CITY OF LINCOLN
GOVERNMENTAL 457(b) PLAN
ADOPTION AGREEMENT

SECTION 1
EMPLOYER INFORMATION

1-1 **EMPLOYER INFORMATION:**

Name: **City of Lincoln, NE**

Address: **555 S. 10th Street**

City, State, Zip Code: **Lincoln, NE 68508**

Telephone: **402-441-7883** Fax: **402-441-7300**

1-2 **EMPLOYER IDENTIFICATION NUMBER (EIN): 47-6006256**

1-3 **TYPE OF EMPLOYER (optional):**

☐ (a) State

☐ (b) Political Subdivision of a State: (Describe) _____

☐ (c) Agency or Instrumentality of a State: (Describe) _____

X (d) Other governmental entity: (Describe) **Primary Class City**

1-4 **EMPLOYER'S TAX YEAR END:** The Employer's tax year ends **08/31**

1-5 **RELATED EMPLOYERS:** (optional) List any Related Employers. A Related Employer must complete a Participating Employer Adoption Page for Employees of that Related Employer to participate in this Plan.

_____

SECTION 2
PLAN INFORMATION

2-1 **PLAN NAME: City of Lincoln 457(b) Deferred Compensation Plan**

2-2 **TYPE OF CONTRIBUTIONS: (Check all that apply.)**

X (a) Salary Deferral Contributions

X (b) Employer Matching Contributions

☐ (c) Employer Contributions

2-3 **PLAN YEAR:**

X (a) Calendar year

☐ (b) The 12-consecutive month period ending on _____ each year.

☐ (c) Other: _____

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SECTION 3
ELIGIBLE EMPLOYEES

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

Deferral	Match	ER	
☐	☐	☐	(a) No exclusions.
☐	☐	☐	(b) Collectively Bargained Employees.
X	X	☐	(c) Nonresident aliens who receive no compensation from the Employer which constitutes U.S. source income.
☐	☐	☐	(d) Employees who normally work less than _____ (not more than 20) hours a week. (See Section 2.02(b)(5) of the Plan.)
☐	☐	☐	(e) Employees eligible for a 401(k), a 403(b) plan or another 457(b) plan sponsored by the Employer (see Section 2.02(b)(6) of the Plan)
☐	☐	☐	(f) Other: _____

3-2 **INDEPENDENT CONTRACTORS:** Independent Contractors of the Employer are excluded from participation in the Plan, unless the Employer specifically elects otherwise below. If the Employer so elects, the term Employee as used in the Plan shall include the eligible Independent Contractors. Select the types of contributions for which Independent Contractors are eligible.

Deferral	Match	ER	
X	X	☐	(a) Independent Contractors may participate in the Plan.
☐	☐	☐	(b) Describe any special rules applicable to Independent Contractors: _____

SECTION 4
MINIMUM AGE AND SERVICE REQUIREMENTS

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

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

Deferral	Match	ER	
X	X	☐	(1) There is no minimum service requirement for participation in the Plan.
☐	☐	☐	(2) One Year of Service (as defined in Section 2.03(a) of the Plan and AA §4-3).
☐	☐	☐	(3) The completion of _____ consecutive full calendar months of employment during which the Employee is credited with at least _____ Hours of Service or the completion of a Year of Service. [*If no minimum Hours of Service are required, insert one (1) in the second blank line.*]
☐	☐	☐	(4) The completion of _____ Hours of Service during an Eligibility Computation Period. [*If this (4) is chosen, an Employee satisfies the service requirement immediately upon completion of the designated Hours of Service.*]
☐	☐	☐	(5) Two (2) Years of Service.
☐	☐	☐	(6) Describe eligibility conditions: _____

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

Deferral	Match	ER	
X	☐	☐	(1) There is no minimum age for Plan eligibility.
☐	☐	☐	(2) Age 21.
☐	☐	☐	(3) Age 18.
☐	X	☐	(4) Other: 19.

4-2 **ENTRY DATE:** An Eligible Employee who satisfies the minimum age and service requirements in AA §4-1 shall be eligible to participate in the Plan as of his/her Entry Date. For this purpose, the Entry Date is the following date with respect to the contribution source(s) identified under this AA §4-2. [***Note:*** *If any of (b) – (f) is completed for a contribution source, also complete one of (g) – (j) for the same contribution source.*]

Deferral	Match	ER	
☐	☐	☐	(a) **Immediate.** The date the minimum age and service requirements are satisfied (or date of hire, if no minimum age and service requirements apply).
☐	☐	☐	(b) **Semi-annual.** The first day of the 1st and 7th month of the Plan Year.
☐	☐	☐	(c) **Quarterly.** The first day of the 1st, 4th, 7th and 10th month of the Plan Year.
X	X	☐	(d) **Monthly.** The first day of each calendar month.
☐	☐	☐	(e) **Payroll period.** The first day of the payroll period.
☐	☐	☐	(f) **The first day of the Plan Year.**

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

Deferral	Match	ER	
X	X	☐	(g) **next following** satisfaction of the minimum age and service requirements.
☐	☐	☐	(h) **coinciding with or next following** satisfaction of the minimum age and service requirements.
☐	☐	☐	(i) **nearest** the satisfaction of the minimum age and service requirements.
☐	☐	☐	(j) **preceding** the satisfaction of the minimum age and service requirements.

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

- **Year of Service.** An Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service during an Eligibility Computation Period. Hours of Service are calculated based on actual hours worked during the Eligibility Computation Period. (See Section 1.60 of the Plan for the definition of Hours of Service.)
- **Eligibility Computation Period.** If one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years (see Section 2.03(a)(2)(i) of the Plan). If more than one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Anniversary Years (see Section 2.03(a)(2)(ii) of the Plan).

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

Deferral	Match	ER	
☐	☐	☐	(a) **Year of Service.** Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of _____ Hours of Service during an Eligibility Computation Period.
☐	☐	☐	(b) **Eligibility Computation Period (ECP).** The Plan will use Anniversary Years, unless more than one Year of Service is required under AA §4-1(a), in which case the Plan will shift to Plan Years.

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Deferral	Match	ER	
☐	☐	☐	(c) **Elapsed Time method.** [*Check the same contribution source as checked in AA §4-1(a)(6) above.*] Eligibility service will be determined under the Elapsed Time method. An Eligible Employee (as defined in AA §3-1) must complete a _____ period of service to participate in the Plan. (See Section 2.03(a)(5) of the Plan.)
☐	☐	☐	(d) **Equivalency Method**. For purposes of determining an Employee's Hours of Service for eligibility, the Plan will use the Equivalency Method (as defined in Section 2.03(a)(4) of the Plan). The Equivalency Method will apply to:

☐ (1) All Employees.

☐ (2) Employees who are not paid on an hourly basis. For Employees for whom the Employer maintains hourly records, eligibility will be determined based on actual hours worked.

If this (d) is checked, Hours of Service for eligibility will be determined under the following Equivalency Method.

☐ (3) **Monthly.** 190 Hours of Service for each month worked.

☐ (4) **Daily.** 10 Hours of Service for each day worked.

☐ (5) **Weekly.** 45 Hours of Service for each week worked.

☐ (6) **Semi-monthly.** 95 Hours of Service for each semi-monthly period worked.

☐ ☐ ☐ (e) **Special eligibility provisions.** The following special eligibility provisions apply: _____

_____

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

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

Deferral	Match	ER	
☐	☐	☐	(a) **Automatic Eligibility.** An Eligible Employee who is employed by the Employer on the following date will become eligible to enter the Plan without regard to minimum age and/or service conditions:

☐ (1) the Effective Date of this Plan (as designated in subsection (a) or (b) of the Employer Signature Page, as applicable)

☐ (2) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page)

☐ (3) _____ [*insert date*]

☐ ☐ ☐ (b) **Describe** other effective date provisions: _____

4-5 **SERVICE WITH PREDECESSOR EMPLOYER.** Service with the following Predecessor Employers will be counted for purposes of determining eligibility, vesting and allocation conditions under this Plan, unless designated otherwise under (b) below. (See Sections 2.06, 3.09 and 7.06 of the Plan.)

☐ (a) Identify Predecessor Employer(s):

- _____
- _____
- _____
- _____

☐ (b) The following special rules apply with respect to service with a Predecessor Employer:_____

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SECTION 5
COMPENSATION DEFINITIONS

5-1 **PLAN COMPENSATION.** Plan Compensation is based on the definition set forth under this AA §5-1. See Section 1.114 of the Plan for a specific definition of the various types of Plan Compensation.

X (a) W-2 Wages

☐ (b) Code §415 Compensation.

☐ (c) Wages under Code §3401(a).

[*For purposes of determining Plan Compensation, each definition includes pre-tax contributions to a Code §125 cafeteria plan, Code §401(k), Code §403(b) or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4).*]

5-2 **POST-SEVERANCE COMPENSATION.**

(a) **Exclusion of post-severance compensation from Plan Compensation.** Plan Compensation (as defined in Section 1.114 of the Plan) includes post-severance compensation, to the extent provided in Section 1.114(b) of the Plan. For this purpose, severance pay is always excluded from the definition of Plan Compensation. Other post-severance compensation paid within 2½ months after severance from employment with the Employer or the end of the Limitation Year that includes such date of severance from employment is included in Plan Compensation, unless excluded under this subsection (a). See Section 1.114(b) of the Plan.

The following amounts paid after a Participant's severance from employment are excluded from Plan Compensation.

☐ (1) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.

☐ (2) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

(b) **Continuation payments for military service and disabled Participants.** Unless designated otherwise under this subsection (b), Plan Compensation does not include continuation payments for military service and disabled Participants. To count Plan Compensation paid after severance of employment on account of military service and/or disability, check the appropriate selections under this subsection (b).

☐ (1) **Payments for military service.** Plan Compensation includes amounts paid to an individual who does not currently perform services for the Employer by reason of qualified military service to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service. See Section 1.114(c)(1) of the Plan.

☐ (2) **Payments to disabled Participants.** Plan Compensation shall include post-severance compensation paid to a Participant who is permanently and totally disabled, as provided in Section 1.114(c)(2) of the Plan.

5-3 **PLAN COMPENSATION.** Plan Compensation (as defined in AA §5-1 above) with the following exclusions described below.

Deferral	Match	ER		
X	X	☐	(a)	No exclusions.
☐	☐	☐	(b)	Elective Deferrals (as defined in Section 1.41 of the Plan), pre-tax contributions to a cafeteria plan, a Code §403(b) plan or a Code §401(k) Plan, and qualified transportation fringes under Code §132(f)(4) are excluded.
☐	☐	☐	(c)	All fringe benefits, expense reimbursements, deferred compensation, and welfare benefits are excluded.
☐	☐	☐	(d)	Compensation above $ _____ is excluded.
☐	☐	☐	(e)	Amounts received as a bonus are excluded.
☐	☐	☐	(f)	Overtime payments are excluded.
☐	☐	☐	(g)	Amounts received after severance from employment are excluded. (See Section 1.114(b) of Plan.)
☐	☐	☐	(h)	Describe adjustments to Plan Compensation: _____

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

(a) **Compensation Period.** Plan Compensation will be determined on the basis of the following period(s) for the contribution sources identified in this AA §5-4. [*If (2), (3) or (4) is checked for any contribution source, any reference to the Plan Year as it refers to Plan Compensation for that contribution source will be deemed to be a reference to the period designated below.*]

Match	ER	
X	☐	(1) The Plan Year.
☐	☐	(2) The calendar year ending in the Plan Year.
☐	☐	(3) The Employer's fiscal tax year ending in the Plan Year.
☐	☐	(4) The 12-month period ending on _____ which ends during the Plan Year.

(b) **Compensation while a Participant.** In determining Plan Compensation, only compensation earned while an individual is a Participant under the Plan with respect to a particular contribution source will be taken into account.

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

Match	ER	
☐	☐	All compensation earned during the Plan Year will be taken into account, including compensation earned while an individual is not a Participant.

SECTION 6
EMPLOYER CONTRIBUTIONS

6-1 **EMPLOYER CONTRIBUTIONS.** Is the Employer authorized to make Employer Contributions under the Plan?

☐ Yes

X No [*If No, skip to Section 6A.*]

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

☐ (a) **Discretionary contribution.** The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.

☐ (b) **Fixed contribution.**

☐ (1) _____ % of each Participant's Plan Compensation.

☐ (2) $ _____ for each Participant.

☐ (c) **Service-based contribution.** The Employer will make:

☐ (1) **Discretionary.** A discretionary contribution determined as a uniform percentage of Plan Compensation or a uniform dollar amount for each period of service designated below.

☐ (2) **Fixed percentage.** _____% of Plan Compensation paid for each period of service designated below.

☐ (3) **Fixed dollar.** $_____ for each period of service designated below.

The service-based contribution selected under this (c) will be based on the following periods of service:

☐ (4) Each Hour of Service

☐ (5) Each week of employment

☐ (6) Describe period: _____

[***Note:*** *Any period described in subsection (6) cannot exceed a 12-month period.*]

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6-3 **ALLOCATION FORMULA.**

☐ (a) **Pro rata allocation.** The Employer Contribution under AA §6-2 will be allocated as a uniform percentage of Plan Compensation or as a uniform dollar amount. If a fixed Employer Contribution is selected in AA §6-2(b), the Employer Contribution will be allocated in accordance with the selections made in AA §6-2(b). If both a discretionary and fixed Employer Contribution is selected in AA §6-2, this subsection (a) may be selected for both contribution formulas.

☐ (b) **Permitted Disparity Method.** The allocation for each Eligible Participant is determined under the Permitted Disparity formula.

☐ **Excess Compensation under the Permitted Disparity Method** is the amount of Included Compensation that exceeds: [*If this selection is not checked, Excess Compensation under the Permitted Disparity Method is the amount of Included Compensation that exceeds the Taxable Wage Base.*]

☐ (1) _____% (may not exceed 100%) of the Taxable Wage Base.

☐ (i) The amount determined under (a) is not rounded.

☐ (ii) The amount determined under (a) is rounded (but not above the Taxable Wage Base) to the next higher:

☐ (A) $1. ☐ (B) $100. ☐ (C) $1,000.

☐ (2) _____ (may not exceed the Taxable Wage Base).

☐ (c) **Service-based allocation formula.** The service-based Employer Contribution selected in AA §6-2(c) will be allocated in accordance with the selections made in AA §6-2(c).

☐ (d) **Describe other allocation method:** _____

6-4 **SPECIAL RULES.** No special rules apply with respect to Employer Contributions under the Plan, except to the extent designated under this AA §6-4.

☐ (a) **Period for determining Employer Contributions.** In determining the amount of the Employer Contributions to be allocated under this AA §6, the Employer Contribution will be based on Plan Compensation earned during the Plan Year.

Alternatively, the Employer may elect to base the Employer Contributions on Plan Compensation earned during the following period:

☐ (1) Plan Year quarter. ☐ (2) calendar month.

☐ (3) payroll period. ☐ (4) Other: _____

[***Note:*** *Although Employer Contributions are determined on the basis of Plan Compensation earned during the period designated under this subsection (a), this does not require the Employer to actually make contributions or allocate contributions on the basis of such period.*

☐ (c) **Special rules.** The following special provisions apply with respect to Employer Contributions: _____

6-5 **ALLOCATION CONDITIONS.** A Participant who has otherwise satisfied all conditions to receive an Employer Contribution, must satisfy any allocation conditions designated under this AA §6-5 to receive an allocation of Employer Contributions under the Plan.

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

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

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

☐ (1) _____ Hours of Service during the Plan Year.

☐ (2) _____ consecutive days of employment with the Employer during the Plan Year.

☐ (e) **Exceptions.** The above allocation condition(s) will **not** apply if the Employee:

☐ (1) dies during the Plan Year.

☐ (2) terminates employment as a result of a Disability.

☐ (3) terminates employment after attainment of Normal Retirement Age in the current Plan Year or any prior Plan Year.

☐ (4) terminates employment after attainment of Early Retirement Age in the current Plan Year or any prior Plan Year.

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SECTION 6A
SALARY DEFERRALS

6A-1 **SALARY DEFERRALS.** Are Employees permitted to make Salary Deferrals under the Plan?

☐ (a) **Yes.** This is a Salary Deferral only Plan. The Employer will make no other contributions to the Plan.

X (b) **Yes.** This Plan permits Salary Deferrals and other Employer Contributions.

☐ (c) **No.** [*If "No" is checked, skip to Section 6B.*]

6A-2 **MAXIMUM LIMIT ON SALARY DEFERRALS.** A Participant may defer an amount up to the Elective Deferral Dollar Limit. See Sections 5.02 and 5.03 of the Plan.

6A-3 **MINIMUM DEFERRAL RATE.** There is no minimum deferral rate applicable to Salary Deferrals under the Plan.

6A-4 **AGE 50 CATCH-UP CONTRIBUTIONS.** The following provisions apply with respect to Age 50 Catch-Up Contributions (as defined in Section 3.03(d) of the Plan).

X (a) Age 50 Catch-Up Contributions are permitted under the Plan.

☐ (1) Age 50 Catch-Up Contributions are eligible for any Matching Contributions under the Plan.

X (2) Age 50 Catch-Up Contributions are **not** eligible for any Matching Contributions under the Plan (other than Safe Harbor Matching Contributions).

☐ (b) Age 50 Catch-Up Contributions are **not** permitted under the Plan.

6A-5 **SPECIAL 457 CATCH-UP CONTRIBUTIONS.** The following provisions apply with respect to Special 457 Catch-Up Contributions (as defined in Section 3.03(e) of the Plan).

X (a) Special 45 Catch-Up Contributions are permitted under the Plan.

☐ (1) Special 457 Catch-Up Contributions are eligible for any Matching Contributions under the Plan.

X (2) Special 457 Catch-Up Contributions are **not** eligible for any Matching Contributions under the Plan (other than Safe Harbor Matching Contributions).

☐ (b) Special 457 Catch-Up Contributions are **not** permitted under the Plan.

6A-6 **CHANGE OR REVOCATION OF DEFERRAL ELECTION:** In addition to the Participant's Entry Date under the Plan, a Participant may change, revoke or resume a Deferral Election (on a prospective basis) as of the dates designated under the Salary Deferral Agreement or other written procedures adopted by the Plan Administrator.

6A-7 **AUTOMATIC DEFERRAL ELECTION.** No automatic deferral election applies under Section 3.03(c) of the Plan.

To provide for an automatic deferral election, complete this AA §6A-8.

☐ (a) **Automatic deferral election.** Upon becoming eligible to make Salary Deferrals under the Plan (pursuant to AA §3 and AA §4), an Eligible Participant will be deemed to have entered into a Salary Deferral Election with a _____% of Total Compensation deferral election for each payroll period, unless the Participant makes a contrary Salary Reduction Agreement. Unless designated otherwise by the Participant, any Salary Deferrals made pursuant to an automatic deferral election will be treated as Pre-Tax Salary Deferrals.

☐ (b) **Automatic increase.** If elected under this subsection (b), the automatic deferral amount set forth in subsection (a) will increase each Plan Year by the following percentage:

☐ (1) _____% of Total Compensation

but not in excess of

☐ (2) _____% of Total Compensation

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☐ (c) **Application of automatic deferral provisions.** This automatic deferral election will apply to:

☐ (1) all Participants who have not entered into a Salary Reduction Agreement (including an election not to defer under the Plan).

☐ (2) all Participants who have not entered into a Salary Reduction Agreement as of _____that is at least equal to the automatic deferral amount under subsection (a).

☐ (3) only Employees who become Participants on or after _____ and who do not enter into a contrary Salary Reduction Agreement (including an election not to defer under the Plan).

6A-8 **SPECIAL DEFERRAL EFFECTIVE DATES.** Unless designated otherwise under this AA §6A-9, a Participant is eligible to make Salary Deferrals under the Plan as of the Effective Date of the Plan (as designated in subsection (a) or (b) of the Employer Signature Page, as applicable). However, in no case may a Participant begin making Salary Deferrals prior to the later of the date the Employee becomes a Participant, the date the Participant executes a Salary Reduction Agreement or the date the Plan is adopted or effective. (See Section 3.03(a) of the Plan.)

☐ (a) **Salary Deferrals.** A Participant is eligible to make Salary Deferrals under the Plan as of:

☐ (1) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).

☐ (2) _____ (insert date).

☐ (b) **Automatic deferral provisions.** The automatic deferral provisions under AA §6A-8 are effective as of _____. [*If this (c) is not checked and the Plan applies an automatic deferral election under AA §6A-8, such automatic deferral provisions are effective as of the Effective Date applicable to Salary Deferrals under this AA §6A-9).*]

6A-10 **SPECIAL RULES APPLICABLE TO SALARY DEFERRAL.** The following special rules apply to Salary Deferrals: _____

_____

SECTION 6B
MATCHING CONTRIBUTIONS

6B-1 **MATCHING CONTRIBUTIONS.** Is the Employer authorized to make Matching Contributions under the Plan?

X Yes.

☐ **No.** [*Check this box if there are no Matching Contributions. If "No" is checked, skip to Section 7.*]

6B-2 **MATCHING CONTRIBUTION FORMULAS:** For the period designated in AA §6B-5 below, the Employer will make the following Matching Contribution on behalf of Participants who satisfy the allocation conditions under AA §6B-7 below.

X (a) **Discretionary match.** The Employer will determine in its sole discretion how much, if any, it will make as a Matching Contribution. Such amount can be determined either as a uniform percentage of deferrals or as a flat dollar amount for each Participant.

