403(b) PLAN
BASIC PLAN DOCUMENT

TABLE OF CONTENTS

SECTION 1
PLAN DEFINITIONS

SECTION 4
ROLLOVER CONTRIBUTIONS AND TRANSFERS

SECTION 5
LIMITS ON CONTRIBUTIONS

SECTION 6
SPECIAL RULES AFFECTING 403(B) PLANS

SECTION 7
PARTICIPANT VESTING AND FORFEITURES

SECTION 8
PLAN DISTRIBUTIONS

SECTION 9
JOINT AND SURVIVOR ANNUITY REQUIREMENTS

SECTION 10
INVESTMENT VEHICLES AND PARTICIPANT ACCOUNTS

SECTION 11
PLAN ADMINISTRATION AND OPERATION

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, Custodian or Insurance Company maintains for each Participant under the Plan. A Participant may have any (or all) of the following separate Accounts under the Plan:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Employer Contribution Account
- Matching Contribution Account
- Qualified Nonelective Contribution (QNEC) Account
- Qualified Matching Contribution (QMAC) Account
- Safe Harbor Employer Contribution Account
- Safe Harbor Matching Contribution Account
- After-Tax Contribution Account
- Mandatory After-Tax Contribution Account
- Mandatory Pre-Tax 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 excess amounts under Code §415 and for Retirement Income Accounts.

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, Custodian or Insurance Company maintains for the Participant under the Plan.

1.03 **Accumulated Benefit.** The total benefit to which a Participant or Beneficiary is entitled under the Plan, including all contributions made to the Plan and all associated earnings.

1.04 **Actual Contribution Percentage Test (ACP Test).** The special nondiscrimination test that applies to Matching Contributions and/or After-Tax Contributions under the 403(b) Plan. See Section 6.02(a).

1.05 **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.

1.06 **After-Tax Contributions.** Employee Contributions that may be made to the 403(b) Plan by a Participant that are included in the Participant's gross income in the year such amounts are contributed to the Plan and are maintained under a separate After-Tax Contribution Account to which earnings and losses are allocated. See Section 3.06. (For this purpose, Roth Deferrals are not considered as After-Tax Contributions.)

1.07 **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).

1.08 **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).

1.09 **Alternate Payee.** A person designated to receive all or a portion of the Participant's benefit pursuant to a QDRO. See Section 11.07.

1.10 **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.

1.11 **Annual Additions.** The amounts taken into account under a Defined Contribution Plan for purposes of applying the limitation on allocations under Code §415. See Section 5.03(c)(1) for the definition of Annual Additions.

1.12 **Annuity Contract.** An annuity contract that satisfies the requirements of Code §403(b)(1). The Plan may hold Annuity Contracts on an individual or group basis.

1.13 **Annuity Starting Date**. The date a Participant (or Beneficiary) commences distribution from the Plan. If a Participant (or Beneficiary) commences distribution with respect to a portion of his/her Account Balance, a separate Annuity Starting Date applies to any subsequent distribution. If distribution is made in the form of an annuity, the Annuity Starting Date may be treated as the first day of the first period for which annuity payments are made. See Section 9.02(d).

1.14 **Automatic Rollover.** For Involuntary Cash-Out Distributions (as defined in Section 8.06(b)), the Plan Administrator will make a Direct Rollover to an individual retirement plan (IRA) designated by the Plan Administrator. See Section 8.06.

1.15 **Average Contribution Percentage (ACP).** The average of the contribution percentages for the Highly Compensated Employee Group and the Nonhighly Compensated Employee Group, which are tested for nondiscrimination under the ACP Test. See Section 6.02(a)(1).

1.16 **Beneficiary.** A person designated by the Participant (or by the terms of the Plan) to receive a benefit under the Plan upon the death of the Participant. See Section 8.08(c) for the applicable rules for determining a Participant's Beneficiaries under the Plan.

1.17 **Benefiting Participant.** A Participant who receives an allocation of Employer Contributions or forfeitures under the new comparability allocation formula.

1.18 **Break in Service.** The Computation Period (as defined in Section 2.03(a)(2) for purposes of eligibility and Section 7.04 for purposes of vesting) during which an Employee does not complete more than five hundred (500) Hours of Service with the Employer. (See Section 2.07 for a discussion of the eligibility Break in Service rules and Section 7.07 for a discussion of the vesting Break in Service rules.)

1.19 **Cash-Out Distribution.** A total distribution made to a terminated Participant in accordance with Section 7.10(a).

1.20 **Church.** A church as defined under Code §3121(w)(3)(A) and a qualified church-controlled organization described under Code §3121(w)(3)(B).

1.21 **Church Plan.** A plan as defined in ERISA §3(33) with respect to which the Employer has not made an election under Code §410(d).

1.22 **Church-Related Organization.** A Church or convention or association of Churches, including an organization described under Code §414(e)(3)(A).

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

1.24 **Code §415 Limitation.** The limit on the amount of Annual Additions a Participant may receive under the Plan during a Limitation Year. See Section 5.03.

1.25 **Code §501(c)(3) Organization**. An organization that is described under Code §501(c)(3) and exempt from tax under Code §501(a).

1.26 **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.

1.27 **Compensation Limit.** The Compensation Limit is the maximum amount of compensation that may be taken into account under the Plan. For 2010 and 2011, the Compensation Limit is $245,000. The Compensation Limit is adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). In determining the Compensation Limit for any applicable period (the "determination period"), the cost-of-living adjustment in effect for a calendar year applies to any determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months, the Compensation Limit for such period is an amount equal to the otherwise applicable Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short

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

If compensation for any prior determination period is taken into account in determining a Participant's allocations for the current Plan Year, the compensation for such prior determination period is subject to the applicable Compensation Limit in effect for that prior period.

In determining the amount of a Participant's Salary Deferrals, a Participant may defer on Plan Compensation that exceeds the Compensation Limit, provided the total deferrals made by the Participant satisfy the Elective Deferral Dollar Limit and any other limitations under the Plan.

The Compensation Limit applies to Governmental Plans.

1.28 **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.

1.29 **Current Year Testing Method.** A method for applying the ACP Test wherein the Matching Contributions and/or After-Tax Contributions taken into account under the ACP Test are based on contributions in the current Plan Year. See Section 6.02(a)(2)(ii) for a discussion of the Current Year Testing Method under the ACP Test.

1.30 **Custodial Account.** A separate account in which Plan contributions or rollovers are held by a bank or a person who satisfies the conditions of Code §401(f)(2), if:

(a) All amounts held in the account are invested in stock of a regulated investment company (as defined in Code §851(a) relating to mutual funds;

(b) The restrictions on distributions under Treas. Reg. §1.403(b)-6(c) are satisfied with respect to the amounts held in the account;

(c) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of Plan Participants and Beneficiaries; and

(d) The account is not part of a Retirement Income Account.

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

1.32 **Determination Year.** The Plan Year for which an Employee's status as a Highly Compensated Employee is being determined. See Section 1.57(c).

1.33 **Direct Rollover.** A rollover, at the Participant's direction, of all or a portion of the Participant's vested Account Balance directly to an Eligible Retirement Plan. See Section 8.05.

1.34 **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.

1.35 **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. See Section 8.11(e)(2).

1.36 **Early Retirement Age.** The age and/or Years of Service set forth in AA §7-2. Early Retirement Age may be used to determine distribution rights and/or vesting rights. Unless otherwise described under the Adoption Agreement, if a Participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the Participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement. The Plan is not required to have an Early Retirement Age.

1.37 **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.)

1.38 **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 3.08 for information on the Elapsed Time method for allocation conditions.

1.39 **Elective Deferral Dollar Limit.** The maximum amount of Elective Deferrals a Participant may make for any calendar year. See Section 5.02.

1.40 **Elective Deferrals.** A Participant's Elective Deferrals is the sum of all Salary Deferrals and other contributions made pursuant to a Salary Reduction Agreement under a SARSEP described in Code §408(k)(6), a SIMPLE IRA plan described in Code §408(p), a plan described under Code §501(c)(18) (i.e., certain trusts created before June 25, 1959 funded by employee contributions) , and a custodial account or other arrangement described in Code §403(b). A contribution that is made pursuant to an Employee's onetime irrevocable election made on or before the Employee's first becoming eligible to participate under the Plan and a contribution made as a condition of employment that reduces an Employee's compensation is not an Elective Deferral and is treated as an Employer Contribution to the Plan.

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

1.42 **Eligible Employer.** An Eligible Employer is an organization that is qualified to maintain a plan under Code §403(b), including:

(a) A State, but only with respect to an Employee performing services for a public school;

(b) A Code §501(c)(3) Organization with respect to any Employee of the Code §501(c)(3) Organization.

(c) Any employer of a minister described in Code §414(e)(5)(A), but only with respect to the minister;

(d) A minister described in Code §414(e)(5)(A), but only with respect to the Retirement Income Account established for the minister; or

(e) Any other organization deemed by the Internal Revenue Service to be qualified to maintain a plan under Code §403(b).

1.43 **Eligible Rollover Distribution.** An amount distributed from the Plan that is eligible for rollover to an Eligible Retirement Plan. See Section 8.05(a)(1).

1.44 **Eligible Retirement Plan.** A retirement plan or IRA that may receive a rollover contribution, including: a qualified plan described in Code §401(a); an individual retirement account described in Code §408(a); an individual retirement annuity described in Code §408(b); an annuity plan described in Code §403(a); an annuity contract described in Code §403(b); or an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan

1.45 **Employee.** An Employee is any individual employed by the Employer (including any Related Employers) as a common law Employee. (See Rev. Rul. 84-71.) 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. An Employee also includes a minister described in Code §414(e)(5)(A) when performing services in the exercise of his or her ministry.

1.46 **Employer.** Except as otherwise provided, Employer means the Employer that adopts this Plan and any Related Employer. (See Section 2.02(c) for rules regarding coverage of Employees of Related Employers. Also see Section 16 for rules that apply to Employers that execute a Participating Employer Adoption Page.)

1.47 **Employer Contributions.** Contributions the Employer makes pursuant to AA §6, including any QNECs the Employer makes pursuant to AA §6-4 and any Safe Harbor Employer Contributions the Employer makes pursuant to AA §6C of the Agreement. See Section 3.02. Employer Contributions also include a contribution that is made pursuant to an Employee's onetime irrevocable election made on or before the Employee's first becoming eligible to participate under the Plan and a contribution made as a condition of employment that reduces an Employee's compensation.

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

1.49 **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).

1.50 **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.

1.51 **ERISA.** The Employee Retirement Income Security Act of 1974, as amended.

1.52 **Excess Aggregate Contributions.** Amounts which are distributed to correct the ACP Test. See Section 6.02(b)(1).

1.53 **Excess Amount.** Amounts which exceed the Code §415 Limitation. See Section 5.03(c)(4).

1.54 **Excess Deferrals.** Elective Deferrals that exceed the Elective Deferral Dollar Limit (as defined in Section 5.02). (See Section 5.02(b) for rules regarding the correction of Excess Deferrals.)

1.55 **Governmental Plan.** A Governmental Plan is a Plan established and maintained for its Employees by the U.S. government, any State or political subdivision of a State, or any Federal or State agency or instrumentality, as defined under Code §414(d). A Governmental Plan is exempt from certain Code requirements, as described in Section 11.10, and generally is exempt from the Title I requirements of ERISA.

1.56 **Hardship.** A heavy and immediate financial need which meets the requirements of Section 8.09(d).

1.57 **Highly Compensated.** An Employee or Participant is Highly Compensated for a Plan Year if he/she is a Five-Percent Owner (as defined in subsection (a)) or has Total Compensation above the compensation limit (as defined in subsection (b)).

(a) **Five-Percent Owner.** An individual is Highly Compensated if at any time during the Determination Year or Lookback Year, such individual owns (or is considered as owning within the meaning of Code §318) more than 5 percent of the outstanding stock of the Employer or stock possessing more than 5 percent of the total combined voting power of all stock of the Employer. If the Employer is not a corporation, an individual is treated as Highly Compensated if such individual owns more than 5 percent of the capital or profits interest of the Employer.

(b) **Compensation limit.** An individual is Highly Compensated if at any time during the Lookback Year, such individual has Total Compensation from the Employer in excess of $80,000 (as adjusted) and, if elected under AA §11-2, is in the Top Paid Group, as defined in subsection (f) below. The $80,000 amount is adjusted at the same time and in the same manner as under Code §415(d), except that the base period is the calendar quarter ending September 30, 1996.

In determining whether an Employee or Participant is Highly Compensated, the following definitions apply:

(c) **Determination Year.** The Determination Year is the Plan Year for which the Highly Compensated determination is being made.

(d) **Lookback Year.** The Lookback Year is the 12-month period immediately preceding the Determination Year. If the Plan Year is not the calendar year, the Employer may elect in AA §11-2(c) to use the calendar year that begins in the Lookback Year. This election to use the calendar year as the Lookback Year only applies for purposes of applying the compensation limit under subsection (b) above and not for purposes of applying the Five-Percent Owner test in subsection (a) above.

(e) **Total Compensation.** Total Compensation as defined under Section 1.114.

(f) **Top Paid Group.** The Top Paid Group is the top 20% of Employees ranked by Total Compensation. In determining the Top Paid Group, the Employer may use any reasonable method of rounding or tie-breaking. In determining the number of Employees in the Top Paid Group, the Employer may exclude Employees described in Code §414(q)(5) or applicable regulations.

1.58 **Highly Compensated Group.** The group of Highly Compensated Employees who are included in the ACP Test. See Section 6.02(a).

1.59 **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.

(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.

1.60 **Insurance Company.** A life insurance company that issues an Annuity Contract on behalf of a Participant under the Plan.

1.61 **Leased Employee.** An individual who performs services for the Employer pursuant to an agreement between the Employer and a leasing organization. See Section 2.02(b)(3) for rules regarding the treatment of a Leased Employee as an Employee of the Employer.

1.62 **Limitation Year.** The measuring period for determining whether the Plan satisfies the Code §415 Limitation under Section 5.03. See Section 5.03(c)(5).

1.63 **Lookback Year.** The 12-month period immediately preceding the current Plan Year during which an Employee's status as Highly Compensated Employee is determined.

1.64 **Mandatory After-Tax Contribution.** After-Tax Contributions that are mandatory for an Employee to make in order to participate in the 403(b) Plan. These contributions are included in the Participant's gross income in the year such amounts are contributed to the Plan and are maintained under a separate Mandatory After-Tax Contribution Account to which earnings and losses are allocated.

1.65 **Mandatory Pre-Tax Contribution.** Contributions that are mandatory for an Employee to make in order to participate in the 403(b) Plan. These contributions will be maintained under a separate Mandatory Pre-Tax Contribution Account to which earnings and losses are allocated.

1.66 **Matching Contributions.** Matching Contributions are contributions made by the Employer on behalf of a Participant on account of Salary Deferrals or After-Tax Contributions made by such Participant, as designated under AA §6B. Matching Contributions also include any QMACs the Employer makes pursuant to AA §6B-4 and any Safe Harbor Matching Contributions the Employer makes pursuant to AA §6C. See Section 3.04.

A contribution will not be considered a Matching Contribution if such contribution is contributed before the underlying Salary Deferral or After-Tax Contribution election is made or before an Employee performs the services with respect to which the underlying Salary Deferrals or After-Tax Contributions are made (or when the cash that is subject to such election would be currently available, if earlier). A Matching Contribution will not be treated as failing to satisfy the requirements of this paragraph merely because contributions are occasionally made before the Employee performs the services with respect to which the underlying Salary Deferral or After-Tax Contribution election is made (or when the cash that is subject to such

elections would be currently available, if earlier) in order to accommodate bona fide administrative considerations (and such amounts are not paid early for the principal purpose of accelerating deductions).

1.67 **Minimum Gateway Contribution.** The minimum allocation described under the new comparability allocation method that must be provided to each Benefiting Participant in order to use cross-testing to demonstrate compliance with the nondiscrimination requirements under Treas. Reg. §1.401(a)(4)-8.

1.68 **Minister.** A minister as described in Code §414(e)(5)(A).

1.69 **Multiple Employer Plan.** A Plan that covers Employees of an Employer that does not qualify as a Related Employer. To be a Multiple Employer Plan, an unrelated Employer must execute a Participating Employer Adoption Page.

1.70 **Mutual Fund.** A "regulated investment company" within the meaning of Code §851(a).

1.71 **Nonhighly Compensated.** An Employee or Participant who is not a Highly Compensated Employee.

1.72 **Nonhighly Compensated Group.** The group of Nonhighly Compensated Employees included in the ACP Test. See Section 6.02(a).

1.73 **Nonvested Participant Break in Service.** Break in Service rule that applies for eligibility and vesting under Sections 2.07(b) and 7.07(c).

1.74 **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.

1.75 **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 3.08.

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

1.76 **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.

1.77 **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.

1.78 **Plan.** The Plan is the retirement plan established or continued by the Employer for the benefit of its Employees under this Plan document. The Employer must be an Eligible Employer to establish the Plan and the Plan must satisfy the requirements of Treas. Reg. 1.403(b)-3. 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.

1.79 **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.

1.80 **Plan Compensation.** Plan Compensation is Total Compensation, as modified under AA §5-3, which is actually paid to an Employee during the determination period (as defined in subsection (a) below). In determining Plan Compensation, the Employer may elect under AA §5-3(b) to exclude all Elective Deferrals, 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.

If Plan Compensation is also used as Testing Compensation for purposes of demonstrating compliance with the nondiscrimination requirements under Code §401(a)(4), additional nondiscrimination testing may be required. If the Plan is a Safe Harbor Plan, the compensation used for Plan Compensation must meet a safe harbor definition of compensation as set forth in Treas. Reg. §1.414(s)-1(c). Therefore, unless stated otherwise under AA §6C-3, the Plan will use Total Compensation, regardless of any exclusions selected under AA §5-3.

In no case may Plan Compensation for any Participant exceed the Compensation Limit.

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

1.81 **Plan Year.** The 12-consecutive month period designated under AA §2-3 on which the records of the Plan are maintained. If the Plan Year is amended to create a Short Plan Year or if a new Plan has an initial Short Plan Year, the Employer may document such Short Plan Year under AA §2-3(c). (See Section 11.09 for special rules that apply to Short Plan Years.)

1.82 **Predecessor Employer.** An employer that previously employed the Employees of the Employer. See Section 2.06 (eligibility), 3.09 (allocation conditions) and 7.06 (vesting) for the rules regarding the crediting of service with a Predecessor Employer.

1.83 **Pre-Tax Deferrals.** Pre-tax Deferrals are a Participant's Salary Deferrals that are not includible in the Participant's gross income at the time deferred.

1.84 **Prior Year Testing Method.** A method for applying the ACP Test. See Section 6.02(a)(2)(i) for a discussion of the Prior Year Testing Method under the ACP Test.

1.85 **Public School.** A State-sponsored educational organization described under Code §170(b)(1)(A)(ii).

1.86 **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 11.07.

1.87 **Qualified Election.** An election to waive the QJSA or QPSA under the Plan. See Section 9.04.

1.88 **Qualified Joint and Survivor Annuity (QJSA).** A QJSA is an immediate annuity payable over the life of the Participant with a survivor annuity payable over the life of the spouse. If the Participant is not married as of the Annuity Starting Date, the QJSA is an immediate annuity payable over the life of the Participant. See Section 9.02(a).

1.89 **Qualified Matching Contribution (QMAC).** A Matching Contribution made by the Employer that satisfies the requirements under Section 3.04(d).

1.90 **Qualified Nonelective Contribution (QNEC).** An Employer Contribution made by the Employer that satisfies the requirements under Section 3.02(b).

1.91 **Qualified Organization.** An Eligible Employer that is an educational organization described under Code §170(b)(1)(A)(ii); a hospital, a health and welfare service agency (including a home health service agency) described under Treas. Reg. §1.403(b)-4(c)(3)(C); a Church-Related Organization; or any organization described under Code §414(e)(3)(B)(ii).

1.92 **Qualified Preretirement Survivor Annuity (QPSA).** A QPSA is an annuity payable over the life of the surviving spouse that is purchased using 50% of the Participant's vested Account Balance as of the date of death. The Employer may modify the 50% QPSA level under AA §9-2(a). See Section 9.03(a).

1.93 **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).

1.94 **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.

1.95 **Required Beginning Date.** The date by which minimum distributions must commence under the Plan. See Section 8.11(e)(5).

1.96 **Retirement Income Account.** A defined contribution program established and maintained by a Church-Related Organization to provide benefits under Code §403(b) for its Employees and beneficiaries as described under Treas. Reg. 1.403(b)-9. See Section 12.04 for special rules applicable to Retirement Income Accounts.

1.97 **Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution (as defined in Section 8.05(a)(1)) from another retirement plan or IRA. See Section 3.07 for rules regarding the acceptance of Rollover Contributions under this Plan.

1.98 **Roth Deferrals.** Roth Deferrals are Salary Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Deferrals in the Participant's Salary Reduction Agreement. A Participant's Roth Deferrals will be maintained in a separate Account containing only the Participant's Roth Deferrals and gains and losses attributable to those Roth Deferrals. See Section 3.03(g).

1.99 **Safe Harbor Plan.** A 403(b) plan that satisfies the conditions under Section 6.04(a).

1.100 **Safe Harbor Contribution.** A contribution authorized under AA §6C that allows the Plan to qualify as a Safe Harbor Plan. A Safe Harbor Contribution may be a Safe Harbor Matching Contribution or a Safe Harbor Employer Contribution. See Section 6.04(a)(1).

1.101 **Safe Harbor Employer Contributions.** An Employer Contribution that satisfies the requirements under Section 6.04(a)(1)(ii).

1.102 **Safe Harbor Matching Contributions.** A Matching Contribution that satisfies the requirements under Section 6.04(a)(1)(i).

1.103 **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 §402(e)(3). For years beginning after 2005, Salary Deferrals include Roth Deferrals and Pre-Tax Deferrals. Salary Deferrals shall not include any amounts properly distributed as an Excess Amount under Code §415 pursuant to Section 5.03(c)(4). An Employee's Salary Deferrals are treated as employer contributions for all purposes under this Plan, except as otherwise provided under the Code or Treasury regulations. See Section 3.03.

1.104 **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 403(b) Plan. See Section 3.03(a).

1.105 **Section 403(b) Contract.** A contract that satisfies the requirements of Treas. Reg. §1.403(b)-3.

1.106 **Severance from Employment.** Severance from Employment occurs on any date on which an Employee ceases to be an Employee of an Eligible Employer, even though the Employee may continue to be employed either by another entity that is treated as the same employer where either that other entity is not an entity that can be an Eligible Employer (such as transferring from a Code §501(c)(3) organization to a for-profit subsidiary of the Code §501(c)(3) organization) or in a capacity that is not employment with an Eligible Employer (for example, ceasing to be an Employee performing services for a public school but continuing to work for the same State employer). See Treas. Reg. §§1.401(k)-1(d) and 1.403(b)-6(h) for additional guidance.

1.107 **Short Plan Year.** Any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year. See Section 11.09 for the operational rules that apply if the Plan has a Short Plan Year.

1.108 **Special Catch-Up Contributions.** A special catch-up contribution allowed for certain Employees of Qualified Organizations as permitted under Treas. Reg. §1.403(b)-4(c)(3).

1.109 **State.** A State, a political subdivision of a State, or any agency or instrumentality of a State.

1.110 **Student Employee.** A student enrolled and regularly attending classes at the school, college or university, and performing services for such school, college or university as described in Code §3121(b)(10).

1.111 **Targeted QNECs.** QNECs that are allocated under the Targeted QNEC allocation method under Section 3.02(b)(2)(ii).

1.112 **Testing Compensation.** The compensation used for purposes of the ACP Test. In determining the Testing Compensation used for purposes of applying the ACP Test, the Plan Administrator is not bound by any elections made under AA §5 with respect to Total Compensation or Plan Compensation under the Plan. The Plan Administrator may determine on an annual basis (and within its discretion) the components of Testing Compensation for purposes of applying the ACP Test. Testing Compensation must qualify as a nondiscriminatory definition of compensation under Code §414(s) and the regulations thereunder and must be applied consistently to all Participants.

Testing Compensation may be determined over the Plan Year for which the applicable test is being performed or the calendar year ending within such Plan Year. In determining Testing Compensation, the Plan Administrator may take into consideration only the compensation received while the Employee is a Participant under the component of the Plan being tested. In no event may Testing Compensation for any Participant exceed the Compensation Limit. In determining Testing Compensation, the Plan Administrator may exclude amounts paid to an individual as severance pay to the extent such amounts are paid after the common-law employment relationship between the individual and the Employer has terminated, provided such amounts also are excluded in determining Total Compensation under Section 1.114.

1.113 **Top Paid Group.** The top 20% of Employees ranked by Total Compensation for purposes of determining status as a Highly Compensated Employee.

1.114 **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 Code §415 Compensation. For a Minister, Total Compensation is the Minister's earned income as defined under Code§401(c)(2) (without regard to Code §911). Each definition of Total Compensation includes Elective Deferrals (as defined in 1.40), elective contributions to a cafeteria plan under Code §125 or to an eligible deferred compensation plan under Code §457, 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).

(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 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 (2)), provided contributions made with respect to amounts treated as compensation under this subsection (2) 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.

1.115 **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 Custodian and the Employer and/or the Plan Administrator may agree to more frequent valuation dates. See Section 12.01(f).

1.116 **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 lesser number of Hours of Service to earn a Year of Service. Alternatively, the Employer may elect to apply the Elapsed Time method (for eligibility and/or vesting purposes) in calculating an Employee's Years of Service under the Plan.

SECTION 2
ELIGIBILITY AND PARTICIPATION

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

(a) **Salary Deferrals.** Each Employee (other than an Employee excluded from participation under Section 2.02(b)) is an Eligible Participant, without regard to any age or service conditions applicable to other types of contributions to the Plan. An Eligible Participant shall be eligible to make Salary Deferrals as of his/her Employment Commencement Date. 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. If the Employer is an educational organization described in Code §170(b)(1)(A)(ii) exempt from tax under Code §501(a), the maximum age cannot exceed age 26, provided the Plan does not require more than one Year of Service to participate and all Participants are immediately vested in their Accounts.

(c) **After-Tax Contributions and Safe Harbor Contributions.** If the Plan provides for Safe Harbor Contributions or After-Tax Contributions, the same eligibility conditions that apply with respect to Salary Deferrals will also apply to the Safe Harbor Contributions and/or After-Tax Contributions. The Employer may elect to provide different eligibility conditions for Safe Harbor Contributions under AA §6C-3 and for After-Tax Contributions under AA §6D-4.

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 may participate in the Plan.** To participate in the Plan, an individual must be a common law Employee. If an individual is not a common law Employee (e.g., the individual performs services with the Employer as an independent contractor or Leased Employee) such individual may not participate under the Plan. If an individual's status as a non-Employee is challenged by the IRS, the reclassification of such individual as an Employee will not create retroactive rights to participate in the Plan. Thus, for example, if the IRS should find that an independent contractor or Leased Employee is really a common law Employee, such individual will be eligible to participate in the Plan as of the date the IRS issues a final determination declaring such individual to be a common law Employee, provided the individual has satisfied all conditions for participating in the Plan (as described in Section 2.01). For periods prior to the date of such final determination, the reclassified Employee will not have any rights to accrued benefits under the Plan, except as agreed to by the Employer and the IRS, or as set forth in an amendment adopted by the Employer.

(b) **Excluded Employees.** The Employer may elect under AA §3-1 to exclude designated classes of Employees. 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. For this purpose, an Employee will not be considered a Collectively Bargained Employee for a Plan Year if more than two percent of the Employees who are covered pursuant to the collective bargaining agreement are professionals as defined in Treas. Reg. §1.410(b)-9. For this purpose, the term "Employee representatives" does not include any organization more than half of whose members are Employees who are owners, officers, or executives of the Employer.

(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 Employer that constitutes U.S. source income (within the meaning of Code §861). If a nonresident alien

Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty.

(3) **Leased Employees.** A Leased Employee is not eligible to participate under the Plan unless such individual satisfies the requirements for treatment as a common law Employee of the Employer. See Rev. Rul. 87-41.

