below the next highest dollar amount of Aggregate Contributions), and continuing in this manner until the Vendor has distributed all Excess Aggregate Contributions.

(9) **Allocable Income/Testing Year.** A corrective distribution under Section 4.10(B)(8) must include Allocable Income. See Section 4.11(B)(2).

(10) **Vesting/Forfeiture of non-Vested Excess Aggregates.** To the extent an HCE's Excess Aggregate Contributions are attributable to Matching Contributions, and he/she is not 100% Vested in his/her Matching Contribution Account, the Plan Administrator will distribute only the Vested portion and will forfeit the non-Vested portion. The Vested portion of the HCE's Excess Aggregate Contributions attributable to Employer Matching Contributions is the total amount of such Excess Aggregate Contributions (as adjusted for allocable income) multiplied by his/her Vested percentage (determined as of the last day of the Plan Year for which the Employer made the Matching Contribution).

(11) **Treatment as Annual Addition.** Distributed Excess Aggregate Contributions are Annual Additions under Sections 4.01 through 4.05 in the Limitation Year in which such amounts were allocated.

(C) QNEC and Matching Targeting Restrictions. The Plan Administrator in performing the ACP test may not include in the tests any impermissibly targeted QNEC or Matching Contribution as described in this Section 4.10(C). These targeting restrictions apply to Matching Contributions and to Plan-Designated and Operational QNECs. The Employer will not contribute Operational QNECs which would violate the targeting restrictions.

(1) **QNEC targeting rules.** The Plan Administrator may include in the ACP test only such amounts of any QNEC as are not impermissibly targeted. A QNEC is impermissibly targeted if the QNEC amount allocated to any NHCE exceeds the greater of: (a) 5% of Compensation; or (b) 2 times the Plan's Representative Contribution Rate.

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(a) **Definition of Representative Contribution Rate.** The Plan's ACP Representative Contribution Rate is the lowest ACP Applicable Contribution Rate of any ACP Participants who are NHCEs in a group consisting of: (A) any one-half of the ACP Participants who are NHCEs for the Plan Year; or (B) if it would result in a greater Representative Contribution Rate than under clause (A), all of the ACP Participants who are NHCEs and who are employed by the Employer on the last day of the Plan Year.

(b) **Definition of Applicable Contribution Rate.** The Applicable Contribution Rate of an ACP Participant who is an NHCE for the ACP test is the sum of the NHCE's Matching Contributions and QNECs used in the ACP test, divided by the NHCE's Compensation.

(2) **Matching Contribution targeting rules.** The Plan Administrator may include in the ACP test only such Matching Contribution amounts as are not impermissibly targeted. A Matching Contribution is impermissibly targeted if the Matching Contribution amount allocated to any NHCE exceeds the greatest of: (i) 5% of Compensation; (ii) the amount of the NHCE's Elective Deferrals; or (iii) the product of two times the Plan's Representative Matching Rate and the NHCE's Elective Deferrals for the Plan Year.

(a) **Definition of Representative Matching Rate.** The Plan's Representative Matching Rate is the lowest Matching Rate for any ACP Participants who are NHCEs in a group consisting of: (i) any one-half of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year; or if it would result in a greater Representative Matching Rate, (ii) all of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year and who are employed by the Employer on the last day of the Plan Year.

(b) **Definition of Matching Rate.** The Matching Rate for an NHCE is the NHCE's Matching Contributions divided by his/her Elective Deferrals; provided that if the Matching Rate is not the same for all levels of Elective Deferrals, the Plan Administrator will determine each NHCE's Matching Rate by assuming an Elective Deferral equal to 6% of Compensation.

(c) **Employee Contributions.** If the Plan permits Employee Contributions, the Plan Administrator will apply this Section 4.10(C)(2) by adding together an NHCE's Employee Contributions and Elective Deferrals. If the Plan provides a Matching Contribution only as to Employee Contributions, the Plan Administrator will apply this Section 4.10(C)(2) by substituting the Employee Contributions for Elective Deferrals.

(3) **Accrued fixed contributions.** The Employer must contribute any accrued fixed contribution, even if any or all of such contribution is impermissibly targeted under this Section 4.10(C).

4.11 DEFINITIONS: SECTIONS 4.06-4.10. For purposes of Sections 4.06 through 4.10:

(A) ACP Participant. ACP Participant means an Eligible Employee who has satisfied the eligibility requirements under Article 2 and the allocation conditions under Section 3.06 applicable to any Matching Contributions such that the Participant would be entitled to a Matching Contribution allocable to the Testing Year if he/she makes an Elective Deferral or any other contribution that is matched under the Adoption Agreement. An ACP Participant also includes an Eligible Employee who has satisfied the eligibility requirements under Article 2 applicable to Employee Contributions and who has the right at any time during the Testing Year to make Employee Contributions. Any Employee with zero Compensation for the Testing Year is not an ACP Participant.

(B) Allocable Income. Allocable Income means as follows:

(1) **Excess Deferrals.** For purposes of making a distribution of Excess Deferrals pursuant to Section 4.10(A), Allocable Income means Earnings allocable to the Excess Deferrals for the Taxable Year in which the Participant made the Excess Deferral.

(a) **Reasonable or alternative (pro rata) method.** To calculate such Allocable Income for the Taxable Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §1.402(g)-1(e)(5)(iii). See Section 4.11(B)(2)(a) as to the alternative method except the Plan Administrator will apply such modifications as are necessary to determine Taxable Year Allocable Income with respect to the Excess Deferrals.

(2) **Excess Aggregate Contributions.** For purposes of making a distribution of Excess Aggregate Contributions under Section 4.10(B), Allocable Income means Earnings allocable to such amounts.

(a) **Reasonable or alternative (pro rata) method.** To calculate such Allocable Income for the Testing Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §1.401(m)-2(b)(2)(iv)(C). Under the alternative method, the Plan Administrator will determine

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the Allocable Income for the Testing Year by multiplying the Testing Year income with respect to a Participant's Excess Contributions (or Excess Aggregate Contributions) by a fraction, the numerator of which is the Participant's Excess Aggregate Contributions and the denominator of which is the Participant's end of the Testing Year Account Balance attributable to Matching Contributions and Employee Contributions and any other amounts included in the ACP test, but disregarding Earnings on such amounts for the Testing Year.

(C) Compensation. Compensation means, except as otherwise provided in this Article 4, Compensation as defined for nondiscrimination purposes in Section 1.11(F).

(D) Current Year Testing. Current Year Testing means for purposes of the ACP test described in Section 4.10(B), the use of data from the Testing Year in determining the ACP for the NHCE Group.

(E) HCE Group. HCE Group means the group of ACP Participants who are HCEs for the Testing Year.

(F) NHCE Group. NHCE Group means the group of ACP Participants who are NHCEs for the Testing Year, or for the immediately prior Plan Year under Prior Year Testing, except as the Testing Year may apply in the first Plan Year, in accordance with Section 4.10(B)(5)(e)(iv).

(G) Prior Year Testing. Prior Year Testing means for purposes of the ACP test described in Section 4.10(B), the use of data from the Plan Year immediately prior to the Testing Year in determining the ACP for the NHCE Group, unless the first Plan Year provisions of Section 4.10(B)(5)(d)(iv) apply.

(H) Testing Year. Testing Year means the Plan Year for which the Plan Administrator is performing coverage or nondiscrimination testing including the ACP test.

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ARTICLE 5. VESTING

5.01 NORMAL/EARLY RETIREMENT AGE. The Employer in its Adoption Agreement must specify the Plan's Normal Retirement Age. If the Employer fails to specify the Plan's Normal Retirement Age in its Adoption Agreement, the Employer is deemed to have elected age 65 as the Plan's Normal Retirement Age. The Employer in its Adoption Agreement may specify an Early Retirement Age. A Participant's Account Balance derived from Employer Contributions is 100% Vested upon and after his/her attaining Normal Retirement Age (or if elected in the Adoption Agreement, Early Retirement Age) if the Participant is employed by the Employer on or after that date and regardless of the Participant's Years of Service for vesting or the Employer's Adoption Agreement elected vesting schedules.

5.02 PARTICIPANT DEATH OR DISABILITY. If the Employer elects in its Adoption Agreement, a Participant's Account Balance derived from Employer Contributions is 100% Vested if the Participant's Severance from Employment is a result of his/her death or his/her Disability.

5.03 VESTING SCHEDULE.

(A) General. Except as provided in Sections 5.01 and 5.02, for each Year of Service as described in Section 5.05, a Participant's Vested percentage of his/her Account Balance derived from Nonelective Contributions and Matching Contributions equals the percentage under the appropriate vesting schedule the Employer has elected in its Adoption Agreement.

(1) **Election of different schedules.** Unless the Employer in its Adoption Agreement elects otherwise, the vesting schedule for Nonelective Contributions will be the same vesting schedule as for Matching Contributions.

(B) Vesting Schedules.

(1) **In General.** Employer Contributions will vest in accordance with the Employer's Adoption Agreement election. The Employer may elect to provide immediate 100% vesting, "3-year cliff," "6-year graded," or a modified vesting schedule. The vesting schedule must be at least as rapid as 6-year graded or 3-year cliff. For purposes of the Employer's elections under its Adoption Agreement, "6-year graded," or "3-year cliff" means an Employee's Vested percentage, based on each included Year of Service, under the following applicable schedule:

6-year graded	**3-year cliff**
0-1 year / 0%	0-2 years / 0%
2 years / 20%	3 years / 100%
3 years / 40%	
4 years / 60%	
5 years / 80%	
6 years / 100%	

(2) **QACAs.** See Section 3.05(E)(10) regarding the vesting of QACA Safe Harbor Contributions.

(C) Vesting Formula. If the Vendor makes a distribution (other than a Cash Out Distribution described in Section 5.04) to a Participant from an Account which is not fully Vested, and the Participant has not incurred a Forfeiture Break in Service, the provisions of this Section 5.03(C) apply to the Participant's Account Balance.

(1) **"Grossed Up" formula.** At any relevant time following the distribution, the Plan Administrator will determine the Participant's Vested Account Balance derived from Employer Contributions in accordance with the following formula: P(AB + D) - D. To apply this formula, "P" is the Participant's current vesting percentage at the relevant time, "AB" is the Participant's Employer-derived Account Balance at the relevant time and "D" is the amount of the earlier distribution. If, under a Restated Plan, the Plan has made distribution to a partially-Vested Participant prior to its restated Effective Date and is unable to apply the cash-out provisions of Section 5.04 to that prior distribution, this special vesting formula also applies to that Participant's remaining Account Balance.

(2) **Alternative separate account formula.** The Employer, in Appendix B to its Adoption Agreement, may elect to use the alternative formula. If the Employer elects to use the alternative formula, then the Plan Administrator will establish a separate account for the Participant's Account Balance at the time of the distribution. At any relevant time following the distribution, the Plan Administrator will determine the Participant's Vested Account Balance in such separate account derived from Employer contributions in accordance with the following formula: P(AB + (R x D)) - (R x D). For purposes of this alternative formula, the terms in the preceding Paragraph have the same meaning and "R" is the ratio of "AB" to the Participant's Employer-derived Account Balance immediately following the earlier distribution.

(3) **Application to Nonelective/Matching.** If necessary, the Plan Administrator will determine the Participant's Vested Account Balance for the Participant's Matching Contributions and the Participant's Employer Nonelective Contributions separately.

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(D) Special Vesting Elections. The Employer in its Adoption Agreement may elect other specified vesting provisions.

(E) Fully Vested Amounts. A Participant is 100% Vested in all Accounts which are attributable to Elective Deferrals, Employee Contributions, QNECs, Safe Harbor Contributions (other than QACA Safe Harbor Contributions described in Section 3.05(E)(10)), Mandatory Employee Contributions, Nonelective Contributions to former Employees under Section 3.04(D), and Rollover Contributions.

(F) Mergers/Transfers. A merger or transfer of assets from another 403(b) Plan to this Plan does not result, solely by reason of the merger or transfer, in 100% vesting of the merged or transferred assets. The Plan Administrator operationally and on a uniform and nondiscriminatory basis will determine in the case of a merger or other transfer to the Plan whether: (1) to vest immediately all transferred assets; (2) to vest the transferred assets in accordance with the Plan's vesting schedule applicable to the contribution type being transferred but subject to the requirements of Section 5.08; or (3) to vest the transferred assets in accordance with the transferor plan's vesting schedule(s) applicable to the contribution types being transferred, as such schedules existed on the date of the transfer. The Employer may elect to record such information in its Adoption Agreement as a special Vesting Election.

5.04 IMMEDIATE FORFEITURE UPON CASH-OUT/POSSIBLE RESTORATION.

(A) Effect of Cash-Out Distribution. If, pursuant to Article 6, a partially-Vested Participant receives a Cash-Out Distribution before he/she incurs a Forfeiture Break in Service, the Participant will incur an immediate forfeiture of the non-Vested portion of his/her Account Balance.

(1) **Definition of Cash-Out Distribution.** For purposes of this Article 5, a Cash-Out Distribution is a distribution to the Participant or a direct rollover for the Participant (whether involuntary or with required consent as described in Article 6), of his/her entire Vested Account Balance (including Elective Deferrals) due to the Participant's Severance from Employment.

(2) **Special rules for Annuities**. For purposes of this Section 5.04, if a Participant's Account is invested in an Annuity Contract, the contract will be returned to the issuer and amended to provide for a transfer of ownership in the Vested portion of the Participant's Account, if any, to the Participant. Upon transfer of ownership, the Participant shall be deemed to have received a distribution of such Vested Account.

(3) **Allocation in Cash-Out Year.** If a partially-Vested Participant's Account is entitled to an allocation of Employer Contributions or Participant forfeitures for the Plan Year in which he/she otherwise would incur a forfeiture by reason of a Cash-Out Distribution, the Plan Administrator will make the additional allocation of Employer Contributions and forfeitures without regard to whether the Participant previously received a Cash-Out Distribution; provided, that the Plan Administrator, in accordance with Section 3.07(D), will not allocate to such Participant any of his/her own forfeiture resulting from the Cash-Out Distribution. A partially-Vested Participant is a Participant whose Vested percentage determined under Section 5.03 is more than 0% but is less than 100%.

(B) Forfeiture Restoration and Conditions for Restoration. A partially-Vested Participant re-employed by the Employer after receiving a Cash-Out Distribution of the Vested percentage of his/her Account Balance may repay to the Investment Arrangement the entire amount of the Cash-Out Distribution (including Elective Deferrals) without any adjustment for Earnings, unless the Participant no longer has a right to restoration under this Section 5.04(B).

(1) **Restoration.** If a re-employed Participant repays his/her Cash-Out Distribution, the Plan Administrator, subject to the conditions of this Section 5.04(B), must restore the Participant's Account Balance to the same dollar amount as the dollar amount of his/her Account Balance on the last day of the Plan Year, or other Valuation Date, immediately preceding the date of the Cash-Out Distribution, unadjusted for any Earnings occurring subsequent to that last day of the Plan Year (and prior to the Participant's repayment or the Employer's restoration), or other Valuation Date.

(2) **Source of repayment.** A re-employed Participant may make repayment from any source, including an IRA rollover, permissible under the Code.

(3) **No restoration.** The Plan Administrator will not restore a re-employed Participant's Account Balance under this Section 5.04(B) if:

(a) **Five Years.** Five years have elapsed since the Participant's first re-employment date with the Employer following the Cash-Out Distribution;

(b) **Not employed.** The Participant is not in the Employer's Service on the date the Participant repays his/her Cash-Out Distribution; or

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(c) **Forfeiture Break.** The Participant has incurred a Forfeiture Break in Service. This condition also applies if the Participant makes repayment within the Plan Year in which he/she incurs the Forfeiture Break in Service and that Forfeiture Break in Service would result in a complete forfeiture of the amount the Plan Administrator otherwise would restore.

(4) **Restoration timing.** If none of the conditions in Section 5.04(B)(3) preventing restoration of the Participant's Account Balance applies, the Plan Administrator will restore the Participant's Account Balance as of the last day of the Plan Year coincident with or immediately following the repayment.

(5) **Source of restoration.** To restore the Participant's Account Balance, the Plan Administrator, to the extent necessary, will allocate to the Participant's Account:

(a) **Forfeitures.** First, from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate in that Plan Year under Section 3.07;

(b) **Earnings.** Second, from the amount, if any, of the Earnings for the Plan Year, except to the extent Earnings are allocable to specific individual Accounts under Section 7.04(A)(2)(b); and

(c) **Employer Contribution.** Third, from the amount of a discretionary Employer Contribution for the Plan Year.

In Appendix B to its Adoption Agreement, the Employer may eliminate as a source of restoration any of the amounts described in clauses (a), (b) and (c) or may change the order of priority of these amounts.

(6) **Multiple restorations.** If, for a particular Plan Year, the Plan Administrator must restore the Account Balance of more than one re-employed Participant, the Plan Administrator will make the restoration allocations from the amounts described in Section 5.04(B)(5), clauses (a), (b) and (c) to each such Participant's Account in the same proportion that a Participant's restored amount for the Plan Year bears to the restored amount for the Plan Year of all re-employed Participants.

