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Article 1. Introduction
This Pre-Approved Plan consists of two parts: (1) an Adoption Agreement that is a separate document incorporated by reference into this Basic Plan Document; and (2) this Basic Plan Document. Each part of the Pre-Approved Plan contains substantive provisions that are integral to the operation of the plan. The Adoption Agreement is the means by which an adopting Employer elects the optional provisions that shall apply under its plan. The Basic Plan Document describes the standard provisions elected in the Adoption Agreement. In addition to the pre-approved provisions, the Plan includes a separate trust agreement that describes the powers and duties of the Trustee with respect to Plan assets. The Trust Agreement is incorporated into the Plan by reference.

The purpose of the Plan is to create a retirement fund intended to help provide for the future security of the Participants and their Beneficiaries. The Pre-Approved Plan is intended to qualify under Code section 401(a).

Depending upon the Adoption Agreement completed by an adopting Employer, the Pre-Approved Plan may be used to implement either (i) a money purchase pension plan or (ii) a profit sharing plan with or without a cash or deferred arrangement intended to qualify under Code section 401(k).

Article 2. Definitions
As used in the Plan the following terms shall have the meanings set forth below:

2.1. Account or Accounts. “Account” or “Accounts” means an account established for the purpose of recording any contributions made on behalf of a Participant and any income, expenses, gains, or losses incurred thereon. The Plan Administrator shall establish and maintain sub-accounts within a Participant’s Account as necessary to depict accurately a Participant’s interest under the Plan. The Plan Administrator shall also establish and maintain such other accounts and/or sub-accounts and records as it decides in its discretion to be reasonably required or appropriate in order to discharge its duties under the Plan.

2.2. Adoption Agreement. “Adoption Agreement” means the instrument, completed and executed by the Employer and accepted by the Trustee, in which the Employer adopts the Plan and selects its options under the Plan. The Adoption Agreement may be amended by the Employer from time to time, subject to Articles 10.2 and 10.3 of the Plan.

2.3. Affiliated Employer. “Affiliated Employer” means the Employer and any trade or business, whether or not incorporated, which is any of the following:
(a) a member of a group of controlled corporations (within the meaning of Code section 414(b)) which includes the Employer; or
(b) a trade or business under common control (within the meaning of Code section 414(c)) with the Employer; or
(c) a member of an affiliated service group (within the meaning of Code section 414(m)) which includes the Employer; or
(d) an entity otherwise required to be aggregated with the Employer pursuant to Code section 414(o).

In determining service for eligibility to participate in the Plan, all employees of Affiliated Employers will be treated as employed by a single employer.

2.4. Alternate Payee. “Alternate Payee” means the Spouse, former Spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive some or all of the benefits payable under the Plan with respect to such Participant.

2.5. Annuity Starting Date. “Annuity Starting Date” means the first day of the first period for which an amount is paid as an annuity or any other form.


2.7. Beneficiary. “Beneficiary” means the person or entity (including a trust or an estate, in which case the term may mean the trustee or personal repre-sentative acting in his or her fiduciary capacity) designated as such by the Participant under Article 7.4 to receive a Participant’s Account upon the Participant’s death, subject to the requirements of Code section 401(a)(9) and the Treasury Regulations thereunder.

2.8. Break in Service. “Break in Service” means a period of 12 consecutive months, commencing on the date on which an individual first performs an Hour of Service or on any anniversary thereof, during which he is not credited with more than 300 Hours of Service. Solely for the purpose of determining whether a Break in Service has occurred, an individual who is absent from work for maternity or paternity reasons shall 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. The Hours of Service credited under this paragraph shall be credited in the 12 month period (as described above) in which the absence begins if the crediting is necessary to prevent a Break in Service in that period or, in all other cases, in the following 12 month period (as described above).

2.9. Business. “Business” means the trade or business of any Employer, the legal form of which may be a corporation, a government entity, a limited liability company, a limited liability partnership, a partnership, an unincorporated sole proprietorship, a professional service corporation, a Subchapter S corporation, a tax-exempt organization, or other unincorporated business.


2.11. Code. “Code” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder. Reference to a section of the Code shall include that section and any comparable section or sections, or any future statutory provision which amends, supplements, or supersedes that section.

(a) For an Employee who is not a Self-Employed Individual, “Compensation” means, subject to the limits of this Article 2.13, wages, tips and other compensation paid by the Employer and reportable on Internal Revenue Service Form W-2, excluding deferred compensation, but increased by amounts withheld under a salary reduction agreement in connection with a cash or deferred plan under Code section 401(k), a SIMPLE retirement account under Code section 408(p), a simplified employee pension under Code section 403(b), or a tax-deferred annuity under Code section 403(b), and any amount which is contributed by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code section 125 (cafeteria plans), Code section 132(f)(4) (qualified transportation fringe benefit programs), or Code section 457 (deferred compensation plans of tax exempt organizations). Amounts under Code section 125 include any amounts available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he has other health coverage. An amount will be treated as an amount under Code section 125 only if the Employer does not request or collect information concerning the Participant’s other health coverage as part of the enrollment process for the health plan.

(b) For an Employee who is a Self-Employed Individual, “Compensation” means the net earnings from self-employment derived by a Self-Employed Individual from the Business with respect to which the Plan is established, for which personal services of the individual are a material income-producing factor, excluding items not included in gross income and the deductions allocated to such items; and reduced by (1) contributions by the Employer to qualified plans, to the extent deductible under Code section 404, and (2) any deduction allowed to the Employer under Code section 164(f).

(c) A Participant’s Compensation for a Plan Year is subject to the limits set forth below:
(1) For Plan Years beginning on or after January 1, 2002, the annual Compensation of each Participant taken into account for determining all contributions provided under the Plan for any Plan Year shall not
exceed $200,000 as adjusted for increases in the cost of living in accordance with Code section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any Plan Year beginning in that calendar year.

(2) If a Plan Year consists of fewer than 12 months (a “short Plan Year”), the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short Plan Year, and the denominator of which is 12.

(3) If so elected in the Adoption Agreement, Compensation for purposes of allocating Employer contributions shall not include Compensation prior to the date the Employee's participation in the Plan commenced. Any such election in an Adoption Agreement shall not apply for purposes of applying the provisions of Article 13.2.

(4) Effective for all Differential Wages paid after December 31, 2008, Compensation includes Differential Wages. However, for the purposes of determining the amount or allocation of contributions under Article 4 of the Plan, Differential Wages paid after December 31, 2008 are not included in Compensation.

If the Plan is adopted as an amendment to an existing plan, the definition in this Article 2.13 is effective as of the first day of the Plan Year in which the Plan is adopted.

2.13. Computation Period. “Computation Period” means a period of 12 consecutive months, commencing on the date on which an individual first performs an Hour of Service or on any anniversary thereof, except that in the case of an Employee who returns to service with the Employer after having incurred a Break in Service, the 12 month period shall commence on the date on which he first performs an Hour of Service after the Break in Service, and each anniversary thereof.

2.14. Designated Roth Contributions. “Designated Roth Contributions” means a Participant’s Elective Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Designated Roth Contributions by the Participant in his or her contribution election.

2.15. Differential Wages. “Differential Wages” means wages paid to an Employee by the Employer with regard to military service meeting the definition of differential wage payment found in Code section 3401(h)(2).

2.16. Disability. “Disability” means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or 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. Disability shall be determined by a licensed physician selected by the Participant.

2.17. DOL Regulations. “DOL Regulation” means a regulation promulgated under ERISA by the U.S. Department of Labor.

2.18. Effective Date. “Effective Date” means the date specified in the Adoption Agreement. However, the effective date of any Plan provision resulting from a change in law or applicable guidance will be effective as of the date required by such law or guidance, even if such date is earlier than the Effective Date.

2.19. Elective Contribution. “Elective Contribution” means any Employer contribution made to the Plan at the election of the Participant, in lieu of cash compensation, and shall include contributions made pursuant to a salary reduction agreement or other contribution mechanism. For purposes of Article 12, with respect to any taxable year, Participant’s Elective Contributions are the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code section 401(k), any salary reduction simplified employee pension as described in Code section 403(b)(18), any eligible deferred compensation plan under Code section 457, any plan as described under Code section 501(c)(18), any employer contribution made on the behalf of a participant for the purchase of an annuity contract under Code section 403(b) pursuant to a salary reduction agreement, and any employer contribution under Code section 408(p)(2)(A)(ii). The term “Elective Contribution” includes Pre-Tax Elective Contributions and Designated Roth Contributions. “Elective Contributions” shall not include any amounts properly distributed as Excess Amounts.

2.20. Employee. “Employee” means (a) a common law employee of an Affiliated Employer; (b) in the case of an Affiliated Employer which is a sole proprietorship, the sole proprietor thereof; (c) in the case of an Affiliated Employer which is a partnership, any partner thereof; (d) any individual treated as an employee of an Affiliated Employer under the “leased employee” rules in Article 11.8 of the Plan. The term “Employee” shall include a Self-Employed Individual and an Owner-Employee, but for purposes of participation in accordance with Article 3.1 shall exclude (1) any individual who is a nonresident alien receiving no earned income from an Affiliated Employer which constitutes income from sources within the United States, (2) any individual included in a unit of employees covered by a collective bargaining agreement as to which retirement benefits were the subject of good faith bargaining, and (3) any individual who is a resident of Puerto Rico.

2.21. Employee Nondeductible Contribution. “Employee Nondeductible Contribution” means a nondeductible contribution made by an Employee to the Plan under provisions of the Plan that are no longer in effect. Employee Nondeductible Contributions are not permitted to be made to the Plan after the later of (i) the first day of the first Plan Year beginning after December 31, 1986 or (ii) the date the Plan was restated onto this Pre-Approved Plan (or any predecessor prototype plan maintained by the Provider).

2.22. Employer. “Employer” means the Employer named in the Adoption Agreement, and any successor thereto.

2.23. ERISA. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder. Reference to a section of ERISA shall include that section and any comparable section or sections, or any future statutory provision which amends, supplements, or supersedes that section.

2.24. Highly Compensated Employee. “Highly Compensated Employee” means any Employee who performs service for the Employer during the “determination year” and who (1) at any time during the “determination year” or the “look-back year” was a five percent owner (as defined in Code section 414(q)) or (2) received Compensation from the Employer during a “look-back year” in excess of $80,000 (as adjusted pursuant to Code section 415(d)). For this purpose, the “determination year” shall be the Plan Year. The “look-back year” shall be the twelve-month period immediately preceding the “determination year.” A highly compensated former employee is based on the rules applicable to determining highly compensated employee status as in effect for that “determination year.”

2.25. Hour of Service. “Hour of Service” means:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for an Affiliated Employer. These hours shall be credited to the Employee for the Computation Period or Periods in which the duties are performed.

(b) Each hour for which an Employee is paid, or entitled to payment, by an Affiliated 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), jury duty, military duty, layoff, or leave of absence; provided, however, that no more than 501 Hours of Service shall be credited under this paragraph (b) to an Employee on account of any single continuous period during which the Employee performs no services (whether or not such period occurs in a single Computation Period). Hours under this paragraph shall be calculated and credited pursuant to DOL Regulation 2530.200b-2, which is incorporated herein by this reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Affiliated Employer, provided, however, that the same Hours of Service shall not be credited under both paragraph (a) or (b), as the case may be, and under this paragraph (c). These hours shall be credited to the Employee for the Computation Period or Periods to which the award or payment pertains, rather than the Computation Period in which the award, agreement, or payment is made.

Hours of Service shall be credited to leased employees in accordance with Article 11.8. If the Employer maintains the plan of a predecessor employer, Hours of Service shall be credited for service with such predecessor employer. 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 shall 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 shall be credited (i) in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or (ii) in all other cases, in the following Computation Period.


2.27. Nonelective Employer Contribution. “Nonelective Employer Contribution” means any contribution made to the Plan in accordance with Article 4.3.

2.28. Non-Highly Compensated Employee. “Non-Highly Compensated Employee” means any Employee who is not a Highly Compensated Employee.

2.29. Normal Retirement Age. “Normal Retirement Age” means the age specified in the Adoption Agreement; provided, however that if the Adoption Agreement provides that the Plan is a money purchase plan, and the age specified is earlier than age 62, the Employer represents that the age specified as the Normal Retirement Age is reasonably representative of the typical retirement age for the industry in which the Employees perform services.

2.30. Owner-Employee. “Owner-Employee” means the sole proprietor, or a partner who owns more than 10 percent of either the capital interest or the profits interest, if the Employer is a partnership.

2.31. Participant. “Participant” means an Employee who has met the requirements of Article 3.1 or Article 3.2.

2.32. Plan. “Plan” means the plan established by the Employer in the form of this Pre-Approved Plan, as provided herein and in the Adoption Agreement executed by the Employer, together with any and all amendments hereto.

2.33. Plan Administrator. “Plan Administrator” means the person(s) or entity named to administer the Plan (as set forth in Article 11.2) on behalf of the Employer, including any successor plan administrator, as specified in the Adoption Agreement or in another form and manner acceptable to the Trustee. The Plan Administrator is a “named fiduciary” for purposes of ERISA section 402(a)(1) and has the powers and responsibilities with respect to the management and operation of the Plan described herein. If the Plan Administrator resigns, dies or is otherwise unable or unwilling to act as Plan Administrator, the successor plan administrator shall assume the duties of Plan Administrator and shall be responsible for administering and terminating the Plan, as applicable.