(4) **Student Employees.** The Employer may elect under AA §3-1(d) (subject to the conditions in Code §410(b)(4)) to exclude Employees who are Student Employees with respect to Salary Deferrals, Employer Contributions and Matching Contributions. A Student Employee is a student enrolled and regularly attending classes at the school, college or university, and performs services for school, college or university as described in Code §3121(b)(10).

(5) **Employees who normally work fewer than 20 hours per week.** The Employer may elect under AA §3-1(e) (subject to the conditions in Code §410(b)(4)) to exclude Employees who normally work fewer than 20 hours per week (or such lower number of hours per week as elected in the Agreement) with respect to Salary Deferrals, Employer Contributions and Matching Contributions. An Employee normally works fewer than 20 hours per week if and only if (1) for the 12-month period beginning on the date of the Employee's Employment Commencement date, the Employer reasonably expects the Employee to work fewer than 1,000 Hours of Service and (2) for each Plan Year after the close of the 12-month period beginning on the date of the Employee's Employment Commencement date, the Employee worked fewer than 1,000 Hours of Service in the preceding 12-month period.

If a Plan is covered by Title I of ERISA, the Plan must satisfy the minimum age and service requirements of ERISA §202(a) and an Employee otherwise excluded under AA §3-1(e) must enter the Plan no later than the first day of the Plan Year or 6 months (whichever is earlier) following the attainment of age 21 and completion of a Year of Service. For this purpose, an Employee is credited with a Year of Service if such Employee is credited with 1,000 Hours of Service in the 12-month period starting with the Employee's Employment Commencement Date or in any Plan Year commencing after the Employment Commencement Date. Once eligible due to satisfaction of this service condition, the Employee will continue to be eligible under the Plan.

(6) **Additional exclusions for Salary Deferral contributions.** With respect to Employees eligible to make Salary Deferrals, the Employer may elect to exclude from the Plan any person:

(i) who participates in an eligible deferred compensation plan within the meaning of Code §457;

(ii) who is eligible to participate in a 401(k) plan or another 403(b) plan sponsored by the Employer which provides for contributions pursuant to a Salary Reduction Agreement; or

(iii) whose contribution to the Plan under its maximum deferral percentage would be $200 or less.

(7) **Inclusion of excludable Employee.** If the Employer does not exclude an individual excludable from participation under the above categories, then all Employees within the same category must be eligible to participate in the Plan.

(c) **Employees of Related Employers.** If the Employer is a member of a Related Employer group, Employees of each member of the Related Employer group may participate under this Plan, provided the Related Employer executes a Participating Employer Adoption Page under the Adoption Agreement. If a Related Employer does not execute a Participating Employer Adoption Page, any Employees of such Related Employer are not eligible to participate in the Plan. See Section 16.06 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.

(d) **Ineligible Employee becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the Plan's minimum age and service conditions (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. **The Employer may not impose age or service conditions on an Employee's ability to make Salary Deferrals.**

(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. The Plan may not require an Employee to attain an age older than age 21 or to complete more than one Year of Service. However, the Plan may require an Employee to complete two Years of Service prior to participating in the Plan if the Employer elects full and immediate vesting under AA §8.

(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 AA §4-3(a) to require a lesser 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(b)).

(i) **Plan Years.** If the Employer elects under AA §4-3(b) 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. (See Section 11.09 for rules that apply if there is a Short Plan Year.)

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

(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.

.

(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:

(A) by reason of the pregnancy of the Employee,

(B) by reason of the birth of a child of the Employee,

(C) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or

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

(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 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 Matching Contributions and Employer Contributions.

(1) **Entry Date requirements.** In no event may a Participant's Entry Date be later than: (i) the first day of the Plan Year beginning after the date on which the Participant satisfies the minimum age and service conditions described in subsection (a) above, or (ii) six months after the date the Participant satisfies such age and service conditions. An Eligible Employee must be employed by the Employer on his/her Entry Date to begin participating in the Plan on such date.

(2) **Single annual Entry Date.** If the Employer elects a single annual Entry Date under AA §4-2(f), the maximum permissible age and service conditions described in subsection (a) above are reduced by one-half (1/2) year, unless: (1) the Employer elects under AA §4-2(i) to use the Entry Date *nearest* the date the Employee satisfies the Plan's minimum age and service conditions *and* the Entry Date is the first day of the Plan Year or (2) the Employer elects under AA §4-2(j) to use the Entry Date *preceding* the date the Employee satisfies the Plan's minimum age and service conditions.

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 **Rehired Employees**. Subject to the Break in Service rules under Section 2.07, if a terminated Employee is subsequently rehired, such Employee will be eligible to participate in the Plan on his/her reemployment date, if the Employee is an Eligible Employee and the Employee had satisfied the Plan's minimum age and service conditions prior to his/her termination of employment. If a rehired Employee had not satisfied the Plan's minimum age and service conditions prior to termination of employment, such Employee is eligible to participate in the Plan on the appropriate Entry Date following satisfaction of the eligibility requirements under Section 2.03. For purposes of Salary Deferrals, this requirement is deemed satisfied if a rehired Employee is permitted to commence making Salary Deferrals as of the beginning of the first payroll period commencing after the Employee's reemployment date.

2.06 **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. If the Employer does not maintain the plan of a Predecessor Employer, service with such Predecessor Employer does not count for eligibility purposes 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 3.08 (see Section 3.09).

2.07 **Break in Service Rules.** Generally, an Employee will be credited with all service earned for the Employer, including service earned prior to the effective date of the Plan and service earned while the Employee is an ineligible Employee. However, the Employer may elect under AA §4-3 to disregard an Employee's service with the Employer under the Break in Service rules set forth in this Section 2.07.

(a) **Break in Service.** An Employee incurs a Break in Service for any Eligibility Computation Period (as defined in Section 2.03(a)(2)) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects under AA §4-3(a) to require less than 1,000 Hours of Service to earn a Year of Service for eligibility purposes, a Break in Service will occur for any Eligibility Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn an eligibility Year of Service. If the Employer elects the Elapsed Time Method under AA §4-1(a)(6), an Employee incurs a Break in Service upon incurring a 12-month Period of Severance.

(b) **Nonvested Participant Break in Service rule.** Under the Nonvested Participant Break in Service rule, if a Participant is totally nonvested (i.e., 0% vested) in his/her entire Account Balance, and such Participant incurs five (5) or more consecutive one-year Breaks in Service (or, if greater, a consecutive period of Breaks in Service at least equal to the Participant's aggregate number of Years of Service with the Employer), the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of determining eligibility to participate in the Plan. If the Employer elects the Elapsed Time Method under AA §4-1(a)(6), an Employee will be treated as incurring five consecutive Breaks in Service when he/she incurs a Period of Severance of at least 60 months.

If the Employee returns to employment with the Employer, such Employee will be treated as a new Employee for purposes of determining eligibility under the Plan. For this purpose, a Participant who has made Salary Deferrals under the Plan will be treated as having a vested interest in the Plan. Thus, the Nonvested Participant Break in Service rule may not be used with respect to any contributions under the Plan (even if such Employee is totally nonvested in such contributions) for a Participant who has made Salary Deferrals under the Plan. The Employer must elect to apply the Nonvested Participant Break in Service rule under AA §4-3(e).

(c) **Special Break in Service rule for Plans using two Years of Service for eligibility.** If the Employer has elected under AA §4-1(a)(5) to require Employees to complete two Years of Service to become eligible to participate in the Plan, any Employee who incurs a one-year Break in Service before satisfying the two Years of Service eligibility condition will not be credited with service earned before such one-year Break in Service.

(d) **One-Year Break in Service rule.** Under the One-Year Break in Service rule, if an Employee incurs a one-year Break in Service, such Employee will not be credited with any service earned prior to such one-year Break in Service for purposes of determining eligibility to participate under the Plan until the Employee has completed a Year of Service after the Employee's return to employment. The Employer must elect to apply the One-Year Break in Service rule under AA §4-3(f).

(1) **Temporary disregard of service.** If a Participant has service disregarded under the One-Year Break in Service rule, such Participant will have his/her service reinstated upon returning to employment as of the first day of the Eligibility Computation during which the Participant completes a Year of Service. For this purpose, the Eligibility Computation Period is the 12-month period commencing on the date the Employee first performs an Hour of Service following the Break in Service. If a Participant does not complete a Year of Service during the first Eligibility Computation Period following his/her return to employment, subsequent Eligibility Computation Periods will be determined based on Plan Years beginning with the first Plan Year following the Employee's

return to employment (unless the Employer selects Anniversary Years as the Eligibility Computation Period under AA §4-3(b).

(2) **Application to Salary Deferrals.** The One-Year Break in Service rule will not apply to Salary Deferrals under the Plan.

SECTION 3
PLAN CONTRIBUTIONS

This Section 3 describes the type of contributions that may be made to the Plan. The type of contributions that may be made to the Plan and the method for allocating such contributions may vary depending on the type of Plan involved. (See Section 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 3.08) 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. With regard to Salary Deferrals, a reasonable period of time is no longer than 15 business days following the month in which the Employer otherwise would have paid the Salary Deferrals to the Employee. An Employer with a Plan subject to ERISA must contribute Salary Deferrals and After-Tax Contributions within a reasonable period of time after the Employee otherwise would have been paid the Salary Deferrals or Employee Contributions, but in no case can this time be longer than 15 business days following the month in which the Employer otherwise would have paid the Salary Deferrals or After-Tax Contributions to the Employee.

(c) Contributions for former Employees. If so provided under AA §6-5(b), the Employer will continue to make Employer Contributions on behalf of a former Employee. For purposes of determining Employer Contributions for a former Employee, the former Employee is deemed to have monthly Total Compensation for the period through the end of the taxable year of the Employee in which he or she ceases to be an Employee and through the end of each of the next five taxable years. The amount of monthly Total Compensation is equal to 1/12 of the former Employee's Total Compensation during the former Employee's most recent year of service, as defined in Treas. Reg. §1.403(b)-4(e).

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 3.08 below.

(a) Employer Contribution formulas. 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.

(1) 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.

(i) 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.

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

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

The Plan must satisfy the general nondiscrimination rate group test under Treas. Reg. §1.401(a)(4)-2(c) with respect to the separate contribution rates under the Plan. The Plan will use standard interest rate and mortality table assumptions in accordance with Treas. Reg. §1.401(a)(4)-12 when testing the allocation formula for nondiscrimination.

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

(B) **Special rules.**

(I) **Family Members.** The Employer may designate in AA §6-3(b)(3)(i) to establish a separate allocation group for any Family Member of a Five-Percent Owner of the Employer. For this purpose, Family Members include the spouse, children, parents and grandparents of a Five-Percent Owner. (See Section 1.57(a) for the definition of a Five-Percent Owner.)

(II) **Benefiting Participants.** The Employer may designate in AA §6-3(b)(3)(ii) to establish a separate allocation group for any Nonhighly Compensated Benefiting Participant who does not receive the Minimum Gateway Contribution described under subsection (III)(a) below. For this purpose, a Participant is treated as a Benefiting Participant if such Participant receives an allocation of Employer Contributions (other than Salary Deferrals or Matching Contributions (including Safe Harbor Matching Contributions and QMACs)) or receives an allocation of forfeitures for the Plan Year (other than forfeitures that are subject to Code §401(m) because they are allocated as a Matching Contribution).

(III) **Special gateway contribution.** If a separate allocation group is not established for Benefiting Participants under AA §6-3(b)(3)(ii), the Employer may make an additional discretionary Employer Contribution ("special gateway contribution") for all Nonhighly Compensated Benefiting Participants (as described in subsection (II)) in an amount necessary to provide the Minimum Gateway Contribution described in subsection (a) below. The special gateway contribution will be allocated to all Nonhighly Compensated Benefiting Participants who have not otherwise received the Minimum Gateway Contribution without regard to any allocation conditions otherwise applicable to Employer Contributions under the Plan. However, Participants who the Plan Administrator disaggregates pursuant to Treas. Reg. §1.410(b)-7(c)(4) because they have not satisfied the greatest minimum age and service conditions permissible under Code §410(a) shall not be eligible to receive an allocation of any special gateway contribution made pursuant to this subsection (III).

(a) **Minimum Gateway Contribution.** A Benefiting Participant is treated as receiving the Minimum Gateway Contribution if the Participant has an allocation rate that is equal to the lesser of: (1) one-third of the allocation rate of the Highly Compensated Employee with the highest allocation rate for the Plan Year or (2) 5% of Compensation (as defined in subsection (b) below). In determining whether a Benefiting Participant has received an allocation that satisfies the Minimum Gateway Contribution, all Employer Contributions allocated to the Participant for the Plan Year are taken into account. For this purpose, Employer Contributions does not include any Matching Contributions, Salary Deferrals, or QNECs that are used in the ACP Test.

(b) **Compensation for 5% gateway allocation.** For purposes of the 5% gateway contribution under (2) of subsection (a) above, Compensation means Total Compensation for the Plan Year. However, for this purpose, Total Compensation shall exclude amounts paid while an Employee is not a Participant in the Plan.

(c) **Compensation under one-third gateway allocation.** To determine whether a Benefiting Participant has received an allocation that satisfies the one-third gateway allocation requirement under (1) of subsection (a) above, a Participant's allocation rate is determined by dividing the total Employer Contribution made on behalf of such Participant by the Participant's Plan Compensation (as defined in AA §5-3), provided the definition satisfies Treas. Reg. §1.414(s). However, solely for purposes of

determining the allocation rate of any Nonhighly Compensated Employee, QNECs that are used in the ACP Test shall not be taken into account.

(IV) **Special restrictions that apply to "short-service" Employees**. A designated Employee allocation group which is limited to Nonhighly Compensated Employees with the lowest amount of compensation and/or the shortest periods of service may be deemed to violate the nondiscrimination requirements under Code §401(a)(4).

(iii) **Age-based allocation.** Under the age-based allocation method, the Employer will allocate the discretionary Employer Contribution on the basis of each Participant's adjusted Plan Compensation. Amounts allocated under an age-based allocation must satisfy the general nondiscrimination rate group test under Treas. Reg. §1.401(a)(4)-2(c).

(A) **Adjusted Plan Compensation.** For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor (as described in subsection (B) below).

(B) **Actuarial Factor.** A Participant's Actuarial Factor must be determined based on standard actuarial assumptions that satisfy Treas. Reg. §1.401(a)(4)-12 using a testing age that is the later of Normal Retirement Age or the Employee's current age. Unless designated otherwise under AA §6-3(c), a Participant's Actuarial Factor is determined based on an 8.5% interest rate and the UP-1984 mortality table. (See Appendix A of the Plan for the Actuarial Factors associated with an 8.5% interest rate and the UP-1984 mortality table and a testing age of 65. If an interest rate other than 8.5% or a mortality table other than the UP-1984 mortality table is selected under AA §6-3(c), or if a testing age other than age 65 is used, the Plan must determine the appropriate Actuarial Factors based on the designated interest rate, mortality table and testing age.)

(iv) **Other allocation method.** The Employer may elect and describe under AA 6-3 any other allocation method, provided such method does not improperly discriminate in favor of the Highly Compensated Employees.

(2) **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).

(3) **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).

(b) **Qualified Nonelective Contributions (QNECs).** For any Plan Year, the Employer may make a discretionary QNEC on behalf of Nonhighly Compensated Participants in order to correct an ACP Test failure. See Section 6.02(b)(3). Such QNEC will be allocated as a uniform percentage of Plan Compensation to all Nonhighly Compensated Participants, without regard to any allocation conditions selected in AA §6-6. A QNEC must satisfy the requirements for a QNEC described in subsection (1) below at the time the contribution is made to the Plan. If the Employer makes both a discretionary Employer Contribution under AA §6-2(a) and a discretionary QNEC, the Employer must designate, in writing, the amount of the Employer Contribution which is designated as a regular Employer Contribution and the amount designated as a QNEC.

(1) **Requirements for a QNEC.** In order to qualify as a QNEC, an Employer Contribution must satisfy the following requirements:

(i) **100% vesting.** A QNEC must be 100% vested when contributed to the Plan.

(ii) **Distribution restrictions.** A QNEC must be subject to the same distribution restrictions applicable to Salary Deferrals under Section 8.09(c), except that no portion of a Participant's QNEC Account may be distributed on account of Hardship. See Section 8.09(d).

(2) Allocation method for QNECs.

(i) Participants. The Employer may elect under AA §6-4(a) to allocate any QNEC under the Plan to all Participants (rather than to just Nonhighly Compensated Participants).

(ii) Targeted QNECs. If the Employer elects to make Targeted QNECs under AA §6-4(b), the QNEC will be allocated to Nonhighly Compensated Participants in the QNEC Allocation Group, starting with Nonhighly Compensated Participants with the lowest Plan Compensation for the Plan Year. For this purpose, the QNEC Allocation Group is made up of the Nonhighly Compensated Participants (equal to one-half of total Nonhighly Compensated Participants under the Plan), with the lowest level of Plan Compensation.

(A) 5% of Plan Compensation limit. The QNEC will be allocated to the Nonhighly Compensated Employees in the QNEC Allocation Group up to a maximum of 5% of Plan Compensation. The QNEC will be allocated first to the Nonhighly Compensated Participant(s) with the lowest Plan Compensation (up to the 5% of Plan Compensation maximum allocation) and continuing with Nonhighly Compensated Employees in the QNEC Allocation Group with the next higher level of Plan Compensation, until all of the QNEC has been allocated (or until all Nonhighly Compensated Employees in the QNEC Allocation Group have received the maximum 5% of Plan Compensation QNEC allocation).

(B) Reallocation to lowest one-half of Nonhighly Compensated Participants. If a QNEC remains unallocated after the allocation under subsection (A), the remaining QNEC will continue to be allocated in accordance with subsection (A), in increments of 5% of Plan Compensation until the entire QNEC is allocated.

(C) Additional members in QNEC Allocation Group. If at any time, a Nonhighly Compensated Participant is not able to receive a full QNEC allocation under subsection (A) or (B) (e.g., due to the application of the Code §415 Limitation), the Nonhighly Compensated Participant with the next higher level of Plan Compensation (that is not in the QNEC Allocation Group) will be added to the QNEC Allocation Group.

(c) Frozen Plan. The Employer may designate under AA §2-4 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions with respect to Plan Compensation earned after the date identified in the Agreement.

3.03 Salary Deferrals. The Employer may elect under AA §6A to authorize Participants to make Salary Deferrals under the Plan. A Participant's total Salary Deferrals under this Plan may not exceed the Elective Deferral Dollar Limit described under Section 5.02 or the amount permitted under the Code §415 Limitation described under Section 5.03.

(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 may not be effective prior to the later of: (a) the date the Employee becomes a Participant; (b) the date the Participant executes the Salary Reduction Agreement; or (c) the date the 403(b) plan is adopted or effective. A Salary Reduction Agreement is valid even though it is executed by an Employee before he/she actually has qualified as a Participant, so long as the Salary Reduction Agreement is not effective before the date the Employee is a Participant.

(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-8 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-8(a) 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-8(a). 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(b) 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(b), 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.

(1) **Special rules for Eligible Automatic Contribution Arrangement.** Effective for Plan Years beginning on or after January 1, 2008, if the Plan provides for an automatic deferral election provision under AA §6A-8, and such automatic deferral election qualifies as an Eligible Automatic Contribution Arrangements (EACA), the Plan may provide for special permissible withdrawals (as set forth in subsection (2) below) and will qualify for the special delayed testing date for purposes of making refunds of Excess Aggregate Contributions (as described in subsection (3) below). To qualify as an EACA, the Plan must satisfy the provisions of subsection (i) for the entire Plan Year.

(i) **Definition of Eligible Automatic Contribution Arrangement**. The Plan will qualify as an EACA under this subsection (1) if the Plan provides for an automatic deferral election (as described in subsection (A)) and provides, in the absence of an investment election by the Participant, that Salary Deferrals are invested in accordance with DOL regulations under ERISA §404(c)(5). In addition, an annual written notice must be provided in accordance with subsection (B) below.

(A) **Automatic deferral election.** To qualify as an EACA, each Employee eligible to participate in the Plan, in the absence of an affirmative election, must be treated as having elected to make Salary Deferrals in an amount equal to a uniform percentage of Plan Compensation (as set forth in AA §6A-8(a)). The automatic deferral election ceases to apply with respect to any Employee who makes an affirmative election (that remains in effect) to make Salary Deferrals in a different amount or percentage of Plan Compensation or to not have any Salary Deferrals made on his/her behalf. For this purpose, an automatic deferral election will not fail to be a uniform percentage of Plan Compensation merely because:

(I) The deferral percentage varies based on the number of years an eligible Employee has participated in the Plan (e.g., due to the application of an automatic increase provisions);

(II) The automatic deferral election does not reduce a Salary Deferral election in effect immediately prior to the effective date of the automatic deferral election;

(III) The rate of Salary Deferrals is limited so as not to exceed the limits of Code §§401(a)(17), 402(g) (determined with or without Catch-Up Contributions) and 415; or

(IV) The automatic deferral election is not applied during the period an employee is not permitted to make Salary Deferrals pursuant to Section 8.09(d)(1)(ii)(C).

(B) **Annual notice requirement.** Each eligible Employee must receive a written notice describing the Participant's rights and obligations under the Plan which is sufficiently accurate and comprehensive to apprise the Employee of such rights and obligations, and is written in a manner calculated to be understood by the average Plan Participant.

(I) **Contents of annual notice.** To qualify as an EACA, the annual notice must contain the same information as applies for purposes of the safe harbor notice described under Section 6.04(a)(4). However, to qualify as an EACA, the annual notice must also include a description of:

(a) the level of Salary Deferrals which will be made on the Employee's behalf if the Employee does not make an affirmative election;

(b) the Employee's right under the EACA to elect not to have Salary Deferrals made on the Employee's behalf (or to elect to have such Salary Deferrals made in a different amount or percentage of Plan Compensation);

(c) how contributions under the EACA will be invested and, if the Plan provides for Participant direction of investment, how Salary Deferrals made pursuant to an automatic deferral election will be invested in the absence of an investment election by the Employee; and

(d) the Employee's right to make a permissible withdrawal (as described under subsection (2) below), if applicable, and the procedures to elect such a withdrawal.

(II) **Timing of annual notice.** The annual notice described under this subsection (B) must be provided at the same time and in the same manner as the annual safe harbor notice described in Section 6.04(a)(4). The annual notice must be provided within a reasonable period before the beginning of each Plan Year (or, in the year an Employee becomes an eligible Employee, within a reasonable period before the Employee becomes an eligible Employee). In addition, a notice satisfies the timing requirements only if it is provided sufficiently early so that the Employee has a reasonable period of time after receipt of the notice and before the first Salary Deferral made under the arrangement to make an alternative deferral election.

The annual notice will be deemed timely if it is provided to each eligible Employee at least 30 days (and no more than 90 days) before the beginning of each Plan Year. In the case of an Employee who does not receive the notice within such period because the Employee becomes an eligible Employee after the 90th day before the beginning of the Plan Year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the Employee becomes an eligible Employee (and no later than the date the Employee becomes an eligible Employee).

(2) **Permissible Withdrawals under Eligible Automatic Contribution Arrangement.** If so elected under AA §6A-8(d), effective for Plan Years beginning on or after January 1, 2008, any Employee who has Salary Deferrals contributed to the Plan pursuant to an automatic deferral election under the EACA may elect to withdraw such contributions (and earnings attributable thereto) in accordance with the requirements of this subsection (2). A permissible withdrawal under this subsection (2) may be made without regard to any elections under AA §10 and will not cause the Plan to fail the prohibition on in-service distribution applicable to Salary Deferrals under Section 8.09(c). In addition, such withdrawal may be made without regard to any notice or consent otherwise required under Code §401(a)(11) or §417.

(i) **Amount of distribution.** A distribution satisfies the requirement of this subsection (2) if the distribution is equal to the amount of Salary Deferrals made pursuant to the automatic deferral election through the effective date of the withdrawal election (as described in subsection (ii)) adjusted for allocable gains and losses as of the date of the distribution. For this purpose, allocable gains and losses are determined in the same manner as for corrective distributions of Excess Contributions (as described in Section 6.02(b)(2)(ii)).

The distribution amount determined under this subsection (i) may be reduced by any generally applicable fees. However, the Plan may not charge a greater fee for a permissible distribution under this subsection (2) than applies with respect to other Plan distributions.

(ii) **Timing.** An election to withdraw Salary Deferrals under this subsection (2) must be made no later than 90 days after the date of the first default Salary Deferral under the EACA. The date of the first default Salary Deferral is the date that the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income. The effective date of an election described in this subsection (2) cannot be later than the last day of the payroll period that begins after the date the election is made.

(iii) **Tax consequences of permissible withdrawal.** Any amount distributed under this subsection (2) is includible in the eligible Employee's gross income for the taxable year in which the distribution is made.

However, the portion of any distribution consisting of Roth Deferrals is not included in an Employee's gross income a second time. In addition, a permissible withdrawal under this subsection (2) is not subject to any penalty tax under Code §72(t).

(iv) **Forfeiture of matching contributions.** In the case of any withdrawal made under this subsection (2), any Matching Contributions made with respect to such withdrawn Salary Deferrals must be forfeited. Any Matching Contributions which are forfeited under this subsection (iv) are not taken into account under the ACP Test (as described in Section 6.02(a)).

(3) Expansion of corrective distribution period for Eligible Automatic Contribution Arrangements. If the Plan qualifies as an EACA (as defined in subsection (1) above), the corrective distribution provisions applicable to Excess Aggregate Contributions under Section 6.02(b)(2) are modified to allow a corrective distribution no later than 6 months (instead of 2½ months) after the last day of the Plan Year in which such excess amounts arose to avoid the 10% excise tax with respect to such corrective distributions. This subsection (3) is effective for corrective distributions made for Plan Years beginning on or after January 1, 2008.

(4) Preemption of state law. In applying the provisions of this Section (4), any law of a State which would directly or indirectly prohibit or restrict the inclusion of an automatic contribution arrangement shall be superseded.

(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, such as the Code §415 Limitation (described in Section 5.03) and the Elective Deferral Dollar Limit (described in Section 5.02).

(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 2009 or 2010 is $5,500. For taxable years beginning after 2010, 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 Elective Deferral Dollar Limit or the Code §415 Limitation.

(e) **Special Catch-Up Contributions for certain Employees of Qualified Organizations.** If permitted under AA §6A-5 , solely for a Participant who is an Employee with 15 years of service (as defined in Treas. Reg. §1.403(b)-4(e)) with an Employer that is a Qualified Organization, the limit under Code §402(g) for a Participant's taxable year is increased to the least of the following:

(1) $3,000,

(2) $15,000 less total Salary Deferrals made for the Employee by the Qualified Organization in prior taxable years, or

(3) The excess of $5,000 multiplied by the number of years of service (as defined in Treas. Reg. §1.403(b)-4(e)) of the Employee with the Qualified Organization, over the total salary Deferrals made for the Employee by the Qualified Organization for prior years.

(f) **Coordination of Age 50 Catch-Up Contributions and Special Catch-Up Contributions**. The Plan will treat any catch-up amount that is contributed by an Employee who is eligible for both the Age 50 Catch-Up Contribution and Special Catch-Up Contribution first as a Special Catch-Up Contribution to the extent permitted and then as an Age 50 Catch-Up Contribution.

(g) **Roth Deferrals.** If permitted under AA §6A-6, a Participant may designate all or a portion of his/her Salary Deferrals as Roth Deferrals. For this purpose, a Roth Deferral is a Salary Deferral that satisfies the following conditions:

(1) **Irrevocable election.** The Participant makes an irrevocable election (at the time the Participant enters into his/her Salary Reduction Agreement) designating all or a portion of his/her Salary Deferrals as Roth Deferrals. The irrevocable election applies with respect to Salary Deferrals that are made pursuant to such election. A Participant may modify or change a Salary Reduction Agreement to increase or decrease the amount of Salary Deferrals designated as Roth Deferrals, provided such change or modification applies only with respect to Salary Deferrals made after such change or modification. (See subsection (a) above for rules regarding the timing of permissible changes or modifications to a Participant's Salary Reduction Agreement.)