☐ (b) **Fixed match.** The Employer will make a Matching Contribution for each Participant equal to:

☐ (1) _____% of Salary Deferrals made for each period designated in AA §6B-5 below.

☐ (2) $_____ for each period designated in AA §6B-5 below.

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☐ (c) **Tiered match.** The Employer will make a Matching Contribution to all Participants based on the following tiers of Salary Deferrals.

Salary Deferrals *(% of Plan Compensation or dollar amount)*	Match %
☐ (1) Salary Deferrals up to first _____% or $_____	_____%
☐ (2) Salary Deferrals up to _____% or $_____	_____%
☐ (3) Salary Deferrals up to _____% or $_____	_____%
☐ (4) Salary Deferrals up to _____% or $_____	_____%

[*Note: All tiers must be based on percentages or dollar amounts (but not both)*]

☐ (d) **Discretionary tiered match.** The Employer will make a discretionary Matching Contribution to all Participants based on the following tiers of Salary Deferrals. The Employer may determine the amount of Matching Contribution to be made with respect to each tier of Salary Deferrals.

Salary Deferrals *(% of Plan Compensation or dollar amount)*
☐ (1) Salary Deferrals up to first _____% or $_____
☐ (2) Salary Deferrals up to _____% or $_____
☐ (3) Salary Deferrals up to _____% or $_____
☐ (4) Salary Deferrals up to _____% or $_____

[*Note: All tiers must be based on percentages or dollar amounts (but not both).*]

☐ (e) **Year of Service match.** The Employer will make a Matching Contribution as a uniform percentage of Salary Deferrals to all Participants based on Years of Service with the Employer.

Years of Service	Matching Percentage
☐ (1) Up to _____ Years of Service	_____%
☐ (2) Up to _____ Years of Service	_____%
☐ (3) Up to _____ Years of Service	_____%
☐ (4) Years of Service above _____	_____%

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

6B-3 **LIMITS ON MATCHING CONTRIBUTIONS.** In applying the Matching Contribution formula(s) selected under AA §6B-2 above, the following limits apply.

X (a) **No limits apply.** All Salary Deferrals are eligible for Matching Contributions.

☐ (b) **Limit on Salary Deferrals.** The Matching Contribution formula(s) selected in AA §6B-2 above apply only to Salary Deferrals that do not exceed:

☐ (1) _____% of Plan Compensation.

☐ (2) $_____.

☐ (3) A discretionary amount determined by the Employer.

☐ (c) **Limit on Matching Contributions.** The total Matching Contribution provided under the formula(s) selected in AA §6B-2 above will not exceed:

☐ (1) _____% of Plan Compensation.

☐ (2) $_____.

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6B-4 **PERIOD FOR DETERMINING MATCHING CONTRIBUTIONS.** The Matching Contribution formula(s) selected in AA §6B-2 above (including any limitations on such amounts under AA §6B-3) are based on Salary Deferrals for the **Plan Year**. To apply a different period for determining the Matching Contributions and limits under AA §6B-2 and AA §6B-3, check one of (a) – (d) below.

X (a) payroll period. ☐ (b) Plan Year quarter.

☐ (c) calendar month. ☐ (d) Other:_____

[*Note: **Although** Matching Contributions (and any limits on those Matching Contributions) will be determined on the basis of the period designated under this AA §6B-5, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. See Section 3.04(c) of the Plan for a discussion of the "true up" requirements applicable to Matching Contributions.*]

6B-6 **ALLOCATION CONDITIONS.** A Participant who has otherwise satisfied all conditions to receive a Matching Contribution, must satisfy any allocation conditions designated under this AA §6B-7 to receive an allocation of Matching Contributions under the Plan.

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

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

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

☐ (1) _____ Hours of Service during the Plan Year.

☐ (2) _____ consecutive days of employment with the Employer during the Plan Year.

☐ (e) **Exceptions.** The above allocation condition(s) will **not** apply:

☐ (1) if the Employee dies during the Plan Year.

☐ (2) if the Employee terminates employment as a result of a Disability.

☐ (3) if the Employee terminates employment after attainment of Normal Retirement Age in the current Plan Year or any prior Plan Year.

☐ (4) if the Employee terminates employment after attainment of Early Retirement Age in the current Plan Year or any prior Plan Year.

6B-8 **SPECIAL RULES APPLICABLE TO MATCHING CONTRIBUTIONS.** The following special rules apply to Matching Contributions: **An employee with a position and pay range prefixed by a letter referenced in Appendix A of this Adoption Agreement will receive an employer matching contribution of 0.50% of Plan Compensation. To be eligible for this Matching Contribution, an employee must contribute to the City of Lincoln Employees Retirement Plan or City of Lincoln Unclassified Department Heads Retirement Plan.**

SECTION 7
NORMAL RETIREMENT AGE

7-1 **NORMAL RETIREMENT AGE:** Normal Retirement Age under the Plan is:

☐ (a) Age _____ (not to exceed 65).

☐ (b) The later of (1) age _____ (not to exceed 65) or (2) the _____ (not to exceed 5th) anniversary of the date the Employee commenced participation in the Plan.

X (c) **The age designated by the participant, but no earlier than age 55 and no later than age 70 ½** (may not be later than the maximum age permitted under subsection (b)).

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SECTION 8
VESTING AND FORFEITURES

8-1 **CONTRIBUTIONS SUBJECT TO VESTING.** Does the Plan provide for Employer Contributions under AA §6 or Matching Contributions under AA §6B that are subject to vesting?

X Yes

☐ No [*If "No" is checked, skip to Section 9. See Section 7.11(a) of the Plan for default forfeiture rules.*]

8-2 **VESTING SCHEDULE.** The vesting schedule under the Plan is as follows for both Employer Contributions and Matching Contributions, to the extent authorized under AA §6 and AA §6B. See Section 7.02(a) of the Plan for a description of the various vesting schedules under this AA §8-2.

☐ (a) **Employer Contributions (see AA §6)**

- ☐ (1) Full and immediate vesting.
- ☐ (2) Three-year cliff vesting schedule
- ☐ (3) Six-year graded vesting
- ☐ (4) Modified vesting schedule
  - ____% after 1 Year of Service
  - ____% after 2 Years of Service
  - ____% after 3 Years of Service
  - ____% after 4 Years of Service
  - ____% after 5 Years of Service
  - ____% after 6 Years of Service

X (b) **Matching Contributions (see AA §6B)**

- **X** (1) Full and immediate vesting.
- ☐ (2) Three-year cliff vesting schedule
- ☐ (3) Six-year graded vesting
- ☐ (4) Modified vesting schedule
  - ____% after 1 Year of Service
  - ____% after 2 Years of Service
  - ____% after 3 Years of Service
  - ____% after 4 Years of Service
  - ____% after 5 Years of Service
  - ____% after 6 Years of Service

8-3 **VESTING SERVICE.** In applying the vesting schedules under this AA §8, the following service with the Employer is excluded.

X (a) None, all service with the Employer counts for vesting purposes.

☐ (b) Service before the original Effective Date of this Plan is excluded. (See Section 7.06 of the Plan for rules regarding Predecessor Service.)

☐ (c) Service completed before the Employee's _____ birthday is excluded.

8-4 **VESTING UPON DEATH, DISABILITY OR EARLY RETIREMENT AGE.** An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee:

X (a) dies

X (b) terminates employment due to becoming Disabled

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8-5 **DEFAULT VESTING RULES.** In applying the vesting requirements under this AA §8, the following default rules apply.

- **Year of Service.** An Employee earns a Year of Service for vesting purposes upon completing 1,000 Hours of Service during a Vesting Computation Period. Hours of Service are calculated based on actual hours worked during the Vesting Computation Period.
- **Vesting Computation Period.** The Vesting Computation Period is the Plan Year.

To override the default vesting rules, complete the applicable sections of this AA §8-5. If this AA §8-5 is not completed, the default vesting rules apply.

ER	Match	
☐	☐	(a) **Year of Service.** Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of _____ [*must be less than 1,000*] Hours of Service during a Vesting Computation Period.
☐	☐	(b) **Vesting Computation Period (VCP).** Instead of the Plan Year, the Vesting Computation Period is: ☐ (1) The 12-month period beginning with the anniversary of the Employee's date of hire. ☐ (2) Describe:_____ [***Note:*** *Any Vesting Computation Period described in (2) must be a 12-consecutive month period and must apply uniformly to all Participants.*]
☐	☐	(c) **Elapsed Time Method.** Vesting service will be determined under the Elapsed Time Method. (See Section 7.03(b) of the Plan.)
☐	☐	(d) **Equivalency Method**. For purposes of determining an Employee's Hours of Service for vesting, the Plan will use the Equivalency Method (as defined in Section 7.03(a)(2) of the Plan). The Equivalency Method will apply to: ☐ (1) All Employees. ☐ (2) Employees who are not paid on an hourly basis. For Employees paid on an hourly basis, vesting will be determined based on actual hours worked. If this (d) is checked, Hours of Service for vesting will be determined under the following Equivalency Method. ☐ (3) **Monthly.** 190 Hours of Service for each month worked. ☐ (4) **Daily.** 10 Hours of Service for each day worked. ☐ (5) **Weekly.** 45 Hours of Service for each week worked. ☐ (6) **Semi-monthly.** 95 Hours of Service for each semi-monthly period.
☐	☐	(e) **Special vesting provisions.** No special vesting provisions apply unless designated under this subsection (e): _____

8-6 **ALLOCATION OF FORFEITURES.** Any forfeitures occurring during a Plan Year will be:

ER	Match	
☐	☐	(a) Reallocated as additional Employer Contributions or as additional Matching Contributions.
☐	X	(b) Used to reduce Employer and/or Matching Contributions.

For purposes of this AA §8-8, forfeitures will be applied:

☐	X	(c) for the Plan Year in which the forfeiture occurs.
☐	☐	(d) for the Plan Year **following** the Plan Year in which the forfeitures occur.

Prior to applying forfeitures under this AA §8-8:

☐	X	(e) Forfeitures will be used to pay Plan expenses.
☐	☐	(f) Forfeitures will **not** be used to pay Plan expenses.

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8-7 **SPECIAL RULES REGARDING CASH-OUT DISTRIBUTIONS.**

(a) **Additional allocations.** If a terminated Participant receives a complete distribution of his/her vested Account Balance while still entitled to an additional allocation, the Cash-Out Distribution forfeiture provisions do not apply until the Participant receives a distribution of the additional amounts to be allocated. (See Section 7.10(a)(1) of the Plan.)

To modify the default Cash-Out Distribution forfeiture rules, complete this AA §8-7(a).

☐ The Cash-Out Distribution forfeiture provisions will apply if a terminated Participant takes a complete distribution, regardless of any additional allocations during the Plan Year.

(b) **Timing of forfeitures.** A Participant who receives a Cash-Out Distribution (as defined in Section 7.10(a) of the Plan) is treated as having an immediate forfeiture of his/her nonvested Account Balance.

To modify the forfeiture timing rules to delay the occurrence of a forfeiture upon a Cash-Out Distribution, complete this AA §8-7(b).

☐ A forfeiture will occur upon the completion of _____ *[cannot exceed 5]* consecutive Breaks in Service (as defined in Section 7.07(a) of the Plan) following the Cash-Out Distribution.

SECTION 9
DISTRIBUTION PROVISIONS – TERMINATION OF EMPLOYMENT

9-1 **AVAILABLE FORMS OF DISTRIBUTION.**

Lump sum distribution Unless selected otherwise under subsection (e) below, a Participant may take a distribution of his/her entire vested Account Balance in a single lump sum.

Additional distribution options. To provide for additional distribution options, check the applicable distribution forms under this AA §9-1. If a lump sum distribution will not be provided under the Plan, check (e) below and indicate that no lump sum distribution is available under the Plan.

X (a) **Partial lump sum.** A Participant may take a distribution of less than the entire vested Account Balance upon termination of employment.

☐ **Minimum distribution amount.** A Participant may not take a partial lump sum distribution of less than $_____.

X (b) **Installment distributions.** A Participant may take a distribution over a specified period not to exceed the life or life expectancy of the Participant (and a designated beneficiary).

☐ (c) **Installment distribution for required minimum distributions.** A Participant may take an installment distribution solely to the extent necessary to satisfy the required minimum distribution rules under Section 8 of the Plan.

☐ (d) **Annuity distributions.** A Participant may elect to have the Plan Administrator use the Participant's vested Account Balance to purchase an annuity as described in Section 8.02 of the Plan.

X (e) **Describe: Monthly, quarterly, semi-annual or annual withdrawals**_____

[***Note:*** *Any distribution option described in (e) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.*]

9-2 **DISTRIBUTION OF SMALLER AMOUNTS**

☐ (a) The Employer has discretion to make distribution of smaller amounts as described in Section 8.06.

☐ (b) The Participant has discretion to receive a distribution of smaller amounts as described in Section 8.06.

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9-3 **TIMING OF DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.**

(a) **Distribution of vested Account Balances exceeding $5,000.** A Participant who terminates employment with a vested Account Balance exceeding $5,000 may receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1 within a reasonable period following:

X (1) the date the Participant terminates employment.

☐ (2) the last day of the Plan Year during which the Participant terminates employment.

☐ (3) the first Valuation Date following the Participant's termination of employment.

☐ (4) the completion of _____ Breaks in Service.

☐ (5) Describe: _____

[*Note: Any distribution event described in (5) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.*]

(b) **Distribution of vested Account Balances not exceeding $5,000.** A Participant who terminates employment with a vested Account Balance that does not exceed $5,000 may receive a **lump sum** distribution of his/her vested Account Balance within a reasonable period following:

X (1) the date the Participant terminates employment.

☐ (2) the last day of the Plan Year during which the Participant terminates employment.

☐ (3) the first Valuation Date following the Participant's termination of employment.

☐ (4) Describe: _____

[*Note: Any distribution event described in (4) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.*]

9-4 **SPECIAL RULES.**

(a) **Availability of Involuntary Cash-Out Distributions.** A Participant who terminates employment with a vested Account Balance of $5,000 or less will receive an Involuntary Cash-Out Distribution, subject to the Automatic Rollover provisions under Section 8.06 of the Plan.

Alternatively, an Involuntary Cash-Out Distribution will be made to the following terminated Participants.

☐ (1) **No Involuntary Cash-Out Distribution.** The Plan does not provide for Involuntary Cash-Out Distributions. A terminated Participant must consent to any distribution from the Plan.

X (2) **Lower Involuntary Cash-Out Distribution threshold.** A terminated Participant will receive an Involuntary Cash-Out Distribution only if the Participant's vested Account Balance is less than or equal to:

X (i) $1,000

☐ (ii) $_____ (*must be less than $5,000*)

(b) **Application of Automatic Rollover rules.** The Automatic Rollover rules described in Section 8.06 of the Plan do not apply to any Involuntary Cash-Out Distribution below $1,000 (to the extent available under the Plan).

To override this default provision, check this subsection (b).

☐ Check this (b) to apply the Automatic Rollover provisions under Section 8.06 of the Plan to all Involuntary Cash-Out Distributions (including those below $1,000).

(c) **Treatment of Rollover Contributions.** Unless elected otherwise under this (c), Rollover Contributions will be excluded in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold for purposes of applying the distribution rules under this AA §9 and Section 8.04(a) of the Plan. To include Rollover Contributions for purposes of applying the Plan's distribution rules, check below.

X In determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, Rollover Contributions will be included.

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SECTION 10
UNFORESEEN EMERGENCY DISTRIBUTIONS AND REQUIRED MINIMUM DISTRIBUTIONS

10-1 **AVAILABILITY OF IN-SERVICE DISTRIBUTIONS.** A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of the event(s) selected under this AA §10-1.

Deferral	Match	ER	
☐	☐	☐	(a) No in-service distributions are permitted, except upon attainment of age 70 ½.
X	X	☐	(b) The occurrence of an Unforeseen Emergency.

10-2 **SPECIAL DISTRIBUTION RULES.** No special distribution rules apply, unless specifically provided under this AA §10-2.

☐ (a) In-service distributions will only be permitted if the Participant is 100% vested in the amounts being withdrawn.

☐ (b) A Participant may take no more than _____ in-service distribution(s) in a Plan Year.

☐ (c) A Participant may not take an in-service distribution of less than $_____ (may not exceed $1,000).

☐ (d) If a distribution is permitted upon the occurrence of an Unforeseen Emergency in AA §10-1 above, a Participant may take such a distribution after termination of employment.

☐ (e) Describe: _____

10-3 **REQUIRED BEGINNING DATE – NON-5% OWNERS.** In applying the required minimum distribution rules under Section 8.11 of the Plan, the Required Beginning Date for non-5% owners is:

X (a) the later of attainment of age 70½ or termination of employment.

☐ (b) the date the Employee attains age 70½, even if the Employee is still employed with the Employer.

SECTION 11
MISCELLANEOUS PROVISIONS

11-1 **VALUATION DATES.** The Plan is valued **annually**, as of the last day of the Plan Year. In addition, the Plan will be valued on the following dates:

Deferral	Match	ER	
X	X	☐	(a) **Daily.** The Plan is valued at the end of each business day during which the New York Stock Exchange is open.
☐	☐	☐	(b) **Monthly.** The Plan is valued at the end of each month of the Plan Year.
☐	☐	☐	(c) **Quarterly.** The Plan is valued at the end of each Plan Year quarter.
☐	☐	☐	(d) **Describe:**_____ [*Note: The Employer may elect operationally to perform interim valuations.*]

11.2 SPECIAL RULES APPLICABLE TO THIS PLAN. The following rules apply to this Plan: _____

_____

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APPENDIX A
SPECIAL EFFECTIVE DATES

☐ A-1 **Eligible Employees.** The definition of Eligible Employee under AA §3 is effective as follows: _____

☐ A-2 **Minimum age and service conditions.** The minimum age and service conditions Entry Date provisions specified in AA §4 are effective as follows: _____

☐ A-3 **Compensation definitions.** The compensation definitions under AA §5 are effective as follows: _____

☐ A-4 **Employer Contributions.** The Employer Contribution provisions under AA §6 are effective as follows: _____

☐ A-5 **Salary Deferrals.** The provisions regarding Salary Deferrals under AA §6A are effective as follows: _____

X A-6 **Matching Contributions.** The Matching Contribution provisions under AA §6B are effective as follows: **Employees in a position and pay range prefixed by the letter "M" hired on or after May 1, 2010. Employees in positions or pay ranges prefixed by the letter "A" and "C" hired on or after September 1, 2010.**

☐ A-7 **Retirement age.** The retirement age provisions under AA §7 are effective as follows: _____

☐ A-8 **Vesting and forfeiture rules.** The rules regarding vesting and forfeitures under AA §8 are effective as follows: _____

☐ A-11 **Distribution provisions.** The distribution provisions under AA §9 are effective as follows: _____

☐ A-12 **Unforeseen Emergency and Required Minimum Distributions.** The provisions regarding Unforeseen Emergency distributions and Required Minimum Distributions under AA §10 are effective as follows: _____

☐ A-13 **Miscellaneous provisions.** The provisions under AA §11 are effective as follows: _____

☐ A-14 **Special effective date provisions for merged plans.** If any retirement plans have been merged into this Plan, the provisions of Section 14.03 of the Plan apply, except as follows: _____

☐ A-15 **Other special effective dates:** _____

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APPENDIX B
LOAN POLICY

B-1 Are **PARTICIPANT LOANS** permitted? (See Section 13 of the Plan.)

☐ (a) Yes.

X (b) No.

B-2 **LOAN PROCEDURES.**

☐ (a) Loans will be provided under the default loan procedures set forth in Section 13 of the Plan, unless modified under this Appendix B.

☐ (b) Loans will be provided under a separate written loan policy. [*If this (b) is checked, do **not** complete the remainder of this Appendix B.*]

B-3 **LOAN LIMITS.** The default loan policy under Section 13.03 of the Plan allows Participants to take a loan provided all outstanding loans do not exceed 50% of the Participant's vested Account Balance. To override the default loan policy to allow loans up to $10,000, even if greater than 50% of the Participant's vested Account Balance, check this AA §B-3.

☐ A Participant may take a loan equal to the greater of $10,000 or 50% of the Participant's vested Account Balance. [*If this AA §B-3 is checked, the Participant may be required to provide adequate security as required under Section 13.06 of the Plan.*]

B-4 **NUMBER OF LOANS.** The default loan policy under Section 13.04 of the Plan restricts Participants to one loan outstanding at any time. To override the default loan policy and permit Participants to have more than one loan outstanding at any time, complete (a) or (b) below.

☐ (a) A Participant may have _____ loans outstanding at any time.

☐ (b) There are no restrictions on the number of loans a Participant may have outstanding at any time.

B-5 **INTEREST RATE.** The default loan policy under Section 13.05 of the Plan provides for an interest rate commensurate with the interest rates charged by local commercial banks for similar loans. To override the default loan policy and provide a specific interest rate to be charged on Participant loans, complete this AA §B-5.

☐ (a) The prime interest rate

☐ (1) plus _____ percentage point(s).

☐ (b) Describe: _____

B-6 **MINIMUM LOAN AMOUNT.** The default loan policy under Section 13.04 of the Plan provides that a Participant may not receive a loan of less than $1,000. To modify the minimum loan amount, complete (a) or (b) below.

☐ (a) There is no minimum loan amount.

☐ (b) The minimum loan amount is $_____.