2.34. Plan Year. “Plan Year” means the period of 12 consecutive months designated by the Employer in the Adoption Agreement, except that in the case of initial adoption or of termination of the Plan, or in the case of a change in Plan Year, a period of less than 12 consecutive months may be designated as the Plan Year.

2.35. Pre-Approved Plan. “Pre-Approved Plan” means the form of this Basic Plan Document and the associated Adoption Agreements, as approved from time to time by the Internal Revenue Service.

2.36. Pre-Tax Elective Contributions. “Pre-Tax Elective Contributions” are a Participant’s Elective Contributions made under the Plan that are not includable in the Participant’s gross income at the time contributed.

2.37. Provider. “Provider” means FMR LLC or its successor.

2.38. QDRO. “QDRO” means a qualified domestic relations order within the meaning of Code section 414(p), as determined by the Plan Administrator in accordance with Article 7.9.

2.39. Qualified Nonelective Employer Contribution. “Qualified Nonelective Employer Contribution” means any contribution made by the Employer to the Plan on behalf of Non-Highly Compensated Employees in accordance with Article 4.9, that may be included in determining whether the Plan meets the ADP test described in Article 12.5.

2.40. Registered Investment Company/Registered Investment Company Shares. “Registered Investment Company” means any one or more corporations or trusts registered under the Investment Company Act of 1940 and acceptable to the Provider and the Trustee, in their discretion, for use under the Plan; and “Registered Investment Company Shares” means the shares, trust certificates, or other evidences of ownership in any such Registered Investment Company.

2.41. Roth Effective Date. “Roth Effective Date” means the date as of which Designated Roth Contributions are allowed under this Pre-Approved Plan, as determined by the Provider. However, the Employer may designate a later Roth Effective Date (or opt out of Designated Roth Contributions) in the Adoption Agreement (or addendum thereto) and in no event will the Roth Effective Date be a date earlier than the date the Employer allows Roth Contributions to be made under the Plan.

2.42. Safe Harbor Nonelective Employer Contribution. “Safe Harbor Nonelective Employer Contribution” means any contribution made to the Plan in accordance with Article 4.8 that is intended to satisfy the requirements of Code section 401(k)(12)(B).

2.43. Self-Employed Individual. “Self-Employed Individual” means an individual who is not a common-law employee and who has earned income (within the meaning of Code section 401(c)(2)) from the Business (or would have had such earned income if the Business had net profits) for the taxable year.

2.44. Spouse. “Spouse” means the person to whom the Participant is married for purposes of Federal income taxes. A former spouse will be treated as a Spouse to the extent provided in a domestic relations order that has been determined to be a qualified domestic relations order (as defined in Code section 414(p)).


2.46. Trust. “Trust” means the trust fund established to hold the assets of the Plan.

2.47. Trust Agreement. “Trust Agreement” means the separate agreement between the Trustee and the Employer under which the assets of the Plan are held, administered, and managed. The Trust Agreement describes the powers and duties of the Trustee with respect to Plan assets. The provisions of the Trust Agreement are hereby incorporated by reference into the Plan. In the event there is a conflict between the provisions of the Pre-Approved Plan and the Trust Agreement, the provisions of the Pre-Approved Plan shall control.

2.48. Trustee. “Trustee” means the Trustee named in the Adoption Agreement or any agent or successor to such Trustee, as may be authorized by the Trustee or the Provider.

2.49. Year of Service. “Year of Service” means a Computation Period during which an individual is credited with at least 1,000 Hours of Service.

Article 3. Participation

3.1. General Rule. Each Employee who has fulfilled the age and service requirements specified by the Employer in the Adoption Agreement shall become a Participant on the date specified by the Employer in the Adoption Agreement provided he is an Employee on such date. For purposes of this Article 3.1, an Employee who incurs a Break in Service before completing the required number of Years of Service shall not thereafter be credited with any Year of Service completed prior to the Break in Service. If a Participant is no longer an Employee (as defined in Article 2.20) and has become ineligible to participate but has not incurred a Break in Service, such individual shall participate immediately upon becoming an Employee again. If such a Participant incurs a Break in Service, eligibility shall be determined under the Break in Service rules of this Article 3.1. If an individual who is not an Employee (as defined in Article 2.20) becomes an Employee, such Employee shall participate immediately if he has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

3.2. Special Rule for Former Participants. A former Participant whose employment with the Employer terminates shall again become a Participant on the day on which he first performs an Hour of Service for the Employer after such termination.
4.1. Contributions by the Employer. Subject to the requirements and limitations contained in this Article 4 and in Article 12, for each Plan Year beginning with the Plan Year in which the Effective Date falls, the Employer shall contribute to the Trust the amount or amounts determined under this Article 4. Any amounts in excess of the deductibility limit under Code section 404 (i) (if applicable) will be subject to an excise tax under Code section 4972. Amounts in excess of the limit under Code section 404 may only be returned to the Employer in accordance with Article 11.15.

4.2. Eligible Participant. An “Eligible Participant” is a Participant who (a) is an active Employee on the last day of the Plan Year, or (b) is credited with more than 500 Hours of Service during the Plan Year, or (c) left employment during the Plan Year on account of death, Disability, or attainment of age 59½ or older. Notwithstanding the preceding sentence, for purposes of Articles 4.8 and 4.9 an “Eligible Participant” is a Participant who is both (a) an active Employee on any day during the Plan Year and (b) is a Non-Highly Compensated Employee, and for purposes of Articles 12.5 and 12.8, an “Eligible Participant” is a Participant who is an active Employee on any day during the Plan Year. An Eligible Participant must have Compensation during the Plan Year to receive a contribution under this Article 4.

4.3. Contributions to Profit Sharing Plans. If the Adoption Agreement provides that the Plan is a profit sharing plan, the Employer may make a Nonelective Employer Contribution each Plan Year in a discretionary amount determined by the Employer. An Employer may make Nonelective Employer Contributions whether or not it has current or accumulated profits. If the Employer elects in the Adoption Agreement to permit Elective Contributions, Elective Contributions shall be permitted in accordance with Article 4.5. If the Employer elects in the Adoption Agreement to make Safe Harbor Nonelective Employer Contributions to the Plan, Safe Harbor Nonelective Employer Contributions shall be made as provided in Article 4.8. Additionally, if the Employer elects in the Adoption Agreement to make Safe Harbor Nonelective Employer Contributions to the Plan, Elective Contributions under Article 4.5 and Safe Harbor Nonelective Employer Contributions under Article 4.8 shall remain in effect for an entire 12-consecutive-month Plan Year, except as otherwise permitted by section 401(k)(3)(c) of the Treasury Regulations (permitting maintenance of safe harbor 401(k) arrangements for periods of less than 12 consecutive months in the case of the initial Plan Year of the Plan, the addition of cash or deferred arrangements to certain existing Plans, change of Plan Year, and the final Plan Year of the Plan). If the Employer elects in the Adoption Agreement to permit Elective Contributions, but not to make Safe Harbor Nonelective Employer Contributions to the Plan, Qualified Nonelective Employer Contributions may be made as provided in Article 4.9.

4.4. Money Purchase Plans. If the Adoption Agreement provides that the Plan is a money purchase plan, the Money Purchase Employer Contribution for each Eligible Participant (as defined in Article 4.2) shall be made in accordance with the formula selected by the Employer in the Adoption Agreement.

4.5. Elective Contributions. If the Employer elects in the Adoption Agreement to permit Elective Contributions, each Participant who is an active Employee may elect to execute a salary reduction agreement with the Employer to reduce his Compensation by a specified percentage, equal to a whole number multiple of one percent, per payroll period. In lieu of specifying a percentage of Compensation reduction, such a Participant may elect to reduce his Compensation by a specified dollar amount per payroll period. A Participant’s salary reduction agreement shall become effective on the first day of the first payroll period for which the Plan Administrator can reasonably process the request, but not earlier than the later of (a) the effective date of the provisions permitting Elective Contributions or (b) the date the Employer adopts such provisions. The Employer shall make an Elective Contribution on behalf of the Participant corresponding to the amount of said reduction. Under no circumstances may a salary reduction agreement be adopted retroactively.

Notwithstanding any other provision of the Plan to the contrary, a Participant may on and after the Roth Effective Date irrevocably designate all or a portion of his Elective Contributions for a calendar year as Designated Roth Contributions. Elective Contributions not designated as Designated Roth Contributions will be treated as Pre-Tax Elective Contributions. Elective Contributions contributed to the Plan as Designated Roth Contributions or as Pre-Tax Elective Contributions may not later be reclassified to the other type under this Plan (in other words, Code section 402A(c)(4) does not apply). A Participant’s Designated Roth Contributions will be deposited in the Participant’s Designated Roth Contribution Account in the Plan. No contribution other than Designated Roth Contributions (and, to the extent provided in Treasury Regulations or applicable IRS guidance, Roth 403(k) rollover contributions) and properly attributable earnings will be credited to each Participant’s Designated Roth Contribution Account, and gains, losses and other credits or charges will be allocated on a reasonable and consistent basis to such account. The Plan will maintain a record of the amount, losses and Designated Roth Contributions in each Participant’s Designated Roth Contribution account.

A Participant may elect to make Elective Contributions, or to change or discontinue the percentage or dollar amount by which his Compensation is reduced by notice to the Employer, in the form and manner prescribed by the Plan Administrator, provided that the Participant must have the effective opportunity to make, change or discontinue an election to make Pre-Tax Elective Contributions or, on and after the Roth Effective Date, Designated Roth Contributions at least once each Plan Year. A Participant may elect to change or discontinue the percentage or dollar amount by which his Compensation is reduced by notice to the Employer within a reasonable period, as specified by the Plan Administrator (but not less than 30 days), of receiving the notice described in Article 12.8.

In order for the Plan to comply with the requirements of Code sections 401(k), 402(g) and 415 or the Treasury Regulations promulgated thereunder (as described in Article 12), at any time during a Plan Year the Plan Administrator may reduce the rate of Elective Contributions to be made on behalf of any Participant, or class of Participants, for the remainder of the Plan Year, or the Plan Administrator may require that all Elective Contributions to be made on behalf of a Participant be discontinued for the remainder of that Plan Year. Upon the close of the Plan Year or such earlier date as the Plan Administrator may determine, any reduction or discontinuance in Elective Contributions shall automatically cease until the Plan Administrator again determines that such a reduction or discontinuance of Elective Contributions is required.

4.6. In-Plan Roth Rollover Contributions and In-Plan Roth Conversions. If elected by the Employer in Section A.2 of the Designated Roth Contributions Addendum to the Adoption Agreement, and effective on and after the date elected by the Employer in such Section A.2, a Participant or Beneficiary may elect to have any portions of his Account otherwise distributable under the Plan, which are not Designated Roth Contributions under the Plan and meet the definition of an Eligible Rollover Distribution found in Article 7.10(a)(1), be considered Designated Roth Contributions for purposes of the Plan. Any assets converted in such a way shall be separately accounted for and be maintained in such records as are necessary for the proper reporting thereof. Such assets shall also retain any distribution rights applicable to them prior to the conversion. Each such in-plan rollover shall be subject to its own 5-taxable year period of participation and subject to the requirements of Code Section 408A(d)(3)(F).

If elected by the Employer in Section A.3 of the Designated Roth Contributions Addendum to the Adoption Agreement, and effective for in-plan Roth conversions on and after the date elected by the Employer in such Section A.3, any Participant may elect to have any portions of his Account which are not Designated Roth Contributions under the Plan, be considered Designated Roth Contributions for purposes of the Plan. Any assets converted in such a way shall be separately accounted for; be maintained in such records as are necessary for the proper reporting thereof, and have any distribution constraints applicable to them prior to the conversion continue to apply to them.

4.7. Catch-Up Contributions. If the Employer elects in the Adoption Agreement to permit Elective Contributions, all Participants who are eligible to make Elective Contributions under the Plan and who are projected to attain age 50 (or a higher age) before the close of the taxable year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the limitations of, Code section 414(v). Catch-Up Contributions are Elective Contributions 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 year. An otherwise applicable plan limit is a limit in the Plan that applies to Elective Contributions without regard to Catch-Up Contributions, such as the limits on annual additions, the dollar limitations on Elective Contributions under Code section 402(g) (not counting Catch-Up Contributions) and the limit imposed by the actual deferral percentage (ADP) test under Code section 401(k)(3). Catch-Up Contributions for a Participant for a taxable year may not exceed (1) the dollar limit on
Catch-Up Contributions under Code section 414(v)(2)(B)(i) for the taxable year or (2) when added to other Elective Contributions, the maximum amount allowed by law. The dollar limit on Catch-Up Contributions under Code section 414(v)(2)(B)(i) is $5,000 for taxable years beginning in 2006 and later years. After 2006, the $5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 414(v)(2)(C). Any such adjustments will be in multiples of $500.

Catch-Up Contributions are not subject to the limits on annual additions, are not counted in the ADP test, and are not counted in determining the minimum allocation under Code section 416 (but Catch-Up Contributions made in prior years are counted in determining whether the Plan is top-heavy).