(7) **Employer must make-up shortfall.** To the extent the amounts described in Section 5.04(B)(5) are insufficient to enable the Plan Administrator to make the required restoration, the Employer must contribute, without regard to any requirement or condition of Article 3, the additional amount necessary to enable the Plan Administrator to make the required restoration.

(8) **Not an Annual Addition.** A cash-out restoration allocation is not an Annual Addition under Article 4.

(C) Deemed Cash-Out of 0% Vested Participant. Except as the Employer may provide in Appendix B to its Adoption Agreement, the deemed cash-out rule of this Section 5.04(C) applies to any 0% Vested Participant. A Participant is not 0% Vested if the Participant has any existing Account Balance at the time that the Plan Administrator applies the deemed cash-out rule, in an individual Account, or attributable to Elective Deferrals, Safe Harbor Contributions, or QNECs. A Participant is 0% Vested if the Participant is eligible to make or to receive any of the foregoing contributions, but has not made or received such contributions.

(1) **If not entitled to allocation.** If a 0% Vested Participant's Account is not entitled to an allocation of Employer Contributions for the Plan Year in which the Participant has a Severance from Employment, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a Cash-Out Distribution on the date of the Participant's Severance from Employment.

(2) **If entitled to allocation.** If a 0% Vested Participant's Account is entitled to an allocation of Employer contributions or Participant forfeitures for the Plan Year in which the Participant has a Severance from Employment, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a Cash-Out Distribution on the first day of the first Plan Year beginning after his/her Severance from Employment.

(3) **Timing of "deemed repayment."** For purposes of applying the restoration provisions of this Section 5.04, the Plan Administrator will treat a re-employed 0% Vested Participant as repaying his/her cash-out "distribution" on the date of the Participant's re-employment with the Employer.

(D) Accounting for Cash-Out Repayment.

(1) **Pending restoration.** As soon as is administratively practicable, the Plan Administrator will credit to the Participant's Account the Cash-Out Distribution amount a Participant has repaid to the Plan. Pending the restoration of the Participant's Account Balance, the Plan Administrator under Section 7.04(A)(2)(c) may direct the Vendor to place the Participant's Cash-Out Distribution repayment in a Segregated Account.

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(2) **Accounting by contribution source.** Restoration of the Participant's Account Balance includes restoration of all Protected Benefits with respect to that restored Account Balance, in accordance with applicable IRS Guidance. For this purpose, the Plan Administrator will account for a Participant's restored balance by treating the Account as consisting of the same contribution types and amounts as existed on the date of the Cash-Out Distribution. The Employer in Appendix B to its Adoption Agreement may elect an alternative accounting for a restored Account, either under the "nonelective rule" or under the "rollover rule." Under the nonelective rule, the Plan Administrator will treat the portion of the Participant's restored balance attributable to the Participant's cash-out repayment as a Nonelective Contribution (or other Employer Contributions as applicable) for purposes of any subsequent distribution. Under the rollover rule, the Plan Administrator will treat the portion of the Participant's restored balance attributable to the Participant's cash-out repayment as a Rollover Contribution for purposes of any subsequent distribution; provided however that if the cash-out repayment does not qualify as a Rollover Contribution or if the Plan does not permit Rollover Contributions, the Plan Administrator will apply the nonelective rule. Under either the nonelective rule or the rollover rule the portion of the Participant's restored balance attributable to the Plan Administrator's restoration under Section 5.04(B)(1), consists of the same Contribution Types and amounts as existed as of the date of the Cash-out Distribution.

(3) **Return if failed repayment.** Unless the cash-out repayment qualifies as a Participant Rollover Contribution, the Plan Administrator will direct the Vendor to repay to the Participant as soon as is administratively practicable, the full amount of the Participant's Cash-Out Distribution repayment if the Plan Administrator determines any of the conditions of Section 5.04(B)(3) prevents restoration as of the last day of the applicable Plan Year, notwithstanding the Participant's repayment.

5.05 YEAR OF SERVICE – VESTING. For purposes of this Article 5, the following definitions and operational rules apply:

(A) Definition of Year of Service. A Year of Service, for purposes of determining a Participant's vesting under Section 5.03, means a Vesting Computation Period during which an Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement, without regard to whether the Employer continues to employ the Employee during the entire Vesting Computation Period.

(B) Definition of Vesting Computation Period. A Vesting Computation Period is a 12-consecutive month period the Employer elects in its Adoption Agreement.

(C) Counting Years of Service. For purposes of a Participant's Vesting in the Plan, the Plan counts all of an Employee's Years of Service except:

(1) **Forfeiture Break in Service; Cash-Out.** For the sole purpose of determining a Participant's Vested percentage of his/her Account Balance derived from Employer Contributions which accrued for his/her benefit prior to a Forfeiture Break in Service or receipt of a Cash-Out Distribution, the Plan disregards any Year of Service after the Participant first incurs a Forfeiture Break in Service or receives a Cash-out Distribution (except where the Plan Administrator restores the Participant's Account under Section 5.04(B)).

(2) **Other exclusions.** Any Year of Service the Employer elects to exclude under its Adoption Agreement, including service during any period for which the Employer did not maintain the Plan or a predecessor plan. For this purpose, a predecessor plan is a qualified plan or a 403(b) plan subject to ERISA which is maintained by the Employer and is terminated within the 5 year period immediately preceding or following the establishment of this Plan. Any such exclusion must be consistent with ERISA §203.

(D) Elapsed Time. If the Employer in its Adoption Agreement elects to apply the Elapsed Time Method in applying the Plan's vesting schedule, the Plan Administrator will credit service in accordance with Section 1.40(D)(3).

5.06 BREAK IN SERVICE AND FORFEITURE BREAK IN SERVICE – VESTING. For purposes of this Article 5, the following definitions and operational rules apply:

(A) Definition of Break in Service. A Participant incurs a Break in Service if during any Vesting Computation Period he/she does not complete more than 500 Hours of Service. On a uniform and nondiscriminatory basis, the Plan Administrator may disregard a Break in Service for a Vesting Computation Period if the Employee is in service on the last day of that period. If the Plan applies the Elapsed Time Method of crediting Service, a Participant incurs a Break in Service if the Participant has a Period of Severance of at least 12 consecutive months. If, pursuant to Section 5.05, the Plan does not require more than 500 Hours of Service to receive credit for a Year of Service, a Participant incurs a Break in Service in a Vesting Computation Period in which he/she fails to complete a Year of Service.

(B) Definition of Forfeiture Break in Service. A Participant incurs a Forfeiture Break in Service when he/she incurs five consecutive Breaks in Service.

(C) Rule of Parity - Vesting. The Employer in its Adoption Agreement may elect to apply the "rule of parity" under ERISA §1012(b)(3)(D) for purposes of determining vesting Years of Service. Under the rule of parity, the Plan Administrator excludes a

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Participant's Years of Service before a Break in Service if: (1) the number of the Participant's consecutive Breaks in Service equals or exceeds five; and (2) the Participant is 0% Vested in his/her Account Balance at the time he/she has the Breaks in Service. A Participant is not 0% Vested if the Participant has any existing Account Balance, at the time that the Plan Administrator applies the rule of parity, attributable to Elective Deferrals, Safe Harbor Contributions, or QNECs. A Participant is not 0% Vested if at the time that the Plan Administrator applies the rule of parity: (i) the Participant has any existing Account Balance attributable to Elective Deferrals; or (ii) the Participant has any Vesting in accordance with the Vesting schedule applicable to any Employer Contribution, even if the Participant has a zero balance in that Account.

(D) One-Year Holdout Rule - Vesting. The one-year holdout Break in Service rule under ERISA §1012(b)(3)(B) will not apply to this Article 5 unless the Employer provides otherwise in Appendix B to its Adoption Agreement. If the one-year holdout Break in Service rule applies, an Employee who has a one-year Break in Service will not be credited for vesting purposes with any Years of Service earned before such one-year Break in Service, until the Employee has completed a Year of Service after the one-year Break in Service.

5.07 FORFEITURE OCCURS.

(A) Timing. A Participant's forfeiture of his/her non-Vested Account Balance derived from Employer Contributions occurs under the Plan on the earlier of:

(1) **Forfeiture Break.** The last day of the Vesting Computation Period in which the Participant first incurs a Forfeiture Break in Service; or

(2) **Cash-Out.** The date the Participant receives a Cash-Out Distribution.

(B) Vesting Schedule/Lost Participants. The Plan Administrator determines the percentage of a Participant's Account Balance forfeiture, if any, under this Section 5.07 solely by reference to the vesting schedule the Employer elected in its Adoption Agreement. A Participant does not forfeit any portion of his/her Account Balance for any other reason or cause except as expressly provided by this Section 5.07 or as provided under Section 7.07.

5.08 AMENDMENT TO VESTING SCHEDULE. The Employer under Section 9.02 may amend the Plan's vesting schedule(s) under Section 5.03 at any time, subject to this Section 5.08. For purposes of this Section 5.08, an amendment to the vesting schedule includes any Plan amendment which directly or indirectly affects the computation of the Vested percentage of a Participant's Account Balance.

(A) No Reduction. The Plan Administrator will not apply the amended vesting schedule to reduce any Participant's existing Vested percentage (determined on the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) in the Participant's existing and future Account Balance attributable to Employer contributions, to a percentage less than the Vested percentage computed under the Plan without regard to the amendment.

(B) Hour of Service Required. Unless the amendment explicitly provides otherwise, an amended vesting schedule will apply to a Participant only if the Participant receives credit for at least one Hour of Service after the new vesting schedule becomes effective.

(C) Election. If the Employer amends the Plan's vesting schedule, each Participant having completed at least three Years of Service (as described in Section 5.05) with the Employer prior to the expiration of the election period described below, may elect irrevocably to have the Plan Administrator determine the Vested percentage of his/her Account Balance without regard to the amendment.

(1) **Notice of amendment.** The Plan Administrator will forward an appropriate notice of any amendment to the vesting schedule to each affected Participant, together with the appropriate form upon which the Participant may make an election to remain under the pre-amendment vesting schedule and notice of the time within which the Participant must make an election to remain under the pre-amendment vesting schedule.

(2) **Election timing.** The Participant must file his/her election with the Plan Administrator within 60 days of the latest of: (a) the Employer's adoption of the amendment; (b) the effective date of the amendment; or (c) the Participant's receipt of a notice of the amendment.

(3) **No election if no adverse effect.** The election described in this Section 5.08(C) does not apply to a Participant if the amended vesting schedule provides for vesting at least as rapid at any time as the vesting schedule in effect prior to the amendment.

5.09 TREATMENT OF NONVESTED AMOUNTS. All Employer Contributions for a Participant, to the extent not vested, will be credited to a separate account for recordkeeping purposes and treated as made to a contract to which Code §403(c) (or another applicable provision of the Code) applies. On or after the date on which the Participant's interest in the separate account becomes nonforfeitable, the contract shall be treated as a Code §403(b) Annuity Contract if: (1) no election has been made under Code §83(b) with respect to the contract; (2) the Participant's interest in the separate account has been subject to a substantial risk of forfeiture before becoming

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nonforfeitable; (3) contributions subject to different vesting schedules have been maintained in separate accounts; and (4) the separate account at all times satisfied the requirements of Code §403(b) except for the nonforfeitability requirement in Code §403(b)(1)(C). If only a portion of the Participant's interest in a separate account becomes nonforfeitable in a year, then that portion of the contract will be considered a Code §403(b) Annuity Contract and the remaining forfeitable portion will be considered a separate contract to which Code §403(c) (or another applicable provision of the Code) applies. Each contribution (and Earnings thereon) that is subject to a different vesting schedule must be maintained in a separate account for the Participant. The phrase "separate account" used in this Section refers to recordkeeping entries, and does not require the maintenance of a separate account or Annuity Contract.

5.10 EMPLOYEE CONTRIBUTIONS. A Participant who is either fully or partially vested in his or her Employer Contributions will not forfeit any of those contributions merely as the result of a distribution of all or any portion of the Participant's Employee Contributions.

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ARTICLE 6. DISTRIBUTIONS

6.01 TIMING OF DISTRIBUTION. Except as otherwise provided in Section 6.01(A), if the Participant is entitled to a distribution, the Vendor will commence distribution of a Participant's Vested Account Balance in accordance with this Article 6 after the Participant's request on a form prescribed by the Plan or the Vendor. The Vendor may make Plan distributions on any administratively practicable date during the Plan Year, consistent with the Investment Arrangement Documentation.

(A) Relationship between Plan and Investment Arrangement Documentation. This Article 6, together with the corresponding Adoption Agreement elections applies to set forth the permissible distributable events and timing. If the Documentation for a particular Investment Arrangement does not provide for a particular distributable event, then such a distribution is unavailable from that Investment Arrangement. For example, if the Plan allows for hardship distributions, and all Investment Arrangements under the Plan except one permit hardship distributions, then hardship distributions are not available from that one Investment Arrangement. By contrast, if the Plan does not allow hardship distributions, then they are not available under any Investment Arrangement in the Plan, regardless of the Investment Arrangement Documentation. Any distribution is subject to the terms of the applicable Investment Arrangement Documentation.

(B) Entitlement to distribution. A Participant is entitled to a distribution after Severance of Employment at the time specified in the Investment Arrangement Documentation, or, if later, the time specified in the Adoption Agreement. The Participant is entitled to a distribution no later than the 60th day after the latest of the close of the Plan Year in which (1) the Participant attains the earlier of age 65 or Normal Retirement Age, (2) the Participant incurs a Separation from Service, or (3) the 10th anniversary of the date the Participant entered the Plan. If the Investment Arrangement Documentation does not specify the timing of distributions after Severance of Employment, the Participant is entitled to a distribution within an administratively reasonable period following Severance of Employment. The failure of a Participant to request a distribution shall be deemed to be an election to defer a distribution. The Plan will make distributions following the Participant's death in accordance with Section 6.01(C). A Participant is entitled to a distribution prior to Severance of Employment under the rules of Section 6.01(D) in accordance with the Employer's elections in the Adoption Agreement. However, the Plan will not make a distribution which would violate Section 6.01(E).

(C) Distribution upon Death. In the event of the Participant's death (whether death occurs before or after Severance from Employment), the Plan Administrator will direct the Vendor, in accordance with this Section 6.01(C) and subject to Section 6.02, to distribute to the Participant's Beneficiary the Participant's Vested Account Balance remaining in the Investment Arrangement at the time of the Participant's death.

(1) **Single payment.** If the Participant's Vested Account Balance does not exceed $5,000, the Vendor will distribute the balance without regard to Section 6.04. The distribution will be made in a lump sum (which will be a Cash-Out Distribution if the Participant's Account Balance is not 100% Vested on death) unless the Plan's distribution form provides otherwise. If the Participant's Vested Account Balance exceeds $5,000, the Vendor will distribute the balance subject to Sections 6.02, 6.03, and 6.04.

(D) In-Service Distribution. The Employer in its Adoption Agreement must elect the distribution election rights, if any, a Participant has prior to his/her Severance from Employment ("in-service distribution").

(1) **Vesting/other conditions.** If a Participant receives an in-service distribution as to a partially-Vested Account, and the Participant has not incurred a Forfeiture Break in Service, the Plan Administrator will apply the vesting provisions of Section 5.03(C). The Employer in its Adoption Agreement may elect to limit any in-service distribution only to Participants who are 100% vested or to apply other conditions.

(2) **Participant election.** A Participant must make any permitted in-service distribution election under this Section 6.01(D) in writing and on a form prescribed by the Plan or the Vendor which specifies the percentage or dollar amount of the distribution and the Participant's Plan Account to which the election applies.

(3) **Frequency, timing and form.** The Investment Arrangement Documentation may limit the frequency, timing, and form of in-service distributions.

(4) **Hardship.** See Section 6.07 regarding requirements for distributions based on hardship.

(5) **Rollover Contributions; Employee Contributions.** A Participant may elect to receive an in-service distribution of his/her Accounts attributable to Rollover Contributions and Employee Contributions subject to Sections 6.01(D)(2) and (3), except as the Employer provides otherwise in Appendix B to its Adoption Agreement. Distribution of a Rollover Contribution or Employee Contribution is subject to Section 6.04 if Section 6.04 otherwise applies to the Participant.

(6) **Distribution events for non-Elective Deferral Accounts in Annuity Contracts.** The Employer in its Adoption Agreement may elect to permit an in-service distribution of any Account in an Annuity Contract other than an Elective Deferral Account upon a Participant's attainment of a stated age, after a fixed number of years, or based on some other

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specified event. Such amounts are not Restricted Balances unless such amounts are QNEC Accounts or Safe Harbor Contribution Accounts.