(2) **Subject to immediate taxation.** To the extent a Participant designates all or a portion of his/her Salary Deferrals as Roth Deferrals, such amounts will be includible in the Participant's income at the time the Participant would have received the contribution amounts in cash if the Employee had not made the Salary Deferral election; and

(3) **Separate account.** Any amounts designated as Roth Deferrals will be maintained by the Plan in a separate Roth Deferral Account. The Plan will credit and debit all contributions and withdrawals of Roth Deferrals to such separate Account. The Plan will separately allocate gains, losses, and other credits and charges to the Roth Deferral Account on a reasonable basis that is consistent with such allocations for other Accounts under the Plan. However, in no event may the Plan allocate forfeitures under the Plan to the Roth Deferral Account. The Plan will separately track Participants' accumulated Roth Deferrals and the earnings on such amounts.

(4) **Satisfaction of Salary Deferral requirements.** Roth Deferrals are subject to the same requirements as apply to Salary Deferrals. Thus Roth Deferrals are subject to the following requirements:

(i) Roth Deferrals are always 100% vested, as provided in Section 7.01.

(ii) Roth Deferrals are subject to the Elective Deferral Dollar Limit, as described in Section 5.02. For this purpose, all Salary Deferrals (both Pre-Tax Salary Deferrals and Roth Deferrals) are aggregated in applying the Elective Deferral Dollar Limit.

(iii) Roth Deferrals are subject to the same distribution restrictions as apply to Salary Deferrals under Section 8.09(c).

(iv) Roth Deferrals are subject to the required minimum distribution requirements under Code §401(a)(9), as set forth in Section 8.11.

(5) **Rollover of Roth Deferrals.**

(i) **Rollovers from this Plan.** For purposes of the rollover rules under Section 8.05, a Direct Rollover of a distribution from a Participant's Roth Deferral Account will only be made to another Roth Deferral Account under a qualified plan described in Code §401(a) or an annuity contract or custodial account described in Code §403(b) or to a Roth IRA described in §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).

(ii) **Rollovers to this Plan.** Subject to the provisions under Section 3.07, a Participant may make a Rollover Contribution to his/her Roth Deferral Account only if the rollover is a Direct Rollover from another Roth Deferral Account under a retirement plan (as described in Section 3.07) and only to the extent the rollover is permitted under the rules of Code §402(c). A rollover of Roth Deferrals may not be made to this Plan from a Roth IRA.

(iii) **Minimum rollover amount.** The Plan will not provide for a Direct Rollover (including an Automatic Rollover) for distributions from a Participant's Roth Deferral Account if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than $200. In addition, any distribution from a Participant's Roth Deferral Account is not taken into account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than $200 during a year. However, Eligible Rollover Distributions from a Participant's Roth Deferral Account are taken into account in determining whether the total amount of the Participant's Account Balances under the Plan exceeds $1,000 for purposes of applying the Automatic Rollover provisions under Section 8.06.

(iv) **Separate treatment of Roth Deferrals.** The provisions under Section 8.05 of the Plan that allow a Participant to elect a Direct Rollover of only a portion of an Eligible Rollover Distribution but only if the amount rolled over is at least $500 is applied by treating any amount distributed from the Participant's Roth Deferral Account as a separate distribution from any amount distributed from the Participant's other Accounts in the Plan, even if the amounts are distributed at the same time.

3.04 **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 3.08 below.

(a) **Contributions eligible for Matching Contributions.** The Matching Contribution formula(s) applies to Salary Deferrals and After-Tax Contributions, to the extent authorized under the Plan. If the Matching Contribution formula(s) applies to both Salary Deferrals and After-Tax Contributions, such contributions are aggregated to determine the Matching Contributions under the Plan. Any reference to Salary Deferrals under the Matching Contribution formula(s) includes After-Tax Contributions to the extent such amounts are eligible for Matching Contributions 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 (and After-Tax Contributions, if applicable) 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.

(d) **Qualified Matching Contributions (QMACs).** Notwithstanding any contrary, for any Plan Year, the Employer may make a discretionary QMAC on behalf of Nonhighly Compensated Participants in order to correct an ACP Test failure. See Sections 6.02(b)(3). Such QMAC will be allocated uniformly to all Nonhighly Compensated Participants, without regard to any allocation conditions selected in AA §6B-7.

Any QMAC contributed pursuant to this subsection (d) must satisfy the following requirements at the time the contribution is made to the Plan, regardless of any inconsistent elections under the Adoption Agreement:

(1) **100% vesting.** A QMAC must be 100% vested when contributed to the Plan.

(2) **Distribution restrictions.** A QMAC must be subject to the same distribution restrictions applicable to Salary Deferrals under Section 8.09(c), except that no portion of a Participant's QMAC Account may be distributed on account of Hardship. See Section 8.09(d).

(3) **Allocation conditions.** A QMAC will not be subject to the allocation provisions applicable to Matching Contributions, unless provided otherwise under the Agreement.

(4) **Discretionary QMAC.** If the Employer makes both a discretionary Matching Contribution under AA §6B-2(a) and a discretionary QMAC, the Employer must designate, in writing, the amount of the Matching Contribution that is designated as a regular Matching Contribution and the amount designated as a QMAC.

3.05 **Safe Harbor Contributions.** The Employer may elect under AA §6C to treat the Plan as a Safe Harbor Plan. To qualify as a Safe Harbor Plan, the Employer must make a Safe Harbor Employer Contribution or a Safe Harbor Matching Contribution. Such contributions are subject to special vesting and distribution restrictions and will be allocated to a Participant's Safe Harbor Employer Contribution Account or Safe Harbor Matching Contribution Account, as applicable. See Section 6.04(a) for the requirements that must be met to qualify as a Safe Harbor Plan.

3.06 **After-Tax Contributions.** The Employer may elect under AA §6D to allow Participants to make After-Tax Contributions under the Plan. Any After-Tax Contributions made under this Plan are subject to the ACP Test outlined in Section 6.02. Any After-Tax Contributions made under the Plan will be held in Participants' After-Tax Contribution Account, which is always 100% vested. A Participant may withdraw amounts from his/her After-Tax Contribution Account at any time, in accordance with the distribution rules under Section 8.09(a), except as prohibited under AA §10. No forfeitures will occur solely as a result of an Employee's withdrawal of After-Tax Contributions. The Plan Administrator may establish separate written administrative procedures addressing the acceptance of After-Tax Contributions. For example, the Employer may provide in separate administrative procedures that After-Tax Contributions will only be accepted through payroll reduction. Any separate procedures will apply uniformly to all Participants under the Plan.

3.07 **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 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 retirement plans and IRAs. Any conditions on Rollover Contributions must be applied uniformly to all Employees under the Plan. The Plan Administrator also may apply different conditions for accepting rollovers from current Employees or former Employees.

3.08 **Allocation Conditions.** In order to receive an allocation of Employer Contributions (other than Salary Deferrals and Safe Harbor Contributions) 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. (See Treas. Reg. §1.401(m)-1(a)(2)(iii) for rules that prohibit the prefunding of Matching Contributions prior to the date the underlying elective deferrals are contributed to the Plan. This could be an issue where the Employer makes Matching Contributions during the year and also applies a last day employment or 1,000 hours minimum service requirement since the Plan will have to reallocate any Matching Contributions that are made to an Employee who subsequently fails to satisfy the allocation conditions.)

The imposition of an allocation condition may cause the Plan to fail the minimum coverage requirements under Code §410(b), unless the only allocation condition under the Plan is a safe harbor allocation condition. Under the safe harbor allocation condition, a Participant who completes the minimum service required under AA §6-6(b) or AA §6B-7(b), as applicable, will satisfy the safe harbor allocation condition for receiving an Employer Contribution or Matching Contribution, even if the Participant's employment terminates during the Plan Year.

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.

3.09 **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 allocation conditions under Section 3.08. 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 Section 3.08, 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 2.06), vesting under Section 7 (see Section 7.06) and for purposes of the minimum allocation conditions under Section 3.08.

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**. An Employee may make a Rollover Contribution to this Plan from another Eligible Retirement Plan, if the acceptance of rollovers is permitted under AA §C-2 or if the Plan Administrator adopts administrative procedures regarding the acceptance of Rollover Contributions. Any Rollover Contribution an Employee makes to this Plan will be held in the Employee's Rollover Contribution Account, which is always 100% vested. A Participant may withdraw amounts from his/her Rollover Contribution Account at any time, in accordance with the distribution rules under Section 8, except as prohibited under AA §10.

To qualify as a Rollover Contribution under this Section, the Rollover Contribution must be transferred directly from the retirement plan or IRA in a Direct Rollover or must be transferred to the Plan by the Employee within sixty (60) days following receipt of the amounts from the retirement plan or IRA.

If Rollover Contributions are permitted, an Employee may make a Rollover Contribution to the Plan even if the Employee is not a Participant with respect to any or all other contributions under the Plan, unless otherwise prohibited under separate administrative procedures adopted by the Plan Administrator. An Employee who makes a Rollover Contribution to this Plan prior to becoming a Participant shall be treated as a Participant only with respect to such Rollover Contribution Account, but shall not be treated as a Participant until he/she otherwise satisfies the eligibility conditions under the Plan.

4.02 **Contract Exchanges and Transfers**. Provided that the Plan allows contract exchanges or plan-to-plan transfers, the Plan Administrator may accept such exchange or transfer from one Code §403(b) investment to another investment, provided the requirements under Sections 14.04 and 14.05 are satisfied.

SECTION 5
LIMITS ON CONTRIBUTIONS

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

(a) **Limitation on Salary Deferrals.** Any Salary Deferrals made under the Plan are subject to the Elective Deferral Dollar Limit, as described in Section 5.02 below.

(b) **Limitation on total Employer Contributions.** All Employer Contributions the Employer makes under the Plan are subject to the Code §415 Limitation, as described in Section 5.03 below. For purposes of applying the Code §415 Limitation, Employer Contributions include any Employer Contributions, Salary Deferrals, Matching Contributions, QNECs, QMACs, or Safe Harbor Contributions made under the Plan.

5.02 **Elective Deferral Dollar Limit.** No Participant may contribute as Elective Deferrals to this Plan (and any other plan, contract or arrangement maintained by the Employer) during any calendar year, an amount that exceeds the Elective Deferral Dollar Limit in effect for the Participant's taxable year beginning in such calendar year. Additional restrictions apply if a Participant participates in a plan maintained by an unrelated employer. (See subsection (b)(6) below.)

The Elective Deferral Dollar Limit is $15,000 for taxable years beginning in 2006. For taxable years beginning after 2006, the Elective Deferral Dollar Limit will be adjusted for cost-of-living increases under Code §402(g)(4). Any such adjustments will be in multiples of $500.

If elected under the Agreement, the Elective Deferral Dollar Limit is increased by the Age 50 Catch-Up Contribution Limit and the Special Catch-Up Contribution Limit for eligible Participants. If the Plan does not provide for Age 50 Catch-up Contributions or the Special Catch-Up Contributions, the Elective Deferral Dollar Limit is not increased.

(a) **Excess Deferrals.** Excess Deferrals are Elective Deferrals made during the Participant's taxable year that exceed the Elective Deferral Dollar Limit (as described above) for such year; counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer. (See subsection (b)(6) below for provisions that apply when a Participant makes Elective Deferrals to a plan of an unrelated Employer.)

(b) **Correction of Excess Deferrals.** If a Participant makes Excess Deferrals (i.e., Elective Deferrals in excess of the Elective Deferral Dollar Limit) under this Plan and any other plan maintained by the Employer, such Excess Deferrals (plus allocable income or loss) shall be distributed to the Participant no later than April 15 of the following calendar year.

(1) **Amount of corrective distribution.** The amount to be distributed from this Plan as a correction of Excess Deferrals equals the amount of Elective Deferrals the Participant contributes during the taxable year to this Plan and any other plan maintained by the Employer in excess of the Elective Deferral Dollar Limit, reduced by any corrective distribution of Excess Deferrals the Participant receives during the calendar year from this Plan or other plan(s) maintained by the Employer.

(2) **Allocable gain or loss.** A corrective distribution of Excess Deferrals must include any allocable gain or loss for the taxable year in which the Excess Deferrals are contributed to the Plan. The gain or loss allocable to Excess Deferrals may be determined in any reasonable manner, provided the manner used to determine allocable gain or loss is applied consistently for all Participants and in a manner that is reasonably reflective of the method used by the Plan for allocating income to Participants' Accounts.

(3) **Taxation of corrective distribution.** If a corrective distribution of Excess Deferrals is made by April 15 of the following calendar year, amounts attributable to the Excess Deferrals will be includible in the Participant's gross income in the taxable year in which such amounts are deferred under the Plan and amounts attributable to income or loss on the Excess Deferrals will be includible in gross income in the year of distribution. If a corrective distribution of Excess Deferrals is made after April 15, the amount of the corrective distribution attributable to Excess Deferrals will be includible in the Participant's gross income in both the taxable year in which such amounts are deferred under the Plan and the taxable year in which such amounts are distributed. (See Section 8.10(b)(2) for a discussion of the ordering rules for determining the Accounts from which the corrective distribution is made where a Participant has both a Pre-Tax Deferral Account and a Roth Deferral Account.)

(4) **Coordination with other provisions.** A corrective distribution of Excess Deferrals made by April 15 of the following calendar year may be made without consent of the Participant or the Participant's spouse, and without regard to any distribution restrictions applicable under Section 8. A corrective distribution of Excess Deferrals

made by the appropriate April 15 also is not treated as a distribution for purposes of applying the required minimum distribution rules under Section 8.11.

(5) **Suspension of Salary Deferrals.** If a Participant's Salary Deferrals under this Plan, in combination with any Elective Deferrals the Participant makes during the calendar year under any other plan maintained by the Employer, equal or exceed the Elective Deferral Dollar Limit, the Employer may suspend the Participant's Salary Deferrals under this Plan for the remainder of the calendar year without the Participant's consent.

(6) **Correction of Excess Deferrals under plans not maintained by the Employer.** The correction provisions under this subsection (b) apply only if a Participant makes Excess Deferrals under this Plan (or under this Plan and other plans maintained by the Employer). However, if a Participant has Excess Deferrals for a calendar year on account of making Elective Deferrals to a plan of an unrelated employer, the Participant may assign to this Plan any portion of his/her Elective Deferrals made under all plans during the calendar year to the extent such Elective Deferrals exceed the Elective Deferral Dollar Limit. The Participant must notify the Plan Administrator in writing on or before March 1 of the following calendar year of the amount of the Excess Deferrals to be assigned to this Plan. Upon receipt of a timely notification, the Excess Deferrals assigned to this Plan will be distributed (along with any allocable income or loss) to the Participant in accordance with the corrective distribution provisions under this subsection (b). A Participant is deemed to notify the Plan Administrator of Excess Deferrals to the extent such Excess Deferrals arise only under this Plan and any other plan maintained by the Employer.

5.03 **Code §415 Limitation.**

(a) **No other plan participation.** If the Participant does not participate in, and has never participated in another plan qualified under Code §403(b) maintained by the Employer, then the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. Special aggregation rules may apply if a Participant is in control of another employer as described under Treasury Regulation §1.415-8(d).

(1) **Using estimated Total Compensation.** Prior to determining the Participant's actual Total Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Total Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

As soon as administratively feasible after the end of the Limitation Year, the Employer will determine the Maximum Permissible Amount for the Limitation Year on the basis of the Participant's actual Total Compensation for the Limitation Year.

(2) **Correction procedures.** If an Employer Contribution that would otherwise be contributed or allocated to a Participant's Account will cause that Participant's Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount to be contributed or allocated to such Participant will be reduced so that the Annual Additions allocated to such Participant's Account for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation to a Participant's Account exceeds the Maximum Permissible Amount due to a correctable event, and the Plan is eligible for self correction under Rev. Proc. 2006-27 (or successive guidance), the Employer may use reasonable correction methods (including the correction methods described in § 1.415-6(b)(6) of the 1981 IRS regulations) to the extent permitted under the IRS correction program. For this purpose, a correctable event includes a violation of the Code §415 Limitation due to the use of estimated Total Compensation, the allocation of forfeitures, a reasonable error in determining the amount of Salary Deferrals that may be made under the Plan, or other reasonable error

(b) **Participation in another plan.** This subsection (b) applies if, in addition to this Plan, the Participant receives an Annual Addition during any Limitation Year from another plan qualified under Code §403(b) maintained by the Employer.

(1) **This Plan's Code §415 Limitation.** The Annual Additions that may be credited to a Participant's Account under this Plan for any Limitation Year will not exceed the Maximum Permissible Amount (defined in subsection (c)(6) below) reduced by the Annual Additions credited to a Participant's Account under any other plan qualified under Code §403(b) maintained by the Employer for the same Limitation Year.

(2) **Annual Additions reduction.** If the Annual Additions with respect to the Participant under any other plan qualified under Code §403(b) maintained by the Employer maintained by the Employer are less than the Maximum Permissible Amount and the Annual Additions that would otherwise be contributed or allocated to the Participant's Account under this Plan would exceed the Code §415 Limitation for the Limitation Year, the

amount contributed or allocated will be reduced so that the Annual Additions under all such Plans for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation to a Participant's Account will exceed the Maximum Permissible Amount, the Excess Amount may be distributed or allocated to such Participant and corrected in accordance with the correction procedures outlined in subsection (a)(2).

(3) **No Annual Additions permitted**. If the Annual Additions with respect to the Participant under such other plan qualified under Code §403(b) maintained by the Employer in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year. However, if a contribution or allocation to a Participant's Account will exceed the Maximum Permissible Amount due to a correctable event described in subsection (a)(2), the Excess Amount may be distributed or allocated to such Participant and corrected in accordance with the correction procedures outlined in subsection (a)(2).

(4) **Using estimated Total Compensation.** Prior to determining the Participant's actual Total Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in subsection (a)(1) above. As soon as administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Total Compensation for the Limitation Year.

(5) **Excess Amounts.** If, as a result of the use of estimated Total Compensation, an allocation of forfeitures, a reasonable error in determining the amount of Salary Deferrals that may be made under this Section 5.03, or other reasonable error in applying the Code §415 Limitation, a Participant's Annual Additions would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a SEP will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, regardless of the actual allocation date.

(i) **Same allocation date.** If an Excess Amount is allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan maintained by the Employer, the Excess Amount attributed to this Plan will be the product of:

(A) the total Excess Amount allocated as of such date, times

(B) the ratio of (I) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (II) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all other Defined Contribution Plans.

(ii) **Alternative methods.** The Employer may elect under AA §11-3 to modify the default rules under this subsection (5). For example, the Employer may elect to attribute any Excess Amount which is allocated on the same date to this Plan and to another plan maintained by the Employer by designating the specific plan to which the Excess Amount is allocated.

(6) **Disposition of Excess Amounts.** Any Excess Amount attributed to this Plan will be disposed in the manner described in subsection (a)(2).

(7) **Separate Account for Excess Amounts.** An Annuity Contract to which an Excess Amount is made is not part of the Plan unless the Excess Amount is held in separate account.

(c) **Definitions.**

(1) **Annual Additions.** The sum of the following amounts credited to a Participant's Account for the Limitation Year:

(i) Employer Contributions, including Matching Contributions, Salary Deferrals, QNECs, QMACs and Safe Harbor Contributions;

(ii) After-Tax Contributions; and

(iii) forfeitures.

For this purpose, any Excess Amount applied under subsections (a)(2) or (b)(5) in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

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

Restorative payments are not considered Annual Additions for any Limitation Year. For this purpose, restorative payments are payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary for which there is a reasonable risk of liability under Title I of ERISA or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Examples of restorative payments include payments made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to the Plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under Title I of ERISA are not restorative payments and generally constitute contributions that give rise to Annual Additions.

(2) **Defined Contribution Dollar Limitation.** $40,000, as adjusted under Code §415(d).

(3) **Employer.** For purposes of this Section 5.03, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in §414(b) of the Code as modified by §415(h)), all commonly controlled trades or businesses (as defined in §414(c) of the Code as modified by §415(h)) or affiliated service groups (as defined in §414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under §414(o) of the Code.

(4) **Excess Amount.** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(5) **Limitation Year.** The Plan Year, unless the Employer elects another 12-consecutive month period under AA §11-3(a). All retirement plans under Code §403(b) maintained by the Employer must use the same Limitation Year. Where there is a change of Limitation Year, a "short" Limitation Year exists for the period beginning with the first day of the Limitation Year and ending on the day before the change in Limitation Year is effective. For this purpose, if the Plan is terminated effective as of a date other than the last day of the Limitation Year, the Plan is treated as if it were amended to change its Limitation Year.

If the Plan has an initial Plan Year that is less than 12 months, the Limitation Year for such first Plan Year is the 12-month period ending on the last day of that Plan Year, unless otherwise specified in AA §11-3(a).

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

(i) the Defined Contribution Dollar Limitation, or

(ii) 100 percent of the Participant's Total Compensation for the Limitation Year.

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

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

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

If a short Limitation Year is created because the Plan has an *initial* Plan Year that is less than 12 months, no proration of the Defined Contribution Dollar Limitation is required, unless provided otherwise under AA §11-

3(a). (See subsection (5) above for the rule allowing the use of a full 12-month Limitation Year for the first year of the Plan, thereby avoiding the need to prorate the Defined Contribution Dollar Limitation.)

(7) **Total Compensation.** Solely for purposes of applying the limitations of this Section 5.03, Total Compensation (as defined in Section 1.114) is the amount of Total Compensation received from the Employer and which is includible in gross income for the most recent period for which the employee is credited with a year of service (as defined in subsection (i) below). For a Minister, Total Compensation is the Minister's earned income as defined under Code §401(c)(2) (without regard to Code §911) for the most recent year of service. Total Compensation under this subsection (7) is determined without regard to the exclusions allowed under Code §105(d). In addition, except as otherwise provided in Section 1.114(b), Total Compensation under this subsection (7) includes any Elective Deferrals and any amount contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code §125, 132(f)(4) or §457.

(i) **Year of service.** For purposes of determining Total Compensation under this Section 5.03, the year of service used to determine Total Compensation is based on the most recent period during which the Employee is credited with a year of service under the following rules. For this purpose, such period may not end after the close of the Employee's taxable year and may not precede the taxable year by more than five years. The period used to calculate a year of service under this subsection may not exceed 12 months.

(A) An Employee is credited with a year of service for each full year during which the individual is a full-time Employee of the Employer. For this purpose, a full year of service for a particular position is based on the usual annual work period of individuals employed full-time in that general type of employment at the place of employment.

(B) An Employee is credited with a fractional year of service for each full year during which the individual is a part-time Employee of the Employer and for each part of a year during which the individual is a full-time or part-time Employee of the Employer. See Treas. Reg. §1.403(b)-1(d)(f) for rules regarding the calculation of a fractional year of service.

(C) If at the close of a taxable year, an Employee has a period of service less than one year, such Employee will be considered as having one year of service for purposes of determining Total Compensation.

(ii) **Definition of Compensation.** The definition of compensation under Treas. Reg. §1.415-2(b) includes amounts that are includible in the gross income of an Employee under the rules of Code §409A or §457(f)(1)(A) or because the amounts are constructively received by the Employee.

(iii) **Few weeks rule.** If elected under the Adoption Agreement, Total Compensation for a Limitation Year may include amounts earned during that Limitation Year but not paid during that Limitation Year solely because of the timing of pay periods and pay dates if:

(A) These amounts are paid during the first few weeks of the next Limitation Year;

(B) The amounts are included on a uniform and consistent basis with respect to all similarly situated Employees; and

(C) No compensation is included in more than one Limitation Year.

(iv) **Disabled Participants.** Total Compensation does not include any imputed compensation for the period a Participant is Disabled. However, the Employer may elect under AA §11-3(b) to include under the definition of Total Compensation, the amount a terminated Participant who is permanently and totally Disabled would have received for the Limitation Year if the Participant had been paid at the rate of Total Compensation paid immediately before becoming permanently and totally Disabled. If the Employer elects under AA §11-3(b) to include imputed compensation for a Disabled Participant, a Disabled Participant will receive an allocation of any Employer Contribution the Employer makes to the Plan based on the Employee's imputed compensation for the Plan Year. Any Employer Contributions made to a Disabled Participant under this subsection (iv) are fully vested when made and will be made only to Non-Highly Compensated Employees.

SECTION 6
SPECIAL RULES AFFECTING 403(b) PLANS

6.01 **Nondiscrimination Testing of Salary Deferrals.** No special nondiscrimination rules apply to Salary Deferrals, other than the universal availability to make such Salary Deferrals as provided under Section 2.01(a).

6.02 **Nondiscrimination Testing of Matching Contributions and After-Tax Contributions – ACP Test.** Except as provided under Section 6.04 for Safe Harbor Plans, if the Plan provides for Matching Contributions and/or After-Tax Contributions, the Plan must satisfy the Actual Contribution Percentage Test ("ACP Test") each Plan Year. The Plan Administrator shall maintain records sufficient to demonstrate satisfaction of the ACP Test, including the amount of any Salary Deferrals or QNECs included in such test, pursuant to subsection (a)(4) below. If the Plan fails the ACP Test for any Plan Year, the corrective provisions under subsection (b) below will apply.

(a) **ACP Test.** The ACP Test compares the Average Contribution Percentage (ACP) of the Highly Compensated Group with the ACP of the Nonhighly Compensated Group. The Highly Compensated Group is the group of Participants who are Highly Compensated for the current Plan Year. The Nonhighly Compensated Group is the group of Participants who are Nonhighly Compensated for the applicable Plan Year. If the Prior Year Testing Method is selected under AA §6B-6, the Nonhighly Compensated Group is the group of Participants in the prior Plan Year who were Nonhighly Compensated for that year. If the Current Year Testing Method is selected under AA §6B-6, the Nonhighly Compensated Group is the group of Participants who are Nonhighly Compensated for the current Plan Year.

(1) **Average Contribution Percentage – ACP.** The ACP for a specified group is the average of the contribution percentages calculated separately for each Participant in the group. A Participant's contribution percentage is the ratio of the contributions made on behalf of the Participant that are included under the ACP Test, expressed as a percentage of the Participant's Testing Compensation for the Plan Year. For this purpose, the contributions included under the ACP Test are the sum of the After-Tax Contributions, Matching Contributions, and QMACs made under the Plan on behalf of the Participant for the Plan Year. The ACP may also include other contributions as provided in subsection (4) below, if applicable but excluding Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or because the contributions to which they relate are Excess Deferrals or Excess Aggregate Contributions.

For purposes of computing Actual Contribution Percentages, a Participant who is eligible for After-Tax Contributions, Matching Contributions (including forfeitures), QMACs or Salary Deferrals (to the extent Salary Deferrals are included in the ACP Test pursuant to subsection (4) below) but does not make or receive any such contributions shall be included in the ACP Test as a Participant on whose behalf no such contributions are made.

(2) **ACP Test testing methods.** In applying the ACP Test for any Plan Year, the Plan may use the Prior Year Testing Method or the Current Year Testing Method, as selected under AA §6B-6. If no testing method is selected under AA §6B-6, the Plan will use the Current Year Testing Method. Unless specifically precluded under statute, regulations or other IRS guidance, the Employer may amend the testing method designated under AA §6B-6 for a particular Plan Year (subject to the requirements under subsection (ii) below) at any time through the end of the 12-month period following the Plan Year for which the amendment is effective.

(i) **Prior Year Testing Method.** Under the Prior Year Testing Method, the Average Contribution Percentage ("ACP") of the Highly Compensated Group (as defined in subsection (a) above) for the current Plan Year and the ACP of the Nonhighly Compensated Group (as defined in subsection (a) above) for the prior Plan Year must satisfy one of the following tests for each Plan Year:

(A) The ACP of the Highly Compensated Group for the current Plan Year shall not exceed 1.25 times the ACP of the Nonhighly Compensated Group for the prior Plan Year.

(B) The ACP of the Highly Compensated Group for the current Plan Year shall not exceed the percentage (whichever is less) determined by (A) adding 2 percentage points to the ACP of the Nonhighly Compensated Group for the prior Plan Year or (B) multiplying the ACP of the Nonhighly Compensated Group for the prior Plan Year by 2.