4.8. Safe Harbor Nonelective Employer Contributions. If the Employer elects in the Adoption Agreement to make Safe Harbor Nonelective Employer Contributions to the Plan, the Employer shall make a Safe Harbor Nonelective Employer Contribution for each Eligible Participant (as defined in Article 4.2) for the Plan Year in the amount of 3 percent of such Eligible Participant’s Compensation for the Plan Year.

4.9. Qualified Nonelective Employer Contributions. If the Employer elects in the Adoption Agreement to permit Elective Contributions, but not to make Safe Harbor Nonelective Employer Contributions to the Plan, the Employer may, in its discretion, make a Qualified Nonelective Employer Contribution for the Plan Year in any amount necessary to satisfy or help to satisfy the ADP test described in Article 12.5, provided that the conditions of section 1.401(k)-2(a)(6) of the Treasury Regulations are satisfied. Any Qualified Nonelective Employer Contribution shall be allocated among the Accounts of Eligible Participants (as defined in Article 4.2) either:

(a) In the ratio that each such Eligible Participant’s Compensation for the Plan Year bears to the total Compensation paid to all such Eligible Participants; or

(b) As a uniform flat dollar amount for each such Eligible Participant for the Plan Year.

Qualified Nonelective Employer Contributions shall be distributable only in accordance with the distribution provisions that are applicable to Elective Contributions.

4.10. Allocation of Nonelective Employer Contributions (Nonintegrated Plans). If the Plan is a profit sharing plan and the Plan is not integrated with Social Security, Nonelective Employer Contributions for any Plan Year shall be allocated as of the last day of the Plan Year among the Nonelective Employer Contribution Accounts of the Eligible Participants (as defined in Article 4.2) in the ratio that each Eligible Participant’s Compensation for the Plan Year bears to the total Compensation of all Eligible Participants for that year.

4.11. Allocation of Nonelective Employer Contributions (Integrated Plans). If the Plan is a profit-sharing plan and the Plan is integrated with Social Security, Nonelective Employer Contributions shall be allocated as follows:

(a) Subject to the overall permitted disparity limits set forth in paragraph (e) below, Nonelective Employer Contributions for the Plan Year shall be allocated to Eligible Participants’ Accounts in the following manner:

STEP 1: Nonelective Employer Contributions shall be allocated to each Eligible Participant’s Account in the ratio that the sum of each Eligible Participant’s total Compensation and Compensation in excess of the Integration Level bears to the sum of all Eligible Participants’ total Compensation and Compensation in excess of the Integration Level, but not in excess of the Excess Contribution Percentage specified in the Adoption Agreement, which may not exceed the Profit Sharing Maximum Disparity Rate described in Section 5 of the Adoption Agreement. For purposes of this Step One, in the case of any Eligible Participant who has exceeded the Cumulative Permitted Disparity Limit described below, two times such Eligible Participant’s total Compensation for the Plan Year will be taken into account.

STEP 2: Any remaining Nonelective Employer Contributions shall be allocated to each Eligible Participant’s Account in the ratio that each Eligible Participant’s total Compensation for the Plan Year bears to the total Compensation of all Eligible Participants for that year.

(b) The “Integration Level” shall be equal to the Taxable Wage Base or such lesser amount elected by the Employer in the Adoption Agreement. The “Taxable Wage Base” (TWB) is the contribution and benefit base in effect under section 230 of the Social Security Act as of the beginning of the Plan Year.

(c) “Compensation” means Compensation as defined in Article 2.13 of the Plan.

(d) “Excess Contribution Percentage” is the percentage of Compensation contributed for each Participant on such Participant’s Compensation in excess of the Integration Level, as specified in the Adoption Agreement.

(e) Overall Permitted Disparity Limits.

(1) Annual Overall Permitted Disparity Limit. Notwithstanding the preceding paragraphs, for any Plan Year the Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Code section 408(k), maintained by the Employer that provides for permitted disparity (or imputes disparity). Employer profit sharing contributions shall be allocated to the Account of each Eligible Participant who either completes more than 500 Hours of Service during the Plan Year or who is employed on the last day of the Plan Year in the ratio that such Eligible Participant’s total Compensation bears to the total Compensation of all Eligible Participants.

(2) Cumulative Permitted Disparity Limit: Effective for Plan Years beginning on or after January 1, 1995, the “Cumulative Permitted Disparity Limit” for a Participant is 35 total cumulative permitted disparity years. “Total cumulative permitted disparity years” means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant’s Cumulative Permitted Disparity Limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no Cumulative Permitted Disparity Limit.

4.12. Allocation of Money Purchase Employer Contributions (Nonintegrated Plans). If the Plan is a money purchase plan and the Plan is not integrated with Social Security, the Money Purchase Employer Contribution for each Eligible Participant (as defined in Article 4.2) shall be an amount computed using the formula specified in the Adoption Agreement.

4.13. Allocation of Money Purchase Employer Contributions (Integrated Plans). If the Plan is a money purchase plan integrated with Social Security, Money Purchase Employer Contributions shall be allocated as follows:

(a) Subject to the overall permitted disparity limits set forth in paragraph (d) below, the Employer shall contribute an amount equal to the Base Contribution Percentage specified in the Adoption Agreement (but not less than 3 percent) of each Eligible Participant’s Compensation (as defined in Article 2.12 of the Plan) for the Plan Year, up to the Integration Level, plus the Excess Contribution Percentage specified in the Adoption Agreement (not less than 3 percent and not to exceed the Base Contribution Percentage by more than the lesser of (1) the Base Contribution Percentage, or (2) the Money Purchase Maximum Disparity Rate described in Section 5 of the Adoption Agreement) of such Eligible Participant’s Compensation in excess of the Integration Level.

However, in the case of any Eligible Participant who has exceeded the Cumulative Permitted Disparity Limit, the Employer shall contribute for each Eligible Participant who either completes more than 500 Hours of Service during the Plan Year or is employed on the last day of the Plan Year an amount equal to the Excess Contribution Percentage multiplied by the Eligible Participant’s total Compensation for the Plan Year.

(b) The “Integration Level” shall be equal to the Taxable Wage Base or such lesser amount elected by the Employer in the Adoption Agreement. The “Taxable Wage Base” (TWB) is the contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the Plan Year.

(c) Overall Permitted Disparity Limits.

(1) Annual Overall Permitted Disparity Limit. Notwithstanding the preceding paragraph, for any Plan Year this Plan benefits any Eligible Participant who benefits under another qualified plan or simplified employee pension, as defined in Code section 408(k), maintained by
the Employer that provides for permitted disparity (or imputes disparity), the Employer shall contribute for each Eligible Participant who either completes more than 500 Hours of Service during the Plan Year or is employed on the last day of the Plan Year an amount equal to the Elective Contribution Percentage (as specified in the Adoption Agreement) multiplied by the Eligible Participant's total Compensation for the Plan Year.

(2) Cumulative Permitted Disparity Limit. Effective for Plan Years beginning on or after January 1, 1995, the “Cumulative Permitted Disparity Limit” for a Participant is 35 total cumulative permitted disparity years. “Total cumulative permitted disparity years” means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant’s Cumulative Permitted Disparity Limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no Cumulative Permitted Disparity Limit.

4.14. Time and Manner of Contributions. Nonelective, Qualified Nonelective, Safe Harbor Nonelective, and Money Purchase Employer Contributions for a Plan Year shall be remitted to the Trustee not later than the due date (including extensions) prescribed by law for filing the Employer’s federal income tax return for the taxable year in which the Plan Year ends, or within such other time frame as may be determined by applicable regulation or legislation. The Employer should remit Elective Contributions to the Trustee as of the earliest date on which such contributions can reasonably be segregated from the Employer’s general assets. In the case of a plan with fewer than 100 Participants, if Elective Contributions are remitted not later than the 7th business day following the day on which such amounts would otherwise have been payable to the Participant in cash, the Elective Contribution is deemed to have been contributed as of such earliest date. In no event may Elective Contributions be remitted to the Trustee later than the 15th business day of the calendar month following the month in which such amounts otherwise would have been paid to the Participant, or within such other time frame as may be determined by applicable regulation or legislation. Each contribution shall be accompanied by instructions (in a form and manner acceptable to the Trustee) specifying the names of the Participants who are entitled to participate in such contribution. Each contribution shall also be accompanied by investment instructions pursuant to Article 6.1.

The Trustee shall have no authority to inquire into the correctness of the amounts contributed and remitted to the Trustee or to determine whether any contribution is payable under this Article 4. The Plan Administrator shall be the named fiduciary responsible for ensuring that the Employer remits contributions to the Trust and have the duty and responsibility for the collection of such contributions when not timely made by the Employer, provided that the Plan Administrator or Employer may appoint another named fiduciary to handle such responsibility and notify the Trustee of such appointment in writing.

4.15. Contributions by Participants. Participants may not make contributions to the Plan (except Elective Contributions, as provided in Articles 4.5 and 4.7). If the Plan is amended to an existing plan that permitted employees to make nondeductible contributions for any Plan Year beginning after December 31, 1986, such contributions in any such Plan Year may not have exceeded the maximum allowed under the nondiscrimination test contained in Code section 401(m)(2). Any Plan that has accepted employee nondeductible contributions must maintain Employee Nondeductible Contribution Accounts so long as any amounts attributable to such contributions remain in the Trust. Subject to Article 8, a Participant may at any time withdraw amounts credited to his Employee Nondeductible Contribution Account by submitting to the Trustee, through the Plan Administrator, a written request specifying the amount to be withdrawn (which shall not be less than $100, unless the entire amount credited is less than $100, in which case the entire amount credited must be withdrawn). Payment of such withdrawals shall be made within 30 days of the Trustee’s receipt of such a request. Except to the extent that such withdrawals are made, a Participant’s Employee Nondeductible Contribution Account shall be distributable at the same time and in the same manner as his other Accounts.

5.1. Individual Accounts. An Account shall be established and maintained for each Participant that shall reflect Employer and Employee contributions made on behalf of the Participant and earnings, expenses, gains and losses attributable thereto, and investments made with amounts in the Participant’s Account. Any Elective Contributions made on behalf of a Participant and the earnings, expenses, gains and losses attributable thereto, shall be accounted for separately. Such other accounts shall be established and maintained as are reasonably required or appropriate.

5.2. Valuation of Accounts. Participant Accounts shall be valued at their fair market value at least annually as of each “Determination Date,” as defined in Article 13.1(a), in accordance with a method consistently followed and uniformly applied, and on such date earnings, expenses, and losses on investments made with amounts in each Participant’s Account shall be allocated to such Account.

5.3. Vesting. A Participant’s interest in his Plan Accounts shall immediately become and at all times remain fully vested and nonforfeitable. No Accounts are subject to a vesting schedule.

6.1. Direction by Participant. Each Participant shall determine the manner in which contributions allocated to his Account are to be invested or reinvested by providing specific instructions in a form or manner acceptable to the Trustee. The Trustee has no duty to follow instructions that are inconsistent with the applicable requirements of the Code, ERISA or other applicable law or regulation. An investment medium must be consistent with the applicable requirements of the Code, ERISA or other applicable law or regulation and must be acceptable to the Trustee in order to be available under the Plan. If at any time there shall be credited to a Participant’s Account an amount(s) for which no such instructions have been furnished, or for which the instructions furnished are, in the opinion of the Trustee, incomplete or unclear, or for which the instructions furnished would require investment in a medium not acceptable to the Trustee for use under the Plan, such amount(s) may be invested in shares of the default investment medium designated in the Participant’s most recent investment instructions (which may be written, electronic, or telephonic) or, if the Participant has never provided instructions, as directed by the Employer in the Adoption Agreement or other form acceptable to the Trustee.

If any balance remains in the Account of a deceased Participant, the balance shall be transferred to an Account for the Beneficiary of the deceased Participant (as determined in accordance with Article 7.4), who shall direct the investment of the Account in accordance with this Article 6.1 as if the Beneficiary were a Participant. The Trustee shall have no duty to question the directions of a Participant or a Beneficiary in the investment of his Account or to advise him regarding the purchase, retention or sale of assets credited to his Account, nor shall the Trustee be liable for any loss which may result from the Participant’s or Beneficiary’s exercise of control over his Account. The Trustee may designate one or more corporations as its agents or agents for the purpose of receiving investment instructions from Participants and Beneficiaries and for such other purposes as the Trustee may permit.

6.2. Investments. Subject to such reasonable and nondiscriminatory rules, limits and procedures as the Trustee, Plan Administrator, or Employer may establish from time to time to facilitate administration of the Plan, all contributions under the Plan shall be invested and reinvested in one or more of the following, as directed by the Participant (or, following the death of the Participant, the Beneficiary):

(a) Registered Investment Company Shares;
(b) marketable securities obtainable over the counter or on a recognized securities exchange which are eligible for registration on the book entry system maintained by the Depository Trust Company, if permitted by the Provider;
(c) deposits bearing a reasonable rate of interest and maintained by the Trustee or by any bank acceptable to the Trustee; or
(d) subject to the applicable requirements of the Code, ERISA, or other applicable law, any other investment medium permitted by the Trustee from time to time.