B-7 **PURPOSE OF LOAN.** The default loan policy under Section 13.02 of the Plan provides that a Participant may receive a Participant loan for any purpose. To modify the default loan policy to restrict the availability of Participant loans, complete (a) or (b) below.

☐ (a) A Participant may only receive a Participant loan upon the demonstration of a hardship event, as described in Section 8.10(d)(1)(i) of the Plan.

☐ (b) A Participant may only receive a Participant loan under the following circumstances: _____

B-8 **SOURCE OF LOAN.** The default loan policy under Section 13.09 of the Plan provides that Participant loans will be made first from Employer Contribution and Employer Matching Contributions Accounts and then from the Salary Deferral Account(s). To modify the default loan policy to modify the contribution sources from which a Participant loan is made, complete (a) or (b) below.

☐ (a) Participant loans will be made on a prorata basis from all contribution sources.

☐ (b) Participant loans will only be available from the following contribution sources: _____

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APPENDIX C
ADMINISTRATIVE ELECTIONS

Use this Appendix C to identify certain elections dealing with the administration of the Plan. These elections may be changed without reexecuting this Agreement by substituting an updated Appendix C with new elections.

C-1 **ROLLOVER CONTRIBUTIONS.** Does the Plan accept **Rollover Contributions**? (See Section 3.07 of the Plan.)

☐ (a) No

X (b) Yes

C-2 **QDRO PROCEDURES.** Do the **default QDRO procedures** under Section 11.06 of the Plan apply?

☐ (a) No

X (b) Yes

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EMPLOYER SIGNATURE PAGE

PURPOSE OF EXECUTION. This Signature Page is being executed to effect:

☐ (a) The adoption of a **new plan**, effective _____ [*insert Effective Date of Plan*].

X (b) The **restatement** of an existing plan, effective **May 1, 2010**_____ [*insert Effective Date of Plan*].

(1) Name of Plan(s) being restated: **City of Lincoln 457 Deferred Compensation Plan**_____.

(2) The original effective date of the plan(s) being restated: **March 1, 1976**

☐ (c) An **amendment** of the Plan. If this Plan is being amended, the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.

(1) Identify the section(s) of the Adoption Agreement being amended: _____

(2) Effective Date(s) of such changes: _____

☐ (d) To identify a **Successor Employer.** Check this selection if a successor to the signatory Employer is continuing this Plan as a Successor Employer. Complete this Employer Signature Page and substitute a new page 1 under this Adoption Agreement to identify the Successor Employer. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.

(1) Effective Date of the amendment is: _____

[***Note:*** *It is recommended that the Employer consult with legal counsel before executing this Agreement.*]

_____
(Name of Employer)

_____
(Name of authorized representative) *(Title)*

_____
(Signature) *(Date)*

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TRUSTEE DECLARATION

Effective date of Declaration: May 1, 2010

Trustee Signature. By signing this Declaration, the Trustee agrees to the duties, responsibilities and liabilities imposed on the Trustee by the BPD and this Agreement.

_____
(Print name)

_____
(Signature of authorized representative) *(Date)*

_____
(Print name)

_____
(Signature of authorized representative) *(Date)*

_____
(Print name)

_____
(Signature of authorized representative) *(Date)*

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PARTICIPATING EMPLOYER ADOPTION PAGE

☐ **Check this selection and complete this page if a Participating Employer (other than the Employer that signs the Signature Page above) will participate under this Plan as a Participating Employer.** [*Note: See Section 16 of the Plan for rules relating to the adoption of the Plan by a Participating Employer. If there is more than one Participating Employer, each one should execute a separate Participating Employer Adoption Page. Any reference to the "Employer" in this Adoption Agreement is also a reference to the Participating Employer, unless otherwise noted.*]

PARTICIPATING EMPLOYER INFORMATION:

Name: _____

Address: _____

City, State, Zip Code: _____

EMPLOYER IDENTIFICATION NUMBER (EIN): _____

TYPE OF ENTITY: _____

EFFECTIVE DATE:

☐ **New plan.** The Participating Employer is adopting this Plan as a new Plan effective _____

☐ **Restated plan.** The Participating Employer is adopting this Plan as a restatement of _____ _____[*insert name of Participating Employer's plan(s) being restated*].

(a) This restatement is effective _____

(b) The original effective date of the plan(s) being restated is: _____

ALLOCATION OF CONTRIBUTIONS. Any contributions made under this Plan (and any forfeitures relating to such contributions) will be allocated to all Participants of the Employer (including the Participating Employer identified on this Participating Employer Adoption Page).

To override this default provision, check below.

☐ Check this box if contributions made by the Participating Employer signing this Participating Employer Adoption Page (and any forfeitures relating to such contributions) will be allocated only to Participants actually employed by the Participating Employer making the contribution. If this box is checked, Employees of the Participating Employer signing this Participating Employer Adoption Page will not share in an allocation of contributions (or forfeitures relating to such contributions) made by the Employer or any other Participating Employer. [***Note:*** *The selection of this box may require additional testing of the Plan. See Section 16.04 of the Plan.*]

MODIFICATIONS TO ADOPTION AGREEMENT. The selections in the Adoption Agreement (including any special effective dates identified in Appendix A) will apply to the Participating Employer executing this Participating Employer Adoption Page., unless modified under this section.

☐ (a) **Special Effective Dates.** Check this (a) if different special effective dates apply with respect to the Participating Employer signing this Participating Employer Adoption Page. Attach a separate Addendum to the Adoption Agreement entitled "Special Effective Dates for Participating Employer" and identify the special effective dates as they apply to such Participating Employer.

☐ (b) **Modification of Adoption Agreement elections.** Page(s) _____ of the Agreement are being modified for this Participating Employer. The modified provisions are effective _____.

[***Note:*** *Attach the modified pages as an addendum to this Participating Employer Adoption Page.*]

SIGNATURE. By signing this Participating Employer Adoption Page, the Participating Employer agrees to adopt (or to continue its participation in) the Plan identified on page 1 of this Agreement. The Participating Employer agrees to be bound by all provision of the Plan and Adoption Agreement as completed by the signatory Employer, unless specifically provided otherwise on this Participating Employer Adoption Page. The Participating Employer also agrees to be bound by any future amendments (including any amendments to terminate the Plan) as adopted by the signatory Employer.

_____
(Name of Participating Employer)

_____
(Name of authorized representative) *(Title)*

_____
(Signature) *(Date)*

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GOVERNMENTAL 457(b) PLAN
BASIC PLAN DOCUMENT

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SECTION 1
PLAN DEFINITIONS

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

1.01 **Account.** The separate Account that the Plan Administrator maintains for each Participant under the Plan. A Participant may have any (or all) of the following separate Accounts under the Plan:

- Salary Deferral Account
- Employer Contribution Account
- Matching Contribution Account
- Rollover Contribution Account
- Transfer Account

The Plan Administrator will maintain separate Accounts for the vested and non-vested portions of any Employer Contribution Account and Matching Contribution Account.

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

1.02 **Account Balance.** Account Balance shall mean a Participant's balances in all of the Accounts that the Plan Administrator maintains for the Participant under the Plan.

1.03 **Adoption Agreement.** The Adoption Agreement contains the elective provisions that an Employer may complete to supplement or modify the provisions under the Plan. Each adopting Employer must complete and execute the Adoption Agreement. Employers adopting the Plan (other than the Employer that executes the Signature Page of the Adoption Agreement) must execute a Participating Employer Signature Page under the Adoption Agreement. (See Section 16 for rules applicable to adoption by multiple Employers.) An Employer may adopt more than one Adoption Agreement associated with this Plan document. Each executed Agreement is treated as a separate Plan.

1.04 **Age 50 Catch-Up Contributions.** Salary Deferrals made to the Plan that are in excess of an otherwise applicable Plan limit and that are made by Participants who are age 50 or over by the end of their taxable years. See Section 3.03(d).

1.05 **Age 50 Catch-Up Contribution Limit.** The annual limit applicable to Age 50 Catch-Up Contributions as set forth in Section 3.03(d)(1).

1.06 **Alternate Payee.** A person designated to receive all or a portion of the Participant's benefit pursuant to a QDRO. See Section 11.06.

1.07 **Anniversary Years.** An alternative period for measuring Eligibility Computation Periods (under Section 2.03(a)(2)) and Vesting Computation Periods (under Section 7.04). An Anniversary Year is any 12-month period which commences with the Employee's Employment Commencement Date or which commences with the anniversary of the Employee's Employment Commencement Date.

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

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Starting Date applies to any subsequent distribution. If distribution is made in the form of an annuity, the Annuity Starting Date may be treated as the first day of the first period for which annuity payments are made.

1.09 **Beneficiary.** A person designated by the Participant (or by the terms of the Plan) to receive a benefit under the Plan upon the death of the Participant.

1.10 **Code.** The Internal Revenue Code of 1986, as amended.

1.11 **Collectively Bargained Employee.** An Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining. Such Employees may be excluded from the Plan if designated under AA §3-1(b). See Section 2.02(b)(1) for additional requirements related to the exclusion of Collectively Bargained Employees.

1.12 **Computation Period.** The 12-consecutive month period used for measuring whether an Employee completes a Year of Service for eligibility or vesting purposes.

(a) **Eligibility Computation Period.** The 12-consecutive month period used for measuring Years of Service for eligibility purposes. See Section 2.03(a)(2).

(b) **Vesting Computation Period.** The 12-consecutive month period used for measuring Years of Service for vesting purposes. See Section 7.04.

1.13 **Custodian.** The company(ies) that hold Custodial Accounts held under the Plan.

1.14 **Designated Beneficiary.** A Beneficiary who is designated by the Participant (or by the terms of the Plan) and whose life expectancy is taken into account in determining minimum distributions under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4. See Section 9.04(a)

1.15 **Direct Rollover.** A rollover, at the Participant's direction, of all or a portion of the Participant's vested Account Balance directly to an Eligible Retirement Plan.

1.16 **Disabled.** An individual is considered Disabled for purposes of applying the provisions of this Plan if the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence.

1.17 **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. See Section 9.04(b).

1.18 **Effective Date.** The date this Plan, including any restatement or amendment of this Plan, is effective. (See the Employer Signature Page of the Adoption Agreement.)

1.19 **Elapsed Time.** A special method for crediting service for eligibility or vesting. See Section 2.03(a)(5) for more information on the Elapsed Time method of crediting service for eligibility purposes and Section 7.03(b) for more information on the Elapsed Time method of crediting service for vesting purposes. Also see Section 3.06 for information on the Elapsed Time method for allocation conditions.

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1.20 **Eligible Employee.** An Employee who is not excluded from participation under Section 2.02 of the Plan or AA §3-1.

1.21 **Eligible Rollover Distribution.** An amount distributed from the Plan that is eligible for rollover to an Eligible Retirement Plan.

1.22 **Eligible Retirement Plan.** A qualified retirement plan or IRA that may receive a rollover contribution..

1.23 **Employee.** An Employee is any individual employed by the Employer (including any Related Employers). An independent contractor is not an Employee. An Employee is not eligible to participate under the Plan if the individual is not an Eligible Employee under Section 2.02.

1.24 **Employer.** Except as otherwise provided, Employer means the Employer that adopts this Plan and any Related Employer. (See Section 16 for rules that apply to Employers that execute a Participating Employer Adoption Page.)

1.25 **Employer Contributions.** Contributions the Employer makes pursuant to AA §6. See Section 3.02.

1.26 **Employment Commencement Date.** The date the Employee first performs an Hour of Service for the Employer.

1.27 **Entry Date.** The date on which an Employee becomes a Participant upon satisfying the Plan's minimum age and service conditions. See Section 2.03(b).

1.28 **Equivalency Method.** An alternative method for crediting Hours of Service for purposes of eligibility and vesting. See Section 2.03(a)(4) for eligibility provisions and Section 7.03(a)(2) for vesting provisions.

1.29 **Excess Amount.** Amounts which exceed the Code §457(b) Maximum Contribution Limit.

1.30 **Governmental Plan.** A Governmental Plan is a Plan established and maintained for its Employees by a State, and any agency or instrumentality a State or political subdivision of a State as described in Code §457(e)(1)(A).

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

(a) **Performance of duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours will be credited to the Employee for the computation period in which the duties are performed.

(b) **Nonperformance of duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single Computation Period). Hours under this paragraph will be calculated and credited pursuant to §2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference.

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(c) **Back pay award.** Hours of Service include each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). These hours will be credited to the Employee for the Computation Period(s) to which the award or agreement pertains rather than the Computation Period in which the award, agreement or payment is made.

(d) **Related Employers.** Hours of Service will be credited for employment with any Related Employer.

(e) **Maternity/paternity leave.** Solely for purposes of determining whether a Break in Service has occurred in a Computation Period, an individual who is absent from work for maternity or paternity reasons will receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph will be credited (1) in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or (2) in all other cases, in the following Computation Period.

1.32 **Matching Contributions.** Matching Contributions are contributions made by the Employer on behalf of a Participant on account of Salary Deferrals made by such Participant, as designated under AA §6B.

1.33 **Normal Retirement Age.** The age selected under AA §7-1. If a Participant's Normal Retirement Age is determined wholly or partly with reference to an anniversary of the date the Participant commenced participation in the Plan and/or the Participant's Years of Service, Normal Retirement Age is the Participant's age when such requirements are satisfied. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

1.34 **Participant.** Except as provided under AA §3-1, a Participant is an Employee (or former Employee) who has satisfied the conditions for participating under the Plan, as described in Section 2.03 and AA §4-1. A Participant also includes any Employee (or former Employee) who has an Account Balance under the Plan, including an Account Balance derived from a rollover or transfer from another plan or IRA. A Participant is entitled to share in an allocation of contributions or forfeitures under the Plan for a given year only if the Participant is an Eligible Employee as defined in Section 2.02, and satisfies the allocation conditions set forth in Section 3.06.

An Employee is treated as a Participant with respect to Salary Deferrals once the Employee has satisfied the eligibility conditions under AA §4-1 for making such contributions, even if the Employee chooses not to actually make such contributions to the Plan. An Employee is treated as a Participant with respect to Matching Contributions once the Employee has satisfied the eligibility conditions under AA §4-1 for receiving such contributions, even if the Employee does not receive a Matching Contribution because of the Employee's failure to make contributions eligible for the Matching Contribution.

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1.35 **Participating Employer.** An Employer that adopts this Plan by executing the Participating Employer Adoption Page under the Adoption Agreement. See Section 16 for the rules applicable to contributions and deductions for contributions made by a Participating Employer.

1.36 **Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer and which is used to determine an Employee's Participation under the Elapsed Time method. See Section 2.03(a)(5) for rules regarding eligibility and Section 7.03(b) for rules regarding vesting.

1.37 **Plan.** The Plan is the deferred compensation plan established or continued by the Employer for the benefit of its Employees under this Plan document. The Employer must be an Eligible Employer under Code §457(e)(1) to establish the Plan and the Plan must satisfy the requirements of Treas. Reg. 1.457(b). The Plan consists of the basic plan document and the elections made under the Adoption Agreement. The basic plan document is the portion of the Plan that contains the non-elective provisions. The Employer may supplement or modify the basic plan document through its elections in the Adoption Agreement or by separate governing documents that are expressly authorized by the Plan. If the Employer adopts more than one Adoption Agreement under this Plan, then each executed Adoption Agreement represents a separate Plan.

1.38 **Plan Administrator.** The Plan Administrator is the person designated to be responsible for the administration and operation of the Plan. Unless otherwise designated by the Employer, the Plan Administrator is the Employer. If another Employer has executed a Participating Employer Adoption Page, the Employer referred to in this Section is the Employer that executes the Employer Signature Page of the Adoption Agreement.

1.39 **Plan Compensation.** Plan Compensation is Total Compensation, as modified under AA §5-3, which is actually paid to an Employee during the determination period (as defined in subsection (a) below). In determining Plan Compensation, the Employer may elect under AA §5-3(b) to exclude all Salary Deferrals , pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code§132(f)(4). In addition, the Employer may elect under AA §5-3 to exclude other designated elements of compensation.

Plan Compensation generally includes amounts an Employee earns with a Participating Employer and amounts earned with a Related Employer (even if the Related Employer has not executed a Participating Employer Adoption Page under the Adoption Agreement). However, the Employer may elect under AA §5-3(h) to exclude all amounts earned with a Related Employer that has not executed a Participating Employer Adoption Page.

(a) **Determination period.** Unless designated otherwise under AA §5-4(a), Plan Compensation is determined based on the Plan Year. Alternatively, the Employer may elect under AA §5-4 to determine Plan Compensation on the basis of the calendar year ending in the Plan Year or any other 12-month period ending in the Plan Year. If the determination period is the calendar year or other 12-month period ending in the Plan Year, for any Employee whose date of hire is less than 12 months before the end of the designated 12-month period, Plan Compensation will be determined over the Plan Year.

(b) **Partial period of participation.** If an Employee is a Participant for only part of a Plan Year, Plan Compensation may be determined over the entire Plan Year or over the period during which such Employee is a Participant. In determining whether an Employee is a Participant for purposes of applying this subsection (b), the Employee's status will be determined solely with respect to the contribution type for which the definition of Plan Compensation is being determined. Plan

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Compensation does not include any amounts earned for any period while an individual is not an Eligible Employee (as defined in Section 2.02).

1.40 **Plan Year.** The 12-consecutive month period designated under AA §2-3 on which the records of the Plan are maintained.

1.41 **Predecessor Employer.** An employer that previously employed the Employees of the Employer.

1.42 **Qualified Domestic Relations Order (QDRO).** A domestic relations order that provides for the payment of all or a portion of the Participant's benefits to an Alternate Payee and satisfies the requirements under Code §414(p). See Section 11.06.

1.43 **Reemployment Commencement Date.** The first date upon which an Employee is credited with an Hour of Service following a Break in Service (or Period of Severance, if the Plan is using the Elapsed Time method of crediting service).

1.44 **Related Employer.** A Related Employer means a controlled group of employers under common control. This determination is made consistent with the principles set forth under Treas. Reg.§1.414(c)-5 and any other guidance issued by the IRS relating to control groups of tax-exempt or governmental employers. For purposes of applying the provisions under this Plan, the Employer and any Related Employers are treated as a single Employer, unless specifically stated otherwise. See Section 16.06 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.

1.45 **Required Beginning Date.** The date by which minimum distributions must commence under the Plan. See Section 9.04(e).

1.46 **Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution from another qualified plan or IRA. See Section 3.05 for rules regarding the acceptance of Rollover Contributions under this Plan.

1.47 **Salary Deferrals.** Amounts contributed to the Plan at the election of the Participant, in lieu of cash compensation, which are made pursuant to a Salary Reduction Agreement or other deferral mechanism, and which are not includible in the gross income of the Employee pursuant to Code §457.

1.48 **Salary Reduction Agreement.** A written agreement between a Participant and the Employer, whereby the Participant elects to have a specific percentage or dollar amount withheld from his/her Plan Compensation and the Employer agrees to contribute such amount into the 457(b) Plan. See Section 3.03(a).

1.49 **Severance from Employment.** The Employee ceases to be employed by the Employer maintaining the Plan due to death, retirement or other severance from employment as provided under Treas. Reg. §1.457-6(b)(1). An Independent Contractor is considered to have a Severence from Employment upon the expiration of the contract under which the services are performed as provided under Treas. Reg. §1.457-6(b)(2).

1.50 **Special 457 Catch-Up Contributions.** A special catch-up contribution allowed for certain Employees as permitted under Code §457(b)(3).

1.51 **Total Compensation.** A Participant's compensation for services with the Employer. Total Compensation may be defined in AA §5-1 to be either W-2 Wages, Wages under Code §3401(a), or

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Code §415 Compensation. Each definition of Total Compensation includes Salary Deferrals, elective contributions to a cafeteria plan under Code §125 or to an eligible deferred compensation plan under Code §401(k) or Code §403(b), and elective contributions that are not includible in the Employee's gross income as a qualified transportation fringe under Code §132(f)(4).

Unless elected otherwise under AA §5-3(i), a reference to elective contributions under a Code §125 cafeteria plan includes any amounts that are not available to a participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. Such "deemed §125 compensation" will be treated as an amount under Code §125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(a) **Definition of Total Compensation.** The Employer may elect under AA §5-1 to define Total Compensation as any of the following definitions:

(1) **W-2 Wages.** Wages within the meaning of Code §3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §6041(d), 6051(a)(3), and 6052, determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(2) **Wages under Code §3401(a).** Wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(3) **Code §415 Compensation.** Wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer (without regard to whether or not such amounts are paid in cash) to the extent that the amounts are includible in gross income. Such amounts include, but are not limited to, commissions, compensation for services on the basis of a percentage of profits, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. §1.62-2(c)), and excluding the following:

(i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions (other than Salary Deferrals) under a SEP (as described in Code §408(k)), or any distributions from a plan of deferred compensation.

(ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option.

(iv) Other amounts which received special tax benefits, or contributions made by the Employer (other than elective deferrals) towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

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(b) **Post-Severance Compensation.** Effective for Limitation Year beginning on or after July 1, 2007, Total Compensation includes compensation that is paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes such date of severance from employment. For this purpose, compensation paid after severance of employment may only be included in Total Compensation to the extent such amounts would have been included as compensation if they were paid prior to the Employee's severance from employment.

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

(1) **Regular pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;

(2) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; and

(3) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

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

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

(c) **Continuation payments for military service and disabled Participants.**

(1) **Payments for military service.** Unless designated otherwise under AA §5-2(b)(1), Total Compensation does not include any payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer

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rather than entering qualified military service. If so elected under AA §5-2(b)(1), such amounts will be included as Total Compensation, notwithstanding the rules under subsection (b) above.