(ii) **Current Year Testing Method.** Under the Current Year Testing Method, the Average Contribution Percentage ("ACP") of the Highly Compensated Group (as defined in subsection (a) above) for the current Plan Year and the ACP of the Nonhighly Compensated Group (as defined in subsection (a) above) for the current Plan Year must satisfy the ACP Test, as described in subsection (i) above, for each Plan Year. If the Current Year Testing Method is used for a Plan Year, the Plan may switch to the Prior Year Testing Method for a Plan Year only if the Plan has used Current Year Testing for each of the preceding five Plan Years (or if lesser, the number of Plan Years the Plan has been in existence) or if, as

a result of a merger or acquisition described in Code §410(b)(6)(C)(i), the Employer maintains both a plan using Prior Year Testing and a plan using Current Year Testing and the change is made within the transition period described in Code §410(b)(6)(C)(ii).

(3) **Special rule for first Plan Year.** For the first Plan Year that the Plan provides for either Matching Contributions or After-Tax Contributions, the Employer may elect under AA §6B-6 to apply the ACP Test using the Prior Year Testing Method, by assuming the ACP for the Nonhighly Compensated Group is 3%. Alternatively, the Employer may elect in AA §6B-6 to use the Current Year Testing Method using the actual data for the Nonhighly Compensated Group in the first Plan Year. This first Plan Year rule does not apply if this Plan is a successor to a plan (as described in IRS Notice 98-1 or subsequent guidance) that was subject to the ACP Test or if the Plan is aggregated for purposes of applying the ACP Test with another plan that was subject to the ACP test in the prior Plan Year. For subsequent Plan Years, the testing method selected under AA §6B-6 will apply.

(4) **Use of QNECs under the ACP Test.** The Plan Administrator may take into account QNECs (see Section 3.02(b)) for purposes of applying the ACP Test. QNECs made to another plan maintained by the Employer may also be taken into account, so long as the other plan has the same Plan Year as this Plan. To include QNECs under the ACP Test, all Employer Nonelective Contributions, including the QNECs, must satisfy Code §401(a)(4). In addition, the Employer Contributions, excluding any QNECs used in the ACP Test, must also satisfy Code §401(a)(4).

(i) **Timing of contributions.** In order to be used in the ACP Test for a given Plan Year, QNECs must be made before the end of the 12-month period immediately following the Plan Year for which they are allocated.

(ii) **Testing flexibility.** The Plan Administrator is expressly granted the full flexibility permitted by applicable Treasury regulations to determine the amount of QNECs used in the ACP Test. QNECs taken into account under the ACP Test do not have to be uniformly determined for each Participant and may represent all or any portion of the QNECs allocated to each Participant, provided the conditions described above are satisfied.

(b) **Correction of Excess Aggregate Contributions.** If the Plan fails the ACP Test for a Plan Year, the Plan Administrator may use any combination of the correction methods under this Section to correct the Excess Aggregate Contributions under the Plan.

(1) **Excess Aggregate Contributions.** Excess Aggregate Contributions are the amount of Matching Contributions and/or After-Tax Contributions taken into account in computing the ACP of the Highly Compensated Group that exceed the maximum amount permitted under the ACP Test for the Plan Year. The amount of Excess Aggregate Contributions for a Plan Year are the amounts determined by hypothetically reducing the ACP contributions of the Highly Compensated Employees, beginning with the Highly Compensated Employee(s) with the highest ACP for the Plan Year, and reducing the ACP of such Highly Compensated Employees until the reduced percentage reaches the ACP of the Highly Compensated Employee(s) with the next higher ACP or until the adjusted ACP percentage satisfies the ACP Test. The reduction continues for each level of Highly Compensated Employees until the Plan satisfies the ACP Test. The total dollar amount so determined is then divided among the Highly Compensated Group in the manner described in subsection (2) to determine the actual corrective distributions to be made.

(2) **Corrective distribution of Excess Aggregate Contributions.** If the Plan fails the ACP Test for a Plan Year, the Plan Administrator may, in its discretion, distribute Excess Aggregate Contributions (including any allocable income or loss) no later than 12 months following the end of the Plan Year to correct the ACP Test violation. Excess Aggregate Contributions will be distributed only to the extent they are vested under Section 7.02, determined as of the last day of the Plan Year for which the contributions are made to the Plan. To the extent Excess Aggregate Contributions are not vested, the Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited in accordance with Section 7.10 in the Plan Year in which the corrective distribution is made from the Plan. If the Excess Aggregate Contributions are distributed more than 2½ months after the last day of the Plan Year in which such excess amounts arose, a 10-percent excise tax will be imposed on the Employer with respect to such amounts. If the Plan qualifies as an EACA (as defined in Section 3.03(c)(1)(i) above),a corrective distribution of Excess Aggregate Contributions that are made no later than 6 months (instead of 2½ months) after the last day of the Plan Year in which such excess amounts arose will not be subject to the 10% excise tax with respect to such corrective distributions. This subsection (2) is effective for corrective distributions made for Plan Years beginning on or after January 1, 2008.

(i) **Amount to be distributed.** In determining the amount of Excess Aggregate Contributions to be distributed to a Highly Compensated Employee under this Section, Excess Aggregate Contributions are first allocated equally to the Highly Compensated Employee(s) with the largest dollar amount of ACP contributions for the Plan Year in which the excess occurs until all of the Excess Aggregate Contributions are allocated or until the dollar amount of ACP contributions for such Highly Compensated Employee(s) is reduced to the next highest dollar amount of such contributions for any other Highly Compensated Employee(s).

(ii) **Allocable gain or loss.** A corrective distribution of Excess Aggregate Contributions must include any allocable gain or loss for the Plan Year in which the excess occurs. For this purpose, allocable gain or loss on Excess Aggregate Contributions may be determined in any reasonable manner, provided the manner used is applied uniformly and in a manner that is reasonably reflective of the method used by the Plan for allocating income to Participants' Accounts.

(iii) **Coordination with other provisions.** A corrective distribution of Excess Aggregate Contributions made by the end of the Plan Year following the Plan Year in which the excess occurs may be made without consent of the Participant or the Participant's spouse, and without regard to any distribution restrictions applicable under Section 8.09. Excess Aggregate Contributions are treated as Annual Additions for purposes of Code §415 even if distributed from the Plan. A corrective distribution of Excess Aggregate Contributions is not treated as a distribution for purposes of applying the required minimum distribution rules under Section 8.11.

(iv) **Accounting for Excess Aggregate Contributions.** Excess Aggregate Contributions are distributed from the following sources and in the following priority:

(A) After-Tax Contributions that are not matched;

(B) proportionately from After-Tax Contributions not distributed under (A) and related Matching Contributions that are included in the ACP Test;

(C) Matching Contributions included in the ACP Test that are not distributed under (B); and

(D) QNECs included in the ACP Test.

(3) **Making QNECs or QMACs.** Regardless of any elections under AA §6-4 or AA §6B-4, the Employer may make additional QNECs or QMACs to the Plan on behalf of the Nonhighly Compensated Employees and use such amount to correct an ACP Test violation. Any QNECs contributed under this subsection (3) which are not specifically authorized under AA §6-4 will be allocated to all Participants who are Nonhighly Compensated Employees in the ratio that each such Participant's Plan Compensation bears to the Plan Compensation of all Participants for the Plan Year. Any QMACs contributed under this subsection (3) which are not specifically authorized under AA §6B-4 will be allocated to all Participants who are Nonhighly Compensated as a uniform percentage of Salary Deferrals made during the Plan Year. See Sections 3.02(b) and 3.04(d), as applicable.

(c) **Adjustment of contribution rate for Highly Compensated Employees.** The Employer may suspend (or automatically reduce the rate of) After-Tax Contributions for the Highly Compensated Group, to the extent necessary to satisfy the ACP Test or to reduce the margin of failure. A suspension or reduction shall not affect After-Tax Contributions already contributed by the Highly Compensated Employees for the Plan Year. As of the first day of the subsequent Plan Year, After-Tax Contributions shall resume at the levels elected by the Highly Compensated Employees.

(d) **Special testing rules.**

(1) **Special rule for determining ACP of Highly Compensated Group.** When calculating the ACP of the Highly Compensated Group for any Plan Year, a Highly Compensated Employee's After-Tax Contributions and/or Matching Contributions under all plans maintained by the Employer are taken into account as if such contributions were made to a single plan. For this purpose, any QNECs or QMACs taken into account under the ACP Test also are treated as made under a single plan. In addition, if a Highly Compensated Employee participates in two or more plans of the Employer that have different Plan Years, all ACP contributions made during the Plan Year under all such plans shall be aggregated. For Plan Years beginning before 2006, all ACP contributions made in Plan Years that end with or within the same calendar year are treated as made under a single plan. This aggregation rule does not apply to plans that are mandatorily disaggregated under regulations under Code §401(m).

(2) **Aggregation of plans.** When calculating the ACP Test, if this Plan satisfies the requirements of Code §401(m), §401(a)(4), or §410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code sections only if aggregated with this Plan, all such plans are treated as a single plan. Plans may be aggregated in order to satisfy Code §401(m) only if they have the same Plan Year and use the same ACP testing method.

6.03 **Disaggregation of Plans.** Subject to the provisions of this Section 6.03, certain plans shall be treated as constituting separate plans to the extent required under the mandatory disaggregation rules under Code §401(m).

(a) **Plans covering Collectively Bargained Employees and non-Collectively Bargained Employees.** If the Plan covers Collectively Bargained Employees and non-Collectively Bargained Employees, the Plan is mandatorily disaggregated for purposes of applying the ACP Test into two separate plans, one covering the Collectively Bargained Employees and one covering the non-Collectively Bargained Employees. A separate ACP Test must be applied to the disaggregated portion of the Plan that covers the non-Collectively Bargained Employees. The disaggregated portion of the Plan that includes the Collectively Bargained Employees is deemed to pass the ACP Test.

(b) **Otherwise excludable Employees.** If the minimum coverage test under Code §410(b) is performed by disaggregating "otherwise excludable Employees" (i.e., Employees who have not satisfied the maximum age 21 and one Year of Service eligibility conditions permitted under Code §410(a)), then the Plan is treated as two separate plans, one benefiting the otherwise excludable Employees and the other benefiting Employees who have satisfied the maximum age and service eligibility conditions.

6.04 **Safe Harbor Plan Provisions.** The Employer may elect in AA §6C to apply the safe harbor plan provisions under this Section 6.04. If Matching Contributions are made for such Plan Year, the ACP Test is deemed satisfied with respect to such contributions if the conditions of subsection (f) below are satisfied. To qualify as a Safe Harbor Plan, the requirements under this Section 6.04 must be satisfied for the entire Plan Year.

(a) **Safe harbor requirements.** To qualify as a Safe Harbor Plan, the Plan must satisfy the requirements under subsections (1), (2), (3) and (4) below.

(1) **Safe Harbor Contribution.** To qualify as a Safe Harbor Plan, the Employer must provide a Safe Harbor Employer Contribution or a Safe Harbor Matching Contribution to Nonhighly Compensated Participants under the Plan. (See subsection (b) below for a discussion of the Participants eligible for a Safe Harbor Contribution.) The Safe Harbor Contribution must be made to the Plan no later than 12 months following the close of the Plan Year for which it is being used to qualify the Plan as a Safe Harbor Plan.

(i) **Safe Harbor Employer Contribution.** The Employer may elect under AA §6C-2(b) to make a Safe Harbor Employer Contribution of at least 3% of Plan Compensation. The Employer has the discretion to increase the amount of the Safe Harbor Employer Contribution in excess of the percentage designated under AA §6C-2(b). (See subsection (4)(iii) below for the ability to condition the Safe Harbor Employer Contribution on the provision of a supplemental notice.)

(ii) **Safe Harbor Matching Contribution.** The Employer may elect under AA §6C-2(a) to satisfy the Safe Harbor Contribution requirement by making a Safe Harbor Matching Contribution with respect to each Participant's Salary Deferrals (and/or After-Tax Contributions) under the Plan. The Employer may elect under AA §6C-2(a) to provide a basic Safe Harbor Matching Contribution, an enhanced Safe Harbor Matching Contribution, or a tiered Safe Harbor Matching Contribution.

(A) **Basic Safe Harbor Matching Contribution.** Under the basic Safe Harbor Matching Contribution formula, each eligible Participant (as defined in AA §6C-3) will receive a Safe Harbor Matching Contribution equal to:

(I) 100% of the amount of a Participant's Salary Deferrals that do not exceed 3% of the Participant's Plan Compensation, plus

(II) 50% of the amount of a Participant's Salary Deferrals that exceed 3% of the Participant's Plan Compensation but that do not exceed 5% of the Participant's Plan Compensation.

(B) **Enhanced Safe Harbor Matching Contribution.** Under the enhanced Safe Harbor Matching Contribution formula, the Safe Harbor Matching Contribution must not be less, at each level of Salary Deferrals, than the amount required under the basic Safe Harbor Matching Contribution formula under subsection (A) above. Under the enhanced Safe Harbor Matching Contribution

formula, the rate of Matching Contributions may not increase as an Employee's rate of Salary Deferrals increase.

(C) **Contributions for Highly Compensated Employees.** The Plan will not fail to be a Safe Harbor Plan merely because Highly Compensated Employees also receive a Safe Harbor Matching Contribution under the Plan. However, a Safe Harbor Matching Contribution will not satisfy this Section if any Highly Compensated Employee is eligible for a higher rate of Safe Harbor Matching Contribution than is provided for any Nonhighly Compensated Employee who has the same rate of Salary Deferrals.

(D) **Period for making Safe Harbor Matching Contribution.** In determining a Participant's Safe Harbor Matching Contributions, the Employer may elect under AA §6C-2(a)(2) to determine the Safe Harbor Matching Contribution on the basis of Salary Deferrals the Participant makes during the Plan Year. Alternatively, the Employer may elect to determine the Safe Harbor Matching Contribution on a payroll, monthly, or quarterly basis. If the Employer elects to use a period other than the Plan Year, the Safe Harbor Matching Contribution must be deposited into the Plan by the last day of the Plan Year quarter following the Plan Year quarter for which the Salary Deferrals are made.

(2) **Full and immediate vesting.** The Safe Harbor Contribution under subsection (1) above must be 100% vested, regardless of the Employee's length of service, at the time the contribution is made to the Plan. Any additional amounts contributed under the Plan may be subject to a vesting schedule.

(3) **Distribution restrictions.** Distributions of the Safe Harbor Contribution under subsection (1) must be restricted in the same manner as Salary Deferrals under Section 8.09(c), except that such contributions may not be distributed upon Hardship. See Section 8.09(d).

(4) **Annual notice.** Each eligible Participant (as defined in subsection (b) below) must receive a written notice describing the Participant's rights and obligations under the Plan.

(i) **Contents of notice.** The annual notice must include a description of:

(A) the Safe Harbor Contribution formula being used under the Plan;

(B) any other contributions under the Plan;

(C) the plan to which the Safe Harbor Contributions will be made (if different from this Plan);

(D) the type and amount of Plan Compensation that may be deferred under the Plan;

(E) the administrative requirements for making and changing Salary Deferral elections; and

(F) the withdrawal and vesting provisions under the Plan.

In addition to any other election periods provided under the Plan, each eligible Participant may make or modify his/her Salary Deferral election during the 30-day period immediately following receipt of the annual notice.

(ii) **Timing of notice.** Each Participant must receive the annual notice within a reasonable period before the beginning of the Plan Year (or within a reasonable period before an Employee becomes a Participant, if later). For this purpose, an Employee will be deemed to have received the notice in a timely manner if the Employee receives such notice at least 30 days, but not more than 90 days, before the beginning of the Plan Year. For an Employee who becomes a Participant after the 90th day before the beginning of the Plan Year, the notice will be deemed timely if it is provided before the date the Employee becomes eligible to participate under the Plan (but no more than 90 days before the Employee becomes eligible).

(iii) **Supplemental notice.** If the Employer elects to provide the Safe Harbor Employer Contribution described in subsection (1)(i) above, the Employer may elect under AA §6C-2(b)(1) to make such contribution only as authorized under a supplemental notice described in this subsection (iii). If the Employer elects to make the Safe Harbor Employer Contribution pursuant to a supplemental notice, the Employer will notify each Participant in the annual notice described in this subsection (4) that the Employer *may* provide the Safe Harbor Employer Contribution and that a supplemental notice will be provided if the Employer decides to make the Safe Harbor Employer Contribution. The supplemental notice indicating the Employer's intention to make the Safe Harbor Employer Contribution must be

provided no later than 30 days prior to the last day of the Plan Year for the Plan to qualify as a Safe Harbor Plan. If the Employer does not provide the supplemental notice in accordance with this paragraph, the Employer is not obligated to make the Safe Harbor Employer Contribution and the Plan does not qualify as a Safe Harbor Plan. The Plan will qualify as a Safe Harbor Plan for subsequent Plan Years if the appropriate notices are provided for such years. No amendment is required to make the Safe Harbor Employer Contribution in subsequent Plan Years.

(b) **Eligibility for Safe Harbor Contributions.** The Employer may elect under AA §6C-3 to provide the Safe Harbor Contribution to all Participants or only to Participants who are Nonhighly Compensated Employees. See subsection (c) for a description of the eligibility conditions applicable to Safe Harbor Contributions.

(c) **Different eligibility conditions.** In determining who is a Participant for purposes of the Safe Harbor Contribution, the eligibility conditions applicable to Salary Deferrals under AA §4-1 apply. However, the Employer may elect under AA§6C-3(b) to apply different eligibility conditions for the Safe Harbor Contribution than apply to Salary Deferrals. If different eligibility conditions are selected for the Safe Harbor Contribution, additional testing requirements may apply in accordance with IRS regulations.

(d) **Provision of Safe Harbor Contribution in separate plan.** The Employer may elect under AA §6C-2(b)(2) to provide the Safe Harbor Contribution under another Defined Contribution Plan maintained by the Employer. The Safe Harbor Contribution under such other plan must satisfy the conditions under this Section 6.04 for this Plan to qualify as a Safe Harbor Plan. To make the Safe Harbor Contribution under another Defined Contribution Plan, each Employee eligible to participate under this Plan must also be eligible to participate under the other Defined Contribution Plan and the other Defined Contribution Plan must have the same Plan Year as this Plan.

(e) **Reduction or suspension of Safe Harbor Contributions.**

(1) **Safe Harbor Matching Contributions.** The Employer may amend the Plan during the Plan Year to reduce or suspend the Safe Harbor Matching Contributions provided the Employer provides a supplemental notice to all Participants explaining the consequences and effective date of the amendment, and that such Participants have a reasonable opportunity (including a reasonable period) to change their Salary Deferral and/or After-Tax Contribution elections, as applicable. The amendment reducing or eliminating the Safe Harbor Matching Contribution must be effective no earlier than the later of: (i) 30 days after Participants are given the supplemental notice or (ii) the date the amendment is adopted. Participants must be given a reasonable opportunity (and reasonable period) prior to the reduction or elimination of the Safe Harbor Matching Contribution to change their Salary Deferral or After-Tax Contribution elections, as applicable. If the Employer amends the Plan to reduce or eliminate the Safe Harbor Matching Contribution, the Plan is subject to the ACP Test for the entire Plan Year.

(2) **Safe Harbor Employer Contributions.** The Employer may amend the Plan during the Plan Year to reduce or suspend the Safe Harbor Employer Contributions provided the Employer notifies all Participants of the amendment and provides each Participant with a reasonable opportunity (including a reasonable period) to change Salary Deferral and/or After-Tax Contribution elections, as applicable. The amendment reducing or eliminating the Safe Harbor Employer Contributions must be effective no earlier than the later of: (A) 30 days after Participants are notified of the amendment or (B) the date the amendment is adopted. If the Employer reduces or eliminates the Safe Harbor Employer Contribution during the Plan Year, the Plan is subject to the ACP Test for the entire Plan Year.

(f) **Deemed compliance with ACP Test.** If the Plan satisfies all the conditions under subsection (a) above to qualify as a Safe Harbor Plan, the Plan is deemed to satisfy the ACP Test for the Plan Year with respect to Matching Contributions (including Matching Contributions that are not used to qualify as a Safe Harbor Plan), provided the following conditions are satisfied. If the Plan does not satisfy the requirements under this subsection (f) for a Plan Year, the Plan must satisfy the ACP Test for such Plan Year in accordance with subsection (g) below.

(1) **Only Safe Harbor Matching Contributions.** If the only Matching Contributions provided under the Plan are Safe Harbor Matching Contributions under AA §6C-2(a)(1), the Plan is deemed to satisfy the ACP Test, without regard to the conditions under subsections (2) - (5) below.

(2) **Additional Matching Contributions.** If Matching Contributions are provided (other than Safe Harbor Matching Contributions under AA §6C-2(a)) the total Matching Contributions provided under the Plan (whether or not such Matching Contributions are provided under a Safe Harbor Matching Contribution formula) must not apply to any Salary Deferrals or After-Tax Contributions that exceed 6% of Plan Compensation. If a Matching Contribution formula applies to both Salary Deferrals and After-Tax Contributions, then the sum of such contributions that exceed 6% of Plan Compensation must be disregarded under the formula.

(3) **Discretionary Matching Contributions.** If the Employer elects to provide discretionary Matching Contributions under a Safe Harbor Plan, such discretionary Matching Contributions will not be subject to the ACP Test only if the total amount of the discretionary Matching Contributions are limited to no more than 4% of the Employee's Plan Compensation.

(4) **Rate of Matching Contribution may not increase.** The Matching Contribution formula may not provide a higher rate of match at higher levels of Salary Deferrals or After-Tax Contributions.

(5) **Limit on Matching Contributions for Highly Compensated Employees.** The Matching Contributions made for any Highly Compensated Employee at any rate of Salary Deferrals and/or After-Tax Contributions cannot be greater than the Matching Contributions provided for any Nonhighly Compensated Employee at the same rate of Salary Deferrals and/or After-Tax Contributions.

(6) **After-Tax Contributions.** If the Plan permits After-Tax Contributions, such contributions must satisfy the ACP Test, regardless of whether the Matching Contributions under Plan are deemed to satisfy the ACP Test under this subsection (f). The ACP Test must be performed in accordance with subsection (g) below.

(7) **Additional Matching Contributions may be subject to vesting and distribution restrictions.** Additional Matching Contributions may satisfy the ACP Test safe harbor described in this subsection (f) even if such Matching Contributions are subject to the normal vesting schedule and distribution rules applicable to Matching Contributions. However, if such Matching Contributions are subject to allocation conditions under AA §6B-7, such Matching Contributions will fail to satisfy the ACP Test safe harbor described in this subsection (f).

(g) **Rules for applying the ACP Test.** If the ACP Test must be performed under a Safe Harbor Plan, either because there are After-Tax Contributions, or because the Matching Contributions do not satisfy the conditions described in subsection (f) above, the Current Year Testing Method must be used to perform such test, even if the Adoption Agreement specifies that the Prior Year Testing Method applies. In addition, the testing rules provided in IRS regulations are applicable in applying the ACP Test.

(h) **Plan Year.** Except as provided in subsections (1) - (3) below, to qualify as a Safe Harbor Plan, the safe harbor requirements under this Section 6.04 must be satisfied for an entire 12-month Plan Year.

(1) **First year of plan.** A newly established plan (other than a successor plan within the meaning of Treas. Reg. §1.401(m)-2(c)(2)(iii)) will not fail to satisfy the requirements of this subsection (h) merely because the Plan Year is less than 12 months, provided that the Plan Year is at least 3 months long. If an Employer is newly established and adopts the Plan as soon as administratively feasible after the Employer comes into existence, the initial Plan Year may be shorter than 3 months.

If the Plan has an initial Plan Year that is less than 12 months, for purposes of applying the Code §415 Limitation under Section 5.03, the Limitation Year will be the 12-month period ending on the last day of the short Plan Year. Thus, no proration of the Defined Contribution Dollar Limitation will be required. See Section 5.03(c)(2). In addition, the Employer's Plan Compensation will be determined for the 12-month period ending on the last day of the short Plan Year. Thus, no proration of the Compensation Limit will be required.

(2) **Change of Plan Year.** If the Plan is amended to change its Plan Year, resulting in a Short Plan Year (see Section 11.09), the Plan will not fail to satisfy the requirements of this subsection (h), provided:

(i) The Plan satisfies the safe harbor requirements under this Section 6.04 for the immediately preceding Plan Year; and

(ii) The plan satisfies the safe harbor requirements under this Section 6.04 (determined without regard to subsection (e) above) for the immediately following Plan Year or for the immediately following 12 months if the immediately following Plan Year is less than 12 months.

(3) **Final plan year.** If the Plan is terminated during a Plan Year, the Plan will not fail to satisfy the requirements of this subsection (h) merely because the final Plan Year is less than 12 months, provided that the plan satisfies the safe harbor requirements under this Section 6.04 through the date of termination and either:

(i) The Plan would satisfy the requirements of subsection (e), treating the termination of the Plan as a reduction or suspension of Safe Harbor Matching Contributions (other than the requirement that Employees have a reasonable opportunity to change their Salary Deferral or After-Tax Contribution elections); or

(ii) The Plan termination is in connection with a transaction described in Code §410(b)(6)(C) or the Employer incurs a substantial business hardship, comparable to a substantial business hardship described in Code §412(d). If this subsection (ii) applies, the Plan will continue to qualify as a Safe Harbor Plan for the year of termination.

(i) **Mid-Year Changes to Safe Harbor 403(b) Plan**. A Plan will not fail to satisfy the requirements relating to safe-harbor plans because of the adoption during the Plan Year of a provision to apply the hardship distribution provisions of the Plan to primary beneficiaries or a provision to implement a qualified Roth contribution program as described in Code §402A.

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 AA §8. A Participant is always fully vested in his/her Salary Deferral Account, After-Tax Contribution Account, QNEC Account, QMAC Account, Safe Harbor Employer Contribution Account, Safe Harbor Matching Contribution 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 and/or Matching 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. The vesting percentage selected under the modified vesting schedule for any Year of Service may not be less than the percentage that would be permitted under a permitted vesting schedule under this subsection (a). Thus, for example, the modified vesting schedule for each Year of Service would have to satisfy the 6-year graded vesting schedule, unless 100% vesting occurs after no more than 3 Years of Service.

(5) **Other vesting schedule.** If the Employer is a governmental entity or nonelecting church plan, the Employer may provide under AA §8-2 for a vesting schedule that satisfies the pre-ERISA vesting requirements (even if such schedule is longer than the schedules set forth in this Section 7.02(a).)

(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.

(4) **Safe Harbor Plans.** If the Plan is a Safe Harbor Plan as defined in Section 6.04, any Safe Harbor Employer Contributions and/or Safe Harbor Matching Contributions made under the Plan are always 100% vested. If a Safe Harbor Plan provides for regular Employer Contributions or Matching Contributions, such amounts will be vested in accordance with the vesting schedule selected under AA §8. Section 7.08 will not apply merely because the Plan is amended to add a vesting schedule for regular Employer Contributions or Matching Contributions.

(5) **Vesting upon merger, consolidation or transfer.** No accelerated vesting will be required solely because a Code §403(b) Plan is merged with another Code §403(b) Plan, or because assets are transferred from a Code §403(b) Plan to another Code §403(b) Plan.

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 to modify the definition of Year of Service to require completion of any lesser 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 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, except as provided under Section 7.07 with respect to service excluded under the Break in Service rules, all service with the Employer counts for purposes of applying the Plan's vesting schedules. However, the Employer may elect under AA §8-3 to exclude certain service with the Employer in calculating an Employee's vesting Years of Service.

(a) **Service before the Effective Date of the Plan.** The Employer may elect under AA §8-3(b) to exclude service earned during any period prior to the date the Employer established the Plan or a Predecessor Plan. For this purpose, a Predecessor Plan is a plan maintained by the Employer that is terminated within the 5-year period immediately preceding or following the establishment of this Plan. A Participant's service under a Predecessor Plan must be counted for purposes of determining the Participant's vested percentage under this Plan.

(b) **Service before a specified age. The** Employer may elect under AA §8-3(c) to exclude service before an Employee attains a specified age (not to exceed age 18). An Employee will be credited with a Year of Service for the Vesting Computation Period during which the Employee attains the required age, provided the Employee satisfies all other conditions required for a Year of Service.

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. 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. 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 2.06) vesting under this Section 7, and for purposes of the minimum allocation conditions under Section 3.08 (see Section 3.09).