Any other provision hereof to the contrary notwithstanding, a Participant (or, following the death of the Participant, the Beneficiary) may not direct that
any part or all of an Account be invested in employer securities or that any part or all of an Account be invested in assets other than Registered Investment Company Shares unless the aggregate amount which the Participant (or, following the death of the Participant, the Beneficiary) proposes to invest in such assets is at least such minimum amount as the Trustee shall establish from time to time. The Trustee may (but need not) require any Account that is invested in assets other than Registered Investment Company Shares to maintain an investment of not more than $100 in the default investment medium designated by the Participant (or, following the death of the Participant, the Beneficiary) in his investment instructions (or, if the Participant has not so designated, as designated by the Employer in the Adoption Agreement), in order to provide a medium for investing available cash pending other instructions and for convenience in collecting fees and expenses from the Account. Commissions and other costs attributable to the acquisition of an investment shall be charged to the Account of the Participant (or, following the death of the Participant, the Beneficiary) for which such investment is acquired.

Article 7. Payment of Benefits

7.1. Distributable Events.

(a) The Participant’s Account shall become payable to him or his Beneficiary pursuant to this Article 7 as follows:

(1) upon attainment of the Participant’s Normal Retirement Age (whether or not employment has terminated);
(2) upon the death of the Participant;
(3) upon the Disability of the Participant; or
(4) upon the severance of the Participant’s employment (whether before or after attainment of the Participant’s Normal Retirement Age) prior to death or Disability.

(b) Distributions on account of any of the distributable events described above are subject to the restrictions in this Article 7. Payments from the Plan shall be subject to applicable withholding taxes under the Code.

(c) Limited in-service withdrawals may be available, as described in Article 4 15 or Article 7.14.

7.2. Commencement of Benefits. Upon a distributable event described in Article 7.1, a Participant shall file a claim for benefits with the Plan Administrator, specifying the manner of distribution in accordance with Article 7.5 and the date on which payment is to commence. A Participant may elect to postpone the commencement of benefits to any date which satisfies the requirements of this Article 7, Article 8, and Article 9, provided, however, that payment of benefits to a Participant must commence within 60 days after the end of the Plan Year in which the Participant reaches Normal Retirement Age, has his 10th anniversary of the year in which he commenced participation in the Plan, or terminates his employment with the Employer, whichever is later. For purposes of this Article 7.2, the failure of a Participant (and his Spouse, if spousal consent is required pursuant to Article 8) to consent to a distribution while a benefit is “immediately distributable” within the meaning of Article 7.6 shall be considered an election to postpone the commencement of payment. Notwithstanding any provision of the Plan to the contrary, to the extent that any optional form of benefit under the Plan permits a distribution prior to the Employee’s attainment of Normal Retirement Age, death, Disability, or termination of employment, and prior to plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code section 414(h), to this Plan from a money purchase pension plan qualified under Code section 401(a) (other than any portion of those assets and liabilities attributable to employee nondeductible contributions). The Plan Administrator shall notify the Trustee if a Participant’s Accounts contain any such assets.

7.3. Death Benefits. Subject to Article 8.4, the Beneficiary of a deceased Participant who had not received a complete distribution of benefits before his death shall be entitled to benefits under the Plan, in an amount equal to the vested balance of the deceased Participant’s Accounts allocated to such Beneficiary at the time of payment, commencing within 60 days after the end of the Plan Year in which the Participant dies; provided, however, that:

(a) a Beneficiary shall file a claim for benefits with the Plan Administrator, specifying the manner of distribution in accordance with Article 7.5, and the date on which payment is to commence; and
(b) a Beneficiary may elect to postpone the commencement of benefits to any date which satisfies the requirements of this Article 7 and Article 9.

In the case of a Participant who dies after having begun to receive a distribution of benefits in installments under Article 7.5(b), distribution of installments shall continue after his death to his Beneficiary subject to Article 9.1(e). In the case of a Participant who dies after having received a distribution under Article 7.5(a) or (c), no death benefit shall be payable from the Plan.

7.4. Designation of Beneficiary. A Participant may designate a Beneficiary or Beneficiaries at any time, and any such designation may be changed or revoked at any time, by a designation executed by the Participant in a form and manner acceptable to, and filed with, the Trustee. The form most recently completed before the Participant’s death and returned to and accepted by the Trustee shall supersede any earlier designation; provided, however, that such designation, change or revocation shall only be valid if it is received and accepted by the Trustee no later than 30 days after the Trustee receives notice of the Participant’s death, and provided further, that such designation, change or revocation shall not be effective as to any assets distributed or transferred out of the Account (including a rollover to an IRA or a transfer to another plan or to an Account for a Beneficiary) prior to the Trustee’s receipt and acceptance of such designation, change or revocation. Subject to this Article 7.4 and Article 11.3 below, the Trustee may distribute or transfer any portion of the Account immediately following the death of the Participant under the provisions of the designation then on file with the Trustee, and such distribution or transfer discharges the Trustee from any and all claims as to the portion of the Account so distributed or transferred. If a Participant has not designated any Beneficiary by filing a form with the Trustee or the Plan Administrator before his death, or if no Beneficiary so designated survives the Participant, his Beneficiary shall be his surviving spouse, or if there is no surviving spouse, his estate. A married Participant may designate a Beneficiary other than his Spouse only if his Spouse consents in writing to the designation, and the Spouse’s consent acknowledges the effect of the consent and is witnessed by a notary public. The marriage of a Participant shall nullify any designation of a Beneficiary previously executed by the Participant. If it is established to the satisfaction of the Plan Administrator that the Participant has no Spouse or that the Spouse cannot be located, the requirement of spousal consent shall not apply. Any spousal consent obtained pursuant to this Article 7.4, and any decision of the Plan Administrator that the consent of a Spouse cannot be obtained, shall apply only with respect to the particular Spouse involved.

7.5. Manner of Distribution. Subject to the rules of Article 8 concerning joint and survivor annuities, benefits shall be distributed in one or more of the following forms, as designated in writing by the Participant or Beneficiary:

(a) a lump sum in cash or in kind;
(b) a series of substantially equal annual (or more frequent) installments, in cash or in kind;
(c) for distributions under a Plan adopted prior to January 1, 2003, the following distribution options:

(1) a fixed or variable annuity contract, other than a life annuity contract,
(2) a life annuity contract (with or without a period certain or guaranteed-refund feature) purchased from an insurance company; and
(d) to the extent provided in Article 8, a straight life annuity, a Qualified Joint and Survivor Annuity, a Qualified Optional Survivor Annuity, or a Qualified Preretirement Survivor Annuity.

If the Plan has been adopted as an amendment of an existing plan, any other form of benefit available under that plan before its amendment shall be made available under the Plan, to the extent provided in Article 14.4. Subject to Article 8, the Account balance of a Participant or Beneficiary who fails to elect a manner of distribution shall be distributed, at the direction of the Plan Administrator, in cash in accordance with paragraph (a) of this Article 7.5.

7.6. Restriction on Immediate Distributions.

(a) General Rules. The following rules apply:

(1) The Participant and the Participant’s Spouse (or where either the Participant or the Spouse has died, the survivor) must consent to any distribution of the Account balance if (i) payment in the form of a...
QJSA (as defined in Article 8.1(d)) is required with respect to a Participant (because the Participant has a Spouse and the Plan is not a profit sharing plan described in Article 8.2(b)), (ii) either the value of a Participant’s vested Account balance exceeds $5,000 or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and (iii) the Account balance is immediately distributable.

(2) The Participant must consent to any distribution of his Account balance if (i) Article 7.6(a)(1) above does not apply to the Participant and (ii) the Account balance is immediately distributable.

The automatic cash-out provisions of Code sections 401(a)(31) and 411(a)(11) do not apply to the Plan.

(b) The consent of the Participant and the Participant’s Spouse shall be obtained in writing within the 180-day period ending on the Annuity Starting Date. The Plan Administrator shall notify the Participant and the Participant’s Spouse of the right to defer any distribution until the Participant’s Account balance is no longer immediately distributable and, for Plan Years beginning after December 31, 2006, the consequences of failing to defer any distribution. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code section 417(a)(3) and a description of the consequences of failing to defer a distribution, and shall be provided no fewer than 30 days and no more than 180 days prior to the Annuity Starting Date. However, distribution may commence fewer than 30 days after the notice described in the preceding sentence is given, provided the distribution is one to which Code sections 401(a)(11) and 417 do not apply, the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects a distribution.

(c) Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity while the Account balance is immediately distributable. (Furthermore, if payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to the Participant pursuant to Article 8, only the Participant need consent to the distribution of an Account balance that is immediately distributable). Neither the consent of the Participant nor the Participant’s Spouse shall be required to the extent that a distribution is required to satisfy Code section 401(a)(9) or Code section 417. In addition, upon termination of the Plan, if the Plan does not offer an annuity option (under Article 7.5(c)) and if the Employer or any entity within the same controlled group as the Employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in Code section 4975(e)(7)), the Participant’s Account balance will, without the Participant’s consent, be distributed to the Participant. However, if any entity within the same controlled group as the Employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code section 4975(e)(7)), then the Participant’s Account balance shall be transferred, without the Participant’s consent, to the other plan if the Participant does not consent to an immediate distribution.

(d) 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) age 62.

7.7. Special Rules for Annuity Contracts. The following rules shall apply to distributions made, in whole or in part, in the form of an annuity contract:

(a) Any annuity contract distributed under the Plan must be nontransferable.

(b) The terms of any annuity contract purchased and distributed by the Plan to a Participant or Spouse shall comply with the requirements of this Article 7, Article 8 and Article 9.

7.8. Distribution Procedure. The Trustee shall make or commence distributions to or for the benefit of Participants only on receipt of a direction (in a form acceptable to the Trustee) from the Plan Administrator that a distribution of a Participant’s benefits is payable pursuant to the Plan, and specifying the manner and amount of payment.

7.9. Distribution under a QDRO.

(a) Distributions of all or any part of a Participant’s Account pursuant to the provisions of a QDRO are specifically authorized.

(b) The Alternate Payee may receive a payment of a benefit under the Plan prior to the date on which the Participant is otherwise entitled to a distribution under the Plan if the QDRO specifically provides for such earlier payment. If the present value of the payment exceeds $5,000, the Alternate Payee must consent in writing to such distribution.

(c) The Alternate Payee may receive a payment of benefits under the Plan in any optional form of benefit permitted under Article 7.5 other than a joint and survivor annuity.

(d) Upon receipt of an order which appears to be a domestic relations order, the Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of the order and provide them with a copy of the procedures established by the Plan Administrator for determining whether the order is a QDRO. While the determination is being made, a separate accounting shall be made with respect to any amounts which would be payable under the order while the determination is being made. If the Plan Administrator determines that the order is a QDRO within 18 months after receipt, the Plan Administrator shall direct the Trustee to establish an Account for the Alternate Payee, who shall direct the investment of such Account in accordance with Article 6.1. The Plan Administrator shall further instruct the Trustee to begin making payments from the Alternate Payee’s Account pursuant to the order when required or as soon as administratively practical or as the Alternate Payee otherwise directs in accordance with the order. If the Plan Administrator determines that the order is not a QDRO, or if no determination is made within 18 months after receipt of the QDRO, then the separately accounted for amounts shall be either restored to the Participant’s Account or distributed to the Participant (if the Plan otherwise permits distribution), as if the order did not exist. If the order is subsequently determined to be a QDRO, such determination shall be applied prospectively to payments made after the determination.

7.10. Direct Rollover of Distributions.

(a) As used in this Article 7.10, the terms set forth below have the following meanings:

(1) Eligible Rollover Distribution. “Eligible Rollover Distribution” means any distribution of all or any portion of the balance to the credit of an Eligible Recipient, except that an Eligible Rollover Distribution does not include any distribution that is one of series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Eligible Recipient or the joint lives (or joint life expectancies) of the Eligible Recipient and the Eligible Recipient’s designated beneficiary, or for a specified period of 10 years or more, or any distribution to the extent such distribution is required under Code section 401(a)(9) or is on account of a hardship.

(2) Eligible Plan. An “Eligible Plan” means (i) an eligible plan under Code section 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, (ii) an individual retirement account described in Code section 408A, (iii) an individual retirement annuity described in Code section 408(b), (iv) effective for distributions made after December 18, 2015, a simple retirement account described in Code section 408(b), provided the rollover is made after the 2-year period described in Code section 72(h)(6), (v) a Roth individual retirement account described in Code section 408A(b), (vi) a qualified plan described in Code section 401(a), (vii) an annuity plan described in Code section 403(a), or (viii) an annuity contract described in Code section 403(b), that accepts the distributee’s eligible rollover distribution. The definition of eligible plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a qualified domestic relation order, as defined in Code section 414(p).

Notwithstanding the foregoing, the following special rules apply:

(i) An Eligible Plan with respect to a Participant’s designated beneficiary other than the Participant’s surviving Spouse, or former Spouse who is an Alternate Payee under a QDRO means an inherited individual retirement plan described in clause (i) or (ii)
of paragraph (8)(B) of Code section 402(c) established for the purpose of receiving such a rollover distribution.

(i) The portion of any Eligible Rollover Distribution consisting of Employee Nondeductible Employee Contributions may be rolled over only to an individual retirement account or annuity described in Code section 408(a) or (b), to a qualified defined contribution plan described in Code section 401(a) or 403(a), or after December 31, 2006 to an annuity contract described in Code section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

(ii) The portion of any Eligible Rollover Distribution consisting of Designated Roth Contributions may be rolled over only to another designated Roth account established for the individual under an applicable retirement plan described in Code section 402A(e)(1) or to a Roth individual retirement account described in Code section 408A.