(7) **In-Plan Roth Rollover Contributions.** Except as otherwise elected in Appendix B to the Adoption Agreement, if the Employer in its Adoption Agreement elects under Section 3.08(E) to permit In-Plan Roth Rollover Contributions, (a) all Accounts (except a Roth Account) from which the Participant could then receive a distribution are eligible for an In-Plan Roth Rollover attributable to otherwise distributable amounts; (b) all Accounts (except a Roth Account) which may not be distributed are eligible for an In-Plan Roth Rollover attributable to otherwise nondistributable amounts; (c) a Participant may distribute and roll over his/her Plan loan in an In-Plan Roth Rollover, but without changing the loan repayment schedule; (d) any amount may be distributed in an In-Plan Roth Rollover with no minimum; (e) a Participant may receive In-Service Distributions from his/her In-Plan Roth Rollover Account under the same conditions as the Participant's Roth Elective Deferral Account; and (f) In-Service Distributions which are eligible for an In-Plan Roth Rollover are limited to those which are available for other types of distributions. If the Employer in Appendix B to its Adoption Agreement provides for In-Service Distributions which are limited to In-Plan Roth Rollovers, the Employer in Appendix B to its Adoption Agreement may permit distribution of an additional amount solely for the purpose of federal or state income tax withholding for the Participant's anticipated tax obligations regarding the amount includible in the Participant's gross income by reason of the In-Plan Roth Rollover (and the amount withheld for income taxes). The Plan Administrator may limit the amount of the 100% withholding distribution to the amount the Plan Administrator reasonably determines is sufficient to satisfy the Participant's federal and/or state income tax liability relating to the Plan distribution. This Section 6.01(D)(7), other than clause (b), is effective no sooner than September 28, 2010. Clause (b) is effective no earlier than January 1, 2013.

(8) **EACA permissible withdrawal.** If the Employer maintains the Plan as an EACA as defined under Section 3.02(B) and the Employer elects in its Adoption Agreement to allow permissible withdrawals, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable Earnings) as a permissible withdrawal. However, if the Employer elects in its Adoption Agreement to limit the group of Participants who are eligible for the permissible withdrawal, only a Participant who is a member of that eligible group may make the election to withdraw, in accordance with the provisions of Section 3.02(B)(2).

(9) **Pre-2009 Annuity Contracts.** If an Annuity Contract an Insurance Company issued before January 1, 2009 provides for In-Service Distributions other than those described in the Adoption Agreement, then amounts held in that Annuity Contract may only be distributed in-service in accordance with its terms.

(10) **Qualified Reservist Distribution ("QRD").** The Employer in its Adoption Agreement may elect to permit in-service distribution of Elective Deferrals as a Qualified Reservist Distribution, or QRD. A QRD means a qualified reservist distribution as defined under Code §72(t)(2)(G)(iii). A QRD is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (A) the distribution is from the Elective Deferral Account; (B) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (C) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

(E) 403(b) Distribution Restrictions (other than those described in (D)(6) above).

(1) **Limitation.** A Participant may not receive a distribution of the Participant's Restricted Balances except in the event of: (a) the Participant's death, Disability, Severance of Employment or attainment of age 59 1/2; (b) except with regard to Employer Contributions under a Custodial Account, QNECs and Safe Harbor Contributions (other than QACA Safe Harbor Contributions), hardship in accordance with Section 6.07; (c) Plan termination, as provided for in Section 9.05, (d) Excess Deferrals described in Section 4.10(A)(2), (e) corrective distributions under Article 4 or Section 7.08, or otherwise permitted by the Code, or (f) as may otherwise be provided by law and in IRS Guidance. This limitation will be applied in conformance with Treas. Reg. §§1.403(b)-6(c) and (d). Also see Sections 6.05 relating to domestic relations orders and 7.05(G) relating to IRS levies.

(2) **Definition of "Restricted Balances."** A Participant's Restricted Balances are the Participant's Elective Deferral Account under an Annuity Contract, all Accounts under a Custodial Account (or transferred from a Custodial Account), QNEC Account and Safe Harbor Contributions Account. Restricted balances do not include (a) Employer Contribution Accounts in an Annuity Contract which were not transferred from a Custodial Account; or (b) any Accounts consisting of Employee Contributions or Rollover Contributions and Earnings thereon; or (c) pre-1989 Elective Deferral contributions and pre-1989 earnings thereon to an Annuity Contract that are separately accounted for.

(F) Mandatory Distributions. The Employer in its Adoption Agreement may elect to have the Plan make Mandatory Distributions. A Mandatory Distribution is a Plan-required distribution to or for a Participant without the Participant's consent upon Severance from Employment, other than a distribution based on the Participant's death or on account of plan termination. A Mandatory Distribution may not exceed the amount (not exceeding $5,000) the Employer elects in its Adoption Agreement or such lesser amount that may be specified in the Investment Arrangement. In applying the elected Mandatory Distribution amount,

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the Plan Administrator will include or exclude a Participant's Rollover Contributions Account as the Employer elects in its Adoption Agreement. A Mandatory Distribution does not include the remaining balance of any installment distribution which has already commenced. The Employer will notify the Vendor within a reasonable period of time of each Participant's Severance from Employment. The Vendor, upon notification by the Employer, will distribute a Participant's Mandatory Distribution in a lump sum within a reasonable period of time after notification by the Employer of the Participant's Severance from Employment. The provisions of this Section 6.01(F) do not impair the Participant's right to receive a distribution of the Participant's Vested Account Balance under other Plan provisions prior to receipt of the Mandatory Distribution. If the Vendor Documentation provides for Mandatory Distributions, those provisions shall apply to Investment Arrangements held by the Vendor as though elected by the Employer in its Adoption Agreement. See Section 6.08 regarding direct rollovers and automatic rollovers.

6.02 REQUIRED MINIMUM DISTRIBUTIONS. The Plan will comply with the minimum distribution requirements of Code §401(a)(9) in accordance with the terms governing each Investment Arrangement, unless and to the extent otherwise permitted by law and in regulations or other rules of general applicability published by the IRS. For purposes of applying the distribution rules of Code §401(a)(9), each Investment Arrangement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treas. Reg. §1.408-8, except as provided in Treas. Reg. §1.403(b)-6(e). "RMD" refers to a required minimum distribution amount the Plan must distribute pursuant to those rules.

6.03 METHOD OF DISTRIBUTION. Subject to any contrary requirements imposed by the Plan or the Adoption Agreement, a Participant or a Beneficiary may elect distribution under any method permitted in the Investment Agreement Documentation. If the Investment Agreement Documentation does not specify, the Participant or Beneficiary may elect to receive payment in the method or methods specified in the Adoption Agreement. If the Participant receives an annuity, the annuity must be nontransferable and otherwise must comply with the Plan terms. This Section 6.03 does not apply to the extent provided in Section 6.01(A).

(A) Account Types/Sourcing Elections. Subject to the Vendor's record keeping requirements, if a Participant who will receive a partial distribution of his/her Plan Account has both a Roth Deferral Account (or some other Account with tax basis) and one or more pre-tax Accounts including a Pre-Tax Deferral Account, the Plan operationally will determine the Account source(s) from which the Vendor will make the distribution. The Plan also may permit the affected Participant to elect the Account source(s) of the Participant's distribution unless such elections are contrary to the Code or the Vendor's record keeping requirements. This Section (A) as to election of Account sources from among multiple sources does not apply to the extent that a Participant is eligible under the Plan terms to receive a distribution only from one specific Account source.

6.04 ANNUITY DISTRIBUTIONS TO PARTICIPANTS AND TO SURVIVING SPOUSES.

(A) Qualified Joint and Survivor Annuity (QJSA). The Vendor will distribute a married or unmarried Participant's Vested Account Balance in the form of a QJSA (or in the form of a QOSA described in Section 6.04(A)(8)), unless the Participant, and spouse if the Participant is married, waive the QJSA in accordance with this Section 6.04(A) or unless Section 6.04(G) applies.

(1) **Definition of QJSA if married.** If, as of the Annuity Starting Date, the Participant is married (even if the Participant has not been married throughout the one year period ending on the annuity starting date), a QJSA is an immediate annuity which is purchasable with the Participant's Vested Account Balance and which provides a life annuity for the Participant and a survivor annuity payable for the remaining life of the Participant's surviving spouse equal to at least 50% of the amount of the annuity payable during the life of the Participant.

(2) **Definition of QJSA if not married.** If, as of the Annuity Starting Date, the Participant is not married, a QJSA is an immediate life annuity for the Participant which is purchasable with the Participant's Vested Account Balance.

(3) **Modification of QJSA benefit.** An individual Investment Arrangement or the Employer in Appendix B to its Adoption Agreement may specify a different percentage (more than 50% but not exceeding 100%) for the survivor annuity.

(4) **Definitions of life/survivor annuity.** A life annuity means an annuity payable to the Participant in equal installments for the life of the Participant that terminates upon the Participant's death. A survivor annuity means an annuity payable to the Participant's surviving spouse in equal installments for the life of the surviving spouse that terminates upon the death of the surviving spouse.

(5) **QJSA notice/timing.** At least 30 days and not more than 180 days before the Participant's Annuity Starting Date, the Plan must provide the Participant a written explanation of the terms and conditions of the QJSA, the Participant's right to make, and the effect of, an election to waive the QJSA benefit, the rights of the Participant's spouse regarding the waiver election and the Participant's right to make, and the effect of, a revocation of a waiver election.

(6) **Waiver frequency and timing.** The Plan does not limit the number of times the Participant may revoke a waiver of the QJSA or make a new waiver during the election period. The Participant (and his/her spouse, if the Participant is married), may revoke an election to receive a particular form of benefit at any time until the Annuity Starting Date.

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(7) **Married Participant waiver.** A married Participant's QJSA waiver election is not valid unless: (a) the Participant's spouse (to whom the survivor annuity is payable under the QJSA), after the Participant has received the QJSA notice, has consented in writing to the waiver election, the spouse's consent acknowledges the effect of the election, and a notary public or the Plan Administrator (or his/her representative) witnesses the spouse's consent; (b) the spouse consents to the alternative form of payment designated by the Participant or to any change in that designated form of payment; and (c) unless the spouse is the Participant's sole primary Beneficiary, the spouse consents to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation.

(a) **Effect of spousal consent/blanket waiver.** The spouse's consent to a waiver of the QJSA is irrevocable, unless the Participant revokes the waiver election. The spouse may execute a blanket consent to the Participant's future payment form election or Beneficiary designation, if the spouse acknowledges the right to limit his/her consent to a specific designation but, in writing, waives that right.

(b) **Spousal consent not required.** The Plan will accept as valid a waiver election which does not satisfy the spousal consent requirements if it is established to the satisfaction of the Plan Administrator that: (i) the Participant does not have a spouse, (ii) the spouse cannot be located, (iii) the Participant is legally separated or has been abandoned (within the meaning of applicable state law) and the Participant has a court order to that effect, or (iv) other circumstances exist under which ERISA excuses the spousal consent requirement. If the Participant's spouse is legally incompetent to give consent, the spouse's legal guardian (even if the guardian is the Participant) may give consent.

(8) **Qualified Optional Survivor Annuity (QOSA).** A Participant who elects to waive the QJSA form of benefit is entitled to elect the QOSA at any time during the applicable QJSA election period. The QJSA notice will explain the terms and conditions of the QOSA. The QJSA provisions of Section 6.04(A) apply to a QOSA the Participant elects pursuant to this Section 6.04(A)(8).

(a) **Definition of QOSA.** A QOSA is an Annuity Contract: (i) for the life of the Participant with a Survivor Annuity for the life of the spouse which is equal to the Applicable Percentage of the amount of the annuity which is payable during the joint lives of the Participant and the spouse; and (ii) which is the actuarial equivalent of a single annuity for the life of the Participant. A QOSA also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) **Definition of Applicable Percentage.** For purposes of this Section 6.04(A)(8), the Applicable Percentage is based on the Survivor Annuity percentage under the Plan's QJSA. If the Survivor Annuity percentage is less than 75%, then the Applicable Percentage is 75%. If the Survivor Annuity percentage is greater than or equal to 75%, the Applicable Percentage is 50%.

(c) **No spousal consent requirement for QOSA.** A Participant may elect a QOSA without spousal consent.

(B) Qualified Preretirement Survivor Annuity (QPSA). If a married Participant dies prior to his/her Annuity Starting Date, the Plan Administrator will direct the Vendor to distribute a portion of the Participant's Vested Account Balance to the Participant's surviving spouse in the form of a QPSA, unless the Participant has a valid waiver election in effect or unless the Participant and his/her spouse were not married throughout the one year period ending on the date of the Participant's death.

(1) **Definition of QPSA.** A QPSA is an annuity which is purchasable with 50% of the Participant's Vested Account Balance (determined as of the date of the Participant's death) and which is payable for the life of the Participant's surviving spouse.

(2) **Modification of QPSA.** An individual Investment Arrangement or the Employer in its Adoption Agreement may elect not to apply the one-year marriage rule requirement as described in Section 6.04(H) or may specify a different percentage (more than 50% but not exceeding 100%) for the QPSA.

(3) **Ordering rule.** The value of the QPSA is attributable to Employer Contributions, to Pre-Tax Deferrals, and to Roth Deferrals in the same proportion as the Participant's Vested Account Balance is attributable to those contributions.

(4) **Disposition of remaining balance.** The portion of the Participant's Vested Account Balance not payable as a QPSA is payable to the Participant's Beneficiary, in accordance with the remaining provisions of this Article 6.

(5) **Surviving spouse elections.** If the Participant's Vested Account Balance which the Vendor would apply to purchase the QPSA exceeds $5,000, the Participant's surviving spouse may elect to have the Vendor commence payment of the QPSA at any time following the date of the Participant's death, but not later than Section 6.02 requires, and may elect any of the forms of payment described in Section 6.03, in lieu of the QPSA. In the absence of an election by the surviving spouse, the Plan Administrator must direct the Vendor to distribute the QPSA on the earliest administratively practicable date following the close of the Plan Year in which the latest of the following events occurs: (a) the Participant's death; (b) the date the Plan Administrator receives notification of or otherwise confirms the Participant's

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death; (c) the date the Participant would have attained Normal Retirement Age; or (d) the date the Participant would have attained age 62.

(6) **QPSA notice/timing.** The Plan must provide a written explanation of the QPSA to each married Participant within the following period which ends last: (a) the period beginning on the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year in which the Participant attains age 34; (b) a reasonable period after an Employee becomes a Participant; (c) a reasonable period after Section 6.04 of the Plan becomes applicable to the Participant; or (d) a reasonable period after the Plan no longer satisfies the requirements for a fully subsidized benefit. A "reasonable period" described in clauses (b), (c) and (d) is the period beginning one year before and ending one year after the applicable event. If the Participant separates from Service before attaining age 35, clauses (a), (b), (c) and (d) do not apply and the Plan must provide the QPSA notice within the period beginning one year before and ending one year after the Separation from Service. The QPSA notice must describe, in a manner consistent with IRS Guidance, the terms and conditions of the QPSA and of the waiver of the QPSA, comparable to the QJSA notice required under Section 6.04(A)(5).

(7) **Waiver frequency and timing.** The Plan does not limit the number of times the Participant may revoke a waiver of the QPSA or make a new waiver during the election period. The election period for waiver of the QPSA ends on the date of the Participant's death. A Participant's QPSA waiver election is not valid unless the Participant makes the waiver election after the Participant has received the QPSA notice and no earlier than the first day of the Plan Year in which he/she attains age 35. However, if the Participant incurs a Separation from Service prior to the first day of the Plan Year in which he/she attains age 35, the Plan Administrator will accept a waiver election as to the Participant's Account Balance attributable to his/her Service prior to his/her Separation from Service. In addition, if a Participant who has not incurred a Separation from Service makes a valid waiver election, except for the age 35 Plan Year timing requirement above, the Plan Administrator will accept that election as valid, but only until the first day of the Plan Year in which the Participant attains age 35.

(8) **Spousal consent to waiver.** A Participant's QPSA waiver is not valid unless the Participant's spouse (to whom the QPSA is payable) satisfies or is excused from the consent requirements as described in Section 6.04(A)(7)(b), except the spouse need not consent to the form of benefit payable to the designated Beneficiary. The spouse's consent to the waiver of the QPSA is irrevocable, unless the Participant revokes the waiver election. The spouse also may execute a blanket consent as described in Section 6.04(A)(7)(a).

(C) Effect of Waiver. If the Participant has in effect a valid waiver election regarding the QJSA or the QPSA, the Vendor will distribute the Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(D) Loan Offset. The Plan will reduce the Participant's Vested Account Balance by any security interest (pursuant to any offset rights authorized by Section 6.06) held by the Plan or Vendor under the Investment Arrangement by reason of a Participant loan, to determine the value of the Participant's Vested Account Balance distributable in the form of a QJSA or QPSA, provided the loan satisfied the spousal consent requirement described in Section 7.06(D).

(E) Effect of QDRO. For purposes of applying this Article 6, a former spouse (in lieu of the Participant's current spouse) is the Participant's spouse or surviving spouse to the extent provided under a QDRO described in Section 6.05. The provisions of this Section 6.04 apply separately to the portion of the Participant's Vested Account Balance subject to a QDRO and to the portion of the Participant's Vested Account Balance not subject to the QDRO.

(F) Vested Account Balance Not Exceeding $5,000. The Vendor must distribute in a lump sum, a Participant's Vested Account Balance which the Vendor otherwise under Section 6.04 would apply to provide a QJSA or QPSA benefit, where the Participant's Vested Account Balance does not exceed $5,000.