(2) **Payments following permanent and total disability.** Unless designated otherwise under AA §5-2(b)(2), Total Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). For this purpose, compensation is the compensation the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled (if such compensation is greater than the Participant's compensation determined without regard to this subsection (b)), provided contributions made with respect to amounts treated as compensation under this subsection (b) are nonforfeitable when made.

If so elected under AA §5-2(b)(2), such amounts will be included as Total Compensation, notwithstanding the rules under subsection (b). The Employer may elect under AA §5-2(b)(2) to apply this rule only to Nonhighly Compensated Employees or to all Participants.

1.52 **Valuation Date.** The date or dates upon which Plan assets are valued. Plan assets will be valued as of the last day of each Plan Year. In addition, the Employer may elect under AA §11-1 to establish additional Valuation Dates. Notwithstanding any election under AA §11-1, the Trustee and the Employer and/or the Plan Administrator may agree to more frequent valuation dates.

1.53 **Year of Service.** A Year of Service is a 12-consecutive month period ("Computation Period") during which an Employee completes 1,000 Hours of Service. For purposes of applying the eligibility rules under Section 2.03 of the Plan, an Employee will earn a Year of Service if he/she completes 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in Section 2.03(a)(2)). For purposes of applying the vesting rules under Section 7.03, an Employee will earn a Year of Service if he/she completes 1,000 Hours of Service with the Employer during a Vesting Computation Period (as defined in Section 7.04). The Employer may elect under AA §4-3(a) (for eligibility purposes) and AA §8-5(a) (for vesting purposes) to require the completion of any other number of Hours of Service to earn a Year of Service. Alternatively, the Employer may elect to apply the Elapsed Time method (for eligibility and/or vesting purposes) in calculating an Employee's Years of Service under the Plan.

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SECTION 2
ELIGIBILITY AND PARTICIPATION

2.01 **Eligibility.** In order to participate in the Plan, an Employee must be an Eligible Employee (as defined in Section 2.02) and must satisfy the Plan's minimum age and service conditions (as defined in Section 2.03). Once an Employee satisfies the Plan's minimum age and service conditions, such Employee shall become a Participant on the appropriate Entry Date (as selected in AA §4-2). An Employee who meets the minimum age and service requirements set forth herein, but who is not an Eligible Employee, will be eligible to participate in the Plan only upon becoming an Eligible Employee.

(a) **Salary Deferrals.** An Employee who is not excluded from participation under Section 2.02(b) will become an Eligible Participant under the Plan for purposes of making Salary Deferrals as of the Entry Date elected in the Agreement following the satisfaction of the age and service conditions specified in AA §4-1. The Employer will contribute a Participant's Salary Deferrals to the Plan on behalf of the Participant. To be eligible to make Salary Deferrals, an Eligible Participant must complete a Salary Reduction Agreement.

(b) **Employer Contributions and Matching Contributions.** An Employee who is not excluded from participation under Section 2.02(b) will become an Eligible Participant under the Plan for purposes of receiving Employer Contributions and Employer Matching Contributions (as applicable) as of the Entry Date elected in the Agreement following the satisfaction of the age and service conditions specified in AA §4-1.

2.02 **Eligible Employees.** Unless specifically excluded under AA §3-1 or this Section 2.02, all Employees of the Employer are Eligible Employees. AA §3-1 lists various classes of Employees that may be excluded from Plan participation. If an Employee is not an Eligible Employee (e.g., such Employee is a member of a class of Employees excluded under AA §3-1), that individual may not participate under the Plan, unless he/she subsequently becomes an Eligible Employee.

(a) **Only Employees or Independent Contractors may participate in the Plan.** To participate in the Plan, an individual must be an Employee or, if elected under the Adoption Agreement, an Independent Contractor. If an Employer elects to cover Independent Contractors, such Independent Contractors will be treated as an Employee under the Plan. The Employer may describe special rules applicable to Independent Contractors under AA §3-2(b).

(b) **Excluded Employees.** The Employer may elect under AA §3-1 to exclude designated classes of Employees. The Employer may elect to exclude different classes of Employees for different contribution sources under the Plan.

(1) **Collectively Bargained Employees.** The Employer may elect under AA §3-1(b) to exclude Collectively Bargained Employees with respect to Employer Contributions and Matching Contributions. For this purpose, a Collectively Bargained Employee is an Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining.

(2) **Nonresident aliens.** The Employer may elect under AA §3-1(c) to exclude Employees who are nonresident aliens with respect to Salary Deferrals, Employer Contributions and Matching Contributions. For this purpose, a nonresident alien is neither a citizen of the United States nor a resident of the United States for U.S. tax purposes (as defined in Code §7701(b)), and who does not have any earned income (as defined in Code §911) for the

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Employer that constitutes U.S. source income (within the meaning of Code §861). If a nonresident alien Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty.

(3) **Employees who normally work fewer than 20 hours per week.** The Employer may elect under AA §3-1(c) to exclude Employees who normally work fewer than 20 hours per week (or such other number of hours per week as elected in the Agreement) with respect to Salary Deferrals, Employer Contributions and Matching Contributions.

(c) **Employees of Related Employers.** If the Employer is a member of a Related Employer group, Employees of each member of the Related Employer group may participate under this Plan, provided the Related Employer executes a Participating Employer Adoption Page under the Adoption Agreement. If a Related Employer does not execute a Participating Employer Adoption Page, any Employees of such Related Employer are not eligible to participate in the Plan. See Section 16 for rules regarding participation of Employees of Related Employers.

(d) **Ineligible Employee becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the Plan's minimum age and service conditions (with respect to Employer Contributions) and has passed the Entry Date (as defined in AA §4-2) that would otherwise have applied had the Employee been an Eligible Employee. If the Employee's original Entry Date (determined as if the Employee was always an Eligible Employee) has not passed as of the date the Employee becomes an Eligible Employee, the Employee will not become a Participant until such Entry Date. This requirement is deemed satisfied with respect to Salary Deferrals under the Plan if the Employee is permitted to commence making deferrals under the Plan as of the beginning of the first payroll period commencing after the Employee becomes an Eligible Employee. If an ineligible Employee has not satisfied the Plan's minimum age and service conditions applicable to Employer Contributions at the time such Employee becomes an Eligible Employee, such Employee will become a Participant on the appropriate Entry Date following satisfaction of the Plan's minimum age and service requirements.

(e) **Eligible Employee becomes ineligible Employee.** If an Employee ceases to qualify as an Eligible Employee (i.e., the Employee changes status from an eligible class to an ineligible class of Employees), such Employee will immediately cease to participate in the Plan. If such Employee should subsequently become an Eligible Employee, he/she will be able to participate in the Plan in accordance with subsection (d) above.

2.03 **Minimum Age and Service Conditions.** AA §4-1 contains specific elections as to the minimum age and service conditions which an Employee must satisfy prior to becoming eligible to participate under the Plan.

(a) **Application of age and service conditions.** The Employer may elect under AA §4-1 to impose minimum age and service conditions that an Employee must satisfy in order to participate under the Plan.

(1) **Year of Service.** In applying the minimum service requirements under AA §4-1, an Employee will earn a Year of Service if the Employee completes at least 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in subsection (2) below). The Employer may modify the definition of Year of Service under

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AA §4-3(a) to require some other number of Hours of Service to earn a Year of Service. An Employee will receive credit for a Year of Service, as of the end of the Eligibility Computation Period during which the Employee completes the required Hours of Service needed to earn a Year of Service. An Employee need not be employed for the entire Eligibility Computation Period to receive credit for a Year of Service, provided the Employee completes the required Hours of Service during such period.

(2) **Eligibility Computation Periods.** In determining whether an Employee has earned a Year of Service for eligibility purposes, an Employee's initial Eligibility Computation Period is the 12-month period beginning on the Employee's Employment Commencement Date. Subsequent Eligibility Computation Periods will either be based on Plan Years or Anniversary Years (as set forth in AA §4-3).

(i) **Plan Years.** If the Employer elects under AA §4-3 to base subsequent Eligibility Computation Periods on Plan Years, the Plan will begin measuring Years of Service on the basis of Plan Years beginning with the first Plan Year commencing after the Employee's Employment Commencement Date. Thus, for the first Plan Year following the Employee's Employment Commencement Date, the initial Eligibility Computation Period and the first Plan Year Eligibility Computation Period may overlap.

(ii) **Anniversary Years.** If the Employer elects under AA §4-3 to base subsequent Eligibility Computation Periods on Anniversary Years, the Plan will measure Years of Service after the initial Eligibility Computation Period on the basis of 12-month periods commencing with the anniversaries of the Employee's Employment Commencement Date.

(3) **Hours of Service.** In calculating an Employee's Hours of Service for purposes of applying the eligibility rules under this Section 2.03, the Employer will count the actual Hours of Service an Employee works during the year. The Employer may elect under AA §4-3(c) or (d) to use the Equivalency Method or Elapsed Time method (instead of counting the actual Hours of Service an Employee works). (See subsections (4) and (5) below for a description of the Equivalency Method and Elapsed Time method of crediting service.)

(4) **Equivalency Method.** Instead of counting actual Hours of Service in applying the minimum service conditions under this Section 2.03, the Employer may elect under AA §4-3(d) to determine Hours of Service based on the Equivalency Method. Under the Equivalency Method, an Employee receives credit for a specified number of Hours of Service based on the period worked with the Employer.

(i) **Monthly.** Under the monthly Equivalency Method, an Employee is credited with 190 Hours of Service for each calendar month during which the Employee completes at least one Hour of Service with the Employer.

(ii) **Daily.** Under the daily Equivalency Method, an Employee is credited with 10 Hours of Service for each day during which the Employee completes at least one Hour of Service with the Employer.

(iii) **Weekly.** Under the weekly Equivalency Method, an Employee is credited with 45 Hours of Service for each week during which the Employee completes at least one Hour of Service with the Employer.

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(iv) **Semi-monthly.** Under the semi-monthly Equivalency Method, an Employee is credited with 95 Hours of Service for each semi-monthly period during which the Employee completes at least one Hour of Service with the Employer.

(5) **Elapsed Time method.** Instead of counting actual Hours of Service in applying the minimum service requirements under this Section 2.03, the Employer may elect under AA §4-3(c) to apply the Elapsed Time method for calculating an Employee's service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee begins a Period of Severance which lasts at least 12 consecutive months. In calculating an Employee's aggregate period of service, an Employee receives credit for any Period of Severance that lasts less than 12 consecutive months. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

(i) **Period of Severance.** For purposes of applying the Elapsed Time method, a Period of Severance is any continuous period of time during which the Employee is not employed by the Employer. A Period of Severance begins on the date the Employee retires, quits or is discharged, or if earlier, the 12-month anniversary of the date on which the Employee is first absent from service for a reason other than retirement, quit or discharge.

In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (i) by reason of the pregnancy of the Employee, (ii) by reason of the birth of a child of the Employee, (iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or (iv) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

(ii) **Related Employers/Leased Employees.** For purposes of applying the Elapsed Time method, service will be credited for employment with any Related Employer. Service also will be credited for any service as a Leased Employee or as an employee under Code §414(o).

(6) **Amendment of age and service requirements.** If the Plan's minimum age and service conditions are amended, an Employee who is a Participant immediately prior to the effective date of the amendment is deemed to satisfy the amended requirements. This provision may be modified under the special Effective Date provisions under Appendix A of the Adoption Agreement.

(b) **Entry Dates for Salary Deferrals, Employer Contributions and Matching Contributions.** Once an Eligible Employee satisfies the minimum age and service conditions (as set forth in AA §4-1), the Employee will be eligible to participate under the Plan as of his/her Entry Date (as set forth in AA §4-2). The Employer may elect different Entry Dates with respect to Salary Deferrals, Matching Contributions and Employer Contributions.

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2.04 **Participation on Effective Date of Plan.** An Employee who has satisfied the minimum age and service conditions and reached his/her Entry Date as of the Effective Date of the Plan will be eligible to participate in the Plan as of such Effective Date. If an Employee has satisfied the minimum age and service conditions as of the Effective Date of the Plan but has not yet reached his/her Entry Date, the Employee will be eligible to participate on the appropriate Entry Date. The Employer may modify this rule under AA §4-2 by electing to treat all Employees employed on the Effective Date of the Plan as Participants (regardless of whether they have satisfied the Plan's minimum age and service conditions) or by designating a specific date as of which all Eligible Employees will be deemed to be a Participant, (regardless of whether the Employee has otherwise satisfied the minimum age and service conditions).

2.05 **Service with Predecessor Employers.** Unless the Employer elects otherwise, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the provisions of this Plan. If the Employer does not maintain the plan of a Predecessor Employer, service with such Predecessor Employer does not count for eligibility purposes under this Section 2, unless the Employer specifically designates under AA §4-5 to credit service with such Predecessor Employer for eligibility. Unless designated otherwise under AA §4-5, if the Employer takes into account service with a Predecessor Employer, such service will count for purposes of eligibility under this Section 2, vesting under Section 7 (see Section 7.06) and for purposes of the minimum allocation conditions under Section 3.06 (see Section 3.07).

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SECTION 3
PLAN CONTRIBUTIONS

This Section 3 describes the type of contributions that may be made to the Plan. The type of contributions that may be made to the Plan and the method for allocating such contributions may vary depending on the type of Plan involved. (See Section 4 for a discussion of the limits that apply to any contributions made under the Plan.)

3.01 Types and Timing of Contributions.

(a) **Types of Contributions**. An Employer may designate under AA §6 the amount and type of contributions that may be made under this Plan. To share in a contribution under the Plan, an Employee must satisfy all of the conditions for being a Participant (as described in Section 2) and must satisfy any allocation conditions (as described in Section 3.06) applicable to the particular type of contribution.

(b) **Timing of Contributions.** The Employer must make contributions to the Plan within a reasonable period of time for the proper administration of the Plan.

3.02 Employer Contribution Formulas. If permitted under AA §6, the Employer may make an Employer Contribution to the Plan, in accordance with the contribution formula selected under AA §6-2. Any Employer Contribution authorized under the Plan must be allocated in accordance with a definite allocation formula as set forth in AA §6-3. To receive an allocation of Employer Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.06 below.

The Employer may elect under AA §6-2 to make any of the following Employer Contributions. If the Employer elects more than one Employer Contribution formula, each formula is applied separately. The Employer's aggregate Employer Contribution for a Plan Year will be the sum of the Employer Contributions under all such formulas.

(a) **Discretionary Employer Contribution.** If elected in AA §6-2(a), the Employer may decide on an annual basis how much (if any) it wishes to contribute to the Plan as an Employer Contribution.

(1) **Pro rata allocation method.** Under the pro rata allocation method, a pro rata share of the Employer Contribution is allocated to each Participant's Employer Contribution Account. A Participant's pro rata share is determined based on the ratio such Participant's Plan Compensation bears to the total Plan Compensation of all Participants or as a uniform dollar amount.

(2) **Permitted Disparity Method.** If the Employer elects the Permitted Disparity Method, the Employer Contribution is allocated to Eligible Participants under the Two-Step Formula below. The Permitted Disparity Method only may apply if the Employer elects under the Agreement to make a discretionary contribution.

For purposes of applying the Permitted Disparity Method, Excess Compensation is the portion of an Eligible Participant's Included Compensation that exceeds the Integration Level. The Integration Level is the Taxable Wage Base, unless the Employer designates a different amount under the Agreement.
Step One. The Employer Contribution is allocated to each Eligible Participant's Account in the ratio that each Eligible Participant's Included Compensation plus Excess Compensation

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for the Plan Year bears to the total Included Compensation plus Excess Compensation of all Eligible Participants for the Plan Year. The allocation under this Step One, as a percentage of each Eligible Participant's Included Compensation plus Excess Compensation, may not exceed the Applicable Percentage under the following table:

Integration Level (as a % of the Taxable Wage Base)	Applicable Percentage
100%	5.7%
More than 80% but less than 100%	5.4%
More than 20% and not more than 80%	4.3%
20% or less	5.7%

Step Two. Any Employer Contribution remaining after Step One will be allocated in the ratio that each Eligible Participant's Included Compensation for the Plan Year bears to the total Included Compensation of all Eligible Participants for the Plan Year.

(3) **Other allocation method.** The Employer may designate any other allocation method under the Adoption Agreement.

(b) **Fixed Employer Contribution.** If elected in AA §6-2(b), the Employer will make a fixed contribution to the Plan as a designated percentage of Plan Compensation or as a uniform dollar amount. The Employer Contribution will be allocated under the prorata allocation formula under AA §6-3(a) in accordance with the selections made in AA §6-2(b).

(c) **Service-based Employer Contribution.** If elected in AA §6-2(c), the Employer may make a contribution based on an Employee's service with the Employer during the Plan Year (or other period designated under AA §6-5(a).) The Employer may elect to make the service-based contribution as a discretionary contribution or as a fixed contribution. Any such contribution will be allocated on the basis of Participants' Hours of Service, weeks of employment or other measuring period selected under AA §6-2(c). The Employer Contribution will be allocated in accordance with the selections made in AA §6-2(c).

3.03 **Salary Deferrals.** The Employer may elect under AA §6A to authorize Participants to make Salary Deferrals under the Plan.

(a) **Salary Reduction Agreement.** In order to make Salary Deferrals under the Plan, a Participant must enter into a Salary Reduction Agreement which authorizes the Employer to withhold a specific dollar amount or a specific percentage from the Participant's Plan Compensation. The Employer will deposit any amounts withheld from a Participant's Plan Compensation as Salary Deferrals into the Participant's Salary Deferral Account under the Plan. A Salary Reduction Agreement may only relate to Plan Compensation that is not currently available at the time the Salary Reduction Agreement is completed.

A Salary Reduction Agreement is not effective unless the Participant enters into the Agreement before the first day of the month in which the Plan Compensation to which it applies is paid or made available.

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(b) **Change in deferral election.** An Employee must be permitted to enter into a new Salary Reduction Agreement or to modify or terminate an existing Salary Reduction Agreement at least once a year. In addition, the Employer may designate additional dates on the Salary Reduction Agreement form (or other written procedures).

(c) **Automatic deferral election.** The Employer may elect under AA §6A-7 to provide for an automatic deferral election under the Plan. If the Employer elects to apply an automatic deferral election, the Employer will automatically withhold the amount designated under AA §6A-7 from Participants' Plan Compensation, unless the Participant completes a Salary Reduction Agreement electing a different deferral amount (including a zero deferral amount). If an automatic deferral election applies under the Plan, such election will not apply to Participants who have entered into a Salary Reduction Agreement for an amount equal to or greater than the automatic deferral amount designated under AA §6A-7. The Employer also may elect to apply the automatic deferral election only to Participants who become eligible to participate after a specified date. Any Salary Deferrals withheld pursuant to an automatic deferral election will be deposited into the Participant's Salary Deferral Account.

The Plan may provide under AA §6A-8 that the automatic deferral amount will automatically increase by a designated percentage or dollar amount each Plan Year. In applying any automatic deferral increase under AA §6A-8, the initial deferral amount will apply for the period that begins when the employee first participates in the automatic contribution arrangement and ends on the last day of the following Plan Year. The automatic increase will apply for each full Plan Year beginning with the Plan Year immediately following the initial deferral period and for each subsequent full Plan Year. For example, if an Employee makes his/her first automatic deferral for the period beginning July 1, 2009, the first automatic increase would not take effect until January 1, 2011 (assuming the Plan is using a calendar Plan Year) which is the Plan Year beginning after the first full Plan Year following the period for which the Employee makes his/her first automatic deferral under the Plan.

Prior to the time an automatic deferral election first goes into effect, the Participant must receive written notice concerning the effect of the automatic deferral election and his/her right to elect a different level of deferral under the Plan, including the right to elect not to defer. After receiving the notice, a Participant must have a reasonable time to enter into a new Salary Reduction Agreement before any automatic deferral election goes into effect.

(d) **Age 50 Catch-Up Contributions.** If permitted under AA §6A-4, a Participant who is aged 50 or over by the end of his/her taxable year beginning in the calendar year may make Age 50 Catch-Up Contributions under the Plan, provided such Age 50 Catch-Up Contributions are in excess of an otherwise applicable limit under the Plan. For this purpose, an otherwise applicable Plan limit is a limit in the Plan that applies to Salary Deferrals without regard to Age 50 Catch-up Contributions.

(1) **Age 50 Catch-Up Contribution Limit. Age 50** Catch-up Contributions for a Participant for a taxable year may not exceed the Age 50 Catch-Up Contribution Limit. The Age 50 Catch-Up Contribution Limit for taxable years beginning in 2006 is $5,000. For taxable years beginning after 2006, the Age 50 Catch-Up Contribution Limit will be adjusted for cost-of-living increases under Code §414(v)(2)(C).

(2) **Special treatment of Catch-Up Contributions.** Age 50 Catch-up Contributions are not subject to the Maximum Contribution Limit.

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(e) **Special 457 Catch-Up Contributions.** If permitted under AA §6A-4, a Participant may make Special 457 Catch-Up Contributions as limited under Section 5.04.

3.04 **Matching Contributions.** The Employer may elect under AA §6B to authorize Matching Contributions under the Plan. If the Employer elects more than one Matching Contribution formula under AA §6B-2, each formula is applied separately. A Participant's aggregate Matching Contributions will be the sum of the Matching Contributions under all such formulas. Any Matching Contribution made under the Plan will be allocated to Participants' Matching Contribution Account. To receive an allocation of Matching Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.06 below.