7.07 **Break in Service Rules.** In addition to any service excluded under Section 7.05, the Employer may elect under AA §8-5 to disregard an Employee's vesting service with the Employer under the Break in Service rules set forth in this Section 7.07.

(a) **Break in Service.** An Employee incurs a Break in Service for any Vesting Computation Period (as defined in Section 7.04) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects under AA §8-5(a) to require less than 1,000 Hours of Service to earn a vesting Year of Service, a Break in Service will occur for any Vesting Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn a vesting Year of Service. If the Employer elects the Elapsed Time Method under AA §4-1(a)(6), an Employee incurs a Break in Service upon incurring a 12-month Period of Severance. In applying these Break in Service rules, Years of Service and Breaks in Service are measured on the same Vesting Computation Period.

(b) **One-Year Break in Service rule.** Under the One-Year Break in Service rule, if an Employee incurs a one-year Break in Service, such Employee will not be credited with any service earned prior to such one-year Break in Service for purposes of applying the Plan's vesting schedules until the Employee has completed a Year of Service after the Employee's return to employment. The Employer must elect to apply the One-Year Break in Service rule under AA §8-5(f).

If a Participant has service disregarded under the One-Year Break in Service rule, such Participant will have his/her service reinstated upon returning to employment as of the first day of the Vesting Computation Period during which the Participant completes a Year of Service.

(c) **Nonvested Participant Break in Service rule.** Under the Nonvested Participant Break in Service rule, if a Participant is totally nonvested (i.e., 0% vested) in his/her entire Account Balance, and such Participant incurs five (5) or more

consecutive one-year Breaks in Service (or, if greater, a consecutive period of Breaks in Service at least equal to the Participant's aggregate number of Years of Service with the Employer), the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of applying the vesting schedules under the Plan. If the Employer elects the Elapsed Time Method under AA §4-1(a)(6), an Employee will be treated as incurring five consecutive Breaks in Service when he/she incurs a Period of Severance of at least 60 months.

If the Employee returns to employment with the Employer, such Employee will be treated as a new Employee for purposes of determining vesting under the Plan. For this purpose, a Participant who has made Salary Deferrals under the Plan will be treated as having a vested interest in the Plan. Thus, the Nonvested Participant Break in Service rule may not be used with respect to any contributions under the Plan (even if such Employee is totally nonvested in such contributions) for a Participant who has made Salary Deferrals under the Plan. The Employer must elect to apply the Nonvested Participant Break in Service rule under AA §8-5(e). In determining a Participant's aggregate Years of Service for purposes of applying the Nonvested Participant Break in Service rule, any Years of Service otherwise disregarded under a previous application of this rule are not counted.

(d) **Five-Year Forfeiture Break in Service.** A Participant's vesting service also may be disregarded if the Participant incurs a Five-Year Forfeiture Break in Service, as described in Section 7.10(b) below.

7.08 **Amendment of Vesting Schedule.** If the Plan's vesting schedule is amended or if the plan is amended in any way that directly or indirectly affects the computation of the Participant's vested percentage, each Participant with at least three (3) Years of Service with the Employer, as of the end of the election period described in the following paragraph, may elect to have his/her vested interest computed under the Plan without regard to such amendment or change. However, the new vesting schedule will apply automatically to an Employee, and no election will be provided, if the new vesting schedule is at least as favorable to such Employee, in all circumstances, as the prior vesting schedule.

The period during which the election may be made shall commence with the date the amendment is adopted or is deemed to be made and shall end on the latest of:

(a) 60 days after the amendment is adopted;

(b) 60 days after the amendment becomes effective; or

(c) 60 days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or effective, the vested percentage (determined as of such date) of such Employee's Account Balance will not be less than the percentage computed under the Plan without regard to such amendment. With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each Participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

No amendment to the plan shall be effective to the extent that it has the effect of decreasing a participant's accrued benefit. Notwithstanding the preceding sentence, a participant's Account Balance may be reduced to the extent permitted under Code §412(c)(8), ERISA §4281, or other applicable law. For purposes of this section, a Plan amendment includes any changes to the terms of the Plan, including changes resulting from a merger, consolidation, or transfer (as defined in Code §414(l)) or a Plan termination. The rules of this Section 7.08 apply to a Plan amendment that decreases a Participant's benefit, or otherwise places greater restrictions or conditions on a Participant's right to protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in Code §411. However, such an amendment does not violate this Section 7.08 to the extent it applies with respect to benefits that accrue after the applicable amendment date. An amendment that satisfies the applicable requirements under DOL Reg. §2530.203-2(c) relating to Vesting Computation Periods does not fail to satisfy the requirements of this Section 7.08 merely because the amendment changes the Plan's Vesting Computation Period.

7.09 **Special Vesting Rule - In-Service Distribution When Account Balance is Less than 100% Vested.** If amounts are distributed from a Participant's Employer Contribution Account or Matching Contribution Account at a time when the Participant's vested percentage in such amounts is less than 100% and the Participant may increase the vested percentage in the Account Balance:

(a) A separate Account will be established for the Participant's interest in the Plan as of the time of the distribution, and

(b) At any relevant time the Participant's vested portion of the separate Account will be equal to an amount ("X") determined by the formula:

$$X = P (AB + D) - D$$

Where:

P is the vested percentage at the relevant time;

AB is the Account Balance at the relevant time; and

D is the amount of the distribution.

7.10 **Forfeiture of Benefits.** A Participant will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account upon the occurrence of any of the events described below. The Plan Administrator has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited pursuant to this Section 7.10, a Participant's entire Account must remain in the Plan and continue to share in gains and losses of the Trust. A Participant will not forfeit any of his/her nonvested Account until the occurrence of one of the following events.

(a) **Cash-Out Distribution.** Following termination of employment, a Participant may receive a total distribution of his/her vested benefit under the Plan (a "Cash-Out Distribution") in accordance with the distribution and Participant consent provisions under Section 8. If a Participant receives a Cash-Out Distribution upon termination of employment, the Participant's nonvested benefit under the Plan will be forfeited in accordance with subsection (1) below. If at the time of termination, a Participant is totally nonvested in his/her entire Account Balance, the Participant will be deemed to receive a total Cash-Out Distribution of his/her entire vested Account Balance (i.e., a deemed Cash-Out Distribution of zero dollars) as of the date of termination, subject to the forfeiture provisions under subsection (1) below.

If a Participant receives a distribution of less than the entire vested portion of his/her Account Balance (including any additional amounts to be allocated under subsection (1)(ii) below), the Participant will not be treated as receiving a Cash-Out Distribution until such time as the Participant receives a distribution of the remainder of the vested portion of his/her Account Balance.

(1) **Timing of forfeiture.** If a Participant receives a Cash-Out Distribution of his/her vested Account Balance (as defined in subsection (a) above), the Participant will immediately forfeit the nonvested portion of such Account Balance, as of the date of the distribution or deemed distribution (as determined under subsection (i) or (ii) below, whichever applies). (See Section 7.11 below for a discussion of the treatment of forfeitures under the Plan.)

(i) **No further allocations.** For purposes of applying the Cash-Out Distribution rules, a terminated Participant who receives a total distribution of his/her vested Account Balance will be treated as receiving the Cash-Out Distribution as of the date the Participant receives such distribution (or in the case of a deemed Cash-Out Distribution (as described in subsection (a) above) as of the date the Participant terminates employment), provided the Participant is not entitled to any further allocations under the Plan for the Plan Year in which the Participant terminates employment. The Participant' will forfeit his/her nonvested benefit as of the date the Participant receives the Cash-Out Distribution, in accordance with the provisions under Section 7.11.

(ii) **Additional allocations.** For purposes of applying the Cash-Out Distribution rules, if upon termination of employment, a Participant is entitled to an additional allocation for the Plan Year in which the Participant terminates, such Participant will not be deemed to receive a Cash-Out Distribution until such time as the Participant receives a distribution of his/her entire vested Account Balance, including any amounts that are still to be allocated under the Plan. Thus, a terminated Participant who is entitled to an additional allocation (e.g., an additional Employer Contribution) for the Plan Year of termination will not be deemed to have a total Cash-Out Distribution until the Participant receives a distribution of such additional amounts. In the case of a deemed Cash-Out Distribution (as described in subsection (a) above), if the Participant is entitled to an additional allocation under the Plan for the Plan Year in which the Participant terminates employment, the deemed Cash-Out Distribution is deemed to occur on the first day of the Plan Year following the Plan Year in which the termination occurs, provided the Participant is still totally nonvested in his/her Account Balance.

(iii) **Modification of Cash-Out Distribution rules.** The Employer may elect under AA §8-7 to modify the Cash-Out Distribution provision under subsection (ii) above to provide that the Cash-Out Distribution and related forfeiture occur immediately upon distribution (or deemed distribution) of the terminated Participant's vested Account Balance, without regard to whether the Participant is entitled to an additional allocation under the Plan.

(2) **Repayment of Cash-Out Distribution.** If a Participant receives a Cash-Out Distribution (as defined in subsection (a) above) that results in a forfeiture under subsection (1) above, and the Participant resumes employment covered under the Plan, such Participant may repay to the Plan the amount received as a Cash-Out Distribution. A Participant will only be permitted to repay his/her Cash-Out Distribution if such repayment is made before the earlier of:

(i) five (5) years after the first date on which the Participant is subsequently re-employed by the Employer, or

(ii) the date the Participant incurs a Five-Year Forfeiture Break in Service (as defined in subsection (b) below).

If a Participant receives a deemed Cash-Out Distribution (as described in subsection (a) above), and the Participant resumes employment covered under this Plan before the date the Participant incurs a Five-Year Forfeiture Break in Service, the Participant is deemed to repay the Cash-Out Distribution immediately upon his/her reemployment.

(3) **Restoration of forfeited benefit.** If a rehired Participant repays a Cash-Out Distribution in accordance with subsection (2) above, any amounts that were forfeited on account of such Cash-Out Distribution (unadjusted for any interest that might have accrued on such amounts after the distribution date) will be restored to the Plan no later than the end of the Plan Year following the Plan Year in which the Participant repays the Cash-Out Distribution (or is deemed to repay the Cash-Out Distribution under subsection (2) above). No amount will be restored under the Plan, however, until such time as the Participant repays the entire amount of the Cash-Out Distribution. (However, see subsection (d) below for a discussion of special rules that apply if a Participant's Cash-Out Distribution includes a distribution of Salary Deferrals.) In no event will a Participant be entitled to a restoration under this subsection (3) if the Participant returns to employment after incurring a Five-Year Forfeiture Break in Service (as defined in subsection (b) below).

(4) **Sources of restoration.** If a Participant's forfeited benefit is required to be restored under subsection (3), the restoration of such forfeited benefits will occur from the following sources. If the following sources are not sufficient to completely restore the Participant's benefit, the Employer must make an additional contribution to the Plan.

(i) Any unallocated forfeitures for the Plan Year of the restoration.

(ii) Any unallocated earnings for the Plan Year of the restoration.

(iii) Any portion of a discretionary Employer Contribution to the extent such contribution has not been allocated to Participants' Accounts for the Plan Year of the restoration.

(b) **Five-Year Forfeiture Break in Service.** If a Participant has five (5) consecutive one-year Breaks in Service (a "Five-Year Forfeiture Break in Service"), all Years of Service after such Breaks in Service will be disregarded for the purpose of vesting in the portion of the Participant's Employer Contribution Account and/or Matching Contribution Account that accrued before such Breaks in Service. A Participant who incurs a Five-Year Forfeiture Break in Service will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account as of the end of the Vesting Computation Period in which the Participant incurs the fifth consecutive Break in Service. Except as provided under Section 7.07, a Participant who is rehired after incurring a Five-Year Forfeiture Break in Service will be credited with both pre-break and post-break service for purposes of determining his/her vested percentage in amounts that accrue under the Plan after the Five Year Forfeiture Break in Service.

(c) **Missing Participant or Beneficiary.** If the Plan is able to make a distribution to a Participant or Beneficiary without consent (as permitted under Section 8.04) and such Participant or Beneficiary cannot be located within a reasonable period following a reasonable diligent search, the Plan Administrator may forfeit the missing Participant's or Beneficiary's Account, as provided in subsection (2) below. An Employer will be deemed to have performed a reasonable diligent search if it performs the actions described in subsection (1) below. In determining whether a reasonable period has elapsed following a reasonable diligent search, the Plan Administrator may follow any applicable guidance provided under statute, regulation, or other IRS or DOL guidance of general applicability. However, the Plan Administrator will be deemed to have waited a reasonable period following a reasonable diligent search if the Plan Administrator waits at least 6 months following the completion of the actions described in subsection (1) below. For purposes of applying this subsection (c), a Participant or Beneficiary is considered missing only if the Plan may make a distribution to such Participant or Beneficiary without consent. (See Section 8.06 for the availability of Automatic Rollover rules that permit the Plan Administrator to automatically rollover a Participant's Involuntary Cash-Out

Distribution to an IRA upon the Participant's failure to consent to a distribution, without the need to locate the Participant.)

(1) **Reasonable diligent search.** The Plan Administrator will be deemed to have performed a reasonable diligent search if it performs the following actions:

(i) Send a certified letter to the Participant's or Beneficiary's last known address.

(ii) Check related plan records of the Employer (e.g., health plan records) to determine if a more current address exists for the Participant or Beneficiary.

(iii) If the Participant cannot be located, the Plan Administrator may attempt to identify and contact any individual that the Participant has designated as a Beneficiary under the Plan for updated information concerning the location of the missing Participant.

(iv) Utilize either the IRS or Social Security Administration (SSA) letter-forwarding services for locating lost participants. (See Rev. Proc. 94-22 for additional information regarding the IRS letter forwarding program. Additional information regarding the SSA letter forwarding program can be located at www.ssa.gov.)

(v) In addition to the search methods discussed above, the Plan Administrator may use other search methods, including the use of Internet search tools, commercial locator services, and credit reporting agencies to locate the missing Participant.

(2) **Forfeiture of Account of missing Participant or Beneficiary.** If a Participant or Beneficiary is deemed to be missing (as described in subsection (c) above), the Plan Administrator may forfeit the distributable amount attributable to such missing Participant or Beneficiary, as permitted under applicable laws and regulations. If, after an amount is forfeited under this subsection (2), the missing Participant or Beneficiary is located, the Plan will restore the forfeited amount (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time in accordance with the provisions of subsection (a)(3) above. However, if a missing Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable amount will be irrevocable.

(3) **Expenses attributable to search for missing Participant,** Reasonable expenses attendant to locating a missing Participant may be charged to such Participant's Account, provided that the amount of such expenses is reasonable. The Plan Administrator may take into account the size of a Participant's Account in relation to the cost of the search when deciding how extensive a search is required before declaring such Participant as missing under subsection (c).

(d) **Excess Deferrals and Excess Aggregate Contributions.** If a Participant receives a distribution of Excess Deferrals or Excess Aggregate Contributions, the Employer will forfeit the portion of his/her Matching Contribution Account (whether vested or not) which is attributable to such distributed amounts (except to the extent such amount has been distributed as Excess Aggregate Contributions, pursuant to Section 6.02(b)(2)). A forfeiture of Matching Contributions under this subsection (d) occurs in the Plan Year in which the Participant receives the distribution of Excess Deferrals and/or Excess Aggregate Contributions.

7.11 **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 §8-6(c) or (d), as applicable, any remaining forfeiture will be used (as designated in AA §8-6) 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. If the Employer elects to use forfeitures to reduce contributions and there are forfeitures remaining after all required contributions have been reduced to zero, the Employer may elect to reallocate any remaining forfeitures as additional contributions, pursuant to subsection (a).

(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.

SECTION 8
PLAN DISTRIBUTIONS

Subject to the Qualified Joint and Survivor Annuity Requirements under Section 9 and to the terms of any vendor agreement or contract associated with the Plan, a Participant may receive a distribution of his/her vested Account Balance at the time and in the manner provided under this Section 8. Upon reaching the Required Beginning Date (defined in Section 8.11(e)(5)), a Participant must begin receiving distributions under the Plan (in accordance with the provisions of Section 8.11.)

8.01 **Deferred distributions.** A Participant must be permitted to receive a distribution from the Plan no later than the 60th day after the latest of the close of the Plan Year in which:

(a) the Participant attains age 65 (or Normal Retirement Age, if earlier);

(b) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or,

(c) the Participant terminates service with the Employer.

A failure by the Participant (and spouse, if applicable) to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section. For this purpose, an Account Balance is immediately distributable if any part of the Account Balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained if not deceased) the later of Normal Retirement Age or age 62.

8.02 **Available Forms of Distribution.** Subject to the Qualified Joint and Survivor Annuity (QJSA) rules described in Section 9, the Employer may elect under AA §9-1 the forms of distribution that are available to a Participant or Beneficiary under the Plan. Different distribution options may apply depending on whether a distribution is made upon termination of employment, death, disability or as an in-service withdrawal. Available distribution options under AA §9-1 may include a lump sum of all or a portion of the Participant's vested Account Balance, installments, annuity payments, or any other form designated in AA §9-1. Any distribution options selected under the Plan must comply with the required minimum distribution rules under Section 8.11.

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

Regardless of the distribution options selected under AA §9-1, if the Plan is subject to the Joint and Survivor Annuity requirements (as described in Section 9), the Plan must make distribution in the form of a QJSA (as defined in Section 9.02(a)) unless the Participant (and spouse, if the Participant is married) elects an alternative distribution form in accordance with a Qualified Election (as defined in Section 9.04).

8.03 **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 which 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.

(a) **Individual or Participant-Directed Accounts.** In the case of a Participant-directed Account, an individual Custodial Account or individual Annuity Contract, the determination of the value of the Participant's Account for distribution purposes is subject to the funding and valuation procedures applicable to such directed Account, individual Custodial Account or individual Annuity Contract.

(b) **Permissible distribution events.** In no event may Participants receive distributions under the Plan until the conditions set forth below are satisfied. The Employer may further restrict the distribution conditions under the Agreement.

(1) **Salary Deferral Account.** A Participant may not receive a distribution of any amounts held under a Salary Deferral Account unless the Participant satisfies one of the following conditions:

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

(ii) The Participant has attained age 59 ½.

(iii) The Participant dies or becomes Disabled.

(iv) The Participant qualifies for a Hardship distribution.

(2) **Custodial Account.** A Participant may not receive a distribution of any amounts attributable to Matching Contributions or Employer Contributions held under a Custodial Account unless the Participant satisfies one of the following conditions:

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

(ii) The Participant has attained age 59 ½.

(iii) The Participant dies or becomes Disabled.

(3) **Annuity Contract.** A Participant may not receive a distribution of any amounts attributable to Matching Contributions or Employer Contributions held under an Annuity Contract unless the Participant satisfies one of the following conditions:

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

(ii) The Participant qualifies for a distribution due to the occurrence of some event, such as after affixed number of years or the attainment of a stated age, as specified under the Agreement.

(iii) The Participant dies or becomes Disabled.

(iv) The Participant qualifies for a Hardship distribution.

(4) **Special rule regarding Severance from Employment.** For purposes of Plan distributions, Severance from Employment occurs on any date an Employee ceases to be an Employee of an Eligible Employer, even though the Employee may continue to be employed by another entity that is treated as the same Employer whether that other entity cannot be an Eligible Employer or in a capacity that is not employment with an Eligible Employer.

8.04 **Participant Consent.** If the value of a Participant's entire vested Account Balance exceeds the Involuntary Cash-Out threshold (as defined in subsection (a) below), the Participant must consent to any distribution of such Account Balance prior to his/her Required Beginning Date (as defined in Section 8.11(e)(5)) or, if so provided in AA §9-4(d), as of the date the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62. If a distribution is subject to Participant consent, the Participant must consent in writing to the distribution within the 120-day period ending on the Annuity Starting Date. If the distribution is subject to the Qualified Joint and Survivor Annuity requirements under Section 9, the Participant's spouse (if the Participant is married at the time of the distribution) also must consent to the distribution in accordance with Section 9.04. In any event, the Participant's consent must be obtained before any distribution regardless of the amount, if such participant is the sole owner of the investment vehicle under the Plan.

(a) **Involuntary Cash-Out threshold.** For purposes of determining whether a distribution is subject to the Participant consent requirements as described in Section 8.04, the Involuntary Cash-Out threshold is $5,000 unless a lesser amount is designated under AA §9-4(a). (See Section 8.06 for a discussion of the Automatic Rollover rules that apply if a Participant does not consent to a distribution that does not exceed the Involuntary Cash-Out threshold.)

(b) **Rollovers disregarded in determining value of Account Balance for Involuntary Cash-Outs.** For purposes of determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold described in subsection (a), the value of the Participant's vested Account Balance shall be determined without regard to that portion of the Account Balance that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Code §§402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16). The Employer may elect in AA §9-4(c) to include Rollover Contributions (and earnings allocable thereto) in determining whether the Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold.

(c) **Participant notice.** Prior to receiving a distribution from the Plan, a Participant must be notified of his/her right to defer any distribution from the Plan in accordance with the provisions under Section 8.01. The notification shall include a general description of the material features, the consequences of a Participant's decision not to defer the receipt of a distribution, and the relative values of the optional forms of benefit available under the Plan (consistent with the requirements under Code §417(a)(3)). The notice must be provided no less than 30 days and no more than 180

days prior to the Participant's Annuity Starting Date. However, distribution may commence less than 30 days after the notice is given, if the Participant is clearly informed of his/her right to take 30 days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects to receive the distribution prior to the expiration of the 30-day minimum period. (But see Section 9.02(c) for the rules regarding the timing of distributions when the Qualified Joint and Survivor Annuity requirements apply.) The notice requirements described in this paragraph may be satisfied by providing a summary of the required information, so long as the conditions described in applicable regulations for the provision of such a summary are satisfied, and the full notice is also provided (without regard to the 180-day period described in this subsection).

(d) **Special rules.** The consent rules under this Section 8.04 apply to distributions made after the Participant's termination of employment and to distributions made prior to the Participant's termination of employment. However, the consent of the Participant (and the Participant's spouse, if applicable) shall not be required to the extent that a distribution is required to satisfy the required minimum distribution rules under Section 8.11 or to satisfy the requirements of Code §415, as described in Section 5.03. A Participant also will not be required to consent to a corrective distribution of Excess Deferrals or Excess Aggregate Contributions.

8.05 **Direct Rollovers.** This Section 8.05 applies to distributions made after December 31, 2001. Notwithstanding any provision in the Plan to the contrary, a Participant may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a Direct Rollover. If an Eligible Rollover Distribution is less than $500, the Participant may not elect a Direct Rollover of only a portion of such distribution (i.e., a Participant must elect a complete Direct Rollover if the Eligible Rollover Distribution is less than $500). For purposes of this Section 8.05, a Participant includes a Participant or former Participant. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving spouse or to a Participant's spouse or former spouse who is the Alternate Payee under a QDRO, as defined in Section 11.07(b)(3).

(a) **Definitions.**

(1) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's Account Balance, except an Eligible Rollover Distribution does not include:

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

(ii) any distribution to the extent such distribution is a required minimum distribution under Code §401(a)(9), as described under Section 8.11;

(iii) any Hardship distribution, as described in Section 8.09(d);

(iv) any distribution if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than $200;

(v) a distribution made to satisfy the requirements of Code §415 (as described in Section 5.03) or a distribution to correct Excess Deferrals or Excess Aggregate Contributions (as described in Sections 5.02(b) and 6.02(b)).

(2) **Eligible Retirement Plan.** For purposes of applying the Direct Rollover provisions under this Section 8.05, an Eligible Retirement Plan is:

(i) a qualified plan described in Code §401(a);

(ii) an individual retirement account described in Code §408(a);

(iii) an individual retirement annuity described in Code §408(b);

(iv) an annuity plan described in Code §403(a);

(v) an annuity contract described in Code §403(b); or

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

The definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a QDRO, as defined in Section 11.07(b)(3).

To the extent any portion of an Eligible Rollover Distribution is attributable to Roth Deferrals (as defined in Section 3.03(g)), an Eligible Retirement Plan shall include only another designated Roth account of the Participant or a Roth IRA.

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

(4) **Rollover of Nontaxable Amounts.** Effective for Plan Years beginning on or after January 1, 2007, an Eligible Rollover Distribution may include the portion of any distribution that is not includible in gross income. For this purpose, an Eligible Retirement Plan includes a Defined Contribution or Defined Benefit Plan qualified under Code §401(a) and a tax-sheltered annuity plan under Code §403(b), provided the rollover is accomplished through a direct rollover and the recipient Eligible Retirement Plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.

(5) **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).

(6) **Rollovers to Roth IRA.** For distributions occurring on or after January 1, 2008, a Participant or beneficiary (including a non-spousal beneficiary to the extent permitted under subsection (5)), may rollover an Eligible Rollover Distribution (as defined in subsection (1)) to a Roth IRA, provided the Participant (or beneficiary) satisfies the requirements for making a Roth contribution under Code §408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code §408A(d)(3)(A)). For purposes of this subsection (6), the Plan Administrator is not responsible for assuring the Participant (or beneficiary) is eligible to make a rollover to a Roth IRA.

(b) **Direct Rollover notice.** A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of his/her right to a Direct Rollover, the tax consequences of not making a Direct Rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same 30 – 180 day timeframe applicable to the Participant consent notice under Section 8.04(c). The Direct Rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than $200.

If a Participant terminates employment with a total vested Account Balance that does not exceed the Involuntary Cash-Out threshold (as defined in Section 8.04(a)) and the Participant does not respond to the Direct Rollover notice indicating whether a Direct Rollover is desired and the name of the Eligible Retirement Plan to which the Direct Rollover is to be made, the Plan Administrator will distribute the Participant's entire vested Account Balance in the form of an Automatic Rollover (pursuant to Section 8.06) no earlier than 30 days and no later than 180 days following the provision of the Direct Rollover notice. (However, see Section 8.06(b) for special rules that apply to Involuntary Cash-Out Distributions below $1,000.) The Direct Rollover notice must describe the procedures for making an Automatic Rollover, including the name, address, and telephone number of the IRA trustee and information regarding IRA maintenance and withdrawal fees and how the IRA funds will be invested. The Direct Rollover notice also must describe the timing of the Automatic Rollover and the Participant's ability to affirmatively opt out of the Automatic Rollover.

8.06 **Automatic Rollover.** The Automatic Rollover rules in this Section 8.06 are effective for all Involuntary Cash-Out Distributions (as defined in subsection (b)) made on or after March 28, 2005.

(a) **Automatic Rollover requirements.** If a Participant is entitled to an Involuntary Cash-Out Distribution (as defined in subsection (b)), and the Participant does not elect to receive a distribution of such amount (either as a Direct Rollover

to an Eligible Retirement Plan or as a direct distribution to the Participant), then the Plan Administrator may pay the distribution in a Direct Rollover to an individual retirement plan (IRA) designated by the Plan Administrator. (The Automatic Rollover provisions under this subsection (a) apply to any Involuntary Cash-Out Distribution for which the Participant fails to consent to a distribution, without regard to whether the Participant can be located. See Section 7.10(c) for alternatives if the Participant cannot be located after a reasonable diligent search.)

(b) **Involuntary Cash-Out Distribution.** An Involuntary Cash-Out Distribution is any distribution that is made from the Plan without the Participant's consent. Unless elected otherwise under AA §9-4(b), an Involuntary Cash-Out Distribution, for purposes of applying the Automatic Rollover requirements under this Section 8.06, does not include any amounts below $1,000. (See Section 8.04 for the Participant consent requirements with respect to distributions under the Plan.)

(c) **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.

8.07 **Distribution Upon Termination of Employment.** Subject to the required minimum distribution provisions under Section 8.11, a Participant who terminates employment for any reason (other than death) is entitled to receive a distribution of his/her vested Account Balance in accordance with this Section 8.07. (See Section 8.08 for the applicable rules when a Participant dies before distribution of his/her vested Account Balance is completed.)

(a) **Account Balance not exceeding $5,000.** If a Participant's vested Account Balance does not exceed $5,000 at the time of distribution, the only distribution option available under the Plan is a lump sum option. The Participant will be eligible to receive a distribution of his/her vested Account Balance as of the date selected in AA §9-3(b). The Employer may elect in AA §9-4(a) to require a Participant to consent to a distribution where his/her vested Account Balance does not exceed $5,000. However this will not change the distribution options described in this subsection (a), unless the Employer specifically modifies such options under AA §9-3(b)(4). In any event, the Participant's consent must be obtained before any distribution regardless of the amount, if such participant is the sole owner of the investment vehicle under the Plan. (See Section 8.04 for a further discussion of the consent requirements under the Plan.)