(G) Profit Sharing Plan Exception. The preceding provisions of Section 6.04 will apply to all Participants unless the Employer, in its Adoption Agreement, specifies that the preceding provisions of Section 6.04 do not apply to Exempt Participants.

(1) **Definition of Exempt Participants.** All Participants are Exempt Participants except the following Participants to whom Section 6.04 must be applied: (a) a Participant with respect to whom the Plan is a direct or indirect transferee from a plan subject to the ERISA §205 requirements and the Plan received the transfer after December 31, 1984, unless the transfer is an elective transfer described in Section 9.06(F); or (b) a Participant who elects a life annuity distribution (if applicable).

(2) **Transfers.** If a Participant receives a transfer under Section 6.04(G)(1), clause (a) above, the Plan Administrator may elect to apply Section 6.04 only to the Participant's transferred balance and not to the Participant's remaining Account Balance provided that the Plan Administrator accounts properly for such balances.

(3) **Distribution to Exempt Participant.** The Plan Administrator must direct the Vendor to distribute the Exempt Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

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(4) **Exempt Participant Beneficiary designation.** See Section 7.05(A)(3) as to requirements relating to a married Exempt Participant's Beneficiary designation.

(H) One-Year Marriage Rule. The Employer in its Adoption Agreement will elect whether to apply the "one-year marriage rule". If the Employer elects to apply the one-year marriage rule, a Participant is not considered married unless the Participant and his/her spouse were married throughout the one year period ending on the date of the Participant's death.

6.05 DISTRIBUTIONS UNDER A QDRO. Notwithstanding any other provision of this Plan, the Vendor, in accordance with the direction of the Plan Administrator, must comply with the provisions of a QDRO, as defined in Code §414(p)(1)(A), which is issued with respect to the Plan.

(A) Distribution at any Time. This Plan specifically permits distribution to an alternate payee under a QDRO at any time, irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code §414(p)(4)(B)) under the Plan. However, a distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution; and (2) if the present value of the alternate payee's benefits under the Plan exceeds $5,000, and the QDRO requires the alternate payee's consent to any distribution occurring prior to the Participant's attainment of earliest retirement age, the alternate payee gives such consent.

(B) Plan Terms Otherwise Apply. Except as to timing of distribution commencement under Section 6.05(A), nothing in this Section 6.05 gives a Participant or an alternate payee a right to receive a type or form of distribution, to receive any option or to increase benefits in a manner that the Plan does not permit.

(C) QDRO Procedures. The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order (as defined under Code §414(p)(1)(B) and Section 1.58).

(1) **Notices and order status.** Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this Section 6.05(C)(1) by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with DOL regulations. If the order is not determined to be a QDRO, then no amounts will be paid pursuant to the order to the alternate payee.

(2) **Interim amounts payable.** If any portion of the Participant's Vested Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will direct the Vendor to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will direct the Vendor to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

(3) **Segregated Account.** To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator under Section 7.04(A)(2)(c) may direct the Vendor to segregate the QDRO amount in a segregated investment account. The Vendor will make any payments or distributions required under this Section 6.05 by separate benefit checks or other separate distribution to the alternate payee(s).

6.06 DEFAULTED LOAN – TIMING OF OFFSET. If a Participant or a Beneficiary defaults on a Plan loan, the Plan will determine the timing of the reduction (offset) of the Participant's Vested Account Balance in accordance with this Section 6.06, the Plan's loan policy and Code §72(p) and regulations thereunder.

(A) Offset if Distributable Event. If the Participant has defaulted and met a distributable event under the Code, the Vendor, at the time of the loan default, may offset the Participant's Vested Account Balance by the lesser of the amount in default (including accrued interest) or the Plan's security interest in that Vested Account Balance.

(B) Restricted Accounts. To the extent the loan is attributable to the Participant's Restricted Balances, the Vendor will not offset the Participant's Vested Account Balance prior to the earlier of the date the Participant incurs a Severance from Employment, Disability, or the date the Participant attains age 59 1/2. Consistent with its loan policy, the Plan also may offset a Participant's defaulted loan upon Plan termination, provided the Participant's Account Balance is distributable upon Plan termination.

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6.07 HARDSHIP DISTRIBUTIONS. Hardship distributions are permitted under the Plan to the extent permitted by the Adoption Agreement. However, in no event will a hardship distribution be available under an Investment Arrangement which does not provide for hardship distributions. Any hardship distribution will comply with the standards in Section 6.07(A) and comply with the operational rules in Section 6.07(B). Section 6.07(C) contains definitions which apply to hardship distributions.

(A) Standards. All hardship distributions must comply with Treas. Reg. §1.401(k)-1(d)(3). If the Employer elects in its Adoption Agreement to use the hardship (safe harbor), then hardship distributions will conform to the safe harbor need and safe harbor necessity rules. A hardship distribution from an Investment Arrangement attributable to a Participant's Elective Deferrals is limited to the aggregate dollar amount of the Participant's Elective Deferrals under the Investment Arrangement (and may not include any income thereon), reduced by the aggregate dollar amount of the distributions previously made to the participant from the Investment Arrangement.

(B) Operational rules.

(1) **Deferral suspension.** To the extent a hardship distribution to a Participant must comply with the safe harbor necessity rules, the Participant will not be able to make Elective Deferrals or Employee Contributions under the Plan during the 6-month period beginning on the date the Participant receives the hardship distribution. The Plan Administrator or the Vendor may adopt a uniform policy that such a suspension will have the effect of revoking the Participant's Salary Reduction Agreement; however, the Participant must have the effective opportunity to enter into a new Salary Reduction Agreement effective after the expiration of the 6-month suspension period.

(2) **Information sharing.** The Employer and the Vendors will exchange information to the extent necessary to implement hardship provisions. If a hardship distribution to a Participant conforms to the safe harbor necessity rules, the Vendor will notify the Employer of the distribution so the Employer can implement the restriction in Section 6.07(B)(1). If the hardship distribution does not comply with the safe harbor necessity rules (because it complies with Treas. Reg. §1.401(k)-1(d)(3)(iii)(B)), the party responsible for approving the distribution must obtain information from the Employer and other Vendors to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need. See also Section 9.07 regarding information sharing.

(3) **Beneficiary hardship distribution.** A hardship distribution on account of a hardship need of the Participant's Beneficiary is available unless otherwise elected in the Adoption Agreement.

(C) Definitions.

(1) **Safe harbor need.** A distribution conforms to the safe harbor need rules if it is for a purpose described in Treas. Reg. §1.401(k)-1(d)(3)(iii)(B), as modified by Q&A 5 of Notice 2007-7 (relating to beneficiary hardship distributions) or other IRS guidance.

(2) **Safe harbor necessity.** A distribution conforms to the safe harbor necessity rules if the amount of the distribution does not exceed the amount of the Participant's immediate and heavy financial need and the distribution otherwise complies with Treas. Reg. §1.401(k)-1(d)(3)(iv)(E).

(D) Ordering. If the Plan permits a hardship distribution from more than one Account type, the Plan (or the Participant in a form that the Plan provides for this purpose), subject to the Investment Arrangement Documentation, may determine any ordering of a Participant's hardship distribution from the hardship distribution eligible Accounts, including ordering as between the Participant's Pre-Tax Deferral Account and Roth Deferral Account, if any, provided that any ordering is consistent with any restriction on hardship distributions under this Section 6.07.

6.08 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(A) Election. A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner prescribed by the Vendor, to have any portion of his/her Eligible Rollover Distribution from the Plan paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover. For purposes of this Section 6.08, a Participant includes as to their respective interests: (1) a Participant's surviving spouse, (2) the Participant's spouse or former spouse who is an alternate payee under a QDRO, or (3) any other Beneficiary of a deceased Participant who is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4.

(B) Rollover and Withholding Notice. At least 30 days and not more than 180 days prior to the distribution of an Eligible Rollover Distribution, the Plan must provide a written notice (including a summary notice as permitted under applicable IRS Guidance) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice"). A recipient of an Eligible Rollover Distribution (whether he/she elects a Direct Rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days (but more than seven days if Section 6.04 applies) following receipt of the rollover notice. The provisions of this Sections 6.08(B) do not apply to distributions to a Beneficiary described in Section 6.08(A)(3).

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(C) [Reserved]

(D) Automatic Rollover. In the event of a Mandatory Distribution described in Section 6.01(F) greater than $1,000 to a Participant (or such lesser amount as the Vendor may determine or the Employer elects in its Adoption Agreement), if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan the Participant specifies in a Direct Rollover or to receive the distribution directly, then the Vendor will pay the distribution in a Direct Rollover to an Individual Retirement Plan. In applying this Section 6.08(D), the Vendor will aggregate a Participant's Roth Deferral and Pre-Tax Deferral Accounts if each Account Balance exceeds $200. If either the Roth Deferral Account or the Pre-Tax Deferral Account is less than $200, the Vendor will apply this Section 6.08(D) only to the other Account and will not aggregate the Account Balance under $200 with the other Account Balance.

(1) **Determination of Mandatory Distribution amount – Rollovers count.** The Vendor, in determining whether a Mandatory Distribution is greater than $1,000 for purposes of this Section 6.08(D), will include the portion of the Participant's distribution attributable to any Rollover Contribution, regardless of the Employer's Adoption Agreement election to include or exclude Rollover Contributions in defining a Mandatory Distribution.

(2) **Beneficiaries, alternate payees and termination.** The automatic rollover provisions of this Section 6.08(D) do not apply to payees described in Section 6.08(A)(1), (2), or (3) or to distributions to a Participant upon Plan termination.

(E) Limitation on Roth Rollovers. If a Participant wishes to roll over his/her Roth Deferral Account by a 60-day indirect rollover, the Participant may roll over only the taxable portion of the distribution to a Roth account in another plan. However, a Participant may use the 60-day rule to roll over the entire Roth Deferral Account to a Roth IRA.

(F) Definitions. The following definitions apply to this Section 6.08:

(1) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan the distributee specifies in his/her Direct Rollover election or in the case of an automatic rollover, to the individual retirement plan that the Plan designates.

(2) **Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement plan, an annuity plan described in Code §403(a), a qualified trust described in Code §401(a), an arrangement described in Code §403(b), or an eligible deferred compensation plan described in Code §457(b) sponsored by a governmental employer which accepts the Participant's or alternate payee's Eligible Rollover Distribution. However, with regard to a Participant's Roth Deferral Account, an Eligible Retirement Plan is a Roth IRA described in Code §408A, a Roth account in another plan which permits Roth deferrals. In the case of a Beneficiary described in Section 6.08(A)(3), an Eligible Retirement Plan is limited to an individual retirement plan that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code §408(d)(3)(C)).

(3) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the Participant's Vested Account Balance, except: (a) any distribution which 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 designated beneficiary, or for a specified period of ten years or more; (b) any RMD under Section 6.02; (c) the portion of any distribution which is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (d) any hardship distribution; (e) any distribution which otherwise would be an Eligible Rollover Distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than $200; (f) any corrective distribution of excess amounts under Code §§402(g), 401(k), 401(m), and/or 415(c) and income allocable thereto; (g) any loans that are treated as deemed distributions under Code §72(p) (h) dividends paid on employer securities described in Code §408(k); (i) the costs of life insurance coverage (P.S. 58 costs); (j) prohibited allocations treated as deemed distributions under Code §409(p); and (k) permissible withdrawals from an EACA described in Code §414(w). For purposes of clause (e), a Participant's Roth Deferral Account is deemed to constitute a separate plan that is subject to a separate $200 limit. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (i) an individual retirement account or annuity described in Code §§408(a) or 408(b) or (ii) a qualified plan described in Code §§401(a) or 403(a), or (iii) a tax-sheltered annuity described in Code §403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(4) **Individual Retirement Plan.** An Individual Retirement Plan is an individual retirement plan described in Code §408(a) or an individual retirement annuity described in Code §408(b).

6.09 REPLACEMENT OF $5,000 AMOUNT. An individual Investment Arrangement or the Employer in Appendix B to its Adoption Agreement may specify that as to any or all places in the Plan, including in Section 3.08, Article 6, or Section 9.05(C) where a $5,000

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amount appears, a lesser amount will apply. However, the Adoption Agreement provides a specific election with regard to the limit on Mandatory Distributions under Section 6.01(F) and that limit will apply to those distributions.

6.10 SEVERANCE FROM EMPLOYMENT. For purposes of Article 6, Severance from Employment or Separation from Service occurs on any date on which an Employee ceases to be an Employee of an Eligible Employer, even though the Employee may continue to be employed either (A) by another entity that is a Related Employer if that other entity is not an entity that can be an Eligible Employer or (B) in a capacity that is not employment with an Eligible Employer. However, an Employee has not suffered a Severance from Employment if the Employee transfers from one Code §501(c)(3) organization to another §501(c)(3) organization that is a Related Employer. An Employee does not have a Severance from Employment if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee. For example, a new employer maintains a plan with respect to an Employee by continuing or assuming sponsorship of the plan or by accepting a transfer of Plan assets and liabilities with respect to the Employee.

6.11 DEEMED SEVERANCE DISTRIBUTIONS. The Employer in its Adoption Agreement will elect whether to permit a deemed severance distribution. If the Employer elects to permit a deemed severance distribution, then notwithstanding Section 1.27(A), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a Severance from Employment solely for purposes of distribution of amounts from Contribution Types the Employer has selected in the Adoption Agreement. If a Participant elects to receive a distribution on account of this deemed severance, and the distribution includes any of the Participant's Elective Deferrals, then the individual may not make Elective Deferrals or Employee Contributions to the Plan during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a QRD), then the other Plan provision will control and the 6-month suspension will not apply.

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ARTICLE 7. ADMINISTRATIVE PROVISIONS

7.01 EMPLOYER ADMINISTRATIVE PROVISIONS.

(A) Information to Plan Administrator. The Employer must supply current information to the Plan Administrator, including the name, date of birth, date of employment, Compensation, leaves of absence, Years of Service and date of Separation from Service of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administrator considers necessary to properly administer the Plan. The Plan Administrator will supply to the Vendors the information necessary for the administration of their Investment Arrangements and for overall Plan coordination. The Employer's records as to the current information the Employer furnishes to the Plan Administrator are conclusive as to all persons. Each Participant shall provide at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the administration of the Plan, including any information required under the terms governing an Investment Arrangement holding any part of the Participant's Account Balance.

(B) Plan Contributions. The Employer is solely responsible to determine the proper amount of any Employer Contributions it makes to the Plan and for the timely deposit to the Investment Arrangement of the Employer Contributions, Employee Contributions, and Elective Deferrals.

(C) Employer Action. The Employer must take any action under the Plan in accordance with applicable Plan provisions and with proper authority such that the action is valid and binding upon the Employer.

(D) No Responsibility for Others. Except as required under ERISA, the Employer has no responsibility or obligation under the Plan to Employees, Participants or Beneficiaries for any act (unless the Employer also serves in such capacities) required of the Plan Administrator, a Vendor, or any other service provider to the Plan.

(E) Indemnity of Certain Fiduciaries. The Employer will indemnify, defend and hold harmless the Plan Administrator from and against any and all loss resulting from liability to which the Plan Administrator may be subjected by reason of any act or omission (except willful misconduct or gross negligence) in its official capacities in the administration of this Plan, including attorneys' fees and all other expenses reasonably incurred in the Plan Administrator's defense, in case the Employer fails to provide such defense. The indemnification provisions of this Section 7.01(E) do not relieve the Plan Administrator from any liability the Plan Administrator may have under ERISA for breach of a fiduciary duty. Furthermore, the Plan Administrator and the Employer may execute a written agreement further delineating the indemnification agreement of this Section 7.01(E), provided the agreement is consistent with and does not violate ERISA. The indemnification provisions of this Section 7.01(E) do not extend to any Vendor (including where the Vendor under Section 1.72 is serving as the Plan Administrator), third party administrator, or other Plan service provider unless so provided in a written agreement (including Investment Arrangement Documentation) executed by such persons and the Employer.

(F) Settlor Expenses. The Employer will pay all reasonable Plan expenses that the Plan Administrator under Section 7.04(C) determines are "settlor expenses" under ERISA.

(G) Named Fiduciary. The Named Fiduciaries of the Plan are the Employer and Plan Administrator unless the Employer designates in writing another person or persons to serve as Named Fiduciary. The Named Fiduciaries have sole responsibility for the management and control of the Plan.

7.02 PLAN ADMINISTRATOR.

(A) Compensation and Expenses. The Plan Administrator (and any individuals serving as Plan Administrator) will serve without compensation for services as such (unless the Plan Administrator is not the Employer or an Employee). The Employer or the Plan will pay all reasonable expenses of the Plan Administrator, in accordance with Section 7.04(C)(2).