(a) **Contributions eligible for Matching Contributions.** The Matching Contribution formula(s) applies to Salary Deferrals, to the extent authorized under the Plan.

(b) **Period for determining Matching Contributions.** AA §6B-5 sets forth the period for which the Matching Contribution formula(s) applies. For this purpose, the period designated in AA §6B-5 applies for purposes of determining the amount of Salary Deferrals taken into account in applying the Matching Contribution formula(s) and in applying any limits on the amount of Salary Deferrals that may be taken into account under the Matching Contribution formula(s).

(c) **True-up contributions.** If the Employer makes Matching Contributions more frequently than annually, the Employer may have to make "true-up" contributions for Participants. Such "true-up" contributions will be required if the Employer actually contributes Matching Contributions to the Plan on a more frequent basis than is used for purposes of determining the amount of Salary Deferrals taken into account under AA §6B-5. For example, if the Plan limits Matching Contributions on the basis of Salary Deferrals for the Plan Year, but the Employer contributes the Matching Contributions on a quarterly basis, the Employer may have to make a "true-up" contribution to any Participant based on Salary Deferrals for the Plan Year. If a "true-up" contribution is required under this subsection (c), the Employer may make such additional contribution as required to satisfy the contribution requirements under the Plan.

3.05 **Rollover Contributions.** The Plan Administrator may refuse to accept a Rollover Contribution if the Plan Administrator reasonably believes the Rollover Contribution (a) is not being made from a proper plan or IRA; (b) is not being made within sixty (60) days from receipt of the amounts from a qualified retirement plan or IRA; (c) could jeopardize the tax-exempt status of the Plan; or (d) could create adverse tax consequences for the Plan or the Employer. Prior to accepting a Rollover Contribution, the Plan Administrator may require the Employee to provide satisfactory evidence establishing that the Rollover Contribution meets the requirements of this Section.

The Plan Administrator may apply different conditions for accepting Rollover Contributions from qualified retirement plans and IRAs. Any conditions on Rollover Contributions must be applied uniformly to all Employees under the Plan.

3.06 **Allocation Conditions.** In order to receive an allocation of Employer Contributions (other than Salary Deferrals) or an allocation of Matching Contributions, a Participant must satisfy any allocation conditions designated under AA §6-6 or AA §6B-7, as applicable. If the Employer elects under AA §6-6(d) or AA §6B-7(d) to apply a minimum service requirement, the Employer may elect to base such minimum service requirement on the basis of Hours of Service or on the basis of consecutive days of employment under the Elapsed Time method.

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(a) **Application to designated period.** Instead of applying the allocation conditions on the basis of the Plan Year, the Employer may elect in AA §6-6(e) or AA §6B-7(e) to apply the allocation conditions on the basis of designated periods. If the Employer elects to apply a last day of employment condition on the basis of designated periods, a Participant will not be entitled to an allocation of Employer Contributions or Matching Contributions for any period designated under AA §6-5(a) or AA §6B-5, as applicable, unless the Participant is employed by the Employer at the end of such designated period. If the Employer elects to apply an Hours of Service allocation condition on the basis of designated periods, a Participant will not be entitled to an allocation of Employer Contributions or Matching Contributions for any period designated under AA §6-5(a) or AA §6B-5, as applicable, unless the Participant satisfies the required service condition before the end of such designated period.

If the Employer elects to apply the allocation conditions on the basis of designated periods, the Employer may elect to apply any Hours of Service condition using the cumulative method (as described in subsection (1) below) or the period-by-period method (as described in subsection (2) below). The Employer may elect operationally to use either method in applying the Hours of Service condition, provided the Employer uses the same method for all affected Employees during any given period. (If the Employer elects to apply a minimum service requirement on the basis of days of employment under AA §6-6(d)(2) or AA §6B-7(d)(2), as applicable, the Employer may not apply such minimum service condition on the basis of designated periods.)

(1) **Cumulative method.** Under the cumulative method, the Hours of Service condition is applied with respect to each designated period on a cumulative basis for the Plan Year. The required service condition for any period is determined by multiplying the required Hours of Service (or days of employment, if applicable) by a fraction, the numerator of which is the total number of periods completed during the Plan Year (including the current period) and the denominator of which is the total number of periods during the Plan Year. For example, if a Participant must complete 1,000 Hours of Service to receive an Employer Contribution or Matching Contribution under the Plan, and the Employer elects to apply such condition on the basis of Plan Year quarters under AA §6-5(a) or AA §6B-5, as applicable, a Participant would have to complete 250 Hours of Service by the end of the first Plan Year quarter [1/4 x 1,000], 500 Hours of Service by the end of the second Plan Year quarter [2/4 x 1,000], 750 Hours of Service by the end of the third Plan Year quarter [3/4 x 1,000] and 1,000 Hours of Service by the end of the Plan Year [4/4 x 1,000] to receive an allocation of the Employer Contribution or Matching Contribution for such period. If a Participant does not satisfy the required service condition for any designated period during the Plan Year, no Employer Contribution or Matching Contribution will be allocated to that Participant for such period.

(2) **Period-by-period method.** Under the period-by-period method, the minimum service allocation condition is applied separately for each designated period. The required service condition for any period is determined by multiplying the required Hours of Service (or days of employment, if applicable) by a fraction, the numerator of which is one (1) and the denominator of which is the total number of periods during the Plan Year. For example, if a Participant must complete 1,000 Hours of Service to receive an Employer Contribution or Matching Contribution under the Plan, and the Employer elects to apply such condition on the basis of Plan Year quarters under AA §6-5(a) or AA §6B-5, as applicable, a Participant would have to complete 250 Hours of Service in each Plan Year quarter [1/4 x 1,000] to receive an allocation of the Employer Contribution or Matching Contribution for such period. If a Participant does not satisfy the required service condition for any designated

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period during the Plan Year, no Employer Contribution or Matching Contribution will be allocated to that Participant for such period.

(b) **Special rule for year of termination.** A last day employment condition automatically applies for any Plan Year in which the Plan is terminated, regardless of whether the Employer has elected to apply a last day employment condition under the Agreement. Thus, the Employer will not be obligated to make an Employer Contribution or Matching Contribution for the Plan Year in which the Plan terminates, unless the Employer provides for an Employer Contribution and/or Matching Contribution in its termination amendment. If there are unallocated forfeitures at the time of Plan termination, such forfeitures will be allocated to Participants under the Plan's procedures for allocating forfeitures.

3.07 **Service with Predecessor Employers.** Unless otherwise designated under the Adoption Agreement, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the allocation conditions under this Section 3.06. If the Employer does not maintain the plan of a Predecessor Employer, service with such Predecessor Employer does not count for purposes of applying the allocation conditions under this Section 3.06, unless the Employer specifically designates under AA §4-5 to credit service with such Predecessor Employer. Unless designated otherwise under AA §4-5, if the Employer takes into account service with a Predecessor Employer, such service will count for purposes of eligibility under Section 2 (see Section 2.05), vesting under Section 7 (see Section 7.06) and for purposes of the minimum allocation conditions under this Section 3.06.

3.08 **Contribution of Property.** The Employer may make its contribution to the Plan in the form of property.

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SECTION 4
ROLLOVER CONTRIBUTIONS AND TRANSFERS

This Section provides the rules regarding Rollover Contributions and transfers that may be made under this Plan. The Plan Administrator has the authority under Section 11 to accept Rollover Contributions under this Plan and to enter into transfer agreements concerning the transfer of assets from another plan to this Plan.

4.01 **Rollover Contributions.** As allowed under applicable law and regulations, an Employee may make a Rollover Contribution to this Plan from an Eligible Retirement Plan, if the special accounting rule is satisfied and the acceptance of rollovers is permitted under the Adoption Agreement or if the Plan Administrator adopts administrative procedures regarding the acceptance of Rollover Contributions. The Employee's Rollover Contributions are always 100% vested. If Rollover Contributions are permitted, an Employee may make a Rollover Contribution to the Plan even if the Employee is not an eligible Participant with respect to any or all other contributions under the Plan, unless otherwise prohibited under separate administrative procedures adopted by the Plan Administrator. An Employee who makes a Rollover Contribution to this Plan prior to becoming an Eligible Participant shall be treated as a Participant only with respect to such Rollover Contributions, but shall not be treated as an eligible Participant until he/she otherwise satisfies the eligibility conditions under the Plan.

(a) **Special Accounting Rule for Rollovers.** The Plan must maintain two separate Rollover Accounts. One Rollover Account may receive Rollover Contributions from:

(1) a qualified plan described in §401(a) of the Code;

(2) a tax sheltered annuity plan described in §403(b) of the Code;

(3) an individual retirement account described in §408(a) of the Code; and

(4) an individual retirement annuity described in §408(b) of the Code.

The other Rollover Account may receive Rollover Contributions only from a governmental 457 plan described in §457(b) of the Code. Neither Rollover Account may include any amount that is not attributable to a Rollover Contribution.

(b) **Refusal of Rollover Contributions.** The Plan Administrator may refuse to accept a Rollover Contribution if the Plan Administrator reasonably believes the Rollover Contribution is not being made from a proper plan. Prior to accepting a Rollover Contribution, the Plan Administrator may require the Employee to provide satisfactory evidence establishing that the Rollover Contribution meets the requirements of applicable law and regulations.

4.02 **Transfers to the Plan.** As allowed under applicable laws, regulations and other guidance, the Plan Administrator may accept a transfer of funds from another governmental 457(b) plan. Such transfers must meet the conditions set forth under Treasury Regulation §1.457-10(b). The Plan Administrator may not accept a transfer from a 457(b) plan of a tax-exempt employer, a 403(b) plan or a 401(a) qualified plan.

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SECTION 5
LIMITS ON CONTRIBUTIONS

5.01 **Maximum Contribution Limit.** Annual contributions on behalf of a Participant for a taxable year may not exceed the Maximum Contribution Limit.

(a) **Components of the Maximum Contribution Limit.** The Maximum Contribution Limit consists of one or more of the following - the Basic Annual Limit, the Age-50 Catch-Up Limit and the Special 457 Catch-Up Limit.

(b) **Limitation Period.** The relevant limitation period is the taxable year of the Participant.

(c) **Contributions Subject to the Maximum Contribution Limitation.** Contributions that are subject to the Maximum Contribution Limit include Salary Deferral Contributions and Employer Contributions, including Employer Matching Contributions. Rollover Contributions and transfers are not subject to the Maximum Contribution Limit. If a contribution is subject to a substantial risk of forfeiture, such contribution is not counted toward the Maximum Contribution Limit until the substantial risk of forfeiture lapses.

5.02 **Basic Annual Limit.** The Basic Annual Limit is the lesser of (i) the applicable dollar amount specified under Code §457(e) (15) for the relevant taxable year or (ii) 100% of the Participant's Total Compensation (without any adjustments, but subject to the maximum limitation as may apply under Code§401(a)(17)) for the taxable year. The applicable dollar amount under Code §457(e)(15) is $15,000 for 2006. After 2006, the $15,000 amount is adjusted for cost-of-living increases.

5.03 **Age 50 Catch-Up Limit.** The Age 50 Catch-Up Limit only applies to a Participant who attains age 50 by the end of the relevant taxable year. The Age 50 Catch-Up Limit is the applicable amount specified under Code §414(v) for the relevant taxable year. The Age 50 Catch-Up Limit does not apply for any taxable year for which a higher limitation applies under the Special 457 Catch-Up Limit.

5.04 **Special 457 Catch-Up Limit.** For one or more of the Participant's last three taxable years ending before the Participant's Normal Retirement Age, the Maximum Contribution Limit is an amount not in excess of the lesser of (i) twice the dollar amount in effect under Code §457(e)(15) or (ii) the underutilization limitation.

(a) **Underutilization Limitation.** The sum of (i) the Maximum Contribution Limit under the Basic Annual Limit for the relevant taxable year, plus the Maximum Contribution Limit for any prior taxable year or years, less the amount of contributions for such taxable year or years (disregarding any Age 50 Catch-Up Contributions).

(b) **Normal Retirement Age.** The Employer will elect a Normal Retirement Age under the Agreement. Normal Retirement Age may be any age that is on or after the earlier of age 65 or the age at which the Participant has the right to retire and receive, under the Employer's pension plan (if any), immediate retirement benefits without actuarial reduction because of retirement before a specified date and that is not later than age 70 ½. Alternatively, the Employer may elect to allow the Participant to designate a Normal Retirement Age within these ages. If an Employer sponsors more than one 457(b) plan, any Participant may only have one Normal Retirement Age.

(c) **Special Rule for Qualified Police and Firefighters.** An Employer with a Plan that covers qualified police and firefighters (as defined under Code §415(b)(2)(H)(ii)(I)) may elect a Normal Retirement Age that is earlier than that specified under subsection (b), but in no event may the Normal Retirement Age be earlier than age 40. Alternatively, the Employer may elect to allow a

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qualified police or firefighter Participant to designate a Normal Retirement Age that is between age 40 and age 70 ½.

5.05 **Excess Deferrals under the Plan.** If Contributions to a Participant under the Plan exceed the Maximum Contribution Limit for a taxable year, the Plan must distribute the excess deferrals (i.e., the amounts that exceed the Maximum Contribution Limit) to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. For purposes of determining whether contributions exceed the Maximum Contribution Limit, all 457(b) plans of the Employer, including plans of Related Employers, are treated as a single plan.

5.06 **Excess Deferrals Arising from Application of the Individual Limitation.** The Plan may distribute excess deferrals that arise from application of the Individual Limitation. The Plan may distribute the excess deferrals to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. The Participant must inform the Plan Administrator of the excess deferrals.

(a) **Individual Limitation.** The Individual Limitation (as set forth under Code §457(c)) equals the Basic Annual Limitation, plus the Age 50 Catch-Up Limitation or the Special 457 Catch-Up Limitation, applied by taking into account the combined annual contributions for the Participant for any taxable year under all Code §457(b) plans. For this purpose, contributions to all Code §457(b) plans, whether sponsored by a governmental employer or a tax-exempt employer, are counted toward the Individual Limitation.

(b) **Special Rules for Catch-Up Amounts under Multiple 457(b) Plans.** For purposes of applying the Individual Limitation, the Special 457 Catch-Up is taken into account only to the extent that the annual contribution is made for a Participant under a 457(b) plan as a result of a plan provision permitted under the Special 457 Catch-Up rules. In addition, if a Participant has annual contributions under more than one 457(b) plan and the applicable catch-up amount under the Age 50 Catch-Up and the Special 457 Catch-Up rules is not the same for each such 457(b) plan for the taxable year, the Individual Limitation is determined using the catch-up amount under whichever plan has the largest catch-up amount applicable to the Participant.

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SECTION 6
SPECIAL RULES AFFECTING THIS GOVERNMENTAL 457(b) PLAN

6.01 **Plan Adoption as Governmental Plan.** Only an Employer that is an eligible employer as defined under Code §457(b)(e)(1)(A) may adopt this Plan.

6.02 **Reporting to Internal Revenue Service and Participants.** The Employer will report contributions to the Plan and distributions from the Plan at the time and in the manner prescribed by the Internal Revenue Service.

6.03 **Taxation of Distributions.** Amounts deferred under the Plan are includible in gross income in the taxable year in which the amounts are actually paid from the Plan. See Treas. Reg. §1.457-7 for special rules applicable to Governmental Plans.

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SECTION 7
PARTICIPANT VESTING AND FORFEITURES

7.01 **Vesting of Contributions.** A Participant's vested interest in his/her Employer Contribution Account and Matching Contribution Account is determined based on the vesting schedule elected in the Adoption Agreement. A Participant is always fully vested in his/her Salary Deferral Account and Rollover Contribution Account.

7.02 **Vesting Schedules.** A Participant's vested interest in his/her Employer Contribution Account and/or Matching Contribution Account is determined by multiplying the Participant's vesting percentage (determined under the applicable vesting schedule selected in AA §8) by the total amount under the applicable Account.

(a) **Vesting schedule.** The Employer may choose any of the vesting schedules described in this subsection (a) as the normal vesting schedule with respect to Employer Contributions.

(1) **Full and immediate vesting schedule.** Under the full and immediate vesting schedule, the Participant is always 100% vested in his/her Account Balance.

(2) **6-year graded vesting schedule.** Under the 6-year graded vesting schedule, an Employee vests in his/her Employer Contribution Account and/or Matching Contribution Account in the following manner:

After 2 Years of Service – 20% vesting
After 3 Years of Service – 40% vesting
After 4 Years of Service – 60% vesting
After 5 Years of Service – 80% vesting
After 6 Years of Service – 100% vesting

(3) **3-year cliff vesting schedule.** Under the 3-year cliff vesting schedule, an Employee is 100% vested after 3 Years of Service. Prior to the third Year of Service, the vesting percentage is zero.

(4) **Modified vesting schedule.** Under the modified vesting schedule, the Employer may designate the vesting percentage that applies for each Year of Service.

(b) **Special vesting rules.**

(1) **Normal Retirement Age.** Regardless of the Plan's vesting schedule, a Participant's right to his/her Account Balance is fully vested upon the date he/she attains Normal Retirement Age (as defined in AA §7-1), provided the Participant is an Employee on or after such date.

(2) **Separate Accounting.** The Plan Administrator will maintain separate accounting for the vested and non-vested portions of any Employer Contribution Account and Matching Contribution Account.

(3) **100% vesting upon death, or becoming Disabled.** The Employer may elect under AA §8-4 to allow a Participant's vesting percentage to automatically increase to 100% if the Participant dies or becomes Disabled while employed by the Employer.

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7.03 **Year of Service.** An Employee's position on the vesting schedule is dependent on the Employee's Years of Service with the Employer. Generally, an Employee will earn a vesting Year of Service for each Vesting Computation Period during which the Employee completes at least 1,000 Hours of Service. Alternatively, the Employer may elect under AA §8-5(a) to modify the definition of Year of Service to require completion of any other number of Hours of Service or may elect to calculate Years of Service using the Elapsed Time method (as defined in subsection (b) below).

(a) **Hours of Service.** Unless the Employer elects to use the Elapsed Time method under AA §8-5(c), vesting Years of Service will be determined based on an Employee's Hours of Service earned during the Vesting Computation Period.

(1) **Actual Hours of Service.** In determining an Employee's vesting Years of Service, the Employer will credit an Employee with the actual Hours of Service earned during the Vesting Computation Period, unless the Employer elects under AA §8-5(d) to determine Hours of Service using the Equivalency Method.

(2) **Equivalency Method.** Instead of counting actual Hours of Service in applying the Plan's vesting schedules, the Employer may elect under AA §8-5(d) to determine Hours of Service based on the Equivalency Method. Under the Equivalency Method, an Employee receives credit for a specified number of Hours of Service based on the period worked with the Employer.

(i) **Monthly.** Under the monthly Equivalency Method, an Employee is credited with 190 Hours of Service for each calendar month during which the Employee completes at least one Hour of Service with the Employer.

(ii) **Daily.** Under the daily Equivalency Method, an Employee is credited with 10 Hours of Service for each day during which the Employee completes at least one Hour of Service with the Employer.

(iii) **Weekly.** Under the weekly Equivalency Method, an Employee is credited with 45 Hours of Service for each week during which the Employee completes at least one Hour of Service with the Employer.

(iv) **Semi-monthly.** Under the semi-monthly Equivalency Method, an Employee is credited with 95 Hours of Service for each semi-monthly period during which the Employee completes at least one Hour of Service with the Employer.

(3) **Employee need not be employed for entire Vesting Computation Period.** If an Employee completes the required Hours of Service during a Vesting Computation Period, the Employee will receive credit for a Year of Service as of the end of such Vesting Computation Period, even if the Employee is not employed for the entire Vesting Computation Period.

(b) **Elapsed Time method.** Instead of using Hours of Service in applying the Plan's vesting schedules, the Employer may elect under AA §8-5(c) to apply the Elapsed Time method for calculating an Employee's vesting service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee begins a Period of Severance which lasts at least 12 consecutive months. In calculating an Employee's aggregate period of service, an Employee receives credit

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for any Period of Severance that lasts less than 12 consecutive months. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

(1) **Period of Severance.** For purposes of applying the Elapsed Time method, a Period of Severance is any continuous period of time during which the Employee is not employed by the Employer. A Period of Severance begins on the date the Employee retires, quits or is discharged, or if earlier, the 12-month anniversary of the date on which the Employee is first absent from service for a reason other than retirement, quit or discharge.

In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (i) by reason of the pregnancy of the Employee, (ii) by reason of the birth of a child of the Employee, (iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or (iv) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

(2) **Related Employers.** For purposes of applying the Elapsed Time method, service will be credited for employment with any Related Employer.

7.04 **Vesting Computation Period.** Generally, the Vesting Computation Period is the Plan Year. Alternatively, the Employer may elect under AA §8-5(b) to use the 12-month period commencing on the Employee's date of hire (or reemployment date, if applicable) and each subsequent 12-month period commencing on the anniversary of such date or the Employer may elect to use any other 12-consecutive month period as the Vesting Computation Period.

7.05 **Excluded service.** Generally, all service with the Employer counts for purposes of applying the Plan's vesting schedules. However, the Employer may elect under AA §8-3 to exclude certain service with the Employer in calculating an Employee's vesting Years of Service.