(b) Notwithstanding any other provision of the Plan, an Eligible Recipient may elect, at the time and in the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid to an Eligible Plan specified by the Eligible Recipient. Notwithstanding the foregoing, an Eligible Recipient may not elect a direct rollover with respect to an Eligible Rollover Distribution if the total value of such distribution is less than $200 or with respect to a portion of an Eligible Rollover Distribution if the value of such portion is less than $500. In determining whether the total value of an Eligible Recipient’s Eligible Rollover Distributions for the year is less than $200, Eligible Rollover Distributions from a Participant’s Designated Roth Contributions Account shall be considered separately from Eligible Rollover Distributions from the Participant’s other accounts under the Plan. In applying the $500 minimum on partial rollovers, any Eligible Rollover Distribution from a Participant’s Designated Roth Contributions Account shall be treated as a separate distribution from any Eligible Rollover Distribution from the Participant’s other accounts under the Plan (rather than as a part of such distribution), even if the distributions are made at the same time.

(c) Except to the extent provided in Treasury Regulations or applicable IRS guidance with respect to Designated Roth Contributions (including amounts treated as Designated Roth Contributions pursuant to Article 4.5), an Eligible Distribution to an Eligible Recipient who does not make the election described in paragraph (b) above will be subject to 20 percent federal income tax withholding or such other rate as may be required by the Code and any applicable state income tax withholding.

7.11. Benefit Claims Procedure. If required under Section 2560.503-1(b)(2) of Regulations issued by the Department of Labor, the claims and review procedures are described in detail in the Summary Plan Description for the Plan.

7.12. Statute of Limitations. A Participant, Beneficiary or Alternate Payee (collectively referred to as “Claimant” in this Article 7.12) seeking judicial review of an adverse benefit determination under the Plan, whether in whole or in part, must file any suit or legal action (including, without limitation, a civil action under section 502(a) of ERISA) within 12 months of the date the final adverse benefit determination is issued. Notwithstanding the foregoing, any Claimant that fails to engage in or exhaust the benefit claims procedures must file any suit or legal action within 12 months of the date of the alleged facts or conduct giving rise to the claim (including, without limitation, the date the Claimant alleges he or she became entitled to the Plan benefits requested in the suit or legal action). The Claimant is required to exhaust all claims and review procedures under the Plan as described in the Summary Plan Description for the Plan before filing suit in state or federal court. A Claimant who fails to file such suit or legal action within the 12 months limitation period will lose any rights to bring any such suit or legal action thereafter.

7.13. Recovery of Overpayments. No Participant or Beneficiary shall have or acquire any right, title or interest in or to the Plan assets or any portion of the Plan assets, except by the actual payment or distribution from the Plan to such Participant or Beneficiary of such Participant’s or Beneficiary’s benefit to which he or she is entitled under the provisions of the Plan. Whenever the Plan pays a benefit in excess of the maximum amount of payment required under the provisions of the Plan, the Plan Administrator will have the right to recover any such excess payment, plus earnings at the Plan Administrator’s discretion, on behalf of the Plan from the Participant and/or Beneficiary, as the case may be. Notwithstanding anything to the contrary herein stated, this right of recovery includes, but it not limited to, a right of offset against future benefit payments to be paid under the Plan to the Participant and/or Beneficiary, as the case may be, which the Plan Administrator may exercise in its sole discretion.

7.14. Availability of In-Service Withdrawals. A Participant shall not be permitted to make a withdrawal from his Plan Account prior to the time provided in Article 7.1, except as provided in this Article 7.14 or Article 4.15:

(a) Military Service – Deemed Severance Distributions. Effective for Plan Years beginning on or after January 1, 2009, a Participant performing service in the uniformed services as described in Code section 3401(b)(2)(A) shall be treated as having been severed from employment with the Employer for purposes of Code section 401(k)(2)(B)(i)(I) and shall, as long as that service in the uniformed services continues, have the option to request a distribution of all or any part of his or her Account restricted from distribution only due to Code section 401(k)(2)(B)(i)(I). Any distribution taken by a Participant pursuant to the previous sentence shall be considered an Eligible Rollover Distribution pursuant to Article 7.10 of the Plan and any Participant taking such a distribution shall be suspended from making Elective Contributions and employee contributions under the Plan and any other plan maintained by the Employer for a period of 6 months following the date of any such distribution.

(b) Qualified Reservist Distributions. Notwithstanding anything herein to the contrary, a Participant ordered or called to active duty for a period in excess of 179 days or for an indefinite period by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code), shall be eligible to elect to receive a Qualified Reservist Distribution. A “Qualified Reservist Distribution” means a distribution from the Participant’s Account of amounts attributable to Elective Contributions, provided such distribution is made during the period beginning on the date of the order or call to active duty (but no earlier than September 11, 2001) and ending at the close of the active duty period.

(c) Qualified Disaster Distributions. Qualified Individuals (as defined in subsection (2) below) may designate all or a portion of a qualifying distribution as a Qualified Disaster Distribution (as defined in subsection (1) below).

(1) A “Qualified Disaster Distribution” means any distribution made on or after the QDD Effective Date (as defined in subsection (3) below) and before the QDD Distribution Date (as defined in subsection (4) below) to a Qualified Individual, to the extent that such distribution, when aggregated with all other Qualified Disaster Distributions to the Qualified Individual made under the Plan (and under any other plan maintained by the Employer or a Related Employer), does not exceed $100,000. A Qualified Disaster Distribution must be made in accordance with and pursuant to the distribution provisions of the Plan, except that:

(i) A Qualified Disaster Distribution of contributions other than Money Purchase Pension Contributions shall be deemed to be made after the occurrence of a distributable event under Code section 401(k)(2)(B)(i), such as termination of employment and the portion of such distribution which is not so includible.

(ii) the requirements of Code sections 401(a)(31), 402(f) and 3405 and of Article 7.10 shall not apply.

(2) A “Qualified Individual” means any individual whose principal place of abode is within a federally declared disaster area on the date so indicated pursuant to the Code.

(3) The “QDD Effective Date” means the date upon which the Code section would be made applicable to the Qualified Individual in accordance with (2) above.
(4) The “QDD Distribution Date” means the date upon which the Qualified Individual is no longer able to take the distribution pursuant to the Code.

(5) An Eligible Employee who received a Qualified Disaster Distribution, as defined herein, may repay to the Plan the Qualified Disaster Distribution, provided the Qualified Disaster Distribution is eligible for tax-free rollover treatment. Any such re-contribution will be treated as having been made in a direct rollover to the Plan, provided it is made during the three-year period beginning on the day after the date on which the Qualified Disaster Distribution was received and does not exceed the amount of such distribution.

8.2. Applicability.
(a) Generally. The provisions of Articles 8.3 through 8.6 set forth the joint and survivor annuity requirements of Code sections 401(a)(11) and 417.
(b) Exception for Certain Profit Sharing Plans. The provisions of Articles 8.3 through 8.6 shall not apply to a Participant in a profit sharing plan if: (1) the Participant does not or cannot elect payment of benefits in the form of a life annuity, and (2) on the death of the Participant, his vested Account Balance will be paid to his surviving Spouse (unless there is no surviving Spouse, or the surviving Spouse has consented to the designation of another Beneficiary in a manner conforming to a Qualified Election) and the surviving Spouse may elect to have distribution of the vested Account Balance (adjusted for gains or losses occurring after the Participant’s death) commence within the 90-day period following the date of the Participant’s death. (The provisions of Article 7.4 meet the requirements of clause (2) of the preceding sentence.) The Participant may waive the spousal death benefit described in this paragraph (b) at any time, provided that no such waiver shall be effective unless it satisfies the conditions applicable under Article 8.1(c) to a Participant’s waiver of a QPSA. The exception in this paragraph (b) shall not be operative with respect to a Participant in a profit sharing plan if the Plan:
(i) is a direct or indirect transferee of a defined benefit plan, money purchase pension plan, target benefit plan, stock bonus plan, or profit sharing plan which is subject to the survivor annuity requirements of Code sections 401(a)(11) and 417, or
(ii) is adopted as an amendment of a plan subject to the survivor annuity requirements of Code sections 401(a)(11) and 417.

8.3. Qualified Joint and Survivor Annuity. Unless an optional form of annuity is selected pursuant to a Qualified Election within the 180-day period ending on the Annuity Starting Date, a married Participant’s vested Account Balance shall be paid in the form of a QJSA and an unmarried Participant’s vested Account Balance shall be paid in the form of a QOSA. The provisions of Articles 8.3 through 8.6 shall not apply to any distribution made on or after the first day of the Plan Year beginning after December 31, 1988, from or under a separate account attributable solely to accumulated deductible employee contributions as defined in Code section 72(o)(5)(B), and maintained on behalf of a Participant in a money purchase pension plan or a target benefit plan, provided that the exceptions applicable to certain profit sharing plans under paragraph (b) are applicable with respect to the separate account (for this purpose, “vested Account Balance” means the Participant’s separate Account balance attributable solely to accumulated deductible employee contributions within the meaning of Code section 72(o)(5)(B)).

8.4. Qualified Preretirement Survivor Annuity. Unless an optional form of benefit has been selected within the Election Period pursuant to a Qualified Election, the vested Account Balance of a Participant who dies before the Annuity Starting Date shall be applied toward the purchase of an annuity for the life of his surviving Spouse (a QPSA). The surviving Spouse may elect to have such annuity distributed within the 90-day period after the Participant’s death. For purposes of this Article 8, the term “Spouse” means the current Spouse or surviving Spouse of a Participant, except that a former Spouse will not be treated as the Spouse or surviving Spouse (and a current Spouse or surviving Spouse of a Participant, except that a former Spouse will be treated as the Spouse or surviving Spouse) to the extent provided under a QDRO.

8.5. Notice Requirements. In the case of a QJSA, no less than 30 days and no more than 180 days before a Participant’s Annuity Starting Date, the Plan Administrator shall provide a written explanation of (a) the terms and conditions of a QJSA and QOSA, (b) the Participant’s right to make, and the effect of, an election to waive the QJSA or QOSA form of benefit, (c) the rights of the Participant’s Spouse, and (d) the right to make, and the effect of, a revocation of a previous election to waive the QJSA. The written explanation shall comply with the requirements of section 1.417(a)(3)-1 of the Treasury Regulations. 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 a date after the date that the written explanation was provided to the Participant. In addition, 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.

In the case of a QPSA, the Plan Administrator shall provide each Participant, within the applicable period for such Participant, a written explanation of the QPSA, in terms and manner comparable to the requirements applicable to the explanation of a QJSA as described in the preceding paragraph. The applicable period for a Participant is whichever of the following periods ends last: (i) 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; (ii) a reasonable period ending after an individual becomes a Participant; and (iii) a reasonable period ending after this Article 8 first applies to the Participant.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (i), (ii) and (iii) is the end of the 2-year period beginning 1 year before 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 he or she attains age 35, notice shall be provided within the 2-year period beginning one year before the separation and ending one year after the separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for the Participant shall be redetermined.

A Participant who will not attain age 35 as of the end of a Plan Year may make a special Qualified Election to waive 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 shall not be valid unless the Participant receives a written explanation of the QPSA in such terms as are comparable to the explanation required under this Article 8.5. QPSA coverage shall be 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 shall be subject to the full requirements of this Article.

8.6. Qualified Optional Survivor Annuity. If a married Participant waives the QJSA in accordance with the requirements of this Article 8, the Participant may elect the QOSA. This Article 8.6 is effective for Plan Years beginning on or after January 1, 2008. However, if the Plan is maintained pursuant to one or more collective bargaining agreements between employee representative and one or more employers ratified on or before August 17, 2006, then this Article 8.6 is effective for Plan Years beginning on or after the earlier of (a) January 1, 2009 or (b) the later of January 1, 2008 or the date on which the last such collective bargaining agreement terminates (determined without regard to any extension thereof after August 17, 2006). (3) Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:

(i) the life of the Participant,
(ii) the joint lives of the Participant and a designated Beneficiary,
(iii) a period certain not extending beyond the life expectancy of the Participant,
(iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

(b) TEFRA Article 242(b)(2) Elections. Notwithstanding the other provisions of this Section 9.1, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and Article 14.3 (c) Time and Manner of Distribution.

(1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

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

(i) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then, except as otherwise elected under Article 9.1(g), distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(ii) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then, except as otherwise elected under Article 9.1(g), distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) 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 Article 9.1(c)(2), other than Article 9.1(c)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Article 9.1(c)(2) and Article 9.1(e), unless Article 9.1(c)(2)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Article 9.1(c)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Article 9.1(c)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions required to begin to the surviving Spouse under Article 9.1(c)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Article 9.1(d) and (e). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and the Treasury Regulations.

(d) 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:

Article 9. Minimum Distribution Requirements

(a) General Rules.

(1) Subject to Article 8, Joint and Survivor Annuity Requirements, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article apply to calendar years beginning after December 31, 2002.