(B) Resignation and Removal. If one or more persons other than the Employer are serving as Plan Administrator, such person(s) will serve until they resign by written notice to the Employer or until the Employer removes them by written notice. In case of a vacancy in the position of Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

(C) General Powers and Duties. To the extent not formally or informally delegated to another party pursuant to Section 7.02(F), the Plan Administrator has the following general powers and duties which are in addition to those the Plan otherwise accords to the Plan Administrator:

(1) **Eligibility/benefit determination.** To determine the rights of eligibility of an Employee to participate in the Plan, all factual questions that arise in the course of administering the Plan, the value of a Participant's Account Balance (based on the value of the Investment Arrangement assets, as determined by the Vendor) and the Vested percentage of each Participant's Account Balance.

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(2) **Rules/policies.** To adopt rules of procedure and regulations or policies the Plan Administrator considers reasonable or necessary for the proper and efficient administration of the Plan, provided the rules are not inconsistent with the terms of the Plan, the Code, ERISA or the Investment Arrangement. The Plan Administrator may, but is not required to reduce such rules, regulations or policies to writing. The Plan Administrator at any time may amend or terminate prospectively any Plan policy without the requirement of a formal Plan amendment. The Plan Administrator also may create and modify from time to time an administrative checklist which is not part of the Plan, but which is for the purpose of tracking certain plan operational features and to facilitate proper administration of the Plan.

(3) **Construction/enforcement.** To construe and enforce the terms of the Plan and the rules and regulations and policies the Plan Administrator adopts, including discretion to interpret the basic plan document, the Adoption Agreement and any document related to the Plan's operation.

(4) **Distribution/valuation.** To direct the Vendor regarding the crediting and distribution of an Investment Arrangement and to establish additional Valuation Dates and direct the Vendor to conduct interim valuations as of such Valuation Dates.

(5) **Claims.** To review and render decisions regarding a claim for (or denial of a claim for) a benefit under the Plan.

(6) **Information to Employer.** To furnish the Employer with information which the Employer may require for tax or other purposes.

(7) **Service providers.** To engage the service of agents whom the Plan Administrator may deem advisable to assist it with the performance of its duties.

(8) **Investment Manager.** If the Plan Administrator is the Named Fiduciary, to engage the services of an Investment Manager or Managers (as defined in ERISA §3(38)), each of whom will have full power and authority to manage, acquire or dispose (or direct the Vendor with respect to acquisition or disposition) of any Plan asset under such Manager's control.

(9) **Funding.** The Plan Administrator will review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan Administrator must communicate periodically, as it deems appropriate, to the Vendor and to any Plan Investment Manager the Plan's short-term and long-term financial needs for the coordination of the Plan's investment policy with Plan financial requirements.

(10) **Records.** To maintain Plan records and records of the Plan Administrator's activities as necessary or appropriate for the proper administration of the Plan.

(11) **Tax returns and other filings.** To file with DOL or IRS as may be required, the Plan's informational tax return and to make such other filings as the Plan Administrator deems necessary or appropriate.

(12) **Notices and disclosures.** To give and to make to Participants and to other parties all Plan related notices and disclosures required under the Code or ERISA.

(13) **Overpayment.** As may be required or appropriate, to seek return from a Participant or Beneficiary of any distributed amount which exceeds the distributable Vested Account Balance (or exceeds the amount which otherwise should have been distributed) and to allocate any recovered overpayment in accordance with the Plan terms.

(14) **Catch-all.** To make any other determinations and undertake any other actions the Plan Administrator in its discretion believes are necessary or appropriate for the administration of the Plan (except to the extent that the Employer provides express contrary direction) and to otherwise administer the Plan in accordance with the Plan terms.

(D) 403(b) Plan Salary Deferrals. The Plan Administrator may adopt such policies regarding Elective Deferrals as it deems necessary or appropriate to administer the Plan. The Plan Administrator also will prescribe a Salary Reduction Agreement form for use by Participants. However, a Vendor may prescribe forms or policies necessary or appropriate to administering Elective Deferrals to the Vendor's Investment Arrangement.

(E) Limitations on Plan Administrator Responsibility.

(1) **Acts of others.** Except as required under ERISA, the Plan Administrator has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act (unless the Plan Administrator also serves in such capacities) required of the Employer, the Vendor, or any other service provider to the Plan.

(2) **Plan contributions.** The Plan Administrator, if not the Employer, is not responsible to collect any required Plan contribution or to determine the correctness of any Employer contribution.

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(3) **Reliance on information.** The Plan Administrator and the Vendors in administering the Plan are entitled to, but are not required to rely upon, information which a Participant, Beneficiary, Vendor, the Employer, a Plan service provider or representatives thereof provide.

(F) Allocation of Responsibilities. Persons to whom administrative functions have been allocated and the specific functions allocated to such persons shall be identified in Appendix D to the Adoption Agreement. Service agreements and other records or information pertaining to the administration of the Plan may be included or incorporated by reference in the Appendix. The Appendix will also include a list of all the Vendors of Investment Arrangements approved for use under the Plan, including sufficient information to identify the approved Investment Arrangements. The Appendix may be modified from time to time. A modification of Appendix D to the Adoption Agreement is not an amendment of the Plan. Persons identified in Appendix D to the Adoption Agreement to whom administrative functions have been delegated shall have all power and authority of the Plan Administrator to the extent necessary or appropriate to perform those functions.

7.03 DIRECTION OF INVESTMENT.

(A) Employer direction of Investment. The Employer has the right to select the Investment Arrangements made available under the Plan unless an Investment Manager is doing so.

(B) Participant Direction of Investment. The Participant generally has the responsibility to invest his/her Plan Account unless the Plan Administrator or the Participant appoint an Investment Manager to invest the Plan Accounts. The Plan Administrator may impose reasonable and nondiscriminatory administrative conditions on the Participants' ability to direct their Account investments. For purposes of this Section 7.03(B), a Participant includes a Beneficiary where the Beneficiary has succeeded to the Participant's Account and where the Plan Administrator's policy affords the Beneficiary the same (or different) self-direction rights as a Participant.

(1) **Vendor authorization and procedures.** The Vendor only will accept direction from each Participant (or from the Participant's properly appointed independent investment adviser or financial planner) in the form or in the manner that the Plan provides or otherwise approves for this purpose. The Plan may establish procedures relating to Participant direction of investment under this Section 7.03(B) as are not inconsistent with the Plan Administrator's policy regarding Participant direction, including procedures or conditions for electronic transfers or for changes in investments by Participants or by their appointed independent advisers or planners.

(2) **Participant loans.** As part of the loan policy the Plan establishes under Section 7.06, the Plan under Section 7.06(E) may treat a Plan loan made to a Participant as a Participant direction of investment.

(3) **Investment services programs.** The Plan may permit Participants to appoint an Investment Manager or Managers, which may be a Vendor or an affiliate thereof, to render investment allocation services, investment advice or management services (collectively, an "investment services program") to the appointing Participants.

(C) Direction Consistent with Plan. To constitute a proper direction, any direction of investment given to a Vendor under the Plan must be in accordance with the Plan terms and must not be contrary to ERISA.

7.04 ACCOUNT ADMINISTRATION, VALUATION AND EXPENSES.

(A) Maintenance of Accounts. The Plan Administrator will maintain, or direct the Vendors to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan. The Plan Administrator will make its allocations of Earnings or request the Vendors to make its allocations, to the Accounts of the Participants as necessary to maintain proper Plan records: (a) in accordance with the contribution source under Section 7.04(A)(1); (b) in accordance with Section 3.06 allocation conditions; (c) consistent with the Plan Administrator's establishment of investment account types under Section 7.04(A)(2); and (d) consistent with the Employer's Adoption Agreement elections as to method of allocation of Earnings under Section 7.04(B)(4).

(1) **By contribution source.** The Plan, or Vendor, as necessary for the proper administration of the Plan, will establish Plan Accounts for each Participant to reflect his/her Accounts attributable to the following contribution sources and the Earnings attributable thereto: Pre-Tax Deferrals, Roth Deferrals, in-plan Roth rollovers, Employee Contributions, Mandatory Employee Contributions, Matching Contributions, Nonelective Contributions, QNECs and Safe Harbor Contributions, and Rollover Contributions (including Roth and pre-tax amounts).

(2) **By investment account type.** The Plan, as necessary for the proper administration of the Plan, will establish separate Accounts for each Participant to reflect his/her investment account types as described below:

(a) **Group Account.** A group Account is an Account which for investment purposes is not a segregated Account or an individual Account. A group Account includes a group Investment Arrangement. If any or all Plan investment Accounts are grouped, each Participant's Account has an undivided interest in the assets comprising the group Account. In a group Account, the value of each Participant's Account Balance consists of that proportion

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of the net worth (at fair market value) of the Investment Arrangement which the net credit balance in his/her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants plus the cash surrender value of any incidental benefit insurance contracts held by the Vendor on the Participant's life. As of each Valuation Date, the Plan Administrator must reduce a Participant's Accounts for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account. In a group Account, the Vendor titles the Investment Arrangement in the name of the Plan.

(b) **Individual Accounts.** An individual Account is an Account that is established and maintained for a Participant to invest in one or more Investment Arrangements in which other Participants do not have any interest. The assets in the individual Account are subject to any limitations imposed by ERISA. A Participant may have one or more individual Accounts in addition to group or segregated Accounts. An individual Account is credited and charged with the Earnings under Section 7.04(B)(4). As of each Valuation Date, the Plan Administrator must reduce an individual Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account. In an individual Account, the Vendor titles the Investment Arrangement in the name of the Participant or the Plan. The Plan Administrator may prohibit investment of funds in individual Accounts to the extent that those funds are not 100% Vested.

(c) **Segregated Accounts.** A segregated Account is an Account the Plan Administrator establishes and maintains or directs the Vendor to establish and maintain for a Participant: (i) as the result of a cash out repayment under Section 5.04; (ii) to facilitate installment payments under Section 6.03; (iii) to hold a QDRO amount under Section 6.05; (iv) to prevent a distortion of Plan Earnings allocations; or (v) for such other purposes as the Plan Administrator may direct. A segregated Account receives all income it earns and bears all expense or loss it incurs. The Vendor will invest the assets of a segregated Account consistent with the purpose for which the Vendor established the Account. As of each Valuation Date, the Plan Administrator must reduce a segregated Account for any forfeiture arising under Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account.

(3) **Value of Account/distributions.** The value of a Participant's Account is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the value of a Participant's Account Balance is its value as of the Valuation Date immediately preceding the date of the distribution.

(B) Allocation of Earnings. This Section 7.04(B) applies solely to the allocation of Earnings of the Investment Arrangement. Any references in this Section 7.04(B) to the Plan Administrator include a Vendor. The Plan Administrator will allocate Employer Contributions and Participant forfeitures, if any, in accordance with Article 3.

(1) **Allocate as of Valuation Date.** As of each Valuation Date, the Plan Administrator must adjust Accounts to reflect Earnings since the last Valuation Date.

(2) **Definition of Valuation Date.** The Valuation Date or Dates applicable to a given Investment Arrangement will be as specified in the Investment Arrangement Documentation.

(3) **Definition of Valuation Period.** The Valuation Period is the period beginning on the day after the last Valuation Date and ending on the current Valuation Date.

(4) **Allocation methods.** The Vendor will allocate Earnings to the Participant Accounts in accordance with the Investment Arrangement Documentation.

(C) Plan Expenses. The Plan Administrator consistent with ERISA must determine whether a particular Plan expense is a settlor expense which the Employer must pay.

(1) **Employer election as to non-settlor expenses.** The Employer will direct the Plan Administrator as to whether the Employer will pay any or all non-settlor reasonable Plan expenses or whether the Plan must bear the expense.

(2) **Allocation of Plan expense.** As to any and all non-settlor reasonable Plan expenses, including Vendor fees, which the Employer determines that the Plan will pay, the Plan Administrator has discretion: (i) to determine the method of allocating reasonable Plan expenses that are charged to the Plan as a whole; (ii) to determine which reasonable Plan expenses the Plan will charge to an individual Participant's Account; and (iii) to adopt an expense policy regarding the foregoing. The Plan Administrator must exercise its discretion under this Section 7.04(C)(2) in a reasonable, uniform and nondiscriminatory manner. Subject to the terms of the Investment Arrangement Documentation, the Plan Administrator will direct the Vendor to pay from the Investment Arrangement or to charge to the overall Plan or to particular Accounts the expenses under this Section 7.04(C)(2) in accordance with the Plan Administrator's election of expense charging method or policy.

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(a) **Charge to overall Plan.** If the Plan Administrator charges a Plan expense to the Accounts of all Participants, the Plan Administrator may allocate the Plan expense either pro rata in relation to the total balance in each Account on the date the expense is allocated (or as of the most recent Valuation Date) or per capita (an equal amount) to each Participant's Account.

(b) **Charge to individual Participant Accounts.** The Plan Administrator, except as prohibited by ERISA and if provided by the Investment Arrangement Documentation, may charge a Participant's Account for any reasonable Plan expenses directly related to that Account, including, but not limited to the following categories of fees or expenses: distribution, loan, QDRO, "lost Participant" search, account maintenance, brokerage accounts, expedited check delivery, investment management (including registered investment advisors' fees) and benefit calculations. The Plan Administrator may charge a Participant's Account for the reasonable expenses incurred in connection with the maintenance of or a distribution from that Account even if the charging of such expenses would result in the elimination of the Participant's Account or in the Participant's not receiving an actual distribution. However, if the actual Account expenses exceed the Participant's Account Balance, the Plan Administrator will not charge the Participant outside of the Plan for such excess expenses.

(c) **Participant's direct payment of investment expenses.** The Plan Administrator may permit Participants to pay directly to the service provider, outside the Plan, Plan expenses such as investment management fees, provided such expenses: (i) would be properly payable either by the Employer or the Plan and are not "settlor" expenses payable exclusively by the Employer; (ii) are not paid in fact by the Employer or by the Plan; and (iii) are not intrinsic to the value of the Plan assets as described in Rev. Rul. 86-142 or in any successor ruling. This Section 7.04(C)(2)(c) does not permit a Participant to reimburse the Plan for expenses the Plan previously has paid. To the extent a Participant does not pay an expense the Participant may pay according to this Section 7.04(C)(2)(c), the Plan Administrator will charge the expense under Sections 7.04(C)(2)(a) or 7.04(C)(2)(b) in accordance with the Plan Administrator's expense policy.

(d) **Charges to former Employee-Participants.** The Plan Administrator may charge reasonable Plan expenses to the Accounts of former Employee-Participants, even if the Plan Administrator does not charge Plan expenses to the Accounts of current Employee-Participants. The Plan Administrator may charge the Accounts of former Employee-Participants by applying one of the Section 7.04(C)(2)(a) or (b) methods.

(D) Fee Recapture Account. The Plan Administrator in its discretion may use a Fee Recapture Account to pay non-settlor Plan Expenses and may allocate funds in the Fee Recapture Account (or excess funds therein after payment of Plan Expenses) as Earnings. The Plan Administrator will exercise its discretion in a reasonable, uniform and nondiscriminatory manner. The Employer, in Appendix B to its Adoption Agreement, may specify a particular method the Plan Administrator will use to allocate excess funds in the Fee Recapture Account. A Fee Recapture Account is an account designated to receive amounts which a Plan service provider receives in the form of 12b-1 fees, sub-transfer agency fees, shareholder servicing fees or similar amounts (also known as "revenue sharing"), which the service provider receives from a source other than the Plan and which the service provider may remit to the Plan.

(E) Late Trading and Market Timing Settlement. In the event the Plan becomes entitled to a settlement from a mutual fund or other investment relating to late trading, market timing or other activities, the Plan Administrator will allocate the settlement proceeds to Participants and Beneficiaries in accordance with FAB 2006-01, or in another reasonable manner as the Plan Administrator may determine on a uniform and nondiscriminatory basis.

7.05 PARTICIPANT ADMINISTRATIVE PROVISIONS.

(A) Beneficiary Designation. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Vendor will pay all or any portion of the Participant's Vested Account Balance (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may, to the extent the Vendor permits, designate the form and method of distribution of his/her Account to the Beneficiary. The Plan (or Vendor) will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan (or Vendor) the form effectively revokes all designations filed with the Plan (or Vendor) prior to that date by the same Participant. This Section 7.05(A) also applies to the interest of a deceased Beneficiary or a deceased alternate payee where the Beneficiary or alternate payee has designated a Beneficiary. Delivery of a Beneficiary Designation to a Vendor affects only distributions from the Investment Arrangement(s) that Vendor provides. In the event of a conflict between a beneficiary designation provided to the Plan Administrator and a beneficiary designation provided to a Vendor, the Vendor's designation will control the distribution of the Vendor's Investment Arrangements.

(1) **Automatic revocation of spousal designation.** A divorce decree revokes the Participant's prior designation, if any, of his/her spouse or former spouse as his/her Beneficiary under the Plan unless: (a) the decree or a QDRO provides otherwise; (b) the Employer provides otherwise in Appendix B to its Adoption Agreement; or (c) prohibited under state law. This Section 7.05(A)(1) applies solely to a Participant whose divorce becomes effective on or after the date the Employer executes this Plan unless the Plan is a Restated Plan and the prior Plan contained a provision to the same effect.