7.06 **Service with Predecessor Employers.** If the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the provisions of this Plan, unless otherwise specified by the Employer in the Adoption Agreement. If the Employer does not maintain the plan of a Predecessor Employer, service with such Predecessor Employer does not count for vesting purposes under this Section 7, unless the Employer specifically designates under AA §4-5 to credit service with such Predecessor Employer for vesting.

7.07 **Forfeiture of Benefits.** A Participant will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account upon the occurrence of any of the events described below. The Plan Administrator has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited pursuant to this Section 7.07, a Participant's entire Account must remain in the Plan and continue to share in gains and losses of the Trust. A Participant will not forfeit any of his/her nonvested Account until the occurrence of a total distribution to the Participant or Beneficiary or the occurrence of a distributable event as described under the Plan.

7.08 **Allocation of Forfeitures.** The Employer may elect in AA §8-6 how it wishes to allocate forfeitures under the Plan. Forfeitures may be allocated in the Plan Year in which the forfeitures occur or in the Plan Year following the Plan Year in which the forfeitures occur. In applying the forfeiture provisions under the Plan, if there are any unused forfeitures as of the end of the Plan Year designated in AA §8-

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8(c) or (d), as applicable, any remaining forfeiture will be used (as designated in AA §8-8) in the immediately following Plan Year.

(a) **Reallocation as additional contributions.** The Employer may elect in AA §8-6 to reallocate forfeitures as additional contributions under the Plan. If the Employer elects to reallocate forfeitures as additional contributions, the Employer may elect, in its discretion, to allocate such amounts as additional Employer Contributions and/or additional Matching Contributions. Forfeitures allocated under this subsection (a) will be allocated in the same manner as selected under AA §6-3 or AA §6B-2 with respect to the contribution type being allocated. If no allocation method is selected for a particular contribution type, forfeitures will be reallocated as a pro rata allocation (as described in AA §6-3(a)) if such amount is reallocated as an additional Employer Contribution or as a discretionary Matching Contribution (as described in AA §6B-2(a)) if such amount is reallocated as an additional Matching Contribution. In applying the provisions of this subsection (a), no allocation of forfeitures will be made to any Participant with respect to forfeitures that arise out of his/her own Account.

(b) **Reduction of contributions.** The Employer may elect in AA §8-6 to use forfeitures to reduce Employer Contributions and/or Matching Contributions under the Plan. If the Employer elects to use forfeitures to reduce contributions, the Employer may, in its discretion, use such forfeitures to reduce Employer Contributions, Matching Contributions, or both. The Employer may adjust its contribution deposits in any manner, provided the total Employer Contributions made for the Plan Year properly take into account the forfeitures that are to be used to reduce such contributions for that Plan Year. If contributions are allocated over multiple allocation periods, the Employer may reduce its contribution for any allocation periods within the Plan Year in which the forfeitures are to be allocated so that the total amount allocated for the Plan Year is proper.

(c) **Payment of Plan expenses.** The Employer may elect under AA §8-6 to first use forfeitures to pay Plan expenses for the Plan Year in which the forfeitures would otherwise be applied. If any forfeitures remain after the payment of Plan expenses under this subsection, the remaining forfeitures will be allocated as selected under AA §8-6.

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SECTION 8
PLAN DISTRIBUTIONS

A Participant may receive a distribution of his/her vested Account Balance at the time and in the manner provided under this Section 8.

8.01 **Distribution Options.** Distributions from the Plan may be made in the form of a lump sum of the Participant's entire vested Account Balance, a single sum distribution of a portion of the Participant's vested Account Balance, or installments, as elected by the Employer under the Agreement.

Notwithstanding any other provision in this Article 8, if the amount of a Participant's Account Balance is not in excess of $5,000 (or the dollar limit under Code§411(a)(11), if greater) on the date that payments commence on account of Severance from Employment or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's death, or other Severance from Employment.

8.02 **Amount Eligible for Distribution.** For purposes of determining the amount a Participant may receive as a distribution from the Plan, a Participant's Account Balance is determined as of the Valuation Date that immediately precedes the date the Participant receives his/her distribution from the Plan. For this purpose, the Participant's Account Balance must be increased for any contributions allocated to the Participant's Account since the most recent Valuation Date and must be reduced for any distributions the Participant received from the Plan since the most recent Valuation Date. A Participant does not share in any allocation of gains or losses attributable to the period between the Valuation Date and the date of the distribution under the Plan, unless the Plan Administrator establishes an alternative policy.

8.03 **Permissible Distribution Events.** Except as provided under Sections 8.06 and 8.08, a Participant may not receive a distribution of any amounts held under the Plan unless the Participant satisfies one of the following conditions:

(a) The Participant has a Severance from Employment with the Employer.

(b) The Participant has attained age 70 ½.

(c) The Participant qualifies for an Unforeseeable Emergency distribution.

8.04 **Severance from Employment.** An Employee has a Severance from Employment if the Employee dies, retires or otherwise has a severance from employment. In general, an Independent Contractor is considered to have a Severance from Employment upon the expiration of the contract under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship.

8.05 **Determining a Participant's Beneficiary.** A Participant may designate a Beneficiary to receive any death benefits under the Plan. A Participant may change or revoke a Beneficiary designation at any time by filing a new designation with the Plan Administrator. Unless specified otherwise in the Participant's designated beneficiary election form, if a Beneficiary does not predecease the Participant but dies before distribution of the death benefit is made to the Beneficiary, the death benefit will be paid to the Beneficiary's estate.

The Plan Administrator may request proper proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan in any form or

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manner the Plan Administrator may deem appropriate. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian, conservator, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator will not be liable for any payments made in accordance with this subsection (c) and are not required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan.

If a Participant designates his/her spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and spouse are divorced or legally separated, the designation of the spouse as Beneficiary under the Plan is automatically rescinded unless specifically provided otherwise under a divorce decree or QDRO, or unless the Participant enters into a new Beneficiary designation naming the prior spouse as Beneficiary. To the extent a Beneficiary has not been named by the Participant and is not designated under the terms of this Plan to receive all or any portion of the deceased Participant's death benefit, such amount shall be distributed to the Participant's surviving spouse (if the Participant was married at the time of death). If the Participant does not have a surviving spouse at the time of death, distribution will be made to the Participant's surviving children, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant's estate. The Employer may modify the default beneficiary rules described in this subparagraph by attaching appropriate language as an addendum to the Agreement.

8.06 **Distributions of Smaller Amounts.** The Employer may elect under the Agreement to allow for distribution of all or a portion of the Participant's Account Balance, provided the conditions set forth under subsection (a) are satisfied.

(a) **Conditions for Distribution.** In order for a Plan to make distributions under this Section 8.06, the following conditions must be satisfied: (i) the Participant's total Account Balance which is not attributable to rollover contributions is not in excess of $5,000 (or such other dollar limit specified under Code §411(a)(11)(A)), (ii) the Participant has not received an Employer Contribution or made a Salary Reduction Contribution during the two-year period ending on the date of distribution and (iii) the Plan has not made a prior distribution to the Participant under this Section 8.06.

(b) **Participant Election.** The Employer may elect under the Agreement to allow a Participant treceive a distribution under this Section 8.06 at the Participant's (or beneficiary's) request, provided the conditions in subsection (a) are satisfied.

8.07 **Distributions under a Qualified Domestic Relations Order.** The plan may make distributions pursuant to a Qualified Domestic Relations Order, even if the amounts subject to the QDRO are not otherwise distributable.

8.08 **Unforeseeable Emergency Distribution.** A Participant may receive an in-service distribution on account of an Unforeseeable Emergency.

(a) **Amount available for distribution.** A Participant may receive a distribution on account of an Unforeseeable Emergency of any portion of his/her vested benefit (including earnings thereon) up to the amount reasonably necessary to satisfy the emergency need.

(b) **Definition of Unforeseeable Emergency.** An unforeseeable emergency is a severe financial hardship resulting from (i) an illness or accident of the Participant or Beneficiary, the

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Participant's or Beneficiary's spouse or the Participant's or Beneficiary's dependent; (ii) loss of the Participant's or Beneficiary's property due to casualty; or (iii) similar extraordinary or unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary (such as the need to pay medical expenses or funeral expenses).

(c) **Availability of Other Resources.** The Plan may not make a distribution on account of an Unforeseeable Emergency to the extent that the emergency is or may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the Participant's assets without causing financial hardship; or by cessation of Salary Deferrals under the Plan.

8.09 **Direct Rollovers.** Notwithstanding any provision in the Plan to the contrary, a Participant may elect to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a Direct Rollover. If a Participant elects a Direct Rollover of only a portion of an Eligible Rollover Distribution, the Plan Administrator may require that the amount being rolled over equals at least $500.

For purposes of this Section 8.09, a Participant includes a Participant or former Participant. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving spouse or to a Participant's spouse or former spouse who is the Alternate Payee under a QDRO.

If it is reasonable to expect (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than $200, the Employer need not offer the Participant a Direct Rollover option with respect to such distribution.

(a) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's Account Balance, except for the following distributions:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or Life Expectancy) of the Participant or the joint lives (or joint Life Expectancies) of the Participant and the Participant's Beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is a required minimum distribution under Article 10;

(3) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); or

(4) a distribution on account of an Unforeseeable Emergency.

(b) **Eligible Retirement Plan.** An Eligible Retirement Plan is:

(1) an individual retirement account described in §408(a) of the Code;

(2) an individual retirement annuity described in §408(b) of the Code;

(3) an annuity plan described in §403(a) of the Code;

(4) a qualified plan described in §401(a) of the Code;

(5) a tax sheltered annuity plan described in §403(b) of the Code; or

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(6) a governmental 457 plan described in §457(b) of the Code.

(c) **Direct Rollover.** A Direct Rollover is a payment made directly from the Plan to the Eligible Retirement Plan specified by the Participant. The Plan Administrator may develop reasonable procedures for accommodating Direct Rollover requests.

(d) **Direct Rollover notice.** A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of his/her right to a Direct Rollover, the tax consequences of not making a Direct Rollover, and, if applicable, any available special income tax elections. The notice must be provided within 30 – 180 days prior to the date of distribution. The Direct Rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than $200.

(e) **Direct Rollover by Non-Spouse Beneficiary.** A non-spouse beneficiary (as defined in Code §401(a)(9)(E)) may elect to directly rollover an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b). In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution (as defined in Code §402(c)). A non-spouse rollover will not be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements under Code §3405(c).

(f) **Automatic Rollovers.**

(1) **Automatic Rollover requirements.** If a Participant is entitled to an Involuntary Cash-Out Distribution (as defined in subsection (2)), and the Participant does not elect to receive a distribution of such amount (either as a Direct Rollover to an Eligible Retirement Plan or as a direct distribution to the Participant), then the Plan Administrator may pay the distribution in a Direct Rollover to an individual retirement plan (IRA) designated by the Plan Administrator. (The Automatic Rollover provisions under this subsection apply to any Involuntary Cash-Out Distribution for which the Participant fails to consent to a distribution, without regard to whether the Participant can be located.)

(2) **Involuntary Cash-Out Distribution.** An Involuntary Cash-Out Distribution is any distribution that is made from the Plan without the Participant's consent. Unless elected otherwise under AA §9-4(b), an Involuntary Cash-Out Distribution, for purposes of applying the Automatic Rollover requirements does not include any amounts below $1,000.

(3) **Treatment of Rollover Contributions.** Unless elected otherwise under AA §9-4(c), for purposes of determining whether a mandatory distribution is greater than $1,000, the portion of the Participant's distribution attributable to any Rollover Contribution is excluded.

8.10 **Sorces of Distribution.** Unless provided otherwise in separate administrative provisions adopted by the Plan Administrator, in applying the distribution provisions under this Article 8, distributions will be made on a pro rata basis from all Accounts from which a distribution is permitted under this Article. Alternatively, the Plan Administrator may permit Participants to direct the Plan Administrator as to which Account the distribution is to be made. Regardless of a Participant's direction as to the source of any distribution, the tax effect of such a distribution will be governed by Code §457 and the regulations

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there under. Nothing in this Article precludes the Plan from making a distribution in the form of property, or other in-kind distribution.

8.11 **Transfers from the Plan to another Code §457(b) Plan.** At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code §457(b) of the Code and §1.457-2(f) of the Income Tax Regulations. A transfer is permitted for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred. Upon the transfer of assets under this Section, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section (for example, to confirm that the receiving plan is an eligible governmental plan, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. §1.457-10 (b).

8.12 **Permissive Service Credit Transfers.** If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code §414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section may be made before the Participant has had a Severance from Employment. A transfer may be made under this Article only if the transfer is either for the purchase of permissive service credit (as defined in Code §415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code §415 does not apply by reason of Code §415 (k)(3).

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SECTION 9
REQUIRED MINIMUM DISTRIBUTIONS

A Participant's entire interest under the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date (as defined in subsection 9.04(e)). All distributions required under this Section 9 will be determined and made in accordance with the regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G). For purposes of applying the required minimum distribution rules under this Section 9, any distribution made in a form other than a lump sum must be made over one of the following periods (or a combination thereof): (1) the life of the Participant; (2) the life of the Participant and a Designated Beneficiary; (3) a period certain not extending beyond the life expectancy of the Participant; or (4) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and a Designated Beneficiary.

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

(a) **Surviving spouse is sole Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the surviving spouse may elect to take distributions under the five-year rule (as described in subsection 9.05(a) below) or under the life expectancy method. If the life expectancy method applies, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.

(b) **Surviving spouse is not the sole Designated Beneficiary.** If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary may elect to take distributions under the five-year rule (as described in subsection 9.05(a) below) or under the life expectancy method. If the life expectancy method applies, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) **No Designated Beneficiary.** If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) **Death of surviving spouse.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 9.01 (other than subsection (a)) will apply as if the surviving spouse were the Participant.

For purposes of this Section 9.01, unless subsection (d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (a) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (a)), the date distributions are considered to begin is the date distributions actually commence.

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9.02 Required Minimum Distributions during Participant's lifetime.

(a) **Amount of Required Minimum Distribution for each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

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

(2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) **Lifetime Required Minimum Distributions continue through year of Participant's death.** Required Minimum Distributions will be determined under this section 9.02 beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

9.03 Required Minimum Distributions After Participant's Death.

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

(1) **Participant survived by Designated Beneficiary.** If the Participant dies on or after the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated in accordance with the Single Life Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1, using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated using the Single Life Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1, for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated under the Single Life Table using the age of the Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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(2) **No Designated Beneficiary.** If the participant dies on or after the date required distributions begin and there is no Designated Beneficiary as of the Participant's date of death who remains a Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

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

(1) **Participant survived by Designated Beneficiary.** If the Participant dies before the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection (a).

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

(3) **Death of surviving spouse before distributions to surviving spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 9.01(a), this subsection (b) will apply as if the surviving spouse were the Participant.

9.04 **Definitions.**

(a) **Designated Beneficiary.** A Beneficiary designated by the Participant (or the Plan), whose life expectancy may be taken into account to calculate minimum distributions, pursuant to Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4.

(b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 9.01. The Required Minimum Distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The Required Minimum Distribution for other Distribution Calendar Years, including the Required Minimum Distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

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(c) **Life expectancy.** For purposes of determining a Participant's Required Minimum Distribution amount, life expectancy is computed using one of the following tables, as appropriate: (1) Single Life Table, (2) Uniform Life Table, or (3) Joint and Last Survivor Table found in Treas. Reg. §1.401(a)(9)-9.

(d) **Account Balance.** For purposes of determining a Participant's Required Minimum Distribution, the Participant's Account Balance is determined based on the Account Balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (the "valuation calendar year") increased by the amount of any contributions or forfeitures allocated to the Account Balance as of dates in the calendar year after the Valuation Date and decreased by distributions made in the calendar year after the Valuation Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(e) **Required Beginning Date.** Unless designated otherwise under AA §10-3, a Participant's Required Beginning Date under the Plan is:

(1) **For Five-Percent Owners.** April 1 that follows the end of the calendar year in which the Participant attains age 70½.

(2) **For Participants other than Five-Percent Owners.** April 1 that follows the end of the calendar year in which the later of the following two events occurs:

(i) the Participant attains age 70½ or

(ii) the Participant retires.

If a Participant is not a Five-Percent Owner for the Plan Year that ends with or within the calendar year in which the Participant attains age 70-1/2, and the Participant has not retired by the end of such calendar year, his/her Required Beginning Date is April 1 that follows the end of the first subsequent calendar year in which the Participant becomes a Five-Percent Owner or retires.

(3) **Alternative Required Beginning Date for Participants other than Five-Percent Owners.** The Employer may designate under AA §10-3 to determine the Required Beginning Date for Participants other than Five-Percent Owners without regard to the rule in subsection (2) above. If so designated under AA §10-3, the Required Beginning Date for all Participants under the Plan will be April 1 of the calendar year following attainment of age 70½.

(f) **Five-Percent Owner.** A Participant is a Five-Percent Owner for purposes of this Section if such Participant is a Five-Percent Owner at any time during the Plan Year ending with or within the calendar year in which the Participant attains age 70½. Once distributions have begun to a Five-Percent Owner under this Section 9, they must continue to be distributed, even if the Participant ceases to be a Five-Percent Owner in a subsequent year.

9.05 **Special Rules.**

(a) **Election to apply 5-year rule to required distributions after death.** If the Participant dies before distributions begin and there is a Designated Beneficiary, the Designated Beneficiary may

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elect to have the Participant's entire interest distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this election will apply as if the surviving spouse were the Participant.

(b) **Election to allow Participants or Beneficiaries to elect 5-year rule.** If a Participant or Designated Beneficiary elects to apply the life expectancy rule under Section 9.01 above or the five year rule under subsection (a), the election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 9.01 or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule under subsection (a) above.

(c) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 9.01 and 9.03. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the regulations.

(d) **Treatment of trust beneficiaries as Designated Beneficiaries.** If a trust is properly named as a Beneficiary under the Plan, the beneficiaries of the trust will be treated as the Designated Beneficiaries of the Participant solely for purposes of determining the distribution period under this 0 with respect to the trust's interests in the Participant's vested Account Balance. The beneficiaries of a trust will be treated as Designated Beneficiaries for this purpose only if, during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as Designated Beneficiaries, the following requirements are met:

(1) the trust is a valid trust under state law, or would be but for the fact there is no corpus;

(2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the Participant;

(3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interests in the Participant's vested Account Balance are identifiable from the trust instrument; and

(4) the Plan Administrator receives the documentation described in subsection (e)(1) below.

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

(e) **Special rules applicable to trust beneficiaries.**

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

(i) **Required minimum distribution before death where spouse is sole beneficiary.** If a Participant designates a trust as the beneficiary of his/her entire benefit and the Participant's spouse is the sole beneficiary of the trust, the Participant must provide

the information under (A) or (B) below to satisfy the information requirements under (d)(4) above.

(A) The Participant must provide to the Plan Administrator a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator a copy of each such amendment; or

(B) The Participant must:

(I) provide to the Plan Administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the spouse is the sole beneficiary) for purposes of Code §401(a)(9);

(II) certify that, to the best of the Participant's knowledge, the list under subsection (I) is correct and complete and that the requirements of subsection (d) above are satisfied;

(III) agree that, if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator corrected certifications to the extent that the amendment changes any information previously certified; and

(IV) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.

(ii) **Required minimum distribution after death.** In order to satisfy the documentation requirement of subsection (d)(4) above for required minimum distributions after the death of the Participant (or spouse in a case to which Treas. Reg. §.401(a)(9)-3, A-5 applies), the trustee of the trust must satisfy the requirements of (A) or (B) by October 31 of the calendar year immediately following the calendar year in which the Participant died.

(A) The trustee of the trust must:

(I) provide the Plan Administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the Participant's death;

(II) certify that, to the best of the trustee's knowledge, the list in subsection (I) is correct and complete and that the requirements of subsection (d) above are satisfied;

(III) and agree to provide a copy of the trust instrument to the Plan Administrator upon demand.

(B) The trustee of the trust must provide the Plan Administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the Participant under the Plan as of the Participant's date of death.

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(2) **Relief for discrepancy.** If required minimum distributions are determined based on the information provided to the Plan Administrator in certifications or trust instruments described in subsection (1) above, the Plan will not fail to satisfy Code §401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the Plan Administrator, provided the Plan Administrator reasonably relied on the information provided and the required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

(f) **Trust beneficiary qualifying for marital deduction.** If a Beneficiary is a trust (other than an estate marital trust) that is intended to qualify for the federal estate tax marital deduction under Code §2056 ("marital trust"), then:

(1) in no event will the annual amount distributed from the Plan to the marital trust be less than the greater of:

(i) all fiduciary accounting income with respect to such Beneficiary's interest in the Plan, as determined by the trustee of the marital trust, or

(ii) the minimum distribution required under this Section 9;

(2) the trustee of the marital trust (or the trustee's legal representative) shall be responsible for calculating the amount to be distributed under subsection (1) above and shall instruct the Plan Administrator in writing to distribute such amount to the marital trust;

(3) the trustee of the marital trust may from time to time notify the Plan Administrator in writing to accelerate payment of all or any part of the portion of such beneficiary's interest that remains to be distributed, and may also notify the Plan Administrator to change the frequency of distributions (but not less often than annually); and

(4) the trustee of the marital trust shall be responsible for characterizing the amounts so distributed form the Plan as income or principle under applicable state laws.