(b) **Account Balance exceeding $5,000.** If a Participant's vested Account Balance exceeds $5,000 at the time of distribution, the Participant may elect to receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1. The Participant will be eligible to receive a distribution of his/her vested Account Balance as of the date selected in AA §9-3(a). (See Section 8.04 for a discussion of the consent requirements under the Plan.)

8.08 **Distribution Upon Death.** Subject to the required minimum distribution rules in Section 8.11, a Participant's vested Account Balance will be distributed to the Participant's Beneficiary(ies) in accordance with this Section 8.08. (See subsection (c) for rules regarding the determination of Beneficiaries upon the death of the Participant.) The form of benefit payable with respect to a deceased Participant will depend on whether the Participant dies before or after distribution of his/her Account Balance has commenced.

(a) **Death after commencement of benefits.** If a Participant begins receiving a distribution of his/her benefits under the Plan, and subsequently dies prior to receiving the full value of his/her vested Account Balance, the remaining benefit will continue to be paid to the Participant's Beneficiary(ies) in accordance with the form of payment that has already commenced. If a Participant commences distribution prior to death only with respect to a portion of his/her Account Balance, then the rules in subsection (b) apply to the rest of the Account Balance.

(b) **Death before commencement of benefits.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the form and timing of any death benefits will depend on whether the value of the death benefit exceeds $5,000. In determining whether the value of the death benefit exceeds $5,000, if there is both a QPSA death benefit and a non-QPSA death benefit, each death benefit is valued separately to determine whether it exceeds $5,000.

(1) **Death benefit not exceeding $5,000.** If the value of the death benefit does not exceed $5,000, such benefit will be paid to the Participant's Beneficiary(ies) in a single sum as soon as administratively feasible following the Participant's death.

(2) **Death benefit exceeding $5,000.** If the value of the death benefit exceeds $5,000, the payment of the death benefit will depend on whether the Qualified Joint and Survivor Annuity requirements apply. See Section 9 to determine whether the Qualified Joint and Survivor Annuity rules apply to a death distribution from the Plan.

(i) **If the Qualified Joint and Survivor Annuity requirements do not apply**, the entire death benefit is payable in the form and at the time described in subsection (ii)(B).

(ii) **If the Qualified Joint and Survivor Annuity requirements apply**, the death benefit may consist of a QPSA death benefit (as described in Section 9.03(a)) and, if applicable, a non-QPSA death benefit.

(A) **QPSA death benefit.** Subject to the waiver procedures under Section 9.04(b), if the Participant is married at the time of death, the surviving spouse is entitled to a QPSA death benefit payable in accordance with the provisions under Section 9.03. (See Section 9.04(c) for rules regarding the determination of a Participant's marital status.)

(B) **Non-QPSA death benefits.** If a Participant is not married at the time of death, the QPSA death benefit was waived under a Qualified Election, or if the QPSA death benefit is less than 100% of the Participant's vested Account Balance, then the non-QPSA death benefit is payable in the form and at the time described in this subsection (B). Any death benefit payable under this subsection (B) will be paid in a lump sum as soon as administratively feasible following the Participant's death. However, the death benefit may be payable in a different form if prescribed by the Participant's Beneficiary designation, or the Beneficiary, before a lump sum payment of the benefit is made, elects to receive the distribution in an alternative form of benefit permitted under Section 8.01.

In no event will any death benefit be paid in a manner that is inconsistent with the required minimum distribution rules under Section 8.11. The Beneficiary of any pre-retirement death benefit described in this subsection (b) may postpone the commencement of the death benefit to a date that is not later than the latest commencement date permitted under Section 8.11, unless such election is prohibited in AA §9-1.

(c) **Determining a Participant's Beneficiary.** The determination of a Participant's Beneficiary(ies) to receive any death benefits under the Plan will be based on the Participant's Beneficiary designation under the Plan. If a Participant does not designate a Beneficiary to receive the death benefits under the Plan, distribution will be made to the default Beneficiaries, as set forth in subsection (3) below. However, any designation of a Beneficiary other than the Participant's spouse, must satisfy the consent requirements under subsection (1) and (2) below.

(1) **Post-retirement death benefit.** If a Participant dies after commencing distribution of benefits under the Plan (but prior to receiving a distribution of his/her entire vested Account Balance under the Plan), the Beneficiary of any post-retirement death benefit is the Participant's surviving spouse, unless (i) there is no surviving spouse, (ii) the surviving spouse has consented to the designation of an alternate Beneficiary(ies) under a Qualified Election (as defined in Section 9.04), or (iii) the surviving spouse makes a valid disclaimer of the death benefit. If the Qualified Joint and Survivor Annuity requirements apply, the spouse is determined as of the Annuity Starting Date for purposes of determining whether a valid election has been made to waive the post-retirement death benefit. If the Qualified Joint and Survivor Annuity requirements do not apply, the spouse is determined as of the Participant's date of death for purposes of determining whether a valid election has been made to waive the post-retirement death benefit.

(2) **Pre-retirement death benefit.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the determination of the Participant's Beneficiary will be determined under subsection (i) or (ii), as applicable.

(i) **If the Qualified Joint and Survivor Annuity requirements apply**, the QPSA death benefit will be payable in accordance with Section 9.02. If a QPSA death benefit is payable under Section 9.02, such benefit will be paid to the Participant's surviving spouse, unless the spouse consents to the designation of an alternative Beneficiary pursuant to a Qualified Election under Section 9.04 or a valid disclaimer. If the QPSA death benefit applies to less than 100% of the Participant's vested Account Balance, the remaining death benefit is payable to any Beneficiary(ies) named in the Participant's Beneficiary designation, without regard to whether spousal consent is obtained for such designation. If a spouse does not properly consent to a Beneficiary designation, the QPSA waiver is invalid, and the QPSA death benefit is still payable to the spouse, but the Beneficiary designation remains valid with respect to any non-QPSA death benefit.

(ii) **If the Joint and Survivor Annuity requirements do not apply,** the surviving spouse (determined at the time of the Participant's death) will be treated as the sole Beneficiary, regardless of any contrary Beneficiary designation, unless there is no surviving spouse, or the spouse has consented to the Beneficiary designation in a manner that is consistent with the requirements for a Qualified Election under Section 9.04 or makes a valid disclaimer. (See Section 9.04(c) for rules regarding the determination of a Participant's marital status.)

(3) **Default beneficiaries.** To the extent a Beneficiary has not been named by the Participant (subject to the spousal consent rules discussed above) 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 Adoption Agreement.

(4) **Identification of Beneficiaries.** The Plan Administrator may request proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan in any form or manner the Plan Administrator may deem appropriate. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian, conservator recognized under state law, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator will not be liable for any payments made in accordance with this subsection (4) and will not be required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan.

(5) **Death of Beneficiary.** Unless specified otherwise in the Participant's Beneficiary designation 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.

(6) **Divorce or legal separation from spouse.** 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.

8.09 **In-Service Distributions.** The Employer may elect under AA §10 to permit in-service distributions under the Plan. If an in-service distribution is not specifically permitted under AA §10, a Participant may not receive a distribution from the Plan until termination of employment, death or disability. If the Plan permits a Participant to receive an in-service distribution, and such distribution is subject to the Qualified Joint and Survivor Annuity requirements under Section 9, such distribution may be made only if the Participant's spouse (if the Participant is married at the time of distribution) consents to such distribution in accordance with the requirements under Section 9.04.

(a) **After-Tax Contributions and Rollover Contributions.** A Participant may withdraw at any time, upon written request, all or any portion of his/her Account Balance attributable to After-Tax Contributions or Rollover Contributions. No forfeiture will occur solely as a result of an Employer's withdrawal of After-Tax Contributions. (See Section 14.04 for a discussion of the distribution rules applicable to transferred Plan assets.)

(b) **Employer Contributions.** The Employer may elect under AA §10 the extent to which in-service distributions will be permitted from Employer Contributions (including Matching Contributions, if applicable) under the Plan. (See subsection (c) below for the in-service distribution rules applicable to Salary Deferrals, QNECs, QMACs and Safe Harbor Contributions.) If permitted under AA §10, Employer Contributions may be withdrawn upon the occurrence of a specified event (including a Hardship, as defined in subsection (d)) or upon the completion of a certain number of years, provided no distribution on account of years may be made with respect to Employer Contributions that have been accumulated in the Plan for less than 2 years, unless the Participant has been a Participant in the Plan for at least 5 years. (See Section 7.09 for special vesting rules that apply if a Participant takes an in-service distribution prior to becoming 100% vested in such contributions.)

(c) **Salary Deferrals, QNECs, QMACs, and Safe Harbor Contributions.** Any Salary Deferrals, QNECs, QMACs, or Safe Harbor Contributions (including any earnings on such amounts) generally may not be distributed prior to the Participant's severance from employment, death, or disability. However, the Employer may elect under AA §10 to permit an in-service distribution of such amounts upon attainment of a specified age (no earlier than age 59½) or upon a Hardship (as defined in subsection (d)). A Hardship distribution is not available with respect to QNECs, QMACs, or Safe Harbor Contributions.

(d) **Hardship distribution.** The Employer may elect under AA §10(c) to authorize an in-service distribution upon the occurrence of a Hardship event. A Hardship distribution must meet the requirements of a safe harbor Hardship as described under subsection (1) below. A Hardship distribution is not available for QNECs, QMACs or Safe Harbor Contributions.

(1) **Safe harbor Hardship distribution.** To qualify for a safe harbor Hardship, a Participant must demonstrate an immediate and heavy financial need, as described in subsection (i), and the distribution must be necessary to satisfy such need, as described in subsection (ii).

(i) **Immediate and heavy financial need.** To be considered an immediate and heavy financial need, the Hardship distribution must be made to satisfy one of the following financial needs:

(A) to pay expenses incurred or necessary for medical care (as described in Code §213(d)) of the Participant, the Participant's spouse or dependents (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

(B) for the purchase (excluding mortgage payments) of a principal residence for the Participant;

(C) for payment of tuition and related educational fees (including room and board) for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents;

(D) to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;

(E) to pay funeral or burial expenses for the Participant's deceased parent, spouse, child or dependent;

(F) to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165 (determined without regard to whether the loss exceeds the 10% of adjusted gross income limit); or

(G) for any other event that the IRS recognizes as a safe harbor Hardship distribution event under ruling, notice or other guidance of general applicability.

For purposes of determining eligibility of a Hardship distribution under this subsection (i), a dependent is determined under Code §152. However, the determination of dependent for purposes of tuition and education fees under subsection (C) above will be made without regard to Code §152(b)(1), (b)(2), and (d)(1)(B) and the determination of dependent for purposes of funeral or burial expenses under subsection (E) above will be made without regard to Code §152(d)(1)(B).

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

(ii) **Distribution necessary to satisfy need.** A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant if:

(A) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(B) The Participant has obtained all available distributions, other than Hardship distributions, and all nontaxable loans under the Plan and all plans maintained by the Employer; and

(C) The Participant is suspended from making Salary Deferrals (and After-Tax Contributions) for 6 months after the receipt of the Hardship distribution.

(2) **Non-safe harbor Hardship distribution.** The Employer may elect in AA §10-1(g) to permit Participants to take a Hardship distribution without satisfying the requirements of subsection (1) above.

(i) For purposes of determining whether a Hardship exists under this subsection (2), the Plan Administrator will consider all of the facts and circumstances. The same Hardship distribution events described in subsection (1)(i) will qualify as a Hardship distribution event under this subsection (2). The Employer may modify the permissible Hardship distribution events under AA §10-1(g).

(ii) A Hardship distribution under this subsection (2) need not satisfy the requirements under (1)(ii) above. However, if the requirements of subsection (1)(ii) are not met, no Hardship distribution shall be made

unless the Plan Administrator, based upon the Participant's representation and such other facts as are known to the Plan Administrator, determines that all of the following conditions are satisfied:

(A) The distribution shall not exceed the amount necessary to satisfy the immediate and heavy financial need of the Participant. The distribution may include any amounts necessary to pay any federal, state or local taxes or penalties reasonably anticipated to result from the distribution).

(B) The immediate and heavy financial need may not be relieved from other resources that are reasonably available to an Employee. The Employer may rely on the Employee's representation, unless the Employer has actual knowledge to the contrary, that the need cannot reasonably be relieved:

(I) Through reimbursement or compensation by insurance or otherwise;

(II) By liquidation of the employee's assets;

(III) By cessation of elective contributions or employee contributions under the plan;

(IV) By other currently available distributions (including distribution of ESOP dividends under Code §404(k)) and nontaxable loans, under Plans maintained by the Employer or by any other Employer; or

(V) By borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

(3) **Amount available for Hardship distribution.** A Participant in an Annuity Contract (but not a Custodial Account) may receive a Hardship distribution of any portion of his/her vested Employer Contribution Account or Matching Contribution Account (including earnings thereon), as permitted under AA §10. A Participant may receive a Hardship distribution of Salary Deferrals provided such distribution, when added to other Hardship distributions from Salary Deferrals, does not exceed the total Salary Deferrals the Participant has made to the Plan (increased by income allocable to such Salary Deferrals as of the later of December 31, 1988 or the end of the last Plan Year ending before July 1, 1989).

(4) Application of Hardship distributions rules with respect to primary beneficiaries. If elected under AA §10-4, if the Plan otherwise permits Hardship distributions based on the safe harbor hardship provisions under subsection (1), the existence of an immediate and heavy financial need under subsection (1)(i) may be determined with respect to a primary beneficiary under the Plan. For this purpose, a primary beneficiary is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of a Participant's Account Balance upon the death of the Participant. Hardship distributions with respect to primary beneficiaries under this subsection (4) are limited to hardship distributions on account of medical expenses, educational expenses and funeral expenses. Any Hardship distribution with respect to a primary beneficiary must satisfy all the other requirements applicable to Hardship distributions.

(e) **Penalty-Free Withdrawals for Individuals Called to Active Duty.** Effective September 11, 2001, the distribution provisions applicable to elective deferrals include a Qualified Reservist Distribution, as defined in subsection (1) below. If a Participant takes a Qualified Reservist Distribution, such distributions will not be subject to the 10% penalty tax under Code §72(t).

(1) Qualified Reservist Distribution. For purposes of this subsection (e), a Qualified Reservist Distribution means any distribution to an individual if:

(i) such distribution is from amounts attributable to elective deferrals described in Code §402(g)(3)(A) or (C) or Code §501(c)(18)(D)(iii),

(ii) such individual was (by reason of being a member of a reserve component (as defined in §101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(iii) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(2) Active duty. For purposes of this subsection (e), a Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001.

(f) **Qualified Distributions for Retired Public Safety Officers.** A Participant who is an eligible retired public safety officer may elect, after separation from service, to have qualified health insurance premiums deducted from amounts to be distributed from the Plan that would otherwise be includible in gross income, and to have such amounts paid directly to the insurer or group health plan. The distribution shall be excluded from the Participant's gross income to the extent that the aggregate amount of the distribution does not exceed the lesser of the amount used to pay the qualified health insurance premiums of the Participant, the Participant's spouse, and the Participant's dependents (as defined in Code §152), or $3,000, determined by aggregating all distributions with respect to the Participant that are used to pay qualified health insurance premiums from all eligible retirement plans of the Employer as defined in Code §414(d).

(1) **Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Participant, the Participant's spouse, and the Participant's dependents (as defined in Code Section 152) by an accident or health insurance plan (including under a self-insured plan) or qualified long-term care insurance contract (within the meaning of Code Section 7702B(b)).

(2) **Eligible retired public safety officer.** The term "eligible retired public safety officer" means an individual who separated from service, either by reason of disability or after attainment of Normal Retirement Age, as a public safety officer with the Employer. For this purpose, a public safety officer is an individual serving the Employer in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or a member of a rescue squad or ambulance crew.

8.10 **Sources of Distribution.** Unless provided otherwise in separate administrative provisions adopted by the Plan Administrator, in applying the distribution provisions under this Section 8.10, distributions will be made on a pro rata basis from all Accounts from which a distribution is permitted under this Section 8. Alternatively, the Plan Administrator may permit Participants to direct the Plan Administrator as to which Account the distribution is to be made. Regardless of a Participant's direction as to the source of any distribution, the tax effect of such a distribution will be governed by Code §72 and the regulations thereunder.

(a) **Exception for Hardship withdrawals.** If the Plan permits a Hardship withdrawal from both Salary Deferrals (including Roth Deferrals) and Employer Contributions, a Hardship distribution will first be treated as having been made from a Participant's Employer Contribution Account and then from the Employer's Matching Contribution Account, to the extent such Hardship distribution is available with respect to such Accounts. Only when all available amounts have been exhausted under the Participant's Employer Contribution Account and/or Matching Contribution Account will a Hardship distribution be made from a Participant's Pre-Tax Salary Deferral Account and/or Roth Deferral Account. (See subsection (b) below for the ordering rules for distributions from the Pre-Tax Salary Deferral and Roth Deferral Accounts.) The Plan Administrator may modify the ordering rules under this subsection (a) under separate administrative procedures.

(b) **Roth Deferrals.** If a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, withdrawals and loans from such Accounts will be made in accordance with this subsection (b).

(1) **Distributions and withdrawals.** Unless designated otherwise under AA §6A-6 or separate administrative procedures, if a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, the Participant may designate the extent to which a distribution or withdrawal of Salary Deferrals will come from the Pre-Tax Salary Deferral Account or the Roth Deferral Account. Alternatively, the Employer may provide under AA §6A-6 (or under separate administrative procedures) that any distribution or withdrawal of Salary Deferrals will be made on a pro rata basis from the Pre-Tax Salary Deferral Account and the Roth Deferral Account. Alternatively, the Employer may designate any other order of distribution and withdrawals under AA §6A-6 or separate administrative procedures.

(2) **Distribution of Excess Deferrals or Excess Aggregate Contributions.** Unless designated otherwise under AA §6A-6 or separate administrative procedures, if a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, and the Plan is required to make a corrective distribution of Excess Deferrals to such Participant or is required to make a distribution of Salary Deferrals as a correction of Excess Aggregate Contributions, the Participant may designate whether the Plan will make such corrective distribution of Excess Deferrals from the Pre-Tax Salary Deferral Account or the Roth Deferral Account. Alternatively, the Employer may elect under AA §6A-6 (or under separate administrative procedures) that corrective distributions of Salary Deferrals to correct Excess Deferrals or Excess Aggregate Contributions will be made pro rata from the Pre-Tax Salary Deferral Account and Roth Deferral Account or first from the Pre-Tax Salary Deferral Account or first from the Roth Deferral Account. (Unless designated otherwise under separate administrative procedures, if a Participant is permitted to designate the extent to which a corrective distribution is made from the Pre-Tax Salary Deferral Account or the Roth Deferral Account, and the Participant fails to designate the appropriate Account by the date the corrective distribution is made from the Plan, such corrective distribution will be made first from Pre-Tax Salary Deferral Account and then from the Roth Deferral Account.)

(c) **In-kind distributions.** Nothing in this Section 8 precludes the Plan Administrator from making a distribution in the form of property, or other in-kind distribution.

8.11 **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 Section (e)(5)). All distributions required under this Section 8.11 will be determined and made in accordance with the regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G). For purposes of applying the required minimum distribution rules under this Section 8.11, 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.

(a) **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:

(1) **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 (f)(1) 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.

(2) **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 (f)(1) 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.

(3) **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.

(4) **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 subsection (a) (other than subsection (1)) will apply as if the surviving spouse were the Participant.

For purposes of this subsection (a), unless subsection (4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (1) above. If distributions under an annuity 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 (1)), the date distributions are considered to begin is the date distributions actually commence.

(b) **Required Minimum Distributions during Participant's lifetime.**

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

(i) 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

(ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in 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.

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

(c) Required Minimum Distributions After Participant's Death.

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

(i) 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:

(A) 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.

(B) 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.

(C) 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.

(ii) 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.

(2) Death before date required distributions begin.

(i) 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 (1).

(ii) 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.

(iii) Death of surviving spouse before distributions to surviving spouse are required to begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section (a)(1), this subsection (2) will apply as if the surviving spouse were the Participant.

(d) Special Minimum Distribution Rules Applicable to 403(b) Plans.

(1) Participation in more than one 403(b) plan. If the Participant has participated in more than one 403(b) plan, either with the same employer or separate employers, minimum distributions must still be calculated separately with respect to each 403(b) plan or contract. However, the total amount of minimum distribution for a year may be satisfied through distributions from one or more 403(b) plans or contracts.

(2) **Incidental benefit requirement.** Distribution of a Participant's or Beneficiary's Accumulated Benefit must satisfy the incidental benefit requirements of Treas. Reg. §1.401-1(b)(1)(ii). The incidental benefit requirement is deemed to be satisfied if distributions satisfy the minimum distribution requirements of Code §401(a)(9), as described above.

(e) **Definitions.**

(1) **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.

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

(3) **Life expectancy.** 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.

(4) **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.

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

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

(ii) **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:

(A) the Participant attains age 70½ or

(B) 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.

A Participant may begin in-service distributions prior to his/her Required Beginning Date only to the extent authorized under Section 8.09 and AA §10. However, if this Plan were amended to add the Required Beginning Date rules under this subsection (5), a Participant who attained age 70½ prior to January 1, 1999 (or, if later, January 1 following the date the Plan is first amended to contain the Required Beginning Date rules under this subsection (5)) may receive in-service minimum distributions in accordance with the terms of the Plan in existence prior to such amendment.

(iii) **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 (ii) 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.

(6) **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 8.11, they must continue to be distributed, even if the Participant ceases to be a Five-Percent Owner in a subsequent year.

(f) **Special Rules.**

(1) **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 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.

(2) **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 subsection (a) above or the five year rule under subsection (1), 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 subsection (a) 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 (1) above.

(3) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity 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 subsections (a) and (c). If the Participant's interest is distributed in the form of an annuity, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the regulations.

(4) **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 8.11 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:

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

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

(iii) 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

(iv) the Plan Administrator receives the documentation described in subsection (5)(i) 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.

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

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

(A) **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 (I) or (II) below to satisfy the information requirements under (4)(iv) above.

(I) 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

(II) The Participant must:

(a) 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);

(b) certify that, to the best of the Participant's knowledge, the list under subsection (a) is correct and complete and that the requirements of subsection (4) above are satisfied;

(c) 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

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

(B) **Required minimum distribution after death.** In order to satisfy the documentation requirement of subsection (4)(iv) 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 (I) or (II) by October 31 of the calendar year immediately following the calendar year in which the Participant died.

(I) The trustee of the trust must:

(a) 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;

(b) certify that, to the best of the trustee's knowledge, the list in subsection (a) is correct and complete and that the requirements of subsection (4) above are satisfied;

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

(II) 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.

(ii) **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 (i) 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.

(6) **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:

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

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

(B) the minimum distribution required under this Section 8.11;

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

(iii) 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

(iv) 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.

8.12 **Correction of Plan Defects.** Nothing in this Section 8 precludes the Plan Administrator from making a distribution to a Participant to correct a Plan defect consistent with the correction procedures under the IRS' voluntary compliance programs. Thus, for example, if an Employee is permitted to enter the Plan prior to his/her proper Entry Date under Section 2.03(b) and the Plan Administrator determines that a corrective distribution is a proper means of correcting the operational violation, nothing in this Section 8 would prevent the Plan from making such corrective distribution. Any such distribution must be made in accordance with the correction procedures applicable under the IRS' voluntary correction programs.

SECTION 9
JOINT AND SURVIVOR ANNUITY REQUIREMENTS

9.01 **Application of Joint and Survivor Annuity Rules.** The Joint and Survivor Annuity rules apply only to the extent that the Plan is subject to such rules under Title I of ERISA. A Plan that receives only Salary Deferral contributions and is not otherwise subject to Title I of ERISA is not subject to the rules under this Section 9. With respect to any Plan that is not otherwise subject to the Joint and Survivor Annuity rules under ERISA §205, the Employer may elect, under AA §9-2, to apply the rules of this Section 9.

(a) **Exception to the Joint and Survivor Annuity Requirements.** If, as of the Annuity Starting Date, the Participant's vested Account Balance (for pre-death distributions) or the value of the QPSA death benefit (for post-death distributions) does not exceed $5,000, the Participant or surviving spouse, as applicable, will receive a lump sum distribution pursuant to Section 8.07(a) or Section 8.08(b)(1), in lieu of any QJSA or QPSA benefits.

(b) **Administrative procedures.** The Plan Administrator may provide alternative procedures for applying the spousal consent requirements under this Section 9 provided such procedures are consistent with the requirements under this Section 9. For example, the Plan Administrator may require under separate administrative procedures to require spousal consent to Participant distributions or may in a separate loan procedure require spousal consent prior to granting a Participant loan, without subjecting the Plan to the Joint and Survivor Annuity requirements.

9.02 **Pre-Death Distribution Requirements.** If a pre-death distribution is subject to the Qualified Joint and Survivor Annuity requirements under this Section 9, the distribution will be paid in the form of a Qualified Joint and Survivor Annuity, unless the Participant (and spouse, if the Participant is married) elects to receive the distribution in an alternative form. Any election of an alternative form of distribution must be pursuant to a Qualified Election (as defined in Section 9.04).

(a) **Qualified Joint and Survivor Annuity (QJSA).** A QJSA is an immediate annuity payable over the life of the Participant with a survivor annuity payable over the life of the spouse equal to 50% of the amount of the annuity which is payable during the joint lives of the Participant and the spouse. The Employer may elect under AA §9-2(a)(2) to increase the percentage of the spouse's survivor annuity to 100%, 75% or 66-2/3% (instead of 50%). If the Participant is not married as of the Annuity Starting Date, the QJSA is an immediate annuity payable over the life of the Participant.

(b) **Qualified Optional Survivor Annuity**. At the election of the Participant, benefits will be paid in the form of a Qualified Optional Survivor Annuity. A Qualified Optional Survivor Annuity is an annuity for the life of the Participant with a survivor annuity for the life of the spouse which is equal to the "applicable percentage" of the amount of the annuity that is: (1) payable during the joint lives for the Participant and the spouse; and (2) the actuarial equivalent of a single annuity for the life of the Participant.

If the survivor annuity provided by the QJSA under the Plan is less than 75% of the annuity payable during the joint lives of the Participant and spouse, then the "applicable percentage" is 75%. If the survivor annuity provided by the QJSA under the Plan is greater than or equal to 75% of the annuity payable during the joint lives of the Participant and spouse, the "applicable percentage" is 50%.

(c) **Notice requirements. T**he Plan Administrator shall provide each Participant with a written explanation of: (1) the terms and conditions of the QJSA; (2) the Participant's right to make and the effect of an election to waive the QJSA form of benefit; (3) the rights of the Participant's spouse; and (4) the right to make, and the effect of, a revocation of a previous election to waive the QJSA. The notice must be provided to each Participant under the Plan no less than 30 days and no more than 180 days prior to the Annuity Starting Date.

The Annuity Starting Date for a distribution in a form other than a QJSA may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (1) the Participant has been provided with information that clearly indicates that the Participant has at least 30 days to consider whether to waive the QJSA and elect (with spousal consent) a form of distribution other than a QJSA; (2) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the Participant; and (3) the Annuity Starting Date is after the date the written explanation was provided to the Participant. For distributions on or after December 31, 1996, the Annuity Starting Date may be a date prior to the date the written explanation is provided to the Participant if the distribution does not commence until at least 30 days after such written explanation is provided, subject to the waiver of the 30-day period described above.

(d) **Annuity Starting Date.** The Annuity Starting Date is the date an Employee commences distributions from the Plan. If a Participant commences distribution with respect to a portion of his/her Account Balance, a separate Annuity Starting Date applies to any subsequent distribution. If distribution is made in the form of an annuity, the Annuity Starting Date is the first day of the first period for which annuity payments are made.