(2) All distributions required under this Article shall be determined and made in accordance with the regulations under Code section 401(a)(9) and the minimum distribution incidental benefit requirement of Code section 401(a)(9)(G).
(i) the quotient obtained by dividing the Participant’s Account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2 of the Treasury Regulations, 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 section 1.401(a)-(9)-9, Q&A-3 of the Treasury Regulations, using the Participant’s and Spouse’s attained ages as of the Participant’s and Spouse’s birthdays in the distribution calendar year.

(2) Lifetime Required Minimum Distributions Continue through Year of Participant’s Death. Required minimum distributions will be determined under this Article 9.1(d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant’s date of death.

(e) Required Minimum Distributions after Participant’s Death.

(1) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant’s death is the quotient obtained by dividing the Participant’s Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant’s designated Beneficiary, determined as follows:

(A) The Participant’s remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant’s surviving Spouse is the Participant’s sole designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant’s death using the surviving Spouse’s age as of the Spouse’s birthday in that year. For distribution calendar years after the year of the surviving Spouse’s death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse’s birthday in the calendar year of the Spouse’s death, reduced by one for each subsequent calendar year.

(C) If the Participant’s surviving Spouse is not the Participant’s sole designated Beneficiary, the designated Beneficiary’s remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant’s death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant’s death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant’s death is the quotient obtained by dividing the Participant’s Account balance by the Participant’s remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. Except as otherwise elected under Article 9.1(g), if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant’s death is the quotient obtained by dividing the Participant’s Account balance by the remaining life expectancy of the Participant’s designated Beneficiary, determined as provided in Article 9.1(e)(1).

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant’s death, distribution of the Participant’s entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant’s death.

(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 Article 9.1(c)(2)(ii), this Article 9.1(e)(2) will apply as if the surviving Spouse were the Participant.

(f) Definitions.

(1) Designated Beneficiary. The individual who is designated as the Beneficiary under Article 7.4 of the Plan and is the designated Beneficiary under Code section 401(a)(9) and section 1.401(a)(9)-4, of the Treasury Regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s Required Beginning Date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Article 9.1(c)(2). The required minimum distribution for the Participant’s first distribution calendar year will be made on or before the Participant’s Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant’s Required Beginning Date occurs, will be made on or before December 31 of the distribution calendar year.

(3) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9, Q&A-1 of the Treasury Regulations.

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

(5) Required Beginning Date. The later of the April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or retires, except that distributions to a 5-percent owner must commence by the April 1 of the calendar year following the calendar year in which such Participant attains age 70½.

(6) 5% Owner. A Participant who is a 5-percent owner as defined in Code section 416(i) (determined in accordance with Code section 416 but without regard to whether the Plan is top heavy) at any time during the Plan Year ending with or within the calendar year in which he attains age 70½ or any subsequent Plan Year. Once distributions have begun to a 5-percent owner under this Article 9, they must continue, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(g) Participants or Beneficiaries May Elect 5-Year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Articles 9.1(c)(2) and 9.1(e)(2) applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Article 9.1(c)(2), or by September 30 of the calendar year which contains the fifth anniversary of the Participant’s (or, if applicable, the surviving Spouse’s) death. If neither the Participant nor the Beneficiary makes an election under this paragraph (g), distributions will be made in accordance with Article 9.1(c)(2) or 9.1(e)(2).
Article 10. Amendment and Termination

10.1. Provider’s Right to Amend. The Provider may amend any part of the Pre-Approved Plan by delivering written notice of such amendment to the Employer, provided, however, that:

(a) the Provider shall have no power to amend or terminate the Pre-Approved Plan in such manner as would cause or permit any part of the assets in the Trust to be diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries as described in Article 11.15, or as would cause or permit any portion of such assets to revert to or become the property of the Employer in violation of such Section;

(b) the Provider shall not have the right to amend the Pre-Approved Plan in a manner that violates Article 10.3;

(c) the Provider shall have no power to amend the Pre-Approved Plan in such a manner as would increase the duties or liabilities of the Trustee unless the Trustee consents thereto in writing; and

(d) for purposes of reliance on an opinion letter, the Provider will no longer have the authority to amend the Pre-Approved Plan on behalf of the Employer as of the date (i) the Employer amends the Plan to incorporate a type of plan described in section 6.03 of Rev. Proc. 2017-41 that is not permitted under the pre-approved plan program, (ii) the Internal Revenue Service determines, in accordance with section 8.06(3) of Rev. Proc. 2017-41, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan, or (iii) the Employer chooses to discontinue participation in the Pre-Approved Plan, including an election described in Article 10.6.

10.2. Employer’s Right to Amend. The Employer may at any time and from time to time modify or amend the Plan in whole or in part (including retroactive amendments); provided, however, that any such amendment (other than an amendment described in paragraphs (a), (b), (c) or (d) below) shall constitute substitution by the Employer of an individually designed plan for the Pre-Approved Plan, including an amendment because of a waiver of the minimum funding requirement under Code section 412(d). In the event of such an amendment, the Trustee shall resign. The following amendments shall not cause the Plan to be an individually designed plan:

(a) a change of the Employer’s prior choice of an optional provision indicated on the Adoption Agreement;

(b) the addition or modification of provisions stated in the Adoption Agreement to allow the Plan to satisfy Code section 415, or to avoid duplication of minimum benefits under Code section 416 because of the required aggregation of multiple plans;

(c) the addition of certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause a plan to be treated as individually designed;

(d) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan provisions;

(e) the adoption of interim amendments or discretionary amendments that are related to a change in qualification requirements; or

(f) the adoption of an amendment reflecting a change in the Provider's name;

(g) add or change administrative provisions in the Plan (such as provisions relating to investments, Plan claims procedures, and employer contact information), provided the additions or changes are not in conflict with any other provision of the Plan and do not cause the Plan to fail to qualify under Code section 401.

An election made by the Employer within the terms of the Pre-Approved Plan shall be deemed to continue after amendment of the Pre-Approved Plan by the Provider and until the Employer expressly further amends the election by execution of a written document.

10.3. Certain Amendments Prohibited. No amendment to the Plan shall be effective to the extent that it has the effect of reducing a Participant’s accrued benefit. An amendment shall be treated as reducing a Participant’s accrued benefit if it has the effect of reducing his Account balance (except that a Participant’s Account balance may be reduced to the extent permitted by Code section 412(d)(2)) with respect to amounts attributable to contributions made before the adoption of the amendment. 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 the date it becomes effective, the vested percentage (determined as of such date) of such Participant’s Employer-derived Account balance shall not be less than the percentage computed under the Plan without regard to such amendment. No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to an amendment that eliminates or restricts the ability of a Participant to receive payment of his Account balance under a particular optional form of benefit if, following the amendment, the Plan provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this Article 10.3, a single-sum distribution form is otherwise identical only if it 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.

10.4. Amendment of Vesting Schedule. If the Plan’s vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of a Participant’s vested percentage, each Participant with at least 3 Years of Service with the Employer may elect, within a reasonable period (as determined by the Plan Administrator) after the adoption of the amendment or change, to have the vested percentage computed under the Plan without regard to such amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted or 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.

10.5. Maintenance of Benefit upon Plan Merger. If there is a merger or consolidation with, or transfer of assets or liabilities to any other plan, each Participant shall receive a benefit immediately after such merger, consolidation, or transfer (as if the Plan were then terminated) which is at least equal to the benefit to which the Participant was entitled immediately before such merger, consolidation, or transfer (as if the Plan had been terminated).

10.6. Termination of the Plan and Trust. The Employer may terminate the Plan, or the Plan and the Trust, at any time by delivering to the Trustee a written notice signed by or on behalf of the Employer and specifying the date or dates as of which the Plan and Trust shall terminate. If the Employer no longer exists as a legal entity, if the Employer is a natural person and is deceased, or if so ordered by a court of competent jurisdiction, the Trustee, in its discretion, may terminate the Plan or permit another person or entity to terminate the Plan. The Trustee and any such person or entity shall each have the power to complete all filings, forms, or other procedures permitted or required by law in connection with such plan termination, but the Trustee shall not be liable for any actions or inactions of the Employer or any such person or entity with respect to the Plan’s operation.

10.7. Procedure upon Termination of Trust. As soon as administratively feasible after the stated date that the Plan terminates pursuant to Article 10.6, the Trustee shall, after paying all expenses of the Trust, allocating any unallocated assets of the Trust, and adjusting all Accounts to reflect such expenses and allocations, distribute to Participants, former Participants and Beneficiaries the assets credited to their Accounts in accordance with the instructions of the Plan Administrator or the Employer, provided, however, that the Trustee shall not be required to make any such distribution until it has received notice of any determination by the Internal Revenue Service which the Trustee may reasonably require. Each such distribution shall be made promptly in accordance with Article 7. Upon completion of such distribution the Trustee shall be relieved from all further liability with respect to all amounts so paid.

If distribution is to be made to a Participant or Beneficiary who cannot be located, following the Administrator’s completion of such search methods as described in applicable Department of Labor guidance, the Administrator shall give instructions to the Trustee to roll over the distribution to an individual retirement account established by the Administrator in the name of the missing Participant or Beneficiary, which account shall satisfy the requirements of the Department of Labor automatic rollover safe harbor generally applicable to amounts less than or equal to the maximum cashout amount specified in Code Section 401(a)(31)(B)(ii) ($5,000 as of January 1, 2018) that are mandatorily distributed from the Plan. In the alternative, the Employer may direct the Trustee, subject to applicable guidance, to transfer...
the Account of any such missing Participant or Beneficiary, regardless of the amount of any such Account to the Pension Benefit Guarantee Corporation. In the absence of such instructions, the Trustee shall make no distribution to the distributee.

Article 11. Miscellaneous

11.1. Status of Participants. Neither the establishment of the Plan and the Trust or any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer or the Trustee, and in no event shall the terms of employment of any Employee or Participant be modified or in any way be affected hereby.

11.2. Administration of the Plan.

(a) Responsibilities of the Employer. The Employer shall have the following responsibilities with respect to administration of the Plan:

(1) The Employer shall appoint a Plan Administrator to administer the Plan. In absence of such an appointment, the Employer shall serve as Plan Administrator. The Employer may remove and reappoint a Plan Administrator from time to time.

(2) The Employer shall, formally or informally, review the performance from time to time of persons appointed by it or to which duties have been delegated by it, such as the Trustee and Plan Administrator (if the Employer is not the Plan Administrator).

(3) If the Employer is not the Plan Administrator, the Employer shall supply the Plan Administrator in a timely manner with all information necessary for it to fulfill its responsibilities under the Plan. The Plan Administrator may rely upon such information and shall have no duty to verify it.

(b) Rights and Responsibilities of Plan Administrator. The Plan Administrator shall administer the Plan according to the Plan’s terms for the exclusive benefit of Participants, former Participants, and their Beneficiaries.

(1) The Plan Administrator’s responsibilities shall include but not be limited to the following:

(i) Determining all questions relating to the eligibility of Employees to participate or remain Participants hereunder, based on the information provided by the Employer.

(ii) Computing, certifying and directing the Trustee with respect to the amount and form of benefits to which a Participant may be entitled hereunder.

(iii) Authorizing and directing the Trustee with respect to disbursements from the Trust.

(iv) Interpreting the provisions of the Plan and preparing and publishing rules and operational procedures for the Plan that are not inconsistent with its terms and provisions.

(v) Complying with any applicable requirements of the Code and ERISA, including, but not limited to, reporting, disclosure and notice requirements such as annual reports (under ERISA section 101(b)), summary annual reports (under ERISA section 104(b)), summary plan descriptions (under ERISA section 101(a)), summaries of material modifications (under ERISA section 101(a)), special tax notices (under Code section 402(f)), notices regarding consent for distributions (under Code section 411(a)(11)), written explanations of QJSSAs, QOSAs and QPSAs (under Code section 417(a)), and the Code section 401(k) safe harbor notice described in Article 12.8.

(2) In order to fulfill its responsibilities, the Plan Administrator shall have all powers necessary or appropriate to accomplish its duties under the Plan, including the discretionary power to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination shall be conclusive and binding upon all persons in the absence of clear and convincing evidence that the Plan Administrator acted arbitrarily and capriciously (as determined by a court of competent jurisdiction). However, all discretionary acts, interpretations and constructions shall be done in a nondiscriminatory manner based upon uniform principles consistently applied. No action shall be taken which would be inconsistent with the intent that the Plan remain qualified under Code section 401(a). The Plan Administrator is specifically authorized to employ or retain suitable employees, agents, and counsel as may be necessary or advisable to fulfill its responsibilities hereunder, and to pay their reasonable compensation, which may, in the discretion of the Plan Administrator and to the extent permitted by law, be reimbursed from the Trust if not paid by the Employer within 30 days after the Plan Administrator advises the Employer of the amount owed.

(3) The Plan Administrator shall serve as the designated agent for legal process under the Plan. Service of summons, subpoena, or other legal process of a court upon the Trustee in its capacity as such shall also constitute service upon the Plan.

(4) In carrying out its duties and responsibilities hereunder, the Plan Administrator shall, to the extent the Plan is subject to ERISA, act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims or, if the Plan is not subject to ERISA, in accordance with the standards of applicable law.