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(2) **Coordination with QJSA/QPSA requirements.** If Section 6.04 applies to the Participant, this Section 7.05 does not impose any special spousal consent requirements on the Participant's Beneficiary designation unless the Participant waives the QJSA or QPSA benefit. If the Participant waives the QJSA or QPSA benefit without spousal consent to the Participant's Beneficiary designation: (a) any waiver of the QJSA or of the QPSA is not valid; and (b) if the Participant dies prior to his/her Annuity Starting Date, the Participant's Beneficiary designation will apply only to the portion of the death benefit which is not payable as a QPSA. Regarding clause (b), if the Participant's surviving spouse is a primary Beneficiary under the Participant's Beneficiary designation, the Vendor will satisfy the spouse's interest in the Participant's death benefit first from the portion which is payable as a QPSA.

(3) **Joint and survivor exception.** This Section 7.05(A)(3) applies if the Employer has elected to apply the exception to the joint and survivor annuity requirements under Section 6.04(G). The Beneficiary designation of a married Exempt Participant, as described in Section 6.04(G), is not valid unless the Participant's spouse consents (in a manner described in Section 6.04(A)(7)) to the Beneficiary designation. The spousal consent requirement in this Section 7.05(A)(3) does not apply if the Participant's spouse is the Participant's sole primary Beneficiary.

(4) **Limitation on frequency of Beneficiary changes.** A Participant may change his/her Beneficiary in accordance with this Section 7.05(A) as often as the Participant wishes.

(5) **Definition of spouse.** The Employer in Appendix B to its Adoption Agreement may define the term "spouse." That definition shall apply for all Plan purposes other than Section 6.02 related to requited minimum distributions, and Sections 6.04 and 7.05(A)(3) related to QJSAs, QPSAs, and related spousal rights.

(B) Default Beneficiary. If: (i) a Participant fails to name a Beneficiary in accordance with Section 7.05(A); or (ii) the Beneficiary (and all contingent or successive Beneficiaries) whom the Participant designates predeceases the Participant, are invalid for any reason, or disclaim the Participant's Vested Account Balance and the disclaimers have been accepted as valid, then the Vendor (subject to any contrary provision in Appendix B to the Adoption Agreement) will distribute the Participant's Vested Account Balance in accordance with the Investment Arrangement Documentation.

(C) Administration of Default Provision. The Employer in Appendix B to its Adoption Agreement may specify a different list or ordering of the list of default beneficiaries; provided however, that if the Plan is subject to Section 6.04(G), and the Plan includes Exempt Participants, as to such Exempt Participants, the Employer may not specify a different default Beneficiary list or order unless the Participant's surviving spouse will be the sole primary Beneficiary. The Employer in Appendix B to its Adoption Agreement may define the term "spouse" under Section 7.05(B)(1). In the absence of such a definition, the Plan Administrator will interpret and apply the term "spouse" in a manner which is consistent with the Code and DOL guidance relating to retirement plans.

(D) Death of Beneficiary. If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Vested Account Balance, the Vendor will distribute the remaining Vested Account Balance to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; (2) the Beneficiary has properly designated a beneficiary; or (3) the Employer provides otherwise in Appendix B to its Adoption Agreement. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms.

(E) Simultaneous Death of Participant and Beneficiary. If a Participant and his/her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Plan will presume conclusively that the Beneficiary predeceased the Participant.

(F) Incapacitated Participant or Beneficiary. If, in the opinion of the Plan Administrator, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, the Vendor will make the distribution to the Participant's or Beneficiary's guardian, conservator, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing satisfactory evidence of such status. The Plan Administrator and the Vendor do not have any liability with respect to payments so made and neither the Plan Administrator nor the Vendor has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

(G) Assignment or Alienation. Except for Plan Loans (Section 7.06) and as provided in Section 6.05 relating to domestic relations orders, and in ERISA §206(d) relating to certain voluntary, revocable assignments, judgments and settlements, neither a Participant nor a Beneficiary may anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Vendor will not recognize any such anticipation, assignment or alienation. Except as provided by law, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process. Without regard to distribution restrictions otherwise provided herein, the Plan Administrator may pay from a Participant's or Beneficiary's Accumulated Benefit the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

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(H) Information Available. Any Participant or Beneficiary without charge may examine the Plan description, copy of the latest annual report, any bargaining agreement, this Plan, and any contract or any other instrument which relates to the establishment or administration of the Plan. The Plan Administrator will maintain all of the items listed in this Section 7.05(H) in its office, or in such other place or places as it may designate from time to time in order to comply with the regulations issued under ERISA, for examination during reasonable business hours. Upon the written request of a Participant or a Beneficiary, the Plan Administrator must furnish the Participant or Beneficiary with a copy of any item listed in this Section 7.05(H). The Plan Administrator may impose a reasonable copying charge upon the requesting person.

(I) Claims Procedure for Denial of Benefits. A Participant or a Beneficiary may file with the Plan Administrator a written claim for benefits, if the Participant or the Beneficiary disputes the Plan Administrator's determination regarding the Participant's or Beneficiary's Plan benefit. However, the Plan will distribute only such Plan benefits to Participants or Beneficiaries as the Plan Administrator in its discretion determines a Participant or Beneficiary is entitled to receive. The Plan Administrator will maintain a separate written document as part of (or which accompanies) the Plan's summary plan description explaining the Plan's claims procedure. This Section 7.05(I) specifically incorporates the written claims procedure as from time to time published by the Plan Administrator as a part of the Plan. If the Plan Administrator pursuant to the Plan's written claims procedure makes a final written determination denying a Participant's or Beneficiary's benefit claim, the Participant or Beneficiary to preserve the claim must file an action with respect to the denied claim not later than 180 days following the date of the Plan Administrator's final determination.

(J) Inability to Determine Beneficiary. In the event that the Plan Administrator (or Vendor with respect to the Account Balance under its Investment Arrangement) is unable to determine the identity of a Participant's Beneficiary under circumstances of competing claims or otherwise, the Plan (or Vendor) may file an interpleader action seeking an order of the court as to the determination of the Beneficiary. The Plan Administrator, the Vendor and other Plan fiduciaries may act in reliance upon any proper order issued under this Section 7.05(J) in maintaining, distributing or otherwise disposing of a Participant's Account under the Plan terms, to any Beneficiary specified in the court's order.

7.06 PLAN LOANS.

(A) Loan Policy. Subject to the terms of the Investment Arrangement Documentation, if the Adoption Agreement permits Participant Loans, the Plan Administrator may establish, amend or terminate, a policy for making Plan loans (including collateralized loans made by an Annuity Provider under the Annuity Contract), if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be nondiscriminatory and must be in writing. The policy must include: (i) the identity of the person or positions authorized to administer the Participant loan program; (ii) the procedure for applying for a loan; (iii) the criteria for approving or denying a loan; (iv) the limitations, if any, on the types and amounts of loans available; (v) the procedure for determining a reasonable rate of interest; (vi) the types of collateral which may secure the loan; (vii) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default; and (viii) acceptable methods for repayment of the loan. A loan policy the Plan Administrator adopts under this Section 7.06 is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.02.

(B) Requirements for Plan Loans. The Vendor may make a Plan loan to a Participant or to a Beneficiary in accordance with the loan policy and the Investment Arrangement Documentation, subject to the following requirements: (1) the loan policy satisfies the requirements of this Section 7.06; (2) loans are available to all Participants and Beneficiaries on a reasonably equivalent basis and are not available in a greater amount for HCEs than for NHCEs; (3) any loan is adequately secured; (4) the loan bears a reasonable rate of interest; (5) the loan provides for a fixed repayment schedule (except that the loan policy may suspend loan payments pursuant to Code §414(u)(4) or other Code provisions); (6) the default provisions of the note permit offset of the Participant's Vested Account Balance only at the time when the Participant has a distributable event under the Plan, but without regard to whether the Participant consents to distribution as otherwise may be required under Section 6.01; (7) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's Vested Account Balance in the Vendor's Investment Arrangement; (8) the loan otherwise conforms to the exemption provided by ERISA §408(b)(1); and (9) the loan has repayment safeguards to which a prudent lender would adhere. The Vendor may impose additional restrictions on loans, provided such terms are consistent with the Code and ERISA.

(C) Default as Distributable Event. The loan policy (or the Investment Arrangement and documentation) may provide a Participant's loan default is a distributable event under the terms of the Plan with respect to the defaulted amount, irrespective of whether the Participant otherwise has incurred a distributable event at the time of default, except as to amounts which the Participant used to secure his/her loan and which remain subject to distribution restrictions under Section 6.01(E) which may not be distributed in-service at the time of default.

(D) QJSA Requirements. If the QJSA requirements of Section 6.04 apply to the Participant, the Participant may not pledge any portion of his/her Account Balance that is subject to such requirements as security for a loan unless, within the 180 day period ending on the date the pledge becomes effective, the Participant's spouse, if any, consents (in a manner described in Section 6.04 other than the requirement relating to the consent of a subsequent spouse) to the security or, by separate consent, to an increase in the amount of security.

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(E) Treatment of Loan as Participant-Directed. The Plan Administrator, to the extent provided in a written loan policy and consistent with Section 7.03(B) and the terms of the Investment Arrangement Documentation, will treat a Plan loan made to a Participant as a Participant-directed investment, even if the Plan otherwise does not permit a Participant to direct his/her Account investments. Where a loan is treated as a directed investment and is not treated as a contract loan, the borrowing Participant's Account alone shares in any interest paid on the loan, and the Account alone bears any expense or loss it incurs in connection with the loan. The Vendor may retain any principal or interest paid on the borrowing Participant's loan in a segregated Account (as described in Section 7.04(A)(2)(c)) on behalf of the borrowing Participant until the Vendor deems it appropriate to add the loan payments to the Participant's Account under the Plan. If the loan is treated as a contract loan, interest will be credited in accordance with the Investment Arrangement and loan documentation.

(F) [Reserved]

(G) Coordination; Code §72(p). To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Plan Administrator will take such steps as may be appropriate to coordinate the limitations on loans set forth in Code §72(p), including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Plan Administrator will also take such steps as may be appropriate to collect information from Vendors, and transmit information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer. The Vendors will cooperate with the Plan Administrator in providing information needed under this Section 7.06(G). No loan to any Participant or Beneficiary can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant or Beneficiary would exceed the lesser of (a) $50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) one-half the present value of the nonforfeitable accrued benefit of the Participant. For the purpose of the above limitation, all loans from all plans of the Employer and Related Employers are aggregated. Any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, except that if such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant, the amortization period shall not extend beyond a commercially reasonable period from the date of the loan.

7.07 LOST PARTICIPANTS. If the Plan is unable to locate any Participant or Beneficiary whose Account becomes distributable under the Plan (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 7.07 consistent with ERISA and the Investment Arrangement Documentation. The provisions of this Section 7.07 no longer apply if the Plan, prior to taking action to dispose of the lost Participant's Account under Section 7.07(A)(2) or 7.07(B)(2), receives a distribution election from the Participant.

(A) Ongoing Plan. The provisions of this Section 7.07(A) apply if the Plan is ongoing.

(1) **Attempt to Locate.** The Plan must conduct a reasonable and diligent search for the Participant, using one or more of the search methods described in Section 7.07(C).

(2) **Failure to locate/disposition of Account.** If a lost Participant remains un-located after six months following the date the Plan first attempts to locate the lost Participant using any of the search methods described in Section 7.07(C), the Plan may forfeit the lost Participant's Account, provided the Account is not subject to the Automatic Rollover rules of Section 6.08(D). If the Plan forfeits the lost Participant's Account, the forfeiture occurs at the end of the above-described 6-month period and the Plan will allocate the forfeiture in accordance with Section 3.07. The Plan under this Section 7.07(A)(2) will forfeit the entire Account of the lost Participant, including Elective Deferrals and Employee Contributions.

(3) **Subsequent restoration of forfeiture.** If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his/her forfeited Account, the Plan will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for Earnings occurring subsequent to the forfeiture. The Plan will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan otherwise would allocate for the Plan Year, and then from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Employer in Appendix B to its Adoption Agreement may modify the order of priority of the sources of restoration described in the previous sentence. The Plan will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan restores the forfeited Account.

(B) Terminating plan. The provisions of this Section 7.07(B) apply if the Plan is terminating.

(1) **Attempt to locate.** The Plan, to attempt to locate a lost Participant when the Plan is terminating, must conduct a reasonable and diligent search for the Participant, using all four search methods described in clauses (1) through (4) of Section 7.07(C). In addition, the Plan Administrator may use a search method described in clause (5) of Section 7.07(C).

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(2) **Failure to locate/disposition of Account.** If a lost Participant remains un-located after a reasonable period the Plan Administrator will distribute the Participant's Account under Sections 7.07(B)(2)(a), (b) or (c) as applicable.

(a) **No Annuity Contract/no other 403(b) Plan.** If the terminating Plan does not provide an Annuity Contract as an investment option and the Employer does not maintain another 403(b) Plan, the Plan Administrator will distribute the lost Participant's Account in an Automatic Rollover to an individual retirement plan under Section 6.08(D), unless the Plan determines it is impracticable to complete an Automatic Rollover or is unable to locate an individual retirement plan provider willing to accept the rollover distribution. In such event, the Plan may: (i) distribute the Participant's Account to an interest-bearing insured bank account the Plan establishes in the Participant's name; or (ii) distribute the Participant's Account to the unclaimed property fund of the state of the Participant's last known address.

(b) **Plan provides Annuity Contract/no other 403(b) Plan.** If the terminating Plan provides for an Annuity Contract as an investment option and the Employer does not maintain another 403(b) Plan, the Plan Administrator will distribute an Annuity Contract payable to the lost Participant for delivery to the Participant's last known address reflected in the Plan's records.

(c) **Employer maintains another 403(b) Plan.** If the Employer maintains another 403(b) Plan, the Plan Administrator may (in lieu of taking the actions described in Sections 7.07(B)(2)(a) or (b)) transfer the lost Participant's Account to the other 403(b) Plan.

(C) Search methods. The search methods described in this Section 7.07 are: (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail; (2) check with other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts; (3) identify and contact the Participant's designated Beneficiary; (4) use free Internet search tools; and (5) use a commercial locator service, credit reporting agencies, other Internet tools or other search method. Regarding search methods (2) and (3) above, if the Plan encounters privacy concerns, the Plan may request that the Employer or other plan fiduciary (under (2)), or the designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan. The purpose of this Section is to reflect DOL Guidance regarding locating missing or unresponsive Participants as of the date the Plan was written, which have changed over time. The Plan Administrator should use the search methods which applied and were available at the time of the search.

(D) Uniformity. The Plan will apply Section 7.07 in a reasonable, uniform and nondiscriminatory manner, but in determining a specific course of action as to a particular Account, the Plan reasonably may take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan's ability to establish and the expense of establishing a rollover IRA, and other factors.

(E) Expenses of search. The Plan, in accordance with Section 7.04(C)(2)(b), may charge to the Account of a Participant the reasonable expenses incurred under this Section 7.07 and which are associated with the Participant's Account, without regard to whether or when the Plan actually locates or makes a distribution to the Participant.

(F) Alternative Disposition. The Plan under Sections 7.07(A) or (B) operationally may dispose of a lost Participant's Account in any reasonable manner which is not inconsistent with ERISA or the Code. The Plan Administrator or a Vendor may adopt a policy under this Section 7.07 as it deems reasonable or appropriate to administer the Accounts of lost Participants, provided that: (1) the terms of any such policy must be uniform and nondiscriminatory; and (2) the Plan must administer the policy in a uniform and nondiscriminatory manner. To the extent a Vendor adopts a policy, that policy will apply to Investment Arrangements of this Plan which the Vendor administers, and the terms and administration of the Policy must be uniform and nondiscriminatory among such Investment Arrangements. The Plan also may administer lost Participant Accounts consistent with the Code and ERISA which is contrary to any provision of Section 7.07.

7.08 PLAN CORRECTION. The Plan Administrator in conjunction with the Employer may undertake such correction of Plan failures as the Plan Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §403(b) or to correct a fiduciary breach under ERISA or to unwind (correct) a prohibited transaction under ERISA. Without limiting the Plan Administrator's authority under the prior sentence, the Plan Administrator, as it determines to be reasonable and appropriate, may undertake or assist the Employer in undertaking correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Plan Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or Plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFCP") or any successor program to VFCP. The Plan Administrator may correct an operational failure by distributing from the Plan Elective Deferrals, including Earnings, and the Plan Administrator may forfeit any Matching Contributions, including Earnings, attributable to the distributed Elective Deferrals or any other Matching Contribution which a Participant has not otherwise accrued.

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7.09 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION.

(A) Plan Administrator's Nondiscriminatory Discretion/Administration. The Plan Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person. The Plan Administrator must exercise all of its Plan powers and discretion, and perform all of its duties in a uniform and nondiscriminatory manner.

(B) Written Communications. All Plan notices and all Participant or Beneficiary notices, designations, elections, consents or waivers must be in writing (which under Section 7.09(C) may include an electronic communication) and made in a form the Plan specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period as permitted by law.