9.03 **Distributions After Death.** If the Joint and Survivor Annuity requirements apply with respect to a distribution on behalf of a married Participant who dies before the Annuity Starting Date (as defined in Section 9.02(d) above), the surviving spouse of that Participant is entitled to receive such distribution in the form of a QPSA, unless the Participant and spouse have waived the QPSA pursuant to a Qualified Election. Any portion of a Participant's vested Account Balance that is not payable to the surviving spouse as a QPSA will be payable under the rules described in Section 8.08(b)(2)(ii)(B).

(a) **Qualified Preretirement Survivor Annuity (QPSA).** A QPSA is an annuity payable over the life of the surviving spouse that is purchased using 50% of the Participant's vested Account Balance (that is subject to the Qualified Joint and Survivor Annuity requirements) as of the date of death. The Employer may elect under AA §9-2(a)(3) to increase the amount used to purchase the QPSA to 100% (instead of 50%) of the Participant's vested Account Balance. To the extent that less than 100% of the Participant's vested Account Balance is paid to the surviving spouse, any After-Tax Contributions will be allocated to the surviving spouse in the same proportion as the After-Tax Contributions bear to the total vested Account Balance of the Participant. If elected under AA §9-2(b), a surviving spouse will not be entitled to a QPSA if the Participant and surviving spouse were not married throughout the one year period ending on the date of the Participant's death.

If a surviving spouse is entitled to a QPSA distribution, the surviving spouse may elect to receive such distribution at any time following the Participant's death (subject to the required minimum distribution rules under Section 8.11) and may elect to receive distribution in any form permitted under Section 8.01 of the Plan. A QPSA distribution will not commence to a surviving spouse without the consent of the surviving spouse prior to the date the Participant would have reached Normal Retirement Age (or age 62, if later). If the QPSA death benefit has been waived, in accordance with the procedures in Section 9.04(b), then the portion of the Participant's vested Account Balance that would have been payable as a QPSA death benefit in the absence of such a waiver is treated as a non-QPSA death benefit payable under Section 8.08(b)(2)(ii)(B).

The QPSA death benefit may be payable to a non-spouse Beneficiary only if the spouse consents to the Beneficiary designation, pursuant to the Qualified Election requirements under Section 9.04, or makes a valid disclaimer. The non-QPSA death benefit, if any, is payable to the person named in the Beneficiary designation, without regard to whether spousal consent is obtained for such designation. If a spouse does not properly consent to a Beneficiary designation, the QPSA waiver is invalid, and the QPSA death benefit is still payable to the spouse, but the Beneficiary designation remains valid with respect to any non-QPSA death benefit.

(b) **Notice requirements.** The Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the QPSA in such terms and in such manner as would be comparable to the explanation provided for the QJSA in subsection (b) above. The applicable period for a Participant is whichever of the following periods ends last: (1) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (2) a reasonable period ending after the individual becomes a Participant; or (3) a reasonable period ending after the joint and survivor annuity requirements first apply to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (2) and (3) is the end of the two year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two year period beginning one year prior to separation and ending one year after separation. If such a Participant thereafter returns to employment with the employer, the applicable period for such Participant shall be redetermined.

9.04 **Qualified Election.** A Participant (and the Participant's spouse) may waive the QJSA or QPSA pursuant to a Qualified Election. A Qualified Election is a written election signed by both the Participant and the Participant's spouse (if applicable) that specifically acknowledges the effect of the election. The spouse's consent must be witnessed by a plan representative or notary public. Any consent by a spouse under a Qualified Election (or a determination that the consent of a spouse is not required) shall be effective only with respect to such spouse. If the Qualified Election permits the Participant to change a payment form or Beneficiary designation without any further consent by the spouse, the Qualified Election must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit, as applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A Participant or spouse may revoke a prior waiver of the QPSA benefit at any time before the commencement of benefits. Spousal consent is not required for a Participant to revoke a prior QPSA waiver. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 9.02(c) or Section 9.03(b), as applicable.

(a) **QJSA.** In the case of a waiver of the QJSA, the election must designate an alternative form of benefit payment that may not be changed without spousal consent (unless the spouse enters into a general consent agreement expressly permitting the Participant to change the form of payment without any further spousal consent). Only the Participant needs consent to the commencement of a distribution in the form of a QJSA.

(b) **QPSA.** In the case of a waiver of the QPSA, the election must be made on a timely basis and the election must designate a specific alternate Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the spouse enters into a general consent agreement expressly permitting the Participant to change the Beneficiary designation without any further spousal consent). To be timely, a Participant (and the Participant's spouse) may waive the QPSA at any time during the period beginning on the first day of the Plan Year in which the Participant attains age 35 and ending on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age 35 is attained, with respect to the Account Balance as of the date of separation, the election period begins on the date of separation. A Participant who has not yet attained age 35 as of the end of a Plan Year may make a special Qualified Election to waive, with spousal consent, the QPSA for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election is not valid unless the Participant receives the proper notice required under Section 9.03(b). QPSA coverage is automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date must satisfy all the requirements for a Qualified Election.

(c) **Identification of surviving spouse.** If it is established to the satisfaction of the Plan Administrator that there is no spouse or that the spouse cannot be located, any waiver signed by the Participant is deemed to be a Qualified Election.

(1) **Definition of spouse.** For this purpose, a Participant will be deemed to not have a spouse if the Participant is legally separated or has been abandoned and the Participant has a court order to such effect. However, a former spouse of the Participant will be treated as the spouse or surviving spouse and any current spouse will not be treated as the spouse or surviving spouse to the extent provided under a QDRO.

(2) **One-year marriage rule.** The Employer may elect under AA §9-2(b), for purposes of applying the provisions of this Section 9, that an individual will not be considered the surviving spouse of the Participant if the Participant and the surviving spouse have not been married for the entire one-year period ending on the date of the Participant's death.

SECTION 10
INVESTMENT VEHICLES AND PARTICIPANT ACCOUNTS

10.01 **Permissible Investment Vehicles.** Amounts contributed to this Plan may only be invested in Annuity Contracts, Custodial Accounts or a combination of these investment vehicles. The 403(b) Fund will consist of all Annuity Contracts and Custodial Accounts held under the Plan.

10.02 **Annuity Contract Requirements.**

(a) An Annuity Contract must meet the requirements of Code §403(b)(1).

(b) An Annuity Contract may only be offered by an Insurance Company.

(c) The Annuity Contract may be owned by the Participant, or in the case of a group annuity contract, by the Employer maintaining the Annuity Contract may hold variable or guaranteed annuities.

(d) The Annuity Contract must provide that it is nontransferable and meets the requirements of Code §401(g).

10.03 **Custodial Account Requirements.**

(a) The Custodial Account must meet the requirements of Code §403(b)(7).

(b) The assets of a Custodial Account must be held by a bank or approved non-bank trustee or custodian under Code §401(f).

(c) The assets of the Custodial Account must be invested exclusively in regulated investment company within the meaning of Code §851(a).

10.04 **Participant Accounts.** The Plan Administrator will direct the Custodian/Insurance Company to 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 direct the Custodian and/or Insurance Company to establish and maintain separate sub-Accounts for a Participant. Accounts may include, but are not limited to:

- Pre-Tax Deferral Account
- Roth Deferral Account
- Employer Contribution Account
- Matching Contribution Account
- Qualified Nonelective Contribution (QNEC) Account
- Qualified Matching Contribution (QMAC) Account
- Safe Harbor Employer Contribution Account
- Safe Harbor Matching Contribution Account
- After-Tax Contribution Account
- Mandatory After-Tax Contribution Account
- Mandatory Pre-Tax 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, for any excess amounts under Code §415 and for Retirement Income Accounts.

10.05 **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 Custodian/Insurance Company 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.

10.06 **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 10.07.

10.07 **Procedures for Determining Net Income or Loss.** The Plan Administrator may establish any reasonable procedures for determining net income or loss under Section 10.06(c). Such procedures may be reflected in a funding agreement governing the applicable investments under the Plan.

10.08 **Investments under the Plan**

(a) **Investment options.** Amounts contributed to this Plan may only be invested in Annuity Contracts, Custodial Accounts or a combination of these investment vehicles.

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

(c) **Participant direction of investments.** If the Plan permits Participant direction of investments, the Plan Administrator, along with the appropriate Custodian or Insurance Company 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. In no case may Participants direct that investments be made in collectibles, other than U.S. Government or State issued gold and silver coins. The investment procedures adopted by the Plan Administrator are incorporated by reference into the Plan.

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 Custodian, Insurance Company, Employer nor any other fiduciary of the Plan will be liable to the Participant or Beneficiary for any loss resulting from action taken at the direction of the Participant.

(d) **ERISA §404(c) protection.** If the Plan (by Employer election under AA §C-1(b)(2) or pursuant to the Plan's investment procedures) is intended to comply with ERISA §404(c), the Participant investment direction program adopted by the Plan Administrator should comply with applicable Department of Labor regulations. Compliance with ERISA §404(c) is not required for Code purposes. The following information is provided solely as guidance to assist the Plan Administrator in meeting the requirements of ERISA §404(c). Failure to meet any of the following safe harbor requirements does not impose any liability on the Plan Administrator (or any other fiduciary under the Plan) for investment decisions made by Participants, nor does it mean that the Plan does not comply with ERISA §404(c). Nothing in this Plan shall impose any greater duties upon the Trustee with respect to the implementation of ERISA §404(c) than those duties expressly provided for in procedures adopted by the Employer and agreed to by the Trustee.

(1) **Disclosure requirements.** The Plan Administrator (or other Plan fiduciary who has agreed to perform this activity) shall provide, or shall cause a person designated to act on his behalf to provide, the following information to Participants:

(i) **Mandatory disclosures.** To satisfy the requirements of ERISA §404(c), the Participants must receive certain mandatory disclosures, including:

(A) an explanation that the Plan is intended to be an ERISA §404(c) plan;

(B) a description of the investment options under the Plan;

(C) the identity of any designated Investment Managers that may be selected by the Participant;

(D) any restrictions on investment selection or transfers among investment vehicles;

(E) an explanation of the fees and expenses that may be charged in connection with the investment transactions;

(F) the materials relating to voting rights or other rights incidental to the holding of an investment;

(G) the most recent prospectus for an investment option which is subject to the Securities Act of 1933.

(ii) **Disclosures upon request.** In addition, a Participant must be able to receive upon request:

(A) the current value of the Participant's interest in an investment option;

(B) the value and investment performance of investment alternatives available under the Plan;

(C) the annual operating expenses of a designated investment alternative; and

(D) copies of any prospectuses, or other material, relating to available investment options.

(2) **Diversified investment options.** The Plan must provide at least three diversified investment options that offer a broad range of investment opportunity. Each of the investment opportunities must have materially different risk and return characteristics. The procedure may allow investment under a segregated brokerage account.

(3) **Frequency of investment instructions.** Participants must have the opportunity to give investment instructions as frequently as is appropriate to the volatility of the investment. For each investment option, the frequency can be no less than quarterly.

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, he 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 **Named Fiduciary.** The Plan Administrator is the Named Fiduciary for the Plan, unless the Plan Administrator specifically names another person or persons as Named Fiduciary and the designated person accepts its responsibilities as Named Fiduciary in writing. The Plan must always have at least one Named Fiduciary.

11.04 **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 ERISA (if applicable) and Code §403(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 under AA §11-5. 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. In delegating responsibilities, the Plan may, under AA §11-5, incorporate by reference other documents, including annuity policies and custodial agreements.

(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 §403(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 10.08(c)), procedures for determining whether domestic

relations orders are QDROs (see Section 11.07), and procedures for the determination of investment earnings to be allocated to Participants' Accounts (see Section 10.06);

(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 Custodian, Insurance Company 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;

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

(10) To establish a "funding policy and method" for the Plan for purposes of ensuring the Plan is satisfying its financial objectives and is able to meet its liquidity needs; and

(11) To suspend contributions, including Salary Deferrals and/or After-Tax Contributions, on behalf of any or all Highly Compensated Employees, if the Plan Administrator reasonably believes that such contributions will cause the Plan to discriminate in favor of Highly Compensated Employees. See Section 6.02(c).

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

(c) **Expenses related to administration of former Employee or surviving spouse.** If the Plan is making distributions to a former Employee or surviving spouse, the Plan may charge reasonable Plan administrative expenses to the Account of that former Employee or surviving spouse, but only if the administrative expenses are on a pro rata basis, Under the pro rata basis, the expenses are based on the amount in each account of a former Employee or surviving spouse receiving benefits from the Plan. The Plan Administrator may use another reasonable basis for charging the expenses, provided it complies with the requirements of Title I of ERISA. In any event, the allocation of plan expenses must meet the nondiscrimination rules of § 401(a)(4).

11.06 Delegation of Administrative Responsibilities. Generally, the Employer has responsibility to administer the Plan. These responsibilities include compliance with Code §403(b) and other tax requirements. However, the Employer may allocate such responsibilities to a third party, including a provider of an Annuity Contract or Custodial Account, provided such third party agrees to such allocation of responsibilities. An Employer may not allocate administrative responsibilities to Plan Participants. The Plan must describe any allocation of administrative responsibilities, including any insurance policies, custodial agreements or other documents that are incorporated into the Plan by reference, under AA §11-5.

11.07 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 11.07.

(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 11.07 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;

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

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

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

(e) **Impermissible QDRO provisions.**

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

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

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

(4) The order must not require the Plan to pay benefits to an Alternate Payee in the form of a Qualified Joint and Survivor Annuity for the lives of the Alternate Payee and his or her subsequent spouse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) **Treatment of Alternate Payee.** If an order is accepted as a QDRO, the Plan Administrator will act in accordance with the terms of the QDRO as if it were a part of the Plan. 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.

11.08 **Claims Procedure.** The Plan Administrator shall establish a procedure for benefit claims consistent with the requirements of ERISA Reg. §2560.503-1. The Plan Administrator is authorized to conduct an examination of the relevant facts to determine the merits of a Participant's or Beneficiary's claim for Plan benefits. The claims procedure must incorporate the following guidelines:

(a) **Filing a claim.** The claims procedure will set forth a reasonable means for a Participant or Beneficiary to file a claim for benefits under the Plan.

(b) **Plan Administrator's decision.** The Plan Administrator must provide a claimant with written notification of the Plan Administrator's decision relating to a claim within a reasonable period of time (not more than 90 days unless special circumstances require an extension to process the claim) after the claim was filed. If the claim is denied, the notification must set forth the reasons for the denial, specific reference to pertinent Plan provisions on which the denial is based, a description of any additional information necessary for the claimant to perfect the claim, and the steps the claimant must take to submit the claim for review.

(c) **Review procedure.** The claims procedure will provide a claimant a reasonable opportunity to have a full and fair review of a denied claim. Such procedure shall allow a review upon a written application, for the claimant to review pertinent documents, and to allow the claimant to submit written comments to the Plan Administrator. The procedure may establish a limited period (not less than 60 days after the claimant receives written notification of the denial of the claim) for the claimant to request a review of the claim denial.

(d) **Decision on review.** If a claimant requests a review, the Plan Administrator must respond promptly to the request. Unless special circumstances exist (such as the need for a hearing), the Plan Administrator must respond in writing within 60 days of the date the claimant submitted the review application. The response must explain the Plan Administrator's decision on review.

11.09 **Operational Rules for Short Plan Years.** The following operational rules apply if the Plan has a Short Plan Year. A Short Plan Year is any Plan Year that is less than a 12-month period, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year.

(a) If the Plan is amended to create a Short Plan Year, and an Eligibility Computation Period or Vesting Computation Period is based on the Plan Year, the applicable computation period begins on the first day of the Short Plan Year, but such period ends on the day which is 12 months from the first day of such Short Plan Year. Thus, the computation period that begins on the first day of the Short Plan Year overlaps with the computation period that starts on the first day of the next Plan Year. This rule applies only to an Employee who has at least one Hour of Service during the Short Plan Year.

If a Plan has an initial Short Plan Year, the rule in the above paragraph applies only for purposes of determining an Employee's Vesting Computation Period and only if the Employer elects under AA §8-3 to exclude service earned prior to the adoption of the Plan. For eligibility and vesting (where service prior to the adoption of the Plan is not ignored), if the Eligibility Computation Period or Vesting Computation Period is based on the Plan Year, the applicable computation period will be determined on the basis of the Plan's normal Plan Year, without regard to the initial short Plan Year.

(b) If Employer Contributions are allocated for a Short Plan Year, any allocation condition under AA §6-6 or AA §6B-7 that requires a Participant to complete a specified number of Hours of Service to receive an allocation of such Employer Contributions will not be prorated as a result of such Short Plan Year unless otherwise specified in AA §6-6 or AA §6B-7, if applicable.

(c) The Compensation Limit will be prorated to reflect the number of months (or partial months) included in the Short Plan Year unless the compensation used for such Short Plan Year is a period of 12 months. (See Section 6.04(h)(1) for special rules that apply for the first year of a Safe Harbor Plan.)

In all other respects, the Plan shall be operated for the Short Plan Year in the same manner as for a 12-month Plan Year, unless the context requires otherwise. If the terms of the Plan are ambiguous with respect to the operation of the Plan for a Short Plan Year, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.

11.10 **Special Rules for Governmental Plans.** If the Plan qualifies as a Governmental Plan, the special rules under this Section 11.10 automatically will apply to such Plan, unless the Employer elects otherwise. A Governmental Plan is exempt from the plan requirements listed in subsection 11.10(a) below. Such Plan is subject to all other Code requirements under the Plan to the extent not specifically listed in subsection 11.10(a) below. An Employer that elects Governmental Plan status may complete the entire Adoption Agreement, including elections that are otherwise inapplicable to Governmental Plans. However, the Employer is not bound by the Code restrictions applicable to such provisions and the completion of those provisions that are inapplicable to Governmental Plans will not affect the Plan's status.

(a) **Code provisions from which Governmental Plans are exempt.** As determined under Treas. Reg. §1.403(b), Governmental Plans are exempt from the following qualification requirements:

(1) The minimum age and service rules under Code §410 (a);

(2) The minimum coverage requirements under Code §410(b);

(3) The minimum vesting requirements under Code §411;

(4) The nondiscrimination requirements under Code §401(a)(4) and 401(m);

(5) The anti-assignment rules (other than the rules applicable to Qualified Domestic Relations Orders) under Code §401(a)(13); and

(6) The commencement of benefits requirements under Code §401(a)(14).

(b) **Exemption from Title I of ERISA.** If a Governmental Plan meets the definition of governmental plan under ERISA §3(32), then the requirements of ERISA Title I will not apply to the Plan.

11.11 **Special Rules for Church Plans and Churches.**

(a) **Church Plan Exemption from Title I of ERISA.** A Church Plan that meets the definition of church plan under ERISA §3(33) is not subject to the requirements of ERISA Title I. An Employer that has Church Plan status may complete the entire Adoption Agreement, including elections that are otherwise inapplicable to Church Plans. However, the Employer is not bound by the ERISA Title I restrictions applicable to such provisions and the completion of those provisions that are inapplicable to Church Plans will not affect the Plan's status as exempt from ERISA Title I.

(b) **Code provisions from which Churches are exempt.** As determined under Treas. Reg. §1.403(b)-5, a plan maintained by a Church as defined under Section 1.20 is exempt from the following requirements:

(1) The nondiscrimination requirements under Code §401(a)(4) and 401(m);

(2) The universal availability requirements for Salary Deferrals under Code §403(b);

(3) The minimum coverage requirements under Code §410(b); and

(4) The Compensation Limit under Code §401(a)(17).

SECTION 12
CUSTODIAL AGREEMENTS/ANNUITY CONTRACTS/RETIREMENT INCOME ACCOUNTS

12.01 **Creation of Custodial Agreement.** **I**f the Employer elects in the Adoption Agreement to fund the Plan using Custodial Accounts, the Employer (or, if applicable each Participant) will execute a Custodial Agreement with the Custodian in which Participants' Accounts are invested. The Custodial Agreement will describe the duties and responsibilities of the Custodian. By executing this Plan, the Custodian will be subject to the terms of the Custodial Agreement set forth in this Section 12. Alternatively, the Custodian may provide its own Custodial Agreement.

(a) **Custodian.** The Custodian identified in the Custodian/Insurance Company Declaration under the Agreement (or under a separate agreement) that accepts the appointment as Custodian.

(b) **Custodian's Responsibilities Regarding Administration of Plan.**

(1) The Custodian is accountable to the Employer and Participants for all amounts contributed to it. The Custodian is not obligated in any manner to ensure that such contributions are correct in amount or that such contributions comply with the terms of the Plan, the Code or ERISA, unless such responsibility is delegated to the Custodian by mutual agreement with the Employer. In addition, the Custodian is under no obligation to request that the Employer make contributions to the Plan.

(2) The Custodian or its agent will make distributions from the Plan in accordance with the written directions of the Plan Administrator or other authorized representative. To the extent the Custodian follows such written direction, the Custodian 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 unless such responsibility is delegated to the Custodian by mutual agreement with the Employer. If there is a dispute as to a payment from the Custodian, the Custodian 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 Custodian has been indemnified to its satisfaction.

(c) **Custodian's Responsibility Regarding Investment of Plan Assets.** The Custodian will invest all assets in Participant's Accounts in Mutual Funds and/or Annuity Contracts as directed in accordance with the instructions given to the Custodian by the Participant, Beneficiary or the Employer. The Custodian has such powers as are necessary to carry out its duties in a prudent manner. The Custodian's powers, rights and duties may be supplemented or limited by a separate custodial agreement, investment policy, funding agreement, or other binding document.

(1) The Custodian shall be responsible for the safekeeping of the assets invested in the Mutual Fund(s) for which the Custodian is responsible and will maintain Custodial Accounts on behalf of each Participant.

(2) The Custodian will invest the Plan assets in Mutual Funds (including any Mutual Funds from which the Custodian or any affiliate thereof receives an investment advisory fee or any other fee) and/or Annuity Contracts as directed in a manner that is consistent with the Plan's funding policy and investment objectives.

(3) The Custodian 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. Any legal fees incurred by the Custodian in carrying out its duties with respect to the Plan, will be paid by the Plan.

(4) The Custodian may make distribution under the Plan in cash and/or property, at its fair market value as determined by the Custodian.

(d) **Custodian's Compliance with Code §403(b).**

(1) The Custodian shall not make any distribution to a Participant in the Plan or his or her Beneficiaries before the Participant is entitled to a distribution under the Plan.

(2) The Employer and the Custodian may modify the Plan's administrative responsibilities relating to the requirements applicable to the Plan under Code §403(b). Such modification must be reflected under AA §11-5.

(e) **Records and Statements.** The Plan Administrator and Employer may obtain from the Custodian records and other information relating to the Mutual Fund(s) as is appropriate.

(f) **Annual Valuation.** The Custodian must value the Mutual Fund at least on an annual basis. The Custodian and the Employer and/or the Plan Administrator may agree to more frequent valuation dates.

(g) **Reasonable Compensation.** The Custodian shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Custodian. The Custodian also will be reimbursed for any reasonable expenses or fees incurred in its function as Custodian, including any reasonable counsel fees whenever the Custodian shall deem it necessary to consult with counsel (who may be counsel for the Employer) in connection with any circumstances affecting the Plan. The Plan will pay the reasonable compensation and expenses incurred by the Custodian, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Custodian is not an Employer Contribution to the Plan.

(h) **Indemnification of Custodian.**

(1) Employer hereby agrees to indemnify and to hold Custodian harmless from and against all claims, expenses (including reasonable attorney fees), liabilities, damages, actions or other charges incurred by or assessed against Custodian (1) as a direct or indirect result of anything done or omitted by Custodian in reliance upon the directions, or absence of directions, of the Plan Administrator, the Employer, any Investment Advisor, or any participant of the Plan or (2) as a direct or indirect result of any act or omission of, or provision of inaccurate information by (A) a predecessor Custodian, (B) a predecessor recordkeeper of the Plan, or (C) any other person charged under any agreement affecting the Plan or the custodial accounts maintained thereunder.

(2) The Employer recognizes that a burden of litigation may be imposed on Custodian, as a result of some act or transaction for which it has no responsibility or over which it has no control under this Agreement. Accordingly, and in consideration of Custodian's agreement to act as Custodian hereunder, the Employer hereby agrees to indemnify and hold Custodian and its affiliates, directors, officers, and employees harmless from and against all claims, expenses (including reasonable counsel fees), liabilities, damages, actions or other charges incurred by or assessed against Custodian as direct or indirect result of anything done or omitted by Custodian in reliance upon the directions (or absence of directions) of the Plan Administrator, the Employer, any other organization participating in the Plan, any Investment Adviser, or a Plan participant or beneficiary, or upon the advice of Custodian's counsel, provided, however, that the foregoing shall not apply to the extent of the Custodian's fraud or gross negligence.

(i) **Resignation and Removal of Custodian.** The Custodian may resign at any time by delivering to the Employer a written notice of resignation at least sixty (60) 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 Custodian at any time, with or without cause, by delivering written notice to the Custodian at least 30 days prior to the effective date of such removal. The Employer may remove the Custodian upon a shorter written notice period if the Employer reasonably determines such shorter period is necessary to protect Plan assets. Upon the resignation or removal of a Custodian, the Employer may appoint a successor Custodian which, upon accepting such appointment, will have all the powers, rights and duties conferred upon the preceding Custodian.

12.02 **Annuity Contracts.** If the Employer elects in the Adoption Agreement to provide Annuity Contracts as an investment option, each Participant or Employer will execute an Annuity Contract with the Insurance Company. The Insurance Company becomes subject to the terms of this Plan in making distributions from the portion of the 403(b) Plan held by the Insurance Company.

(a) **Insurance Company.** The Insurance Company identified in the Custodian/Insurance Company Declaration under the Agreement (or under a separate agreement).

(b) **Insurance Company's Responsibilities Regarding Administration of Plan.**

(1) The Insurance Company is accountable to the Employer and Participants for all amounts contributed to it. The Insurance Company is not obligated in any manner to ensure that such contributions are correct in amount or that such contributions comply with the terms of the Plan, the Code or ERISA, unless such responsibility is delegated to the Insurance Company by mutual agreement with the Employer. In addition, the Insurance Company is under no obligation to request that the Employer make contributions to the Plan.

(2) The Insurance Company or its agent will make distributions from the Plan in accordance with the written directions of the Plan Administrator or other authorized representative. To the extent the Insurance Company follows such written direction, the Insurance Company 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 unless such responsibility is delegated to the Insurance Company by mutual agreement with the Employer. If there is a dispute as to a payment from the Insurance Company, the Insurance Company 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 Insurance Company has been indemnified to its satisfaction.

(c) **Insurance Company's Responsibility Regarding Investment of Plan Assets.** The Insurance Company will invest all assets in Participant's Accounts as directed in accordance with the instructions given to the Insurance Company by the Participant, Beneficiary or the Employer. The Insurance Company has such powers as are necessary to carry out its duties in a prudent manner. The Insurance Company's powers, rights and duties may be supplemented or limited by a separate agreement, investment policy, funding agreement, or other binding document.

(1) The Insurance Company shall be responsible for the safekeeping of the assets invested with the Insurance Company.

(2) The Insurance Company will invest the Plan assets as directed in a manner that is consistent with the Plan's funding policy and investment objectives.

(3) The Insurance Company 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. Any legal fees incurred by the Insurance Company in carrying out its duties with respect to the Plan, will be paid by the Plan.

(4) The Insurance Company may make distribution under the Plan in cash and/or property, at its fair market value as determined by the Insurance Company.

(d) **Insurance Company's Compliance with Code §403(b).**

(1) The Insurance Company shall not make any distribution to a Participant in the Plan or his or her Beneficiaries before the Participant is entitled to such distribution under the terms of the Plan.

(2) The Employer and the Insurance Company may modify the Plan's administrative responsibilities relating to the requirements applicable to the Plan under Code §403(b). Such modification must be reflected under AA §11-5.

(e) **Records and Statements.** The Plan Administrator and Employer may obtain from the Insurance Company records and other information relating to the Mutual Fund(s) as is appropriate.

(f) **Annual Valuation.** The Insurance Company must value the Plan assets it holds at least on an annual basis. The Insurance Company and the Employer and/or the Plan Administrator may agree to more frequent valuation dates.