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SECTION 10
INVESTMENT VEHICLES AND PARTICIPANT ACCOUNTS

10.01 **Participant Accounts.** The Plan Administrator will establish and maintain a separate Account (or multiple Accounts, if appropriate) for each Participant to reflect the Participant's entire interest under the Plan. To the extent applicable, the Plan Administrator may establish and maintain separate sub-Accounts for a Participant. Accounts may include, but are not limited to:

- Salary Deferral Account
- Employer Contribution Account
- Matching Contribution Account
- Transfer Account

The Plan Administrator will maintain separate Accounts for the vested and non-vested portions of any Employer Contribution Account and Matching Contribution Account.

10.02 **Value of Participant Accounts.** The value of a Participant's Account consists of the fair market value of the Participant's share of the Plan assets.

(a) **Periodic valuation.** The Trustee must value Plan assets at least annually.

(b) **Daily valuation.** If the Employer elects daily valuation under AA §11-1(a) or, if in operation, the Employer elects to have the Plan daily valued, the Plan Administrator may adopt reasonable procedures for performing such valuations. Unless otherwise set forth in the written procedures, a daily valued Plan will have its assets valued at the end of each business day during which the New York Stock Exchange is open. The Plan Administrator has authority to interpret the provisions of this Plan in the context of a daily valuation procedure. This includes, but is not limited to, the determination of the value of the Participant's Account for purposes of Participant loans, distribution and consent rights, and corrective distributions under Section 6.

(c) **Interim valuations.** The Plan Administrator may perform interim valuations, provided such valuations do not result in discrimination in favor of Highly Compensated Employees.

10.03 **Adjustments to Participant Accounts.** As of each Valuation Date under the Plan, each Participant's Account is adjusted in the following manner.

(a) **Distributions and forfeitures from a Participant's Account.** A Participant's Account will be reduced by any distributions and forfeitures from the Account since the previous Valuation Date.

(b) **Contributions and forfeitures allocated to a Participant's Account.** A Participant's Account will be credited with any contribution or forfeiture allocated to the Participant since the previous Valuation Date.

(c) **Net income or loss.** A Participant's Account will be adjusted for any net income or loss in accordance with the provisions under Section 10.04.

10.04 **Procedures for Determining Net Income or Loss.** The Plan Administrator may establish any reasonable procedures for determining net income or loss. Such procedures may be reflected in a funding agreement governing the applicable investments under the Plan.

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10.05 **Investments under the Plan.** The Trustee or other person(s) responsible for the investment of Plan assets is authorized to invest Plan assets in any prudent investment consistent with the funding policy of the Plan. Investment options include, but are not limited to, the following: common and preferred stock or other equity securities (including stock bought and sold on margin); corporate bonds; open-end or closed-end mutual funds; money market accounts; certificates of deposit; debentures; commercial paper; put and call options; limited partnerships; mortgages; U.S. Government obligations, including U.S. Treasury notes and bonds; real and personal property having a ready market; life insurance or annuity policies; commodities; savings accounts; notes; and securities issued by the Trustee and/or its affiliates, as permitted by law. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for this Plan.

(a) **Individual/Pooled Accounts,** The Plan may maintain individual or pooled accounts for Participants.

(b) **Participant direction of investments.** If the Plan permits Participant direction of investments, the Plan Administrator, along with the Trustee must adopt investment procedures for such direction. The investment procedures should set forth the permissible investment options available for Participant direction, the timing and frequency of investment changes, and any other procedures or limitations applicable to Participant direction of investment.

The Employer may elect to limit Participant direction of investment to specific types of contributions. If Participant direction of investments is permitted, the Employer will designate how accounts will be invested in the absence of proper affirmative direction from the Participant. Except as otherwise provided in this Plan, neither the Employer or Trustee will be liable to the Participant or Beneficiary for any loss resulting from action taken at the direction of the Participant.

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SECTION 11
PLAN ADMINISTRATION AND OPERATION

11.01 **Plan Administrator.** The Employer is the Plan Administrator, unless the Employer designates in writing an alternative Plan Administrator. The Plan Administrator has the responsibilities described in this Section 11.

11.02 **Designation of Alternative Plan Administrator.** The Employer may designate another person or persons as he Plan Administrator by name, by reference to the person or group of persons holding a particular position, by reference to a procedure under which the Plan Administrator is designated, or by reference to a person or group of persons charged with the specific responsibilities of Plan Administrator. .

(a) **Acceptance of responsibility by designated Plan Administrator.** If the Employer designates an alternative Plan Administrator, the designated Plan Administrator must accept its responsibilities in writing. The Employer and the designated Plan Administrator jointly will determine the time period for which the alternative Plan Administrator will serve.

(b) **Multiple alternative Plan Administrators.** If the Employer designated more than one person as an alternative Plan Administrator, such Plan Administrators shall act by majority vote, unless the group delegates particular Plan Administrator duties to a specific person.

(c) **Resignation or removal of designated Plan Administrator.** A designated Plan Administrator may resign by delivering a written notice of resignation to the Employer. The Employer may remove a designated Plan Administrator by delivering a written notice of removal. If a designated Plan Administrator resigns or is removed, and no new alternative Plan Administrator is designated, the Employer is the Plan Administrator.

(d) **Employer responsibilities.** If the Employer designates an alternative Plan Administrator, the Employer will provide in a timely manner all appropriate information necessary for the Plan Administrator to perform its duties. This information includes, but is not limited to, Participant compensation data, Employee employment, service and termination information, and other information the Plan Administrator may require. The Plan Administrator may rely on the accuracy of any information and data provided by the Employer.

11.03 **Duties, Powers and Responsibilities of the Plan Administrator.** The Plan Administrator will administer the Plan for the exclusive benefit of the Plan Participants and Beneficiaries, and in accordance with the terms of the Plan. If the terms of the Plan are unclear, the Plan Administrator may interpret the Plan, provided such interpretation is consistent with the rules of Code §457(b) and is performed in a uniform and nondiscriminatory manner. This right to interpret the Plan is an express grant of discretionary authority to resolve ambiguities in the Plan document and to make discretionary decisions regarding the interpretation of the Plan's terms, including who is eligible to participate under the Plan, and the benefit rights of a Participant or Beneficiary. Unless an interpretation or decision is determined to be arbitrary and capricious, the Plan Administrator will not be held liable for any interpretation of the Plan terms or decision regarding the application of a Plan provision. .

(a) **Delegation of duties, powers and responsibilities.** The Employer, as Plan Administrator, may delegate its duties, powers or responsibilities to one or more persons. Such delegation must be in writing and accepted by the person or persons receiving the delegation. The Employer may not delegate responsibilities to Plan Participants. The Employer must agree to such delegation by an alternative Plan Administrator.

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(b) **Specific Plan Administrator responsibilities.** The Plan Administrator has the general responsibility to control and manage the operation of the Plan. This responsibility includes, but is not limited to, the following:

(1) To interpret and enforce the provisions of the Plan and applicable rules under Code §457(b) including those related to Plan eligibility, vesting, benefits and other tax requirements;

(2) To communicate with the appropriate persons with respect to the crediting of Plan contributions, the disbursement of Plan distributions and other relevant matters

(3) To develop separate procedures (if necessary) consistent with the terms of the Plan to assist in the administration of the Plan, including the adoption of a separate or modified loan policy (see Section 13), procedures for direction of investment by Participants (see Section 10.05(b)), procedures for determining whether domestic relations orders are QDROs (see Section 11.06), and procedures for the determination of investment earnings to be allocated to Participants' Accounts (see Section 10.03);

(4) To maintain all records necessary for tax and other administration purposes;

(5) To furnish and to file all appropriate notices, reports and other information to Participants, Beneficiaries, the Employer, the Trustee and government agencies (as necessary);

(6) To provide information relating to Plan Participants and Beneficiaries;

(7) To retain the services of other persons, including Investment Managers, attorneys, consultants, advisers and others, to assist in the administration of the Plan;

(8) To review and decide on claims for benefits under the Plan; and

(9) To correct any defect or error in the operation of the Plan.

11.04 Plan Administration Expenses.

(a) **Reasonable Plan administration expenses.** All reasonable expenses related to plan administration will be paid from Plan assets, except to the extent the expenses are paid (or reimbursed) by the Employer. For this purpose, Plan expenses include, but are not limited to, all reasonable costs, charges and expenses incurred in connection with the administration of the Plan.

(b) **Plan expense allocation.** The Plan Administrator may allocate plan expenses among the accounts of Plan Participants. The Plan Administrator has authority to allocate these expenses either proportionally based on the value of the Account Balances or pro rata based on the number of Participants in the Plan. The Plan Administrator will determine the proper method for allocating expenses in accordance with such reasonable rules as the Plan Administrator deems appropriate under the circumstances. Unless the Plan Administrator decides otherwise, the following expenses will be allocated to the Participant's Account relative to which the expense is incurred: distribution expenses, including those relating to lump sums, installments, QDROs, hardship, in-service and required minimum distributions; loan expenses; participant direction expenses, including brokerage fees; and benefit calculations.

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11.05 **Delegation of Administrative Responsibilities.** Generally, the Employer has responsibility to administer the Plan. These responsibilities include compliance with Code §457(b) and other tax requirements. However, the Employer may allocate such responsibilities to a third party, provided such third party agrees to such allocation of responsibilities. An Employer may not allocate administrative responsibilities to Plan Participants.

11.06 **Qualified Domestic Relations Orders (QDROs).**

(a) **In general.** The Plan Administrator must develop written procedures for determining whether a domestic relations order is a QDRO and for administering distributions under a QDRO. For this purpose, the Plan Administrator may use the default QDRO procedures set forth in subsection (h) below or may develop separate QDRO procedures.

(b) **Definitions related to Qualified Domestic Relations Orders (QDROs).**

(1) **QDRO**. A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with respect to a Participant under the Plan. (See Code §414(p).) The QDRO must contain certain information and meet other requirements described in this Section 11.06.

(2) **Domestic relations order.** A domestic relations order is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law).

(3) **Alternate Payee.** An Alternate Payee must be a spouse, former spouse, child, or other dependent of a Participant.

(4) **Revision of QDRO.** A domestic relations order otherwise meeting the requirements to be a QDRO under Code §414(p)(3) shall not fail to be treated as a QDRO solely because:

(i) the order is issued after, or revises, another domestic relations order or QDRO; or

(ii) of the time at which the order is issued, including orders issued after the death of the Participant.

Any QDRO described in this Section 11.06 shall be subject to the same requirements and protections which apply to QDROs under Code §414(p)(7).

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

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

(1) the name and last known mailing address of the Participant and each Alternate Payee;

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(2) the name of each plan to which the order applies;

(3) the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee; and

(4) the number of payments or time period to which the order applies.

(e) **Impermissible QDRO provisions.**

(1) The order must not require the Plan to provide an Alternate Payee or Participant with any type or form of benefit, or any option, not otherwise provided under the Plan;

(2) The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value); and

(3) The order must not require the Plan to pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO.

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

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

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

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

(2) **Notifications to Participant and Alternate Payee.** The Plan Administrator will promptly notify the affected Participant and each Alternate Payee named in the domestic relations order of the receipt of the order. The Plan Administrator will send the notification to the address included in the domestic relations order. Along with the notification, the Plan Administrator will provide a copy of the Plan's procedures for determining whether a domestic relations order is a QDRO.

(3) **Alternate Payee representative.** The prospective Alternate Payee may designate a representative to receive copies of notices and Plan information that are sent to the Alternate Payee with respect to the domestic relations order.

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(4) **Evaluation of domestic relations order.** Within a reasonable period of time, the Plan Administrator will evaluate the domestic relations order to determine whether it is a QDRO. A reasonable period will depend on the specific circumstances. The domestic relations order must contain the information described in subsection (d). If the order is only deficient in a minor respect, the Plan Administrator may supplement information in the order from information within the Plan Administrator's control or through communication with the prospective Alternate Payee.

(i) **Separate accounting.** Upon receipt of a domestic relations order, the Plan Administrator will separately account for and preserve the amounts that would be payable to an Alternate Payee until a determination is made with respect to the status of the order. During the period in which the status of the order is being determined, the Plan Administrator will take whatever steps are necessary to ensure that amounts that would be payable to the Alternate Payee, if the order were a QDRO, are not distributed to the Participant or any other person. The separate accounting requirement may be satisfied, at the Plan Administrator's discretion, by a segregation of the assets that are subject to separate accounting.

(ii) **Separate accounting until the end of "18 month period."** The Plan Administrator will continue to separately account for amounts that are payable under the QDRO until the end of an "18-month period." The "18-month period" will begin on the first date following the Plan's receipt of the order upon which a payment would be required to be made to an Alternate Payee under the order. If, within the "18-month period," the Plan Administrator determines that the order is a QDRO, the Plan Administrator must pay the Alternate Payee in accordance with the terms of the QDRO. If, however, the Plan Administrator determines within the "18-month period" that the order is not a QDRO, or, if the status of the order is not resolved by the end of the "18-month period," the Plan Administrator may pay out the amounts otherwise payable under the order to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order will apply only prospectively; that is, the Alternate Payee will be entitled only to amounts payable under the order after the subsequent determination.

(iii) **Preliminary review.** The Plan Administrator will perform a preliminary review of the domestic relations order to determine if it is a QDRO. If this preliminary review indicates the order is deficient in some manner, the Plan Administrator will allow the parties to attempt to correct any deficiency before issuing a final decision on the domestic relations order. The ability to correct is limited to a reasonable period of time.

(iv) **Notification of determination.** The Plan Administrator will notify in writing the Participant and each Alternate Payee of the Plan Administrator's decision as to whether a domestic relations order is a QDRO. In the case of a determination that an order is not a QDRO, the written notice will contain the following information:

(A) references to the Plan provisions on which the Plan Administrator based its decision;

(B) an explanation of any time limits that apply to rights available to the parties under the Plan (such as the duration of any protective actions the Plan Administrator will take); and

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(C) a description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.

(v) **Treatment of Alternate Payee.** If an order is accepted as a QDRO, the Plan Administrator will act in accordance with the terms of the QDRO as if it were a part of the Plan. An Alternate Payee will be considered a Beneficiary under the Plan and be afforded the same rights as a Beneficiary. The Plan Administrator will provide any appropriate disclosure information relating to the Plan to the Alternate Payee.

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SECTION 12
TRUST AGREEMENT

12.01 **Creation of Trust.** By adopting this Plan, the Employer creates a Trust to hold the assets of the Plan (or, in the event that this Plan document represents an amendment of the Plan, the Employer hereby amends the terms of the Trust maintained in connection with the Plan). The Trustee is the owner of the Plan assets held by the Trust. The Trustee is to hold the Plan assets for the exclusive benefit of Plan Participants and Beneficiaries. Plan Participants and Beneficiaries do not have ownership interests in the assets held by the Trust. The Employer may adopt a separate trust agreement in lieu of the trust provisions under this Section.

12.02 **Trustee.** The Trustee identified in the Trustee Declaration under the Agreement shall act either as a Discretionary Trustee or as a Directed Trustee, as identified under the Agreement.

(a) **Discretionary Trustee.** A Trustee is a Discretionary Trustee to the extent the Trustee has exclusive authority and discretion with respect to the investment, management or control of Plan assets. Notwithstanding a Trustee's designation as a Discretionary Trustee, a Trustee's discretion is limited, and the Trustee shall be considered a Directed Trustee, to the extent the Trustee is subject to the direction of the Plan Administrator or the Employer.

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

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

A Directed Trustee must act solely in accordance with the direction of the Plan Administrator, the Employer, or any employees or agents of the Employer.

The Employer may direct the Trustee to invest in any media in which the Trustee may invest, as described in Section 12.04. However, the Employer may not borrow from the Trust or pledge any of the assets of the Trust as security for a loan to itself; buy property or assets from or sell property or assets to the Trust; charge any fee for services rendered to the Trust; or receive any services from the Trust on a preferential basis.

12.03 **Trustee's Responsibilities Regarding Administration of Trust.** This Section outlines the Trustee's powers, rights and duties under the Plan with respect to the administration of the investments held in the Plan. The Trustee's administrative duties are limited to those described in this Section 12.03; the Employer is responsible for any other administrative duties required under the Plan or by applicable law.

(a) The Trustee will receive all contributions made under the terms of the Plan. The Trustee is not obligated in any manner to ensure that such contributions are correct in amount or that such

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contributions comply with the terms of the Plan. In addition, the Trustee is under no obligation to request that the Employer make contributions to the Plan. The Trustee is not liable for the manner in which such amounts are deposited or the allocation between Participant's Accounts, to the extent the Trustee follows the written direction of the Plan Administrator or Employer.

(b) The Trustee will make distributions from the Trust in accordance with the written directions of the Plan Administrator or other authorized representative. To the extent the Trustee follows such written direction, the Trustee is not obligated in any manner to ensure a distribution complies with the terms of the Plan, that a Participant or Beneficiary is entitled to such a distribution, or that the amount distributed is proper under the terms of the Plan. If there is a dispute as to a payment from the Trust, the Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or the Trustee has been indemnified to its satisfaction.

(c) The Trustee may employ agents, attorneys, accountants and other third parties to provide counsel on behalf of the Plan, where the Trustee deems advisable. The Trustee may reimburse such persons from the Trust for reasonable expenses and compensation incurred as a result of such employment. The Trustee shall not be liable for the actions of such persons, provided the Trustee acted prudently in the employment and retention of such persons. In addition, the Trustee will not be liable for any actions taken as a result of good faith reliance on the advice of such persons.

12.04 **Trustee's Responsibility Regarding Investment of Plan Assets.** In addition to the powers, rights and duties enumerated under this Section, the Trustee has whatever powers are necessary to carry out its duties in a prudent manner. The Trustee's powers, rights and duties may be supplemented or limited by a separate trust agreement, investment policy, funding agreement, or other binding document entered into between the Trustee and the Plan Administrator which designates the Trustee's responsibilities with respect to the Plan. A separate trust agreement must be consistent with the terms of this Plan and must comply with all requirements of Code §457 and regulations there under.

(a) The Trustee shall be responsible for the safekeeping of the assets of the Trust in accordance with the provisions of this Plan.

(b) The Trustee may invest, manage and control the Plan assets in a manner that is consistent with the Plan's funding policy and investment objectives. The Trustee may invest in any investment, which the Trustee deems advisable and prudent, subject to the proper written direction of the Plan Administrator or the Employer. The Trustee is not liable for the investment of Plan assets to the extent the Trustee is following the proper direction of the Plan Administrator, the Employer, a Participant, or other person or persons duly appointed by the Employer to provide investment direction. In addition, the Trustee does not guarantee the Trust in any manner against investment loss or depreciation in asset value, or guarantee the adequacy of the Trust to meet and discharge any or all liabilities of the Plan.

(c) The Trustee may retain such portion of the Plan assets in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon.

(d) The Trustee may collect and receive any and all moneys and other property due the Plan and to settle, compromise, or submit to arbitration any claims, debts, or damages with respect to the Plan, and to commence or defend on behalf of the Plan any lawsuit, or other legal or administrative proceedings.

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(e) The Trustee may hold any securities or other property in the name of the Trustee or in the name of the Trustee's nominee, and may hold any investments in bearer form, provided the books and records of the Trustee at all times show such investment to be part of the Trust.

(f) The Trustee may exercise any of the powers of an individual owner with respect to stocks, bonds, securities or other property, including the right to vote upon such stocks, bonds or securities; to give general or special proxies or powers of attorney; to exercise or sell any conversion privileges, subscription rights, or other options; to participate in corporate reorganizations, mergers, consolidations, or other changes affecting corporate securities (including those in which it or its affiliates are interested as Trustee); and to make any incidental payments in connection with such stocks, bonds, securities or other property.

(g) The Trustee may borrow or raise money on behalf of the Plan in such amount, and upon such terms and conditions, as the Trustee deems advisable. The Trustee may issue a promissory note as Trustee to secure the repayment of such amounts and may pledge all, or any part, of the Trust as security.

(h) The Trustee, upon the written direction of the Plan Administrator, is authorized to enter into a transfer agreement with the Trustee of another Code §457 plan and to accept a transfer of assets from such retirement plan on behalf of any Employee of the Employer. The Trustee is also authorized, upon the written direction of the Plan Administrator, to transfer some or all of a Participant's vested Account Balance to another Code §457 plan on behalf of such Participant.

(i) The Trustee is authorized to execute, acknowledge and deliver all documents of transfer and conveyance, receipts, releases, and any other instruments that the Trustee deems necessary or appropriate to carry out its powers, rights and duties hereunder.

(j) If the Employer maintains more than one Plan, the assets of such Plans may be commingled for investment purposes. The Trustee must separately account for the assets of each Plan. A commingling of assets, as described in this paragraph, does not cause the Trusts maintained with respect to the Employer's Plans to be treated as a single Trust, except as provided in a separate document authorized in the first paragraph of this Section 12.04.

(k) If the Trustee is a bank or similar financial institution, the Trustee is authorized to invest in any type of deposit of the Trustee (including its own money market fund) at a reasonable rate of interest.

12.05 **More than One Person as Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement and Trustee decisions will be made by a majority vote (unless otherwise agreed to by the Trustees) or as otherwise provided in a separate trust agreement or other binding document.

12.06 **Annual Valuation.** The Plan assets will be valued at least on an annual basis. The Employer may designate more frequent valuation dates. The Trustee and Plan Administrator may agree to value the Trust on a more frequent basis, and/or to perform an interim valuation of the Trust.