(C) Use of Electronic Media. The Plan using any electronic medium may give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under the Code and ERISA. A Participant, a Participant's spouse, or a Beneficiary, may use any electronic medium to provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent allowed by the Code or ERISA. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version.

(D) Evidence. Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Administrator and the Vendors are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(E) Plan Terms Binding. The Plan is binding upon the Employer, Plan Administrator, Vendors (to the extent no changes are made to the Plan after it is provided to the Employer or Vendor), and all other service providers to the Plan, upon Participants, Beneficiaries and all other persons entitled to benefits, and upon the successors and assigns of the foregoing persons. As to a Vendor, see Section 8.01(B).

(F) Employment Not Guaranteed. Nothing contained in this Plan, or any modification or any amendment to the Plan, or in the creation of any Account, or with respect to the payment of any benefit, gives any Employee, Participant or any Beneficiary any right to employment or to continued employment by the Employer, or any legal or equitable right against the Employer, the Plan Administrator or any employee or agent thereof, except as expressly provided by the Plan.

(G) Word Usage. Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural. Titles of Plan and Adoption Agreement sections are for reference only.

(H) State Law. The law of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of the Plan. The Employer, in Appendix B to its Adoption Agreement, may elect to apply the law of another state.

(I) Parties to Litigation. A Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, an Investment Arrangement or any fiduciary of the Plan. Any final judgment entered in any such proceeding will be binding upon the Employer, the Plan Administrator, affected Vendors, Participants and Beneficiaries and upon their successors and assigns provided that the Vendor has been properly served and has had opportunity to litigate the issue.

(J) Fiduciaries Not Insurers. The Plan Administrator and the Employer in no way guarantee the Investment Arrangements from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from an Investment Arrangement. The liability of the Employer, the Plan Administrator and a Vendor to make any payment from the Investment Arrangement at any time and all times is limited to the then available assets of the Account.

(K) Construction/Severability. The Plan, the Adoption Agreement, the Investment Arrangements and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §403(b) and also consistent with ERISA. Any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

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ARTICLE 8. PLAN FUNDING

8.01 INVESTMENT ARRANGEMENTS/INCORPORATION OF TERMS.

(A) Alternative Investment Arrangements. The Plan may be funded by means of one or more Custodial Accounts or Annuity Contracts. The Employer will specify in Appendix D to its Adoption Agreement the Annuity Contracts and Custodial Accounts available under the Plan.

(1) **Multiple vehicles.** The Plan may provide more than one Investment Arrangement within the single Plan.

(2) **Selection of specific funding.** The Employer in its sole discretion will designate from time to time the specific Investment Arrangements which are available as Plan investments. The Employer may change such designation at any time.

(3) **Nonforfeitability.** An Investment Arrangement must be nonforfeitable under Code §403(b)(1)(C), except as otherwise provided herein (such as the vesting provisions of Article 5).

(4) **Group trust.** As permitted under the Code, Plan assets under a Custodial Account may be invested in a group trust with assets held by tax qualified plans or individual retirement plans. Notwithstanding any contrary provision in the Plan, the Plan Administrator may transfer, unless restricted in writing by the Custodian, Plan assets to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code §403(b), Code §401(a), individual retirement accounts that are exempt under Code §408(e), and eligible Governmental Plans under Code §457(b). For purposes of valuation, the value of the interest maintained by the Plan in such group trust will be the fair market value of the portion of the group trust held for the Plan, determined in accordance with generally recognized valuation procedures. This authorization applies solely to a group trust fund exempt from taxation under Code §501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100 (as modified and clarified by Revenue Ruling 2004-67), or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan, subject to the limitations contained herein. The provisions of the group trust fund will govern any investment of Plan assets in that fund. For purposes of this Section 8.01(A)(4), a trust includes a custodial account which is treated as a trust under Code §401(f).

(B) Incorporation of Terms. The Plan under this Section 8.01(B) incorporates the provisions of the Investment Arrangement Documentation. To the extent that any of these incorporated provisions conflict with the remaining Plan terms (including references to Investment Arrangements), the Plan provisions will prevail. In the event of any conflict between the terms of this Plan and the terms of any document that is made a part of the Plan, the Plan Administrator shall resolve the conflict. In the event of any conflict between the terms of this Plan and the terms of any portion of any document that is not a part of the Plan, the Plan provisions shall control.

8.02 CONTRIBUTION TIMING.

(A) General. The Employer will make its contributions to the Investment Arrangement within a period that is not longer than is reasonable for the proper administration of the Plan.

(B) Elective Deferrals. The Employer will transmit Elective Deferrals to an Investment Arrangement within a reasonable period of time following the date the Employer withholds the Elective Deferrals from the Participant's Compensation. However, if the Plan is an ERISA Plan, the Employer must transmit the Elective Deferrals within a time period that is consistent with 403(b) and ERISA requirements and in no event later than the 15th business day of the month following the month in which the amounts would otherwise have been payable to the Participant.

8.03 ANNUITY CONTRACT.

(A) Defined. An Annuity Contract is defined in 1.06, subject to the additional rules of this Section 8.03.

(1) **Transition Rule.** An Annuity Contract issued under a State maintained Plan established on or before May 17, 1982, need not comply with the requirement that the contract issuer be qualified to issue annuities in a State.

(B) Prohibition on Life Insurance and Other Insurance. An Annuity Contract may not consist of a life insurance contract under Code §7702, an endowment contract, a health or accident insurance contract, nor a property, casualty, or liability insurance contract. This limitation does not apply to a contract issued before September 24, 2007.

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8.04 CUSTODIAL ACCOUNT.

(A) Defined. A Custodial Account is defined in Section 1.14, as established under a Custodial Agreement, subject to the additional rules of this Section 8.04.

(B) Limitation on Investment Assets/Other Limitations. All assets held in the Custodial Account must be invested in stock of one or more regulated investment companies as defined in Code §851(a).

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ARTICLE 9. ADDITIONAL PROVISIONS

9.01 EXCLUSIVE BENEFIT. Except as provided under Section 3.01(E), the Employer does not have any beneficial interest in any asset of an Investment Arrangement and no part of any asset in an Investment Arrangement may ever revert to or be repaid to the Employer, either directly or indirectly; nor, prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, may any part of the corpus or income of the Investment Arrangement, or any asset of the Investment Arrangement, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries and for defraying reasonable expenses of administering the Plan.

9.02 AMENDMENT.

(A) Permitted Amendments. The Employer, consistent with this Section 9.02 and other applicable Plan provisions, has the right, at any time to amend the Plan as follows:

(1) **Adoption Agreement.** To restate or amend the elective provisions of the Adoption Agreement (changing an existing election or making a new election) in any manner the Employer deems necessary or advisable;

(2) **Code §415.** To add in Appendix B to its Adoption Agreement overriding language to satisfy Code §415 because of the required aggregation of multiple 403(b) plans; and

(3) **Interim Amendments.** To make such good faith amendments as the Employer considers necessary to keep the Plan in compliance with the Code or with ERISA.

(B) Amendment Formalities.

(1) **Writing.** The Employer must make all Plan amendments in writing. Each amendment must specify the amendment execution date and, if different from its execution date, must specify the date as of which the amendment is either retroactively or prospectively effective.

(2) **Restatement.** An Employer may amend its Plan by means of a complete restatement of its Adoption Agreement. To restate its Plan, the Employer must complete, and the Employer must execute and date, a new Adoption Agreement or a replacement plan document.

(3) **Amendment (without restatement).** An Employer may amend its Plan without completion of a new Adoption Agreement by either: (a) completion and substitution of one or more Adoption Agreement pages including a new Adoption Agreement Execution Page executed and dated by the Employer; or (b) other written instrument amending the Adoption Agreement executed and dated by the Employer.

(4) **Operational discretion and policy not an amendment.** A Plan amendment does not include the Plan Administrator's exercise of any operational discretion the Plan accords to the Plan Administrator, including but not limited to, the Plan Administrator's adoption, modification or termination of any policy, rule or regulation in accordance with the Plan or any change to an administrative checklist, or other ancillary documents described in Section 1.04 which are part of the Plan, other than the Adoption Agreement and the basic plan document.

(5) **Signatory Employer authority.** If the Plan has Participating Employers, only the Signatory Employer need execute any Plan amendment under this Section 9.02. See Section 1.29(A).

(C) Impermissible Amendment/Protected Benefits.

(1) **Exclusive benefit/no reversion.** The Employer may not amend the Plan to permit any of an Investment Arrangement (other than as required to pay taxes and reasonable administrative expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries. An amendment may not cause any portion of the Investment Arrangement to revert to the Employer or to become the Employer's property.

(2) **Alteration of Plan Administrator or Vendor duties.** The Employer may not amend the Plan in any manner which affects the powers duties or responsibilities of the Plan Administrator, or of a Vendor without the written consent of the affected party.

(3) **No cut-backs.** An amendment (including the adoption of this Plan as a restatement of an existing plan) may not decrease a Participant's Account Balance. Except as provided under IRS or DOL Guidance, an amendment may not reduce or eliminate Protected Benefits determined immediately prior to the adoption date (or, if later, the Effective Date) of the amendment. An amendment reduces or eliminates Protected Benefits if the amendment has the effect of eliminating an optional form of benefit except as provided under IRS or DOL Guidance. An amendment does not impermissibly

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eliminate a Protected Benefit relating to the form of distribution if after the amendment a Participant may receive a single sum payment at the same time or times as the form of distribution eliminated by the amendment and such payment is based on the same or a greater portion of the Participant's Account as the eliminated form of distribution.

(4) **Disregard of amendment/tracking Protected Benefits.** The Plan Administrator must disregard an amendment to the extent application of the amendment would fail to satisfy this Section 9.02(C). The Plan Administrator may maintain a list of Protected Benefits it must retain.

(D) Practitioner Amendments. The Practitioner may amend any part of the Plan. For purposes of Practitioner amendments, the mass submitter shall be recognized as the agent of the Practitioner. If the Practitioner does not adopt the amendments made by the mass submitter, it will no longer be based on the mass submitter Plan.

9.03 VOLUME SUBMITTER PRACTITIONER AMENDMENTS.

(A) General. The Practitioner, without the Employer's consent, may amend the Plan (including any Adoption Agreement), from time to time on behalf of Employers who have previously adopted the Plan: (1) to conform the Plan to any changes to the Code or ERISA, and other IRS or DOL Guidance (including adoption of model, sample or other required good faith amendments that specifically provide that their adoption will not cause such plan to be individually designed); or (2) to make corrections to prior approved plans that may be applied to all employers who adopted the Plan. The Practitioner, also may amend the Plan (including any Adoption Agreement), from time to time effective as to employers who have not yet adopted the Plan. The Practitioner's mass submitter may act as the agent of the Practitioner in adopting amendments.

(B) Notice to Employers. The Practitioner must make reasonable and diligent efforts to ensure adopting Employers have actually received and are aware of all Practitioner generated Plan amendments and that such Employers complete and sign new Adoption Agreements when necessary.

(C) Prohibited Amendments. Except under Section 9.03, the Practitioner may not amend the Plan in any manner which would modify any adopting Employer's Plan existing Adoption Agreement election without the Employer's written consent. In addition, the Practitioner may not amend the Plan in any manner which would violate Section 9.02(C).

(D) Practitioner limitations. A Practitioner may no longer amend the Plan as to any adopting Employer as of the date: (1) the Employer amends its Plan in a manner as would result in the type of plan not permitted under the Volume Submitter program; or (2) the IRS notifies the Practitioner that the Plan is being treated as an individually designed plan.

9.04 FROZEN PLAN.

(A) Employer Action to Freeze. The Employer subject to Section 9.02(C) and by proper Employer action has the right, at any time, to suspend or discontinue all contributions under the Plan and thereafter to continue to maintain the Plan as a Frozen Plan (subject to such suspension or discontinuance) until the Employer terminates the Plan. During any period while the Plan is frozen, the Plan Administrator will continue to: (1) allocate forfeitures, if any, in accordance with Section 3.07, irrespective of when the forfeitures occur under Section 5.07; and (2) operate the Plan in accordance with its terms other than those related to the making and allocation of additional (new) contributions.

(B) Not a Termination. A resolution or an amendment to discontinue all future contributions, but otherwise to continue maintenance of this Plan, is not a Plan termination for purposes of Section 9.05.

9.05 PLAN TERMINATION.

(A) Employer Action to Terminate. The Employer, subject to Section 9.02(C) and by proper Employer action, has the right, at any time, to terminate this Plan. The Employer has no obligation or liability whatsoever to maintain the Plan for any specific length of time and may terminate the Plan or discontinue contributions under the Plan at any time without liability hereunder for any such discontinuance. The Plan will terminate upon the first to occur of the following:

(1) **Specified date.** The Effective Date of termination specified by proper Employer action; or

(2) **Employer no longer exists.** The Effective Date of dissolution or merger of the Employer, unless a successor makes provision to continue the Plan, in which event the successor must substitute itself as the Employer under this Plan.

(B) [Reserved]

(C) General Procedure upon Termination. Upon termination of the Plan, the distribution provisions of Article 6 remain operative, with the following exceptions and subject to any restrictions in the Investment Arrangement Documentation:

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(1) **If no consent required.** If the Participant's Vested Account Balance does not exceed $5,000 (or exceeds $5,000 but the Participant has attained the later of age 62 or Normal Retirement Age), the Vendor may distribute the Participant's Vested Account Balance to him/her in a lump sum as soon as administratively practicable after the Plan terminates.

(2) **If consent required.** If the present value of the Participant's Vested Account Balance exceeds $5,000, the Participant has not attained the later of age 62 or Normal Retirement Age, the Participant or the Beneficiary may elect to have the Vendor commence distribution of his/her Vested Account Balance in a lump sum as soon as administratively practicable after the Plan terminates. If a Participant with consent rights under this Section 9.05(D)(2) does not elect an immediate lump sum distribution with spousal consent if required, the Vendor will purchase a deferred Annuity Contract for each Participant which protects the Participant's distribution rights under the Plan.

(3) **Lower dollar amount.** As provided in Section 6.09, the Employer may provide for a lower dollar threshold than $5,000 under this Section (C).

(4) **Plan Termination Distribution.** For purposes of the Plan termination requirements, the Plan may treat the delivery of a fully paid Annuity Contract as a distribution.

(D) Joint and Survivor Exception. If the Plan is subject to Section 6.04(G), in lieu of applying Section (C) and the distribution provisions of Article 6, the Vendor may distribute each Participant's Vested Account Balance, in lump sum, as soon as administratively practicable after the termination of the Plan, irrespective of the amount of the Participant's Vested Account Balance, the Participant's age and whether the Participant consents to the distribution.

(1) **Limitations.** This Section 9.05(D) does not apply if: (a) the Plan at termination provides an annuity option which is a Protected Benefit and which the Employer may not eliminate by Plan amendment; or (b) as of the period between the Plan termination date and the final distribution of assets, the Employer maintains any other 403(b) Plan. If clause (b) applies, the Plan Administrator to facilitate Plan termination may direct the Vendor to transfer the Account of any non-consenting Participant to the other 403(b) Plan.

(E) 403(b) Plan Distribution Restrictions. A Participant's Restricted Balances are distributable on account of Plan termination, as described in this Section 9.05, only if: (i) the Employer (including any Related Employer, determined as of the Effective Date of Plan termination) does not maintain an Alternative 403(b) Plan and the Plan distributes the Participant's entire Vested Account Balance in a lump sum; or (ii) the Participant otherwise is entitled under the Plan to a distribution of his/her Vested Account Balance.

(1) **Definition of Alternative 403(b) Plan.** An Alternative 403(b) Plan is another 403(b) Plan to which the Employer makes contributions during the period beginning on the date of Plan termination and ending 12 months after distribution of all assets from the terminating Plan. However, a plan is not an Alternative 403(b) Plan if less than 2% of the Employees eligible to participate in the terminating Plan as of the termination date are eligible to participate (beginning 12 months prior to and ending 12 months after the Plan's termination Effective Date and distribution of all of the assets of the terminated Plan) in the potential Alternative 403(b) Plan.

(F) Continuing Investment Arrangement Documentation. A Vendor's Investment Arrangement Documentation will continue in effect until the Vendor has distributed all of the benefits under the Investment Arrangement. On each Valuation Date, the Plan will credit any part of a Participant's Account Balance retained in the Investment Arrangement with its share of Earnings.

(G) Lost Participants. The Vendor will distribute the Accounts of lost Participants in a terminating Plan in accordance with the Plan Administrator's direction under Section 7.07(B) or as the Investment Arrangement Documentation may provide.

(H) Vesting. Upon either full or partial termination of the Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article 5.

9.06 MERGER/DIRECT TRANSFER.

(A) Authority. Subject to the terms of the Investment Arrangements, the Plan Administrator possesses the specific authority to enter into merger agreements or direct transfer of assets agreements with another 403(b) Plan, including an elective transfer, and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement. The limitations of this Section 9.06 do not apply to rollovers described in Sections 3.08 or 6.08. Except as provided in Sections 9.06(G) and (H), the Plan may not accept a transfer or merger from, or make a transfer or merger to, a qualified plan or a plan described in Code §457(b).