(g) **Reasonable Compensation.** The Insurance Company shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Insurance Company. The Insurance Company also will be reimbursed for any reasonable expenses or fees incurred in its function as Insurance Company, including any reasonable counsel fees whenever the Insurance Company shall deem it necessary to consult with counsel (who may be counsel for the Employer) in connection with any circumstances affecting the Plan. The Plan will pay the reasonable compensation and expenses incurred by the Insurance Company, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Insurance Company is not an Employer Contribution to the Plan.

(h) **Indemnification of Insurance Company.**

(1) Employer hereby agrees to indemnify and to hold Insurance Company harmless from and against all claims, expenses (including reasonable attorney fees), liabilities, damages, actions or other charges incurred by or assessed against Insurance Company (1) as a direct or indirect result of anything done or omitted by Insurance Company in reliance upon the directions, or absence of directions, of the Plan Administrator, the Employer, any Investment Advisor, or any participant of the Plan or (2) as a direct or indirect result of any act or omission of, or provision of inaccurate information by (A) a predecessor Insurance Company, (B) a predecessor recordkeeper of the Plan, or (C) any other person charged under any agreement affecting the Plan or the custodial accounts maintained thereunder.

(2) The Employer recognizes that a burden of litigation may be imposed on Insurance Company, as a result of some act or transaction for which it has no responsibility or over which it has no control under this Agreement. Accordingly, and in consideration of Insurance Company's agreement to act as Insurance Company hereunder, the Employer hereby agrees to indemnify and hold Insurance Company and its affiliates, directors, officers, and employees harmless from and against all claims, expenses (including reasonable counsel fees), liabilities, damages, actions or other charges incurred by or assessed against Insurance Company as direct or indirect result of anything done or omitted by Insurance Company in reliance upon the directions (or absence of directions) of the Plan Administrator, the Employer, any other organization participating in the Plan, any Investment Adviser,

or a Plan participant or beneficiary, or upon the advice of Insurance Company's counsel, provided, however, that the foregoing shall not apply to the extent of the Insurance Company's fraud or gross negligence.

(i) **Resignation and Removal of Insurance Company.** The Insurance Company may resign at any time by delivering to the Employer a written notice of resignation at least sixty (60) 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 Insurance Company at any time, with or without cause, by delivering written notice to the Insurance Company at least 30 days prior to the effective date of such removal. The Employer may remove the Insurance Company upon a shorter written notice period if the Employer reasonably determines such shorter period is necessary to protect Plan assets. Upon the resignation or removal of a Insurance Company, the Employer may appoint a successor Insurance Company which, upon accepting such appointment, will have all the powers, rights and duties conferred upon the preceding Insurance Company.

12.03 **Modification of Custodian or Insurance Company Responsibilities.** The Employer, Custodian and/or Insurance Company may modify the provisions of this Section 12 by mutual agreement. To the extent that the modification affects the administrative responsibilities relating to the requirements applicable to the Plan under Code §403(b), such modification must be reflected under AA §11-5.

12.04 **Retirement Income Accounts.** A Retirement Income Account for Employees of a Church-Related Organization is treated as an annuity contract for purposes of Treas. Reg. §§1.403(b)-1 through 1.403(b)-11, subject to the following requirements.

(a) **Separate Accounting.**

(1) The Retirement Income Account provides for separate accounting for the Retirement Income Account's interest in the underlying assets;

(2) Investment performance is based on gains and losses on those assets; and

(3) The assets held in the Retirement Income Account cannot be used for, or diverted to, purposes other than for the exclusive benefit of Plan Participants or their Beneficiaries (and for this purpose, assets are treated as diverted to the Employer if there is a loan or other extension of credit from assets in the Account to the Employer).

(b) **Plan required.** A retirement income account must be maintained pursuant to a program which is a plan (as defined in Treas. Reg. §1.403(b)-3(b)(3)) and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a Retirement Income Account.

(c) **Ownership or use constitutes distribution.** Any asset of a Retirement Income Account that is owned or used by a Participant or Beneficiary is treated as having been distributed to that Participant or Beneficiary. See Treas. Reg. §§1.403(b)-6 and 1.403(b)-7 for rules relating to distributions.

(d) **Coordination of Retirement Income Account with Custodial Account rules.** A Retirement Income Account that is treated as an annuity contract is not a Custodial Account, even if it is invested solely in stock of a regulated investment company.

(e) **Life annuities.** A Retirement Income Account may distribute benefits in a form that includes a life annuity only if:

(1) The amount of the distribution form has an actuarial present value, at the annuity starting date, equal to the Participant's or Beneficiary's Accumulated Benefit, based on reasonable actuarial assumptions, including regarding interest and mortality; and

(2) The plan sponsor guarantees benefits in the event that a payment is due that exceeds the Participant's or Beneficiary's Accumulated Benefit.

(f) **Combining Retirement Income Account assets with other assets.** For purposes of Treas. Reg. §1.403(b)-8(f) relating to combining assets, Retirement Income Account assets held in trust (including a custodial account that is treated as a trust under Code §401(f)) are subject to the same rules regarding combining of assets as custodial account assets. In addition, Retirement Income Account assets are permitted to be commingled in a common fund with amounts devoted exclusively to church purposes (such as a fund from which unfunded pension payments are made to former employees of the church). However, unless otherwise permitted by the Internal Revenue Service, no assets of the plan sponsor, other than Retirement Income Account assets, may be combined with custodial account assets or any other assets permitted to be combined under Treas. Reg. §1.403(b)-8(f).

(g) **Trust treated as tax exempt.** A trust (including a custodial account that is treated as a trust under Code §401(f)) that includes no assets other than assets of a Retirement Income Account is treated as an organization that is exempt from taxation under Code §501(a).

(h) **No compensation limitation up to $10,000.** See Code §415(c)(7) for special rules regarding certain annual additions not exceeding $10,000.

(i) **Special deduction rule for self-employed Ministers.** See Code §404(a)(10) for a special rule regarding the deductibility of a contribution made by a self-employed Minister.

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)). The Employer may describe in a separate loan policy the treatment of parties in interest and terminated Employees.

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. Participant loans will not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Employees. The Employer may elect under AA §B-7 to limit the availability of Participant loans to specified events. For example, the Employer may limit the availability of Participant loans to the occurrence of a hardship event as described in Section 8.09(d)(1)(i).

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

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

(b) one-half (½) of the Participant's vested Account Balance, determined as of the Valuation Date coinciding with or immediately preceding such loan, adjusted for any contributions or distributions made since such Valuation Date, or, if the Plan is not subject to ERISA, $10,000, if greater.

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 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, and if applicable, the spousal consent requirements described in Section 13.08 have been satisfied. 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, unless the Plan is not subject to ERISA.

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.

(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 **Spousal Consent.** If this Plan is subject to the Joint and Survivor Annuity requirements under Section 9, a Participant may not use his/her Account Balance as security for a Participant loan unless the Participant's spouse, if any, consents to the use of such Account Balance as security for the loan. The spousal consent must be made within the 180-day period ending on the date the Participant's Account Balance is to be used as security for the loan. Spousal consent is not required, however, if the value of the Participant's total vested Account Balance does not exceed $5,000. If the Plan is not subject to the Joint and Survivor Annuity requirements under Section 9, a spouse's consent is not required to use a Participant's Account Balance as security for a Participant loan, regardless of the value of the Participant's Account Balance.

Any spousal consent required under this Section must be in writing, must acknowledge the effect of the loan, and must be witnessed by a plan representative or notary public. Any such consent to use the Participant's Account Balance as security for a Participant loan is binding with respect to the consenting spouse and with respect to any subsequent spouse as it applies to such loan. A new spousal consent will be required if the Account Balance is subsequently used as security for a renegotiation, extension, renewal, or other revision of the loan. A new spousal consent also will be required only if any portion of the Participant's Account Balance will be used as security for a subsequent Participant loan.

13.09 **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. If the Plan provides for both Pre-Tax Deferrals and Roth Deferrals, the loan will be taken first from the Pre-Tax Deferral Account. The Employer may elect under separate loan procedures to modify this provision with respect to the Pre-Tax and Roth Deferral Account, including allowing the Participant to designate the extent to which the loan will be made from Pre-Tax or Roth Deferral Accounts. 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.

13.10 **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 (determined without regard to the consent requirements under Sections 8.04 and 9.04, so long as spousal consent was properly obtained at the time of the loan, if required under Section 13.08). The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

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

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

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

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

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

13.11 **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 (without regard to the consent requirements under Sections 8.04 and 9.04, so long as spousal consent was properly obtained at the time of the loan, if required under Section 13.08), 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 under Section 8.08.

(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 as defined in Section 8.05(a)(1)) to another 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 13.11, 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.

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 overriding language to the Adoption Agreement when such language is necessary to satisfy Code §415 because of the required aggregation of multiple plans.

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

(4) The Employer may amend administrative provisions of the Plan document, including the name of the Plan, Employer, Custodian, Insurance Company, Plan Administrator and other fiduciaries.

(5) The Employer may add certain sample or model amendments published by the IRS.

(6) The Employer may add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan 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.

(7) The Employer may adopt any amendments that it deems necessary to satisfy the requirements for resolving failures under the IRS' compliance resolution programs.

(8) If the Plan fails the minimum coverage test under Code §410(b) or the nondiscrimination requirements under Code §401(a)(4) for any Plan Year, the Employer may amend the Plan to correct the coverage or nondiscrimination violation within 9½ months after the end of the Plan Year, as permitted under Treas. Reg. §1.401(a)(4)-11(g).

(b) **Reduction of accrued benefit.** No amendment to the plan shall be effective to the extent that it has the effect of reducing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account Balance may be reduced to the extent permitted under statute (e.g., Code §412(c)(8)), regulations (e.g., Treas. Reg. §1.411(d)-4), or other IRS guidance of general applicability. For this purpose, a Plan amendment (or other transaction having the effect of a Plan amendment, such as a merger, acquisition, plan transfer, or similar transaction) shall have the effect of reducing a Participant's accrued benefit to the extent such amendment eliminates or reduces a protected benefit (as defined in Code §411(d)(6)) with respect to benefits accrued prior to the adoption date (or effective date, if later) of the Plan amendment. If the adoption of this Plan will result in the elimination of a protected benefit, the Employer may preserve such protected benefit by identifying the protected benefit in an addendum to the Adoption Agreement. Failure to identify protected benefits under the Adoption Agreement will not override the requirement that such protected benefits be preserved under this Plan. The availability of each optional form of benefit under the Plan must not be subject to Employer discretion.

The Employer may eliminate or restrict the ability of a Participant to receive payment of his/her Account Balance under a particular form of benefit for distributions with annuity starting dates after the date the amendment is adopted if, after the amendment is effective with respect to the Participant, the Participant has the ability to elect to receive distribution in the form of a lump sum that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a lump sum distribution form is otherwise identical only if the lump sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement.

14.02 Plan Termination. The Employer may terminate this Plan at any time by delivering to the Plan Administrator written notice of such termination. However, to the extent that the Plan holds Salary Deferral Accounts and/or Custodial Accounts, Plan termination is only permitted if the Employer does not make contributions to any Code §403(b) plan that is not part of the Plan

during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the terminated Plan.

(a) **Full and immediate vesting.** Upon a full or partial termination of the Plan (or the complete discontinuance of contributions), all amounts credited to an affected Participant's Account become 100% vested, regardless of the Participant's vested percentage determined under Section 7.02. The Plan Administrator has discretion to determine whether a partial termination has occurred.

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

(c) **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.

(d) **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. For this purpose, the Plan Administrator will adopt procedures similar to the procedures required under Section 8.06 for making Automatic Rollovers in applying the provisions under this subsection (d). An Automatic Rollover under this subsection (d) may be made on behalf of any missing Participant, regardless of the value of his/her vested Account Balance under the Plan.

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 had the Plan terminated immediately before such merger or consolidation.

14.04 **Contract exchanges within the Plan.** The Plan Administrator may, but is not required to, exchange Section 403(b) Contracts within the Plan. Such exchanges must satisfy the following conditions:

(a) The Plan provides for the exchange;

(b) The Participant or Beneficiary has an Accumulated Benefit immediately after the exchange that is at least equal to the Accumulated Benefit of that Participant or Beneficiary immediately before the exchange (taking into account the Accumulated Benefit of that Participant or Beneficiary under both Section 403(b) Contracts immediately before the exchange);

(c) The other Section 403(b) Contract is subject to distribution restrictions with respect to the Participant that are not less stringent than those imposed on the contract being exchanged, and the Employer enters into an agreement with the issuer of the other Section 403(b) Contract under which the employer and the issuer will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting Section 403(b) Contract, or any other contract to which contributions have been made by the employer, to satisfy Code §403(b), including information concerning the Participant's employment and information that takes into account other Section 403(b) Contracts or employer plans (such as whether a Severance from Employment has occurred for purposes of the distribution restrictions in Treas. Reg. §1.403(b)-6 and whether the hardship withdrawal rules of Treas. Reg. §1.403(b)-6(d)(2) are satisfied).

(2) Information necessary for the resulting Section 403(b) Contract, or any other contract to which contributions have been made by the Employer, to satisfy other tax requirements (such as whether a plan loan satisfies the conditions in Code §72(p)(2) so that the loan is not a deemed distribution under Code §72(p)(1)).

14.05 **Plan-To-Plan Transfers.** The Plan Administrator may, but is not required to, permit plan-to-plan transfers. The Plan Administrator may decide in a separate policy whether the Plan accepts plan-to-plan transfers into the Plan and separately whether the Plan allows plan-to-plan transfers from the plan. Plan-to-plan transfers must satisfy the following conditions:

(a) In the case of a transfer for a Participant, the Participant is an Employee or former Employee of the Employer (or the business of the employer) for the receiving plan;

(b) In the case of a transfer for a Beneficiary of a deceased Participant, the Participant was an Employee or former Employee of the Employer (or business of the Employer) for the receiving plan;

(c) The transferor plan provides for transfers;

(d) The receiving plan provides for the receipt of transfers;

(e) The Participant or Beneficiary whose assets are being transferred has an Accumulated Benefit immediately after the transfer that is at least equal to the Accumulated Benefit of that Participant or Beneficiary immediately before the transfer.

(f) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under treas. Reg. §1.403(b)-6, the receiving plan imposes restrictions on distributions to the participant or beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan.

(g) If a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the transferee plan treats the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the Plan.

14.06 Permissive service credit transfers.

(a) 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, the participant may elect to have any portion of his/her Account Balance transferred to the Defined Benefit governmental plan. A transfer under this subsection (a) may be made even if the Participant has not had a severance from employment.

(b) A transfer may be made under subsection (a) only if the transfer is:

(1) for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving Defined Benefit governmental plan or

(2) a repayment to which Code §415 does not apply by reason of Code §415(k)(3).

SECTION 15
MISCELLANEOUS

15.01 **Exclusive Benefit.** Except as provided under Section 15.02, 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 Custodian/Insurance Company 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 **General Compliance with Code §403(b).**

(a) A Participant may not transfer his interest in the Plan, except as allowed by IRS regulations and approved by the Plan Administrator.

(b) A Participant may not make Salary Deferrals under the Plan and all other plans, contracts or arrangements maintained by the Employer in any calendar year which exceeds the dollar limitation in effect under Code §402(g)(1).

(c) Distributions of a Participant's benefits from the Plan shall begin no later than the Participant's required beginning date under Code §401(a)(9) and all payments shall satisfy the minimum distribution and incidental death benefit requirements of Code §401(a)(9).

(d) In form and in operation, the Plan shall satisfy the direct rollover rules under Code §§403(b)(10) and 401(a)(31).

(e) In form and in operation, the Plan shall satisfy the nondiscrimination requirements of Code §403(b)(12).

15.04 **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 11.07.

15.05 **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.

15.06 **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.

15.07 **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 to a Participant's spouse must comply with all requirements under this Plan.

15.08 **Use of IRS compliance programs.** Nothing in this Plan document should be construed to limit the availability of the IRS' voluntary compliance programs, An Employer may take whatever corrective actions are permitted under the IRS voluntary compliance programs, as is deemed appropriate by the Plan Administrator or Employer.

15.09 **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.

15.10 **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.

15.11 **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, as required by Section 8.04, 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).

15.12 **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.

15.13 **Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

SECTION 16
PARTICIPATING EMPLOYERS

16.01 **Participation by Participating Employers.** An Employer (other than the Employer that executes the Employer Signature Page of the Adoption Agreement) may elect to participate under this Plan by executing a Participating Employer Adoption Page under the Adoption Agreement. A Participating Employer (including a Related Employer) 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) **Custodian/Insurance Company Declaration.** The Participating Employer agrees to use the same Custodians/Insurance Companies as is designated on the Custodian/Insurance Company 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. An election to allocate contributions and forfeitures only to the Participants employed by the Participating Employer making such contributions will preclude the Plan from satisfying the nondiscrimination safe harbor rules under Treas. Reg. §1.401(a)(4)-2 and may require additional nondiscrimination testing.

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 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.

(f) The Code §415 Limitation described in Section 5.03 is applied by treating all members of the Related Employer group as the Employer.

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

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

Actuarial Factor Table. The following table sets forth Actuarial Factors based on a testing age of 65, an interest rate of 8.5% and a UP-1984 mortality table. The Actuarial Factors in this table must be modified if the Employer uses a testing age other than age 65 or selects a different interest rate or mortality table under AA §6-3(c). To determine a Participant's Actuarial Factor, use the factor corresponding to the number of years to the Participant's testing age. The number of years to the testing age is determined by counting the number of years from the last day of the current plan year to the last day of the plan year in which the Participant reaches the testing age. If the Participant has reached the testing age as of the last day of the current Plan Year, the number of years is 0 for that year and all subsequent years.

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

APPENDIX B
INTERIM AMENDMENT #1
HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008 (HEART ACT), WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008 (WRERA) AND OTHER GUIDANCE

B-1.01 **Compliance with Plan Qualification Requirements.** The provisions of this Appendix B and the elective Adoption Agreement provisions are intended to qualify as a good-faith amendment to document the Plan's compliance with the requirements under the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and other IRS guidance, and the final regulations regarding automatic contribution arrangements. This amendment supersedes any contrary provisions under the Plan. The provisions under this Appendix B and the Adoption Agreement elections are incorporated into the document as of September 1, 2010 for all Plans adopted on or after such date.

B-2.01 **Requirements under Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act).**

(a) **Death Benefits under Qualified Military Service.** In the case of a Participant who dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007. (See Notice 2010-15 for guidance in applying the provisions under this subsection (a)).

(b) **Benefit Accruals.** If elected under AA §IA1-1, for benefit accrual purposes, the Plan will treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service (as defined in Code §414(u)) with respect to the Employer, as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. This provision is effective with respect to deaths and disabilities occurring on or after January 1, 2007. (See Notice 2010-15 for guidance in applying the provisions under this subsection (b)).

(1) This subsection (b) shall apply only if all individuals performing qualified military service with respect to the Employer maintaining the plan who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(2) The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this subsection (b) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of:

(i) the 12-month period of service with the Employer immediately prior to qualified military service, or

(ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.

(c) **Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the Employer:

(1) such individual will be treated as an Employee of the Employer making the payment, and

(2) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit based on Differential Pay. However, for purposes of applying this subparagraph, the provisions of Code §§410(b)(3), (4), and (5) shall apply. The Employer may elect to exclude Differential Pay from the definition of Plan Compensation under AA §IA1-1(b). (See Notice 2010-15 for guidance in applying the provisions under this subsection (c).)

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

Notwithstanding the provisions of this subsection (c), an individual shall be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I). If an individual elects to receive a distribution by reason of this paragraph, the individual may not make Salary Deferrals or Employee After-Tax Contributions under the Plan during the 6-month period beginning on the date of the distribution.

B-2.02 Requirements under Worker Retiree and Employer Recovery Act of 2008 (WRERA) and Other IRS Guidance.

(a) **Waiver of Required Minimum Distributions.** For calendar year 2009, the Required Minimum Distribution rules under Section 8.11 of the Plan will not apply. In applying the provisions of Section 8.11 of the Plan for the 2009 Distribution Calendar Year,

(1) the Required Beginning Date with respect to any individual shall be determined without regard to this subsection (a) for purposes of applying this paragraph for Distribution Calendar Years after 2009, and

(2) required distributions to a beneficiary upon the death of the Participant shall be determined without regard to calendar year 2009.

A Participant or beneficiary who would have been required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year but for the enactment of Code §401(a)(9)(H) ("2009 RMD"), may elect whether or not to receive the 2009 RMD (or any portion of such distribution). A distribution of the 2009 RMD or a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years, will be treated as an Eligible Rollover Distribution. However, if all or any portion of a distribution during 2009 is treated as an Eligible Rollover Distribution but would not be so treated if the Required Minimum Distribution requirements under Section 8.11 of the Plan had applied during 2009, such distribution shall not be treated as an Eligible Rollover Distribution for purposes of Code §§401(a)(31), 402(f) or 3405(c). (See Notice 2009-82 for transitional rules that apply for purposes of applying the rollover rules to the distribution of 2009 RMDs.)

(b) **Non-Spousal Rollovers after December 31, 2009.** Notwithstanding any other provision in the Plan to the contrary, effective for Plan Years beginning after December 31, 2009, a non-spouse beneficiary (as defined in Code §401(a)(9)(E)) may elect to make a direct rollover of an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). A non-spouse rollover made after December 31, 2009 will be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) and the mandatory withholding requirements under Code §3405(c).

(c) **Elimination of "Gap Period" Earnings.** The method for determining allocable income or loss attributable to a corrective distribution of Excess Deferrals under Code §402(g) is clarified to provide that only allocable gain or loss through the end of the Plan Year must be taken into account. Thus, "gap period" income need not be included in determining the amount of a corrective distribution of Excess Deferrals.

(d) **Transfer of Plan to Unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated taxpayer.

B-2.03 Final Automatic Contribution Regulations. This Section B-2.03 only applies if the plan contains an automatic contribution arrangement provision.

(a) **Definition of Eligible Automatic Contribution Arrangement (EACA).** Section 3.03(c)(1)(i) of the Plan is amended to modify the definition of an Eligible Automatic Contribution Arrangement (EACA). Section 3.03(c)(1)(i)(A) of the Plan requires that to qualify as an EACA, the automatic contribution arrangement must apply to all eligible Employees who have not entered into an affirmative deferral election. Under this subsection (a), the definition of an EACA is modified to allow the Employer to designate the Employees eligible to participate in the EACA. Thus, a Plan will not fail to be an EACA merely because an election is made in AA §6A-8 to apply the automatic contribution arrangement only to a limited group of Employees. However, if the Plan otherwise qualifies as an EACA but the automatic contribution arrangement does not apply to all eligible Employees (who have not entered into an affirmative deferral election), the Plan will not qualify for the extended 6-month correction period described in Section 3.03(c)(3) of the Plan.

(b) **Annual EACA notice.** Section 3.03(c)(1)(i)(B)(II) of the Plan is amended to clarify that the annual EACA notice only needs to be provided to those Employees who are covered under the EACA. In addition, Section 3.03(c)(1)(i)(B)(II) of the Plan is amended to clarify that if it is impractical to provide the annual EACA notice to a newly eligible Participant before the date such individual becomes eligible to participate under the Plan, the notice will be treated as timely if it is provided as soon as practicable after such date and the Employee is permitted to defer from Plan Compensation earned beginning on the date of participation.

(c) **Permissible Withdrawals under Eligible Automatic Contribution Arrangement.** Section 3.03(c)(2)(ii) of the Plan is amended to provide that a permissible withdrawal election must be effective no later than the pay date for the second payroll period that begins after the election is made or, if earlier, the first pay date that occurs at least 30 days after the election is made. The Employer may designate an alternative period for making permissive withdrawals under AA §IA1-3(a). If an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissive withdrawal, but only with respect to default contributions made after the Employee's return to employment.

(d) **Treatment of rehires.** Effective for Plan Years beginning on or after January 1, 2008, if an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may treat such Employee as having a new initial period for determining the automatic deferral amount under AA §6A-8 if such Employee recommences making default contributions under the Plan, regardless of what minimum percentage would otherwise apply to that Employee. The provisions of this subsection (d) will automatically apply, unless designated otherwise under AA §IA1-3(c).

B-2.04 Requirements Under Emergency Economic Stabilization Act of 2008 (EESA)

(a) **In General.** This Section B-2.04 sets forth the provisions under the Emergency Economic Stabilization Act of 2008 (EESA) relating to Qualified Disaster Recovery Assistance Distributions made to Participants residing in a federally declared Midwestern disaster area between May 20, 2008 and August 1, 2008. The provisions of this Section B-2.04 will apply only to the extent a distribution or loan has been made to a Qualified Individual pursuant to the provisions of this Section B-2.04. If the Plan does not operationally apply the rules under this Section B-2.04, such provisions do not apply to the Plan. To the extent this Section B-2.04 applies to the Plan, the provisions of this Amendment supersede any inconsistent provisions of the Plan or loan program.

(b) **Tax-Favored Withdrawals of Qualified Disaster Recovery Assistance Distributions.**

(1) **Eligibility for Qualified Disaster Recovery Assistance Distributions.** A Qualified Individual may take a Qualified Disaster Recovery Assistance Distribution without regard to any distribution restrictions otherwise applicable under the Plan. A Qualified Disaster Recovery Assistance Distribution is not subject to the early distribution penalty under Code §72(t).

(2) **Definition of Qualified Disaster Recovery Assistance Distributions.** A "Qualified Disaster Recovery Assistance Distribution" is a hardship distribution, in-service distribution or a loan that is made to a Qualified Individual on or after a presidentially-declared disaster date ("the applicable disaster date"), and before January 1, 2010.

(i) **Definition of Qualified Individual.** A Qualified Individual is an individual whose principal residence on the applicable disaster date was located in a Midwestern Disaster Area and who suffered an economic loss due to severe storms, flooding or tornadoes.

(ii) **Limit on amount of Qualified Disaster Recovery Assistance Distributions.** The aggregate amount of Qualified Disaster Recovery Assistance Distributions received by an individual for any taxable year (from all plans maintained by the Employer and any member of a controlled group which includes the Employer) may not exceed the excess (if any) of $100,000, over the aggregate amounts treated as Qualified Disaster Recovery Assistance Distributions received by such individual for all prior taxable years.

(3) **Income inclusion spread over 3-year period.** Unless a Qualified Individual elects not to have this paragraph apply for any taxable year, a Qualified Disaster Recovery Assistance Distribution is not required to be included in gross income for the taxable year of distribution but shall be included in gross income ratably over the 3-taxable year period beginning with the taxable year of the distribution.

(4) **Repayment of Qualified Disaster Recovery Assistance Distributions.** A Participant who received a Qualified Disaster Recovery Assistance Distribution from the Plan or another eligible retirement plan (as defined in Code §402(c)(8)(B)) may, at any time during the 3-year period beginning on the day after the receipt of such

distribution, make one or more rollover contributions to the Plan in an aggregate amount that does not exceed the amount of such Qualified Disaster Recovery Assistance Distribution. This subsection (4) only applies if the Plan permits rollover contributions.

(c) **Recontributions of Qualified Hardship Distributions.** A Participant who received a qualified hardship distribution to purchase a home in the Midwest disaster area within six months of the applicable disaster date and the home was not purchased due to the disaster, may recontribute such distributions to the Plan (or an IRA) no later than March 3, 2009. This subsection (c) only applies if the Plan permits rollover contributions.

(d) **Special loan rules.**

(1) **Increased Participant loan limits.** Notwithstanding the Participant loan limitations under the Plan, for purposes of determining the maximum amount of a Participant loan for a Qualified Individual (as defined in subsection (b)(2)(i) above) during the period from October 3, 2008 through December 31, 2009, the loan limits under Section 13.03 of the Plan shall be applied by substituting "$100,000" for "$50,000" under Section 13.03(a) and "the Participant's vested Account Balance" for "one-half (½) of the Participant's vested Account Balance" under Section 13.03(b).

(2) **Delayed loan repayment date.** If a Qualified Individual has an outstanding Participant loan on or after the applicable disaster date and before January 1, 2010:

(i) the due date for repayment of the Participant loan shall be delayed for 1 year;

(ii) any subsequent repayments with respect to such loan shall be appropriately adjusted to reflect the delay in the due date under subsection (i) and any interest accruing during such delay; and

(iii) in determining the 5-year period and the term of the loan under Section 13.07 of the Plan, the 1-year delay period described in subsection (i) shall be disregarded.