(c) Death or Incapacity of the Plan Administrator. If the Plan Administrator dies or becomes incapacitated and a successor Plan Administrator is not appointed in accordance with the terms of the Plan and Adoption Agreement (or other applicable procedures satisfactory to the Trustee), the Trustee may rely on the instructions of the executor or administrator of the Plan Administrator’s estate in the case of death or a court-appointed guardian or conservator (or other legally authorized representative under applicable state law) in the case of incapacity, provided that such instructions are made in accordance with the terms of the Plan and in a form and manner acceptable to the Trustee. If, notwithstanding the provisions of this Article 11.2(c) the Trustee has not received proper instructions regarding the Plan and provided that the Plan is not subject to ERISA, the surviving spouse of the Plan Administrator shall be deemed to be the Plan Administrator for the limited purpose of providing distribution instructions to the Trustee.

(d) Missing Plan Administrator. The Trustee may use reasonable efforts to locate a missing Plan Administrator, including the use of a locator service. If a missing Plan Administrator is unable to be located (or if no successor Plan Administrator can be determined) notwithstanding reasonable efforts by the Trustee, the Trustee, in its sole discretion, may rely on a court order or the instructions of a Participant or, following a Beneficiary’s notification to the Trustee of the death of a Participant, a Beneficiary regarding distributions from the Plan to said Participant or Beneficiary.

11.3. Transfers and Rollovers. Notwithstanding any other provision hereof, with the consent of the Trustee, the Plan shall accept transfers and rollovers as provided herein.

(a) Transfers: Plan Administrator may cause to be transferred to the Plan all or any of the assets held in any other plan which satisfies the applicable requirements of Code section 401, and which is maintained by the Employer for the benefit of any of the Participants. Any such assets so transferred shall be accompanied by written instructions from the Plan Administrator, which shall be conclusive, naming the Participants for whom benefit such assets have been transferred and showing separately the respective contributions by the Employer and by the Participants and identifying the assets attributable to the various contributions. The Plan Administrator, with the consent of the Trustee, may permit an Employee (whether or not a Participant) to transfer or cause to be transferred to the Plan any assets held for his benefit in a qualified plan of a former employer of his or in an individual retirement savings plan which has been used by the Employee exclusively as a conduit for a prior distribution of assets held for his benefit in his former employer’s qualified plan. Such a transfer shall be made in the form of cash (excluding currency) or property permitted as an investment hereunder or readily marketable assets, either:

(1) directly between the trustee or custodian of the prior employer’s plan and the Trustee, in which case the transferred assets shall be accompanied by written instructions showing separately the respective contributions by the prior employer and by the transferring Employee, and identifying the assets attributable to the various contributions, or
(2) by the Employee to the Trustee, in which case the assets transferred must be accompanied by a written representation by the Employee that the assets meet the requirements for rollover contributions set forth in Code section 402(c) and (e) or Code section 408(d)(3) (whichever is applicable).

(b) Rollover Contributions. The Plan will accept Participant rollover contributions and/or direct rollovers of distributions (including rollover contributions received by the Participant as a surviving Spouse, or a Spouse or former Spouse who is an Alternate Payee pursuant to a qualified domestic relations order) from the following types of plans:

(1) qualified plan described in Code section 401(a) or 403(a), excluding after-tax employee contributions;

(2) an annuity contract described in Code section 403(b), excluding after-tax employee contributions;

(3) an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentalities of a state or political subdivision of a state; and

(4) Participant rollover contributions of the portion of a distribution from an individual retirement account or annuity described in Code section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includable in gross income.

Notwithstanding the foregoing, a rollover/transfer of a Roth 401(k) or Roth 403(b) contribution balance to the Plan shall be permitted in accordance with Treasury Regulations or applicable IRS guidance under the rules of Code section 402(c) after both (i) the Roth Effective Date and (ii) the establishment of a Designated Roth Contribution account under the Plan for the benefit of the Participant making the rollover/transfer. No rollover/transfer contribution may be made to the Plan unless such contribution has been approved by the Plan Administrator. The Trustee shall not accept assets unless they are in a medium proper for investment hereunder or in cash (excluding currency). It shall hold the assets for investment in accordance with the provisions of Article 6, and shall in accordance with the written instructions of the Employer make appropriate credits to the Employer Contribution Account of the Employee for whose benefit assets have been transferred or such other account and/or subaccount as the Plan Administrator may deem appropriate. Any amounts so credited as contributions previously made by an employer or by an Employee under a transferor plan, as specified by the Employer, shall be treated as contributions previously made under the Plan by the Employer or by the Employee, as the case may be. For purposes of Article 4.15 concerning withdrawal of Employee nondeductible contributions, employee nondeductible contributions made by an Employee under any other plan and transferred to this Plan pursuant to paragraph (a) of this Article 11.3 shall be considered Employee nondeductible contributions held under this Plan pursuant to Article 4.15.

Subject to the provisions of the Trust Agreement, the Plan Administrator may direct the Trustee to transfer assets held in the Trust for the account of a former Participant to the custodian of any other plan or plans maintained by the employer of the former Participant for the benefit of the former Participant, or to the custodian or trustee of an individual retirement plan established by the former Participant, provided that the Trustee has received evidence satisfactory to it that such other plan meets all applicable requirements of the Code. The assets so transferred shall be accompanied by written instructions from the Employer naming the person for whose benefit such assets have been transferred, showing separately the respective contributions by the Employer and by the Participant, and identifying the assets attributable to the various contributions. If the Employer transfers the assets of the Plan to another custodian or trustee, the Employer shall be responsible for ensuring that the Accounts of all Participants, former Participants, and Beneficiaries are also transferred to such custodian or trustee at the same time. The Trustee shall have no further liabilities under the terms of this Agreement with respect to assets so transferred.

11.4. Condition of Plan and Trust Agreement. It is a condition of the Plan, and each Employee by participating herein expressly agrees, that he shall look solely to the assets of the Trust for the payment of any benefit under the Plan.

11.5. Inalienability of Benefits. The benefits provided hereunder shall not be subject to alienation, pledge, use as security for a loan, assignment, garnishment, attachment, execution or levy of any kind, and any attempt to cause such benefits to be so subjected shall not be recognized; provided, however, that the rule just stated shall not apply in the case of a QDRO or any domestic relations order entered before January 1, 1985. Furthermore, notwithstanding any provisions of this Article 11.5 to the contrary, the benefits provided hereunder to a Participant may be offset pursuant to either (a) a judgment, (b) an order, (c) a decree, or (d) a settlement agreement, any of which satisfies the Participant’s actions with respect to the Plan and otherwise satisfies the conditions of Code section 401(a)(13)(C), provided that the requirements of Code section 401(a)(13)(C) and (D) are met, to the extent they are applicable.

11.6. Governing Law. The Plan shall be construed, administered and enforced in accordance with the laws of the Commonwealth of Massachusetts to the extent not preempted by the laws of the United States of America (including ERISA), any provision of the Plan in conflict with applicable federal law shall survive to the extent permitted by that law. Regulations to ERISA or to DOL Regulations or other guidance under ERISA shall apply only to the extent that the Plan is subject to ERISA and is not excluded from coverage under ERISA pursuant to DOL Regulation section 2510.3-3(b) or otherwise.

11.7. Failure of Qualification. Notwithstanding any other provision contained herein, if the Employer’s plan fails to be a qualified plan under the Code, such plan can no longer participate in this Pre-Approved Plan arrangement and the Provider will no longer have the authority to amend the Plan on behalf of the Employer.

11.8. Leased Employees. Any leased employee within the meaning of Code section 414(n) shall be treated as an employee of the recipient employer; however, contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. The preceding sentence shall not apply to any person who would otherwise be considered a leased employee, if leased employees do not constitute more than 20 percent of the recipient’s non-highly compensated workforce (as defined by Code section 414(n)(5)(C)(ii)), and such employee is covered by a money purchase pension plan providing (a) a non-integrated employer contribution rate of at least 10 percent of compensation (as defined in Code section 415(c)(3), but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the employee’s gross income under Code section 125, Code section 402(c)(3), Code section 402(b)(1)(B) or Code section 403(b)), (b) immediate participation, and (c) full and immediate vesting. The term “leased employee” means any person (other than an employee of the Employer) who pursuant to an agreement between the recipient and any other person (“leasing organization”) has performed services for the recipient (or for the recipient and related persons determined in accordance with Code section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient employer.

11.9. USERRA – Military Service Credit and Veteran’s Reemployment Rights. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Code section 414(u). Notwithstanding the foregoing and for all purposes other than calculating Plan contributions under Article 4, in the case of a Participant who dies on or after January 1, 2007 and while performing qualified military service as defined in Code section 414(u)(5), such Participant shall be treated as having resumed employment pursuant to this Article 11.9 on the day prior to his/her death and then terminating on account of death.

11.10. Directions, Notices and Disclosure. Any notice or other communication in connection with the Plan shall be deemed delivered in writing if addressed as provided below and if either actually delivered at said address or, in the case of a letter, three business days shall have elapsed after the same shall have been deposited in the United States mail, first-class postage prepaid and registered or certified:

(a) If to the Employer or Plan Administrator, to it at the most recent address of record communicated to the Trustee and, if to the Employer, to the attention of the most recent contact communicated to the Trustee;

(b) If to the Trustee, at the address set forth in the Adoption Agreement;

or, in each case at such other address as the addressee shall have specified by written notice delivered in accordance with the foregoing to the addressee’s then effective notice address. Any direction, notice or other communication provided to the Employer, the Plan Administrator or the Trustee by another party which is stipulated to be
in written form under the provisions of the Plan may also be provided in any medium which is permitted under applicable law or regulation. Any written communication or disclosure to Participants required under the provisions of the Plan may be provided in any other medium (electronic, telephone or otherwise) that is permitted under applicable law or regulation.

11.11. No Tax Advice. Neither the Trustee nor the Provider, nor any affiliate of either the Trustee or the Provider shall provide tax or legal advice. Employers, Plan Administrators, Participants and Beneficiaries are strongly encouraged to consult with their attorneys or tax advisors with regard to their specific situations.

11.12. Missing Participants. If a distribution is required under the terms of the Plan, the Plan Administrator shall provide the Trustee with the information necessary to make such distribution, including the last known address of the Participant or Beneficiary.

11.13. Incapacitated Participant or Beneficiary. In the event the Plan Administrator determines, on the basis of medical reports or other evidence satisfactory to the Plan Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his affairs by reason of minority, illness, infirmity or other incapacity, the Plan Administrator may direct the Trustee to disburse any payments due to such Participant or Beneficiary to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under state law for the care and control of such recipient, to the extent such individual has furnished satisfactory evidence of such status to the Plan Administrator. The receipt by such person or institution of any such payments shall be complete acquittance therefore, and any such payment to the extent thereof, shall discharge the liability of the Trust for the payment of benefits hereunder to such recipient. The Plan Administrator will not be liable for any payments made under this Article 11.14 and will have no obligation to inquire as to the competence of an individual entitled to receive any payments under this Section.

11.14. Establishment of Trust. A Trust shall be established and maintained to accept and hold such contributions by or on behalf of Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan, and no such assets shall ever revert to the Employer or the Plan Administrator.

11.15. Exclusive Benefit and Return of Employer Contributions. In accordance with Code section 401(a)(2) and ERISA section 403(c)(1) (as applicable), Plan assets shall be held for the exclusive purpose of providing benefits to Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan, and no such assets shall ever revert to the Employer or the Plan Administrator except that if the Employer or the Plan Administrator so direct:

(a) contributions made by the Employer by mistake of fact may be returned to the Employer within 1 year of the date of payment,

(b) contributions that are conditioned on the deductibility thereof under Code section 404 may be returned to the Employer within 1 year of the disallowance of the deduction, and

(c) contributions that are conditioned on the initial qualification of the Plan under the Code may be returned to the Employer within 1 year after such qualification is denied by determination of the Internal Revenue Service, but only if an application for determination of such qualification is made within the time prescribed by law for filing the Employer's federal income tax return for its taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

All contributions under the Plan are hereby expressly conditioned on the initial qualification of the Plan and their deductibility under the Code.

11.16. Fees and Expenses of the Trust. The Trustee shall be entitled to the fees set forth in the materials provided to Participants by the Trustee, as amended from time to time, and to reimbursement of all reasonable expenses incurred in the performance of its duties. If the Employer fails to pay agreed compensation or to reimburse expenses, the same shall be paid from the assets of the Trust.

To the extent incurred by the Trustee, any income, gift, estate and inheritance taxes and other taxes of any kind whatsoever (including transfer taxes incurred in connection with the investment or reinvestment of the assets of the Trust) that may be levied or assessed in respect of such assets, if allocable to specific Participants, shall be charged to their Accounts, and if not so allocable shall be charged proportionately to all Participants' Accounts. All other administrative expenses incurred by the Trustee in the performance of its duties, including fees for legal services rendered to the Trustee, shall be charged proportionately to all Accounts. All such fees and taxes and other administrative expenses charged to a Participant's Account shall be collected from the amount of any contribution or distribution to be credited to such Account, or by selling assets credited to such Account, and the Trustee is expressly authorized to liquidate any assets held in a Participant's Account for the purpose of paying such amounts. The Trustee shall not be deemed to be exercising discretion by causing the sale of any such assets to pay such fees or expenses. The Employer shall be responsible for payment of any deficiency.