(B) Regulatory Requirements.

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(1) **Contract exchange within same plan.** Except as the Employer otherwise elects in Appendix B to its Adoption Agreement, a Participant (or Beneficiary) may exchange one 403(b) Investment Arrangement for another Investment Arrangement then authorized to receive ongoing contributions under the Plan provided the exchange satisfies the following conditions: (1) the Participant's Accumulated Benefit immediately after the exchange at least equals the Participant's Accumulated Benefit immediately before the exchange; and (2) to the extent the exchanged Investment Arrangement is subject to 403(b) Distribution Restrictions, the other Investment Arrangement imposes distribution restrictions no less stringent than those imposed by the exchanged Investment Arrangement.

(2) **Plan-to-plan transfer.** A plan-to-plan transfer is permissible, if the transfer satisfies the following conditions: (1) the Participant (or Beneficiary) subject to the transfer is an employee or former employee of the employer providing the receiving plan; (2) the transferor plan provides for transfers; (3) the receiving plan provides for the receipt of transfers; (4) the Participant's Accumulated Benefit after the transfer at least equals the Participant's Accumulated Benefit before the transfer; (5) to the extent the transferred Investment Arrangement is subject to 403(b) Distribution Restrictions, the receiving plan imposes distribution restrictions no less stringent than those imposed on the transferor plan; and (6) if the transfer does not constitute a complete transfer of the Participant's interest in the transferor plan, the transferee plan treats the amount transferred as a continuation of a pro rata portion of the Participant's interest in the transferor plan (*e.g.*, a pro rata interest in any Employee Contributions). This Plan expressly prohibits such transfers except to the extent the Employer provides otherwise in Appendix B to its Adoption Agreement. The Plan Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with the requirements of this Section and Treas. Reg. §1.403(b)-10(b)(3) and to confirm that any other plan involved in the transfer satisfies Code §403(b).

(3) **Contract exchange to Vendor which is not part of the Plan.** A Participant (or Beneficiary) may exchange one 403(b) Investment Arrangement for an Investment Arrangement not provided under the Plan, if the exchange satisfies the following conditions: (1) the Vendor agrees to assume the responsibilities of a Vendor hereunder; (2) the Participant's Accumulated Benefit immediately after the exchange at least equals the Participant's Accumulated Benefit immediately before the exchange; (3) to the extent the exchanged Investment Arrangement is subject to 403(b) Distribution Restrictions, the other Investment Arrangement imposes distribution restrictions no less stringent than those imposed by the exchanged Investment Arrangement; (4) the Employer has not prohibited the exchange in Appendix B to its Adoption Agreement; and (5) the Employer and the Vendor enter into an Information Sharing Agreement, as defined in Section (C). Unless otherwise specified in Appendix B to the Adoption Agreement, the Plan provides for and permits such exchanges with any Vendor which agrees to assume the responsibilities of a Vendor hereunder and enters into an Information Sharing Agreement.

(C) Information Sharing Agreement. An Information Sharing Agreement should provide for the exchange of the following information:

(1) **403(b) matters.** Information necessary for the resulting Investment Arrangement, or any other Investment Arrangement under the Plan, to satisfy Code §403(b), including the following: (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment; (ii) the Vendor notifying the Employer of any hardship withdrawal; and (iii) the Vendor providing information to the Eligible Employer or other Vendors concerning the Participant's or Beneficiary's 403(b) contracts or Custodial Accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any Plan loans and rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules):

(2) **Reporting matters.** Information necessary for the Plan Administrator and Vendor to satisfy any reporting, disclosure, or federal or state withholding obligations related to the Investment Arrangement; and

(3) **Other matters.** Information necessary in order for the resulting Investment Arrangement and any other Investment Arrangement under the Plan for the Participant to satisfy other tax requirements, including the following: (i) the amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations, so that any such additional loan is not a deemed distribution under Code §72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax Employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

(D) Administration of Transferred Amount. The Vendor will hold, administer and distribute the transferred assets as a part of the Investment Arrangement.

(E) Pre-Participation Transfers. The Vendor may accept a direct transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the Entry Date. If the Vendor accepts such a direct transfer of plan assets, the Plan Administrator and the Vendor must treat the Employee as a limited Participant as described in Section 3.08(C).

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(F) Elective Transfer/Protected Benefits. The Plan ("transferee plan") will not fail to satisfy the requirements of Section 9.06 because the Plan does not provide some or all of the forms of distribution (including the timing of distribution forms) previously available under another 403(b) Plan ("transferor plan") to the extent that: (1) the transferee plan receives a direct transfer of the Participant's Account Balance under the transferor plan, or the transferee plan results from a merger or other transaction that has the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan; (2) the terms of both plans authorize the transfer; (3) the transfer occurs following a Participant's voluntary election made after the Participant has received a notice describing the consequences of making the election; and (4) the transferee plan permits the Participant to receive a distribution of his/her account balance in the form of a single sum distribution, if permitted under the terms of the Investment Arrangement.

(G) Transfers to Purchase Service Credit. If permitted by the terms of the Investment Arrangement, the Plan Administrator upon Participant request may instruct the Vendor to transfer an amount from the Participant's 403(b) Plan Account to a governmental Defined Benefit Plan in which he/she participates for: (1) the purchase of permissive service (as defined in Code §415(n)(3)(A)) under such plan; or (2) the repayment of a cash-out distribution (as defined in Code §415(k)(3)).

(H) Church Plans. The Plan Administrator may accept a transfer from a qualified plan, may make a transfer to a qualified plan, or may merge this Plan with a qualified Plan, if all of the following conditions are satisfied: (1) The Employer sponsoring both plans is the same Church or Church-Related Organization, and (2) the total accrued benefit of each Participant or Beneficiary, after the transfer or merger, is: (a) fully vested and (b) at least equal to the total accrued benefit of such Participant or Beneficiary before the transfer or merger. The phrase "accrued benefit" means the accrued benefit determined under the terms of a defined benefit plan, or the account balance determined under the terms of a defined contribution plan.

9.07 INFORMATION SHARING.

Each Vendor and the Plan Administrator shall exchange such information as may be necessary to satisfy Code §403(b) or other requirements of applicable law. In the case of a Vendor which is not eligible to receive contributions under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive contributions under the Plan and a Vendor holding assets under the Plan), the Employer shall keep the Vendor informed of the name and contact information of the Plan Administrator in order to coordinate information necessary to satisfy Code §403(b) or other requirements of applicable law. If any Vendor ceases to be eligible to receive contributions under the Plan, the Employer will offer to enter into an Information Sharing Agreement as described in Section 9.06(C) to the extent the Employer's contract with the Vendor does not already provide for the exchange of information described in therein.

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ARTICLE 10. MULTIPLE EMPLOYER PLAN

10.01 ELECTION/OVERRIDING EFFECT. This Article 10 applies only to the extent described in Paragraphs (A) or (B) below. If this Article 10 does apply, then the rules of Code §413(c) and the related Treasury Regulations (which are incorporated by reference) will apply to the adopting Employer and each Participating Employer. The provisions of Article 10, if in effect, supersede any contrary provisions in the Plan or the Employer's Adoption Agreement. *Note: The IRS has not reviewed the provisions of this Article 10, and the Employer cannot rely on the Advisory Letter with regard to the validity of these provisions.*

(A) Election. If the Employer elects in its Adoption Agreement that the Plan is a Multiple Employer Plan, then the provisions of this Article 10 will apply as of the Effective Date the Employer elects in its Adoption Agreement. If an Employer that is not a Related Employer becomes a Participating Employer, then this Article 10 will apply effective as of the date the Employer specifies in its participation agreement.

(B) Automatic Effect. If a Related Employer is a Participating Employer, and thereafter ceases to be a Related Employer (but is still a Participating Employer), then the provisions of this Article 10 will apply thereafter until the Plan is no longer maintained by a Participating Employer which is not a Related Employer.

10.02 DEFINITIONS. The following definitions apply to this Article 10 and supersede any conflicting definition in the Plan.

(A) Employee. Employee means any Employee of a Participating Employer.

(B) Lead Employer. The Lead Employer means the Signatory Employer to the Adoption Agreement Execution Page, and does not include any Related Employer or Participating Employer except as described in the next sentence. If the Adoption Agreement designates that Article 10 applies pursuant to Section 10.01(A), the Lead Employer will be a Participating Employer unless otherwise specified in a separate agreement. The Lead Employer has the same meaning as the Signatory Employer for purposes of making Plan amendments and other purposes as described in Section 1.29(A) regardless of whether the Lead Employer is also a Participating Employer under this Article 10. As to the right of a Lead Employer to terminate the participation of a Participating Employer, see Section 10.09.

(C) Participating Employer. A "Participating Employer" is an Eligible Employer which, with the consent of the Lead Employer, executes a Participation Agreement to the Adoption Agreement. A Participating Employer is an Employer for all purposes of the Plan except as provided in Section 1.29. A Participating Employer may, but need not be a Related Employer.

10.03 PARTICIPATING EMPLOYER ELECTIONS. In its Adoption Agreement, the Lead Employer will specify: (A) whether a Participating Employer may modify any of the Adoption Agreement elections; (B) which elections the Participating Employer may modify; and (C) any restrictions on the modifications. Such elections and modifications must be reflected on the Participation Agreement the Participating Employer signs. See Section 1.51.

10.04 HCE STATUS. The Plan Administrator will determine HCE status under Section 1.39 separately with respect to each Participating Employer.

10.05 TESTING.

(A) Separate Status. The Plan Administrator will perform the tests listed in this Section (A) (to the extent they apply) separately for each Participating Employer, with respect to the Employees of that Participating Employer. For this purpose, the Employees of a Participating Employer, and their allocations and Accounts, will be treated as though they were in a separate plan. Any Plan correction under Section 7.08 will only affect the Employees of the Participating Employer. The tests subject to this separate treatment are:

(1) **Universal Availability.** The universal availability requirement of Section 2.01(A).

(2) **ACP.** The ACP test in Section 4.10(B).

(3) **Nondiscrimination.** Nondiscrimination testing as described in Code §401(a)(4), the applicable Treasury regulations, and Sections 4.06 and 4.07.

(4) **Coverage.** Coverage testing as described in Code §410(b), the applicable Treasury regulations, and Sections 3.06(F) and 4.06.

(B) Transition Year. This Section 10.05(B) applies if as a result of a transaction or similar event a Participating Employer ceases to be a Related Employer in the middle of a Plan Year. In such a situation the Plan Administrator may perform the tests described in Section 10.05(A) as though (1) the Plan Year consisted of two Plan Years, before and after the transaction; or (2) on

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the basis of a single Plan Year, taking all for each Participating Employer the Employees of Related Employers before the transaction, and disregarding Employees who are not Employees of Related Employers after the transaction.

(C) Joint Status. The Plan Administrator will perform the following tests for the Plan as whole, without regard to an Employee's employment by a particular Participating Employer:

(1) **Annual Additions Limit.** Applying the Annual Additions Limit in Section 4.05(B).

(2) **Elective Deferral Limit.** Applying the Elective Deferral Limit in Section 4.10(A).

(3) **Catch-Up Limit.** Applying the limit on Catch-Up Deferrals in Section 3.02(D) or 3.02(E).

10.06 COMPENSATION.

(A) Separate Determination. For the following purposes, described in this Section 10.06(A), the Plan Administrator will determine separately a Participant's Compensation for each Participating Employer. Under this determination, except as provided below, Compensation from a Participating Employer includes Compensation paid by a Related Employer of that Participating Employer.

(1) **Nondiscrimination and coverage.** All of the separate tests listed in Section 10.05(A).

(2) **Allocations.** Application of allocations under Article 3. However, the Employer's Adoption Agreement elections control the extent to which Compensation for this purpose includes Compensation of Related Employers.

(3) **HCE determination.** The determination of an Employee's status as an HCE.

(B) Joint Status. For all Plan purposes other than those described in Section 10.06(A) but not limited to determining the Annual Additions Limit in Section 4.05(B), Compensation includes all Compensation paid by or for any Participating Employer or Related Employer.

10.07 SERVICE. An Employee's Service includes all Hours of Service and Years of Service with any and all Participating Employers and their Related Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not incurred a Separation from Service or a Severance from Employment.

10.08 COOPERATION AND INDEMNIFICATION.

(A) Cooperation. Each Participating Employer agrees to timely provide to the Plan Administrator upon request all information the Plan Administrator deems necessary. Each Participating Employer will cooperate fully with the Plan Administrator, the Lead Employer, and with Plan fiduciaries and other proper Plan representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to Employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(B) Indemnity. Each Participating Employer will indemnify and hold harmless the Plan Administrator, the Lead Employer, the Plan, other Plan fiduciaries, other Participating Employers, Participants and Beneficiaries, and as applicable, their subsidiaries, officers, directors, shareholders, employees, and agents, and their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as all IRS or DOL Plan disqualification, fiduciary breach or other sanctions, compliance fees or penalties) arising out of or relating to: (1) the Participating Employer's noncompliance with any of the Plan's terms or requirements; or (2) the Participating Employer's intentional or negligent act or omission with regard to the Plan, including the failure to provide accurate, timely information requested by the Plan Administrator.

10.09 INVOLUNTARY TERMINATION. The Lead Employer may terminate the participation of any Participating Employer (hereafter, "Terminated Employer") in this Plan. If the Lead Employer acts under this Section 10.09, the following will occur:

(A) Notice. The Lead Employer will give the Terminated Employer a notice of the Lead Employer's intent to terminate the Terminated Employer's status as a Participating Employer of the Plan. The Lead Employer will provide such notice not less than 30 days prior to the Effective Date of termination unless the Lead Employer determines that the interests of Plan Participants requires earlier termination.

(B) Spin-off. The Lead Employer will establish a new 403(b) Plan, using the provisions of this Plan with any modifications contained in the Terminated Employer's Participation Agreement, as a guide to establish a new 403(b) Plan (the "Spin-off Plan"). The Lead Employer will direct the Vendors to transfer (in accordance with the rules of Treas. Reg. §1.403(b)-10(b)) the Accounts of the Employees of the Terminated Employer to the Spin-off Plan. The Terminated Employer will be the Employer, Plan

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Administrator, and sponsor of the Spin-off Plan. The Lead Employer may charge the Terminated Employer or the Accounts of the Employees of the Terminated Employer with the reasonable expenses of establishing the Spin-off Plan.

(C) Transfer. The Terminated Employer, in lieu of the Lead Employer's creation of the Spin-off Plan under Section 10.09(B), may elect a transfer under this Section 10.09(C) to effect the termination of its status as a Participating Employer. To elect this alternative, the Terminated Employer must give notice to the Lead Employer of its choice, and must supply any documentation which the Lead Employer reasonably may require as soon as is practical and before the Effective Date of termination. If the Lead Employer has not received such notice and any required documentation within ten (10) days prior to the stated date of termination, the Lead Employer may proceed with the Spin-off Plan under Section 10.09(B). The Lead Employer will direct the transfer (in accordance with the rules of Treas. Reg. §1.403(b)-10(b)) of the Accounts of the Employees of the Terminated Employer to a 403(b) plan the Terminated Employer maintains. The Terminated Employer must deliver to the Lead Employer in writing such identifying and other relevant information regarding the transferee plan and must provide such assurances as the Lead Employer may reasonably require that the transferee plan is a 403(b) plan.

(D) Participants. The Employees of the Terminated Employer will cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the Terminated Employer, as of the Effective Date of the termination. To the extent that these Employees have accrued but unpaid contributions as of such Effective Date, the Terminated Employer will pay such amounts to the Plan or to the Spin-off Plan no later than 30 days after the Effective Date of termination, unless the Terminated Employer has elected the transfer alternative under Section 10.09(C).

(E) Consent. By its execution of the Participation Agreement, the Terminated Employer specifically consents to the provisions of this Article 10, and in particular, this Section 10.09 and agrees to perform its responsibilities with regard to the Spin-off Plan, if necessary.

10.10 VOLUNTARY TERMINATION. A Participating Employer (hereafter "Withdrawing Employer") may voluntarily withdraw from participation in the Plan at any time. If and when a Withdrawing Employer wishes to withdraw, the following will occur:

(A) Notice. The Withdrawing Employer will inform the Lead Employer and the Plan Administrator of its intention to withdraw from the Plan. The Withdrawing Employer must give the notice not less than 30 days prior to the Effective Date of its withdrawal.

(B) Procedure. The Withdrawing Employer and the Lead Employer will agree upon procedures for the orderly withdrawal of the Withdrawing Employer from the Plan. Such procedures, as they relate to the Accounts of the Employees of the Withdrawing Employer, may include any alternative described in Section 10.09.

(C) Costs. The Withdrawing Employer will bear all reasonable costs associated with withdrawal and transfer under this Section 10.10.

(D) Participants. The Employees of the Withdrawing Employer will cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the Withdrawing Employer, as of the Effective Date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of such Effective Date, the Withdrawing Employer will contribute such amounts to the Plan or the Spin-off Plan promptly after the Effective Date of withdrawal, unless the Accounts are transferred to a 403(b) plan the Withdrawing Employer maintains.

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