12.07 **Reporting to Plan Administrator and Employer.** Within a reasonable time following the end of each Plan Year, the Trustee will file with the Employer an accounting of its administration of the Trust from the date of its last accounting. The accounting will include a statement of cash receipts, disbursements and other transactions effected by the Trustee since the date of its last accounting, and such further

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information as the Trustee and/or Employer deems appropriate. Upon receipt of such information, the Employer must promptly notify the Trustee of its approval or disapproval of the information.

12.08 **Reasonable Compensation.** The Trustee shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Trustee. The Trustee also will be reimbursed for any reasonable expenses or fees incurred in its function as Trustee. The Plan will pay the reasonable compensation and expenses incurred by the Trustee, unless the Employer pays such compensation and expenses.

12.09 **Resignation and Removal of Trustee.** The Trustee may resign at any time by delivering to the Employer a written notice of resignation at least thirty (30) days prior to the effective date of such resignation, unless the Employer consents in writing to a shorter notice period. The Employer may remove the Trustee at any time, with or without cause, by delivering written notice to the Trustee at least 30 days prior to the effective date of such removal. The Employer may remove the Trustee upon a shorter written notice period if the Employer reasonably determines such shorter period is necessary to protect Plan assets. Upon the resignation, removal, death or incapacity of a Trustee, the Employer may appoint a successor Trustee which, upon accepting such appointment, will have all the powers, rights and duties conferred upon the preceding Trustee. In the event there is a period of time following the effective date of a Trustee's removal or resignation before a successor Trustee is appointed, the Employer is deemed to be the Trustee. During such period, the Trust continues to be in existence and legally enforceable, and the assets of the Plan shall continue to be protected by the provisions of the Trust.

12.10 **Indemnification of Trustee.** Except to the extent that it is judicially determined that the Trustee has acted with gross negligence or willful misconduct, the Employer shall indemnify the Trustee (whether or not the Trustee has resigned or been removed) against any liabilities, losses, damages, and expenses, including attorney, accountant, and other advisory fees, incurred as a result of:

(a) any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion given to the Trustee by the Employer, the Plan Administrator, or legal counsel of the Employer, or any person or entity appointed by any of them and authorized to give any information, instruction, direction, or opinion to the Trustee;
(b) the failure of the Employer, the Plan Administrator, or any person or entity appointed by any of them to make timely disclosure to the Trustee of information which any of them or any appointee knows or should know if it acted in a reasonably prudent manner; or
(c) any breach of fiduciary duty by the Employer, the Plan Administrator or any person or entity appointed by any of them, other than such a breach which is caused by any failure of the Trustee to perform its duties under this Trust.

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

The Employer agrees that the Trustee shall have no liability with regard to the investment or management of illiquid Plan assets transferred from a prior Trustee, and shall have no responsibility for investments made before the transfer of Plan assets to it, or for the viability or prudence of any investment made by a prior Trustee, including those represented by assets now transferred to the custody of the Trustee, or for any dealings whatsoever with respect to Plan assets before the transfer of such assets to the Trustee. The Employer shall indemnify and hold the Trustee harmless for any and all claims, actions or causes of action for loss or damage, or any liability whatsoever relating to the assets of the Plan transferred to the Trustee by any prior Trustee of the Plan, including any liability arising out

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of or related to any act or event, including prohibited transactions, occurring prior to the date the Trustee accepts such assets, including all claims, actions, causes of action, loss, damage, or any liability whatsoever arising out of or related to that act or event, although that claim, action, cause of action, loss, damage, or liability may not be asserted, may not have accrued, or may not have been made known until after the date the Trustee accepts the Plan assets. Such indemnification shall extend to all applicable periods, including periods for which the Plan is retroactively restated to comply with any tax law or regulation.

12.11 **Appointment of Custodian.** The Plan Administrator may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the same powers, rights and duties as a Directed Trustee. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, or other third party with authority to provide direction to the Custodian.

12.12 **Satisfaction of Trust Requirement Using Custodial Accounts or Annuity Contracts.** The Employer may satisfy the trust requirement of Code §457(g) as provided under Treas. Reg. §1.457-8(a)(3)(iii).

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SECTION 13
PARTICIPANT LOANS

13.01 **Availability of Participant Loans.** The Employer may elect under Appendix B of the Adoption Agreement to permit Participants to take loans from their vested Account Balance under the Plan. If the Employer elects to permit loans under the Plan, the Employer may elect to use the default loan policy under this Section 13, as modified under Appendix B of the Adoption Agreement, or may establish an outside loan policy for purposes of administering Participant loans under the Plan. If the Employer adopts a separate written loan policy, the terms of such separate loan policy will control over the terms of this Plan with respect to the administration of any Participant loans. Any separate written loan policy must satisfy the requirements under Code §72(p) and the regulations thereunder. Participant loans are subject to the terms of any vendor agreements or contracts associated with the Plan.

Participant loans under this Section 13 are available to Participants and Beneficiaries who are parties in interest (as defined in ERISA §3(14)). Unless modified in a separate loan policy, any reference to Participant under this Section is a reference to a Participant or Beneficiary who is a party in interest.

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

13.02 **Must be Available in Reasonably Equivalent Manner.** Participant loans must be made available to Participants in a reasonably equivalent manner. The Employer may elect under AA §B-7 to limit the availability of Participant loans to specified events.

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

(a) $50,000 (reduced by the excess, if any, of the Participant's highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which such loan is made, over the Participant's outstanding balance of loans from the Plan as of the date such loan is made) or

(b) one-half (½) of the Participant's vested Account Balance, determined as of the Valuation Date coinciding with or immediately preceding such loan, adjusted for any contributions or distributions made since such Valuation Date.

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

13.04 **Limit on Amount and Number of Loans.** Unless elected otherwise under AA §B-4 and/or AA §B-6, or under a separate written loan policy, a Participant may not receive a Participant loan of less than $1,000 nor may a Participant have more than one Participant loan outstanding at any time.

(a) **Loan renegotiation.** A Participant may renegotiate a loan without violating the one outstanding loan requirement to the extent such renegotiated loan is a new loan (i.e., the renegotiated loan separately satisfies the reasonable interest rate requirement under Section 13.05, the adequate security requirement under Section 13.06, and the periodic repayment requirement under Section

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13.07) and the renegotiated loan does not exceed the limitations under Section 13.03 above, treating both the replaced loan and the renegotiated loan as outstanding at the same time. However, if the term of the renegotiated loan does not end later than the original term of the replaced loan, the replaced loan may be ignored in applying the limitations under Section 13.03 above.

(b) **Participant must be creditworthy.** The Plan Administrator may refuse to make a loan to any Participant who is determined to be not creditworthy. For this purpose, a Participant is not creditworthy if, based on the facts and circumstances, it is reasonable to believe that the Participant will not repay the loan. A Participant who has defaulted on a previous loan from the Plan and has not repaid such loan (with accrued interest) at the time of any subsequent loan will be treated as not creditworthy until such time as the Participant repays the defaulted loan (with accrued interest).

13.05 **Reasonable Rate of Interest.** All Participant loans will be charged a reasonable rate of interest. For this purpose, the interest rate charged on a Participant loan must be commensurate with the interest rates charged by persons in the business of lending money for loans under similar circumstances. The Employer may identify alternative methods for determining a reasonable rate of interest under AA §B-5 or under a separate written loan policy. The Plan Administrator must periodically review its interest rate assumptions to ensure the interest rate charged on Participant loans is reasonable.

If a Participant is in "military service" while he/she has an outstanding Participant loan, the applicable interest charged on such loan during the period while the Participant is in "military service" will not exceed 6% per year provided the Participant provides written notice and a copy of his/her call-up or extension orders to the Plan Administrator within 180 days following the Participant's termination or release from "military service." For this purpose, "military service" is as defined in the Soldier's and Sailor's Civil Relief Act of 1940 as modified by the Servicemembers Civil Relief Act of 2003. The Participant may voluntarily waive this 6% interest limitation and the Plan Administrator may petition the court to retain the original interest rate if the ability to repay is not affected by the Participant's activation to military duty.

13.06 **Adequate Security.** All Participant loans must be adequately secured. The Participant's vested Account Balance shall be used as security for a Participant loan provided the outstanding balance of all Participant loans made to such Participant does not exceed 50% of the Participants vested Account Balance, determined immediately after the origination of each loan. The Plan Administrator may require a Participant to provide additional collateral to receive a Participant loan if the Plan Administrator determines such additional collateral is required to protect the interests of Plan Participants. A separate loan policy or written modifications to this loan policy may prescribe alternative rules for obtaining adequate security. However, the 50% rule in this paragraph may not be replaced with a greater percentage.

13.07 **Periodic Repayment.** A Participant loan must provide for level amortization with payments to be made not less frequently than quarterly. A Participant loan must be payable within a period not exceeding five (5) years from the date the Participant receives the loan from the Plan, unless the loan is for the purchase of the Participant's principal residence, in which case the loan must be payable within a reasonable time commensurate with the repayment period permitted by commercial lenders for similar loans. Loan repayments must be made through payroll withholding, except to the extent the Plan Administrator determines payroll withholding is not practical given the level of a Participant's wages, the frequency with which the Participant is paid, or other circumstances.

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(a) **Unpaid leave of absence.** A Participant with an outstanding Participant loan may suspend loan payments to the Plan for up to 12 months for any period during which the Participant is on an unpaid leave of absence. Upon the Participant's return to employment (or after the end of the 12-month period, if earlier), the Participant's outstanding loan will be reamortized over the remaining period of such loan to make up for the missed payments. The reamortized loan may extend beyond the original loan term so long as the loan is paid in full by whichever of the following dates comes first: (1) the date which is five (5) years from the original date of the loan (or the end of the suspension, if sooner), or (2) the original loan repayment deadline (or the end of the suspension period, if later) plus the length of the suspension period.

(b) **Military leave.** A Participant with an outstanding Participant loan also may suspend loan payments for any period such Participant is on military leave, in accordance with Code §414(u)(4). Upon the Participant's return from military leave (or the expiration of five years from the date the Participant began his/her military leave, if earlier), loan payments will recommence under the amortization schedule in effect prior to the Participant's military leave, without regard to the five-year maximum loan repayment period. Alternatively, the loan may be reamortized to require a different level of loan payment, as long as the amount and frequency of such payments are not less than the amount and frequency under the amortization schedule in effect prior to the Participant's military leave.

13.08 **Designation of Accounts.** Unless designated otherwise under a separate loan procedure, Participant loans will first be taken proportionately from the Participant's Employer Contribution Account and Matching Contribution Account, to the extent the Participant has a vested interest in such Accounts and subject to the loan limits under Section 13.03. If a Participant's total vested Account Balance attributable to the Employer Contribution and Matching Contribution Accounts is not sufficient to satisfy the amount of the loan, the Participant loan will next be taken from the Participant's Salary Deferral Account. Finally, the loan will be taken from the Participant's Rollover Contribution Account.

A Participant loan will be treated as a segregated investment on behalf of the individual Participant for whom the loan is made. Each payment of principal and interest paid by a Participant on his/her Participant loan shall be credited to the Participant's Accounts and investment funds within such Accounts in the same manner as allocated under the above paragraph.

13.09 **Procedures for Loan Default.** A Participant will be considered to be in default with respect to a loan if any scheduled repayment with respect to such loan is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due.

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

(a) Interest continues to accrue on the amount in default until the time of the loan offset or, if earlier, the date the loan repayments are made current or the amount is satisfied with other collateral.

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(b) A subsequent offset of the amount in default is not reported as a taxable distribution, except to the extent the taxable portion of the default amount was not previously reported by the Plan as a taxable distribution.

(c) The post-default accrued interest included in the loan offset is not reported as a taxable distribution at the time of the offset.

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

13.10 Termination of Employment.

(a) **Offset of outstanding loan.** A Participant loan becomes due and payable in full immediately upon the Participant's termination of employment. Upon a Participant's termination, the Participant may repay the entire outstanding balance of the loan (including any accrued interest) within a reasonable period following termination of employment. If the Participant does not repay the entire outstanding loan balance, the Participant's vested Account Balance will be reduced by the remaining outstanding balance of the loan, to the extent such Account Balance is available as security on the loan, pursuant to Section 13.06, and the remaining vested Account Balance will be distributed in accordance with the distribution provisions under Section 8. If the outstanding loan balance of a deceased Participant is not repaid, the outstanding loan balance shall be treated as a distribution to the Participant and shall reduce the death benefit amount payable to the Beneficiary.

(b) **Direct Rollover.** Upon termination of employment, a Participant may request a Direct Rollover of the loan note (provided the distribution is an Eligible Rollover Distribution) to another qualified plan which agrees to accept a Direct Rollover of the loan note. A Participant may not engage in a Direct Rollover of a loan to the extent the Participant has already received a deemed distribution with respect to such loan.

(c) **Modified loan policy.** A separate loan policy or written modifications to this loan policy may modify this Section 13.10, including, but not limited to: (1) a provision to permit loan repayments to continue beyond termination of employment; (2) to prohibit the Direct Rollover of a loan note; and (3) to provide for other events that may accelerate the Participant's repayment obligation under the loan.

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SECTION 14
PLAN AMENDMENTS, TERMINATION, MERGERS, EXCHANGES, AND TRANSFERS

14.01 Plan Amendments.

(a) **Amendment by the Employer.** The Employer shall have the right at any time to amend the Adoption Agreement at any time. (The ability to amend the Plan as authorized under this subsection (a) applies only to the Employer that executes the Signature Page of the Adoption Agreement. Any amendment to the Plan by the Employer under this subsection (a) also applies to any other Employer that participates under the Plan as a Participating Employer.) Such amendments include, but are not limited to:

(1) The Employer may change any optional selections under the Adoption Agreement.

(2) The Employer may add additional language or provisions to the Plan.

(3) The Employer may change the administrative selections under Appendix C of the Adoption Agreement by replacing the appropriate page(s) within the Adoption Agreement. Such amendment does not require reexecution of the Employer Signature Page of the Adoption Agreement.

(4) The Employer may amend administrative provisions of the Plan document, including the name of the Plan, Employer, Trustee, and Plan Administrator.

(5) The Employer may add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

(b) **Reduction of Account Balance.** No amendment to the plan shall be effective to the extent that it has the effect of reducing a Participant's Account Balance.

14.02 Plan Termination. The Employer may terminate (or freeze) this Plan at any time.

(a) **Distribution upon Plan termination.** Upon the termination of the Plan, the Plan Administrator shall direct the distribution of Account Balances to Participants in accordance with the provisions under Section 8 as soon as administratively practicable after termination of the Plan.

(b) **Termination upon merger, liquidation or dissolution of the Employer.** The Plan may terminate upon the liquidation or dissolution of the Employer provided however, that in any such event, arrangements may be made for the Plan to be continued by any successor to the Employer.

(c) **Missing Participants.** Upon termination of the Plan, if any Participant cannot be located after a reasonable diligent search, the Plan Administrator may make a direct rollover to an IRA selected by the Plan Administrator. An Automatic Rollover under this subsection (c) may be made on behalf of any missing Participant, regardless of the value of his/her vested Account Balance.

14.03 Merger or Consolidation. In the event the Plan is merged or consolidated with another plan, each Participant must be entitled to a benefit immediately after such merger or consolidation that is at least equal to the benefit the Participant would have been entitled to if the Plan terminated immediately before such merger or consolidation.

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SECTION 15
MISCELLANEOUS

15.01 **Exclusive Benefit.** Except as provided under this Section 15, no part of the Plan assets may revert to the Employer prior to the satisfaction of all liabilities under the Plan nor will such Plan assets be used for, or diverted to, a purpose other than the exclusive benefit of Participants or their Beneficiaries.

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

15.02 **Return of Employer Contributions.** Upon written request by the Employer, the Trustee must return any Employer Contributions made because of a mistake of fact must be returned to the Employer within one year of the contribution.

15.03 **Alienation or Assignment.** Except as permitted under applicable statute or regulation, a Participant or Beneficiary may not assign, alienate, transfer or sell any right or claim to a benefit or distribution from the Plan, and any attempt to assign, alienate, transfer or sell such a right or claim shall be void, except as permitted by statute or regulation. Any such right or claim under the Plan shall not be subject to attachment, execution, garnishment, sequestration, or other legal or equitable process. This prohibition against alienation or assignment also applies to the creation, assignment, or recognition of a right to a benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a QDRO pursuant to Section 11.06.

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

15.05 **Military Service.** To the extent required under Code §414(u), an Employee who returns to employment with the Employer following a period of qualified military service will receive any contributions, benefits and service credit required under Code §414(u), provided the Employee satisfies all applicable requirements under the Code and regulations.

15.06 **Annuity Contracts.** Any annuity contract distributed under the Plan must be nontransferable. In addition, the terms of any annuity contract purchased and distributed to a Participant or Beneficiary must comply with all requirements under this Plan.

15.07 **Use of IRS compliance programs.** Nothing in this Plan document should be construed to limit the availability of the IRS' voluntary compliance programs, An Employer may take whatever corrective

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actions are permitted under the IRS voluntary compliance programs, as is deemed appropriate by the Plan Administrator or Employer.

15.08 **Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state in which the Employer has its principal place of business.

15.09 **Waiver of Notice.** Any person entitled to a notice under the Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by law, regulation or other pronouncement.

15.10 **Use of Electronic Media.** The Plan Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

15.11 **Severability of Provisions.** In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.

15.12 **Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

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SECTION 16
PARTICIPATING EMPLOYERS

16.01 **Participation by Participating Employers.** An Employer (other than the Employer that executes the Employer Signature Page of the Adoption Agreement) may elect to participate under this Plan by executing a Participating Employer Adoption Page under the Adoption Agreement. A Participating Employer (including a Related Employer) may not contribute to this Plan unless it executes the Participating Employer Adoption Page.

16.02 **Participating Employer Adoption Page.**

(a) **Application of Plan provisions.** By executing a Participating Employer Adoption Page, a Participating Employer adopts all the provisions of the Plan, including the elective choices made by the signatory Employer under the Adoption Agreement. The Participating Employer may elect under the Participating Employer Adoption Page to modify the elective provisions under the Adoption Agreement as they apply to the Participating Employer.

(b) **Plan amendments.** In addition, unless provided otherwise under the Participating Employer Adoption Page, a Participating Employer is bound by any amendments made to the Plan in accordance with Section 14.01.

(c) **Trustee Declaration.** The Participating Employer agrees to use the same Trustee(s) as is designated on the Trustee Declaration under the Agreement, except as provided in a separate agreement.

16.03 **Compensation of Related Employers.** In applying the provisions of this Plan, Total Compensation includes amounts earned with a Related Employer, regardless of whether such Related Employer executes a Participating Employer Adoption Page. The Employer may elect under AA §5-3(h) to exclude amounts earned with a Related Employer that does not execute a Participating Employer Adoption Page for purposes of determining an Employee's Plan Compensation.

16.04 **Allocation of Contributions and Forfeitures.** Unless selected otherwise under the Participating Employer Adoption Page, any contributions made by a Participating Employer (and any forfeitures relating to such contributions) will be allocated to all Participants employed by the Employer and Participating Employers in accordance with the provisions under this Plan. A Participating Employer may elect under the Participating Employer Adoption Page to allocate its contributions (and forfeitures relating to such contributions) only to the Participants employed by the Participating Employer making such contributions. If so elected, Employees of the Participating Employer will not share in an allocation of contributions (or forfeitures relating to such contributions) made by any other Participating Employer (except in such individual's capacity as an Employee of that other Participating Employer). Thus, for example, a Participating Employer may make a different discretionary contribution and allocate such contribution only to its Employees. Where contributions are allocated only to the Employees of a contributing Participating Employer, a separate accounting must be maintained of Employees' Account Balances attributable to the contributions of a particular Participating Employer. This separate accounting is necessary only for contributions that are not 100% vested, so that the allocation of forfeitures attributable to such contributions can be allocated for the benefit of the appropriate Employees.

16.05 **Discontinuance of Participation by a Participating Employer.** A Participating Employer may discontinue its participation under the Plan at any time. To document a Participating Employer's cessation of participation, the following procedures should be followed: (1) the Participating Employer

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should adopt a resolution that formally terminates active participation in the Plan as of a specified date, (2) the Employer that has executed the Employer Signature Page of the Adoption Agreement should reexecute such page, indicating an amendment by page substitution through the deletion of the Participating Employer Adoption Page executed by the withdrawing Participating Employer, and (3) the withdrawing Participating Employer should provide any notices to its Employees that are required by law. Discontinuance of participation means that no further benefits accrue after the effective date of such discontinuance with respect to employment with the withdrawing Participating Employer. The portion of the Plan attributable to the withdrawing Participating Employer may continue as a separate plan, under which benefits may continue to accrue, through the adoption by the Participating Employer of a successor plan (which may be created through the execution of a separate Adoption Agreement by the Participating Employer) or by spin-off of the portion of the Plan attributable to such Participating Employer followed by a merger or transfer into another existing plan, as specified in a merger or transfer agreement.

16.06 **Operational Rules for Related Employer Groups.** If an Employer has one or more Related Employers, the Employer and such Related Employer(s) constitute a Related Employer group. In such case, the following rules apply to the operation of the Plan.

(a) If the term "Employer" is used in the context of administrative functions necessary to the operation, establishment, maintenance, or termination of the Plan, only the Employer executing the Employer Signature Page under the Adoption Agreement, and any Related Employer executing a Participating Employer Adoption Page, is treated as the Employer.

(b) Hours of Service are determined by treating all members of the Related Employer group as the Employer.

(c) The term Excluded Employee is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.

(d) Compensation is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.

(e) An Employee is not treated as terminated from employment if the Employee is employed by any member of the Related Employer group.

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

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