11.17. Use of Provider's Documentation Service. Notwithstanding any provision in this Plan to the contrary, if this Plan is provided to the Employer by a third party (e.g., a brokerage firm, an actuarial firm, an insurance company, an accounting firm, etc.) rather than by the Provider directly, and (a) such third party subsequently terminates its business relationship with the Provider for any reason, (b) the Provider subsequently terminates its business relationship with such third party for any reason, or (c) the Employer subsequently terminates its business relationship with such third party, then this Plan will no longer be considered a pre-approved plan, but rather will be considered an individually designed plan, and the Provider will have no further responsibilities or obligations with respect to the Plan or the Employer.

Article 12. Limitations on Allocations

12.1. Definitions. For purposes of this Article 12, the following terms shall have the meanings set forth below:

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

(1) Employer contributions, other than Catch-Up Contributions;

(2) for any Plan Year beginning after December 31, 1986, employee nondeductible contributions;

(3) forfeitures; and

(4) allocations under a simplified employee pension.

For this purpose, any Excess Amount (as defined below) applied under Article 12.2 or 12.3 in the Limitation Year (as defined below) to reduce Employer contributions shall be considered Annual Additions for such Limitation Year. Amounts allocated after March 31, 1984 to an individual medical account, as defined in Code section 415(1)(2), which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined in Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer, are treated as Annual Additions to a defined contribution plan. A "restorative payment" as defined in Treasury Regulation section 1.415(c)-1(b)(2)(ii)(c) shall not be included as an Annual Addition.

(b) Compensation. "Compensation" means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements, and expense allowances under a nonaccountable plan (as described in Treasury Regulation section 1.62-2(c), and excluding the following:

(1) Employer contributions to a plan of deferred compensation which are not includable in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan, or any distributions from a plan of deferred compensation;

(2) 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;

(3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(4) other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Code
For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such year.

For purposes of applying the limitations of this Article, Compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is 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 section 125, 132(f)(4) or 457. Amounts under Code section 125 include any amounts available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he has other health coverage. An amount will be treated as an amount under Code section 125 only if the Employer does not request or collect information concerning the Participant’s other health coverage as part of the enrollment process for the health plan.

For any Self-Employed Individual, Compensation shall mean earned income (as described in Code section 401(c)(2) and the Treasury Regulations promulgated thereunder), plus amounts deferred at the election of the Self-Employed Individual that would be includible in gross income but for the rules of Code section 402(e)(3), 402(h)(1)(B), 402(k) or 457(b).

Compensation for a Limitation Year shall also include compensation paid by the later of 2½ months after an Employee’s severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes the date of the Employee’s severance from employment with the Employer maintaining the Plan, if:

(1) the payment is regular 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, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or

(2) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, (a) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code section 414(a)(11)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; or (b) compensation paid to a Participant who is permanently and totally disabled, as defined in Code section 22(e)(3), provided salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee, as defined in Code section 414(q), immediately before becoming disabled.

Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

Compensation shall be limited to amounts not in excess of the limit of Code section 401(a)(17) as amended.

(c) Deferral Ratio. “Deferral Ratio” means the ratio (expressed as a percentage) of (1) the amount of Includible Contributions made on behalf of an Eligible Participant for the Plan Year to (2) an Eligible Participant’s Compensation for such Plan Year. An Eligible Participant who does not receive Includible Contributions for a Plan Year shall have a Deferral Ratio of zero.

(d) Defined Contribution Dollar Limitation. “Defined Contribution Dollar Limitation” means $40,000, as adjusted under Code section 415(d).

(e) Employer. For purposes of this Article 12, “Employer” means the employer that adopts the Plan, and all members of a controlled group of corporations (as defined in Code section 414(b) as modified by Code section 415(h)), all commonly controlled trades or businesses (as defined in Code section 414(c) as modified by Code section 415(h)) or affiliated service groups (as defined in Code section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Code section 414(o).

(f) Excess Amount. “Excess Amount” means the excess of the Participant’s Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(g) Excess Contributions. “Excess Contributions” means, with respect to any Plan Year, the excess of:

(1) the aggregate amount of Includible Contributions actually taken into account in computing the average deferral percentage of Eligible Participants who are Highly Compensated Employees for such Plan Year, over

(2) the maximum amount of Includible Contributions permitted to be made on behalf of Highly Compensated Employees under Article 12.5 (determined by reducing Includible Contributions made for the Plan Year on behalf of Eligible Participants who are Highly Compensated Employees in order of their Deferral Ratios, beginning with the highest of such Deferral Ratios).

(h) Excess Deferrals. “Excess Deferrals” shall mean those Elective Contributions that are includible in a Participant’s gross income under Code section 402(g) to the extent such Participant’s Elective Contributions for a taxable year exceed the dollar limitation under such Code section (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code section 414(v)). Excess Deferrals shall be treated as Annual Additions under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the Participant’s taxable year.

(i) Includible Contributions. “Includible Contributions” mean:

(1) Any Elective Contribution (other than Catch-Up Contributions) made on behalf of an Eligible Participant, including Excess Deferrals of Highly Compensated Employees, but excluding Excess Deferrals of Non-Highly Compensated Employees that arise solely from Elective Contributions made under the Plan or plans maintained by the Employer;

(2) Qualified Nonelective Employer Contributions allocated as of a date within the “testing year” and designated at the time of contribution as applying for the “ADP” test.

To be included in determining an Eligible Participant’s Deferral Ratio for the Plan Year, Includible Contributions must be allocated to the Participant’s Account as of a date within such Plan Year and made before the last day of the 12-month period immediately following the Plan Year to which the Includible Contributions relate.

(j) Limitation Year. “Limitation Year” means a calendar year, or the other period of 12 consecutive months elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different period of 12 consecutive months, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(k) Pre-Approved Plan. “Pre-Approved Plan” means a plan, the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(l) Maximum Permissible Amount. “Maximum Permissible Amount” means the (i) Defined Contribution Dollar Limitation or (ii) 100 percent of the Participant’s Compensation for the Limitation Year. The compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of Code section 401(h) or Code section 419A(g)(2)) which is otherwise treated as an Annual Addition under
12.2. Code Section 415 Limitations; Participation Only in This Plan. If the Participant does not participate in, and has never participated in, another qualified plan, a welfare benefit fund (as defined in Code section 419(e)), an individual medical account (as defined in Code section 415(l)(2)) or a simplified employee pension (as defined in Code section 408(k)) maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant’s Account for any Limitation Year shall not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant’s Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated shall be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

Prior to determining the Participant’s actual 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 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year shall be determined on the basis of the Participant’s actual Compensation for the Limitation Year. If, pursuant to the last sentence of the preceding paragraph or as a result of the allocation of Forfeitures, there is an Excess Amount for a Limitation Year beginning on or after July 1, 2007, such Excess Amount may be corrected through the Internal Revenue Service Employee Plans Compliance Resolution System (EPCRS) or any successor program or as otherwise permitted by Internal Revenue Service guidance.

12.3. Code Section 415 Limitations; Participation in Additional Defined Contribution Plan. This Article 12.3 applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan, a welfare benefit fund (as defined in Code section 419(e)), an individual medical account (as defined in Code section 415(l)(2)), or a simplified employee pension (as defined in Code section 408(k)) maintained by the Employer, which provides an Annual Addition during any Limitation Year. The Annual Additions which may be credited to a Participant’s Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant’s Account under the other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant’s Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated shall be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount shall be contributed or allocated to the Participant’s Account under this Plan for the Limitation Year.

Prior to determining the Participant’s actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Article 12.2. As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year shall be determined on the basis of the Participant’s actual Compensation for the Limitation Year.

If a Participant’s Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount shall be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension shall 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.

If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan shall be the product of:

(a) the total Excess Amount allocated as of such date, multiplied by

(b) the ratio of (1) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (2) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all other qualified Pre-Approved defined contribution plans.

Any Excess Amount attributed to this Plan shall be corrected through the Internal Revenue Service Employee Plans Compliance Resolution System (EPCRS) or any successor program or as otherwise permitted by Internal Revenue Service guidance.

12.4. Code Section 402(g) Limitation on Elective Contributions. In no event shall the amount of Elective Contributions made under the Plan for a calendar year, when aggregated with the elective contributions made under any other plan maintained by the Employer or an Affiliated Employer, exceed the dollar limitation contained in Code section 402(g) in effect at the beginning of such calendar year, except to the extent permitted under Article 4.7 and Code section 414(v), if applicable. A Participant may assign to the Plan any Excess Deferrals made during a calendar year by notifying the Plan Administrator on or before March 15 following the calendar year in which the Excess Deferrals were made of the amount of the Excess Deferrals to be assigned to the Plan. A Participant is deemed to notify the Plan Administrator of any Excess Deferrals that arise by taking into account only those Elective Contributions made to the Plan and those elective contributions made to any other plan maintained by the Employer or an Affiliated Employer. Notwithstanding any other provision of the Plan, Excess Deferrals, plus any income and minus any loss allocable thereto, as determined under Article 12.7, less the amount of any Excess Contributions (and allocable income) previously distributed with respect to the Participant for the Plan Year beginning with or within the taxable year, shall be distributed no later than April 15 to any Participant to whose Account Excess Deferrals were so assigned for the preceding calendar year and who claims Excess Deferrals for such calendar year. Distributions of Excess Deferrals for a year shall be made first from the Participant’s Pre-Tax Elective Contribution Account, to the extent Pre-Tax Elective Contributions were made that year, unless the Participant specifies otherwise. Excess Deferrals shall be treated as Annual Additions under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the calendar year in which the Excess Deferrals were made.

12.5. Additional Limit on Elective Contributions (“ADP” Test). Except as provided in Article 12.8 below with respect to Plans providing for Safe Harbor NonElective Employer Contributions, the Elective Contributions made with respect to a Plan Year on behalf of Eligible Participants who are Highly Compensated Employees for such Plan Year may not result in an average Deferral Ratio for such Eligible Participants that exceeds the greater of:

(a) The average Deferral Ratio for the Plan Year of Eligible Participants who are Non-Highly Compensated Employees for the Plan Year multiplied by 1.25; or

(b) The average Deferral Ratio for the Plan Year of Eligible Participants who are Non-Highly Compensated Employees for the Plan Year multiplied by two, provided that the average Deferral Ratio for Eligible Participants who are Highly Compensated Employees for the Plan Year being tested does not exceed the average Deferral Ratio for Participants who are Non-Highly Compensated Employees for the Plan Year by more than two percentage points.

The Deferral Ratios for an Eligible Participant who is a Highly Compensated Employee for the Plan Year being tested and who is eligible to have Includible Contributions allocated to his accounts under two or more cash or deferred arrangements described in Code section 401(k) that are maintained by the Employer or an Affiliated Employer, shall be determined as if such Includible Contributions were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a
The Excess Contributions allocable to a Participant's Account shall be determined and amounts imposed on the Employer maintaining the Plan with respect to such Excess Contributions shall be made from the Participant's Pre-Tax Elective Contributions were made. Distribution of Elective Contributions that are Year, shall be distributed to the Participant no later than the last day of the Deferrals for the Participant's taxable year ending with or within the Plan previously distributed to the Participant from the Plan to correct Excess loss allocable thereto, as determined under Article 12.7, less any amounts Notwithstanding any other provision of this Plan, the Excess Contributions allocable to the Account of a Participant, plus any income and minus any loss allocable thereon, as determined under Article 12.7, less any amounts previously distributed to the Participant from the Plan to correct Excess Deferrals for the Participant's taxable year ending with or within the Plan Year, shall be distributed to the Participant no later than the last day of the Plan Year immediately following the Plan Year in which the Excess Contributions were made. Distribution of Elective Contributions that are Excess Contributions shall be made from the Participant's Pre-Tax Elective Contribution Account before the Participant's Designated Roth Contribution Account, to the extent Pre-Tax Elective Contributions were made for the year, unless the Participant specifies otherwise. If such excess amounts are distributed more than 2½ months after the last day of the Plan Year in which the Excess Contributions were made, a ten-percent excise tax shall be imposed on the Employer maintaining the Plan with respect to such amounts.

The Excess Contributions allocable to a Participant's Account shall be determined by reducing the Includible Contributions made for the Plan Year on behalf of Eligible Participants who are Highly Compensated Employees in order of the dollar amount of such Includible Contributions, beginning with the highest dollar amount. To the extent a Highly Compensated Employee has not reached his Catch-Up Contribution limit under the Plan, Excess Contributions shall be Catch-Up Contributions and will not be classified as Excess Contributions.

Excess Contributions shall be treated as Annual Additions.

12.7. Income or Loss on Excess Deferrals or Excess Contributions. The income or loss allocable to Excess Deferrals or Excess Contributions shall be determined under one of the following methods:
(a) the income or loss allocable to the Participant's Elective Contribution Account for the taxable year multiplied by a fraction, the numerator of which is the amount of the distributable contributions for the year and the denominator of which is the balance of the Participant's Elective Contribution Account, determined without regard to any income or loss occurring during the calendar year in which the Excess Deferrals distributable contributions were made.
(b) the income or loss for the calendar year in which the distributable contributions were made determined under any other reasonable method, provided that such method is used consistently for all Participants in determining the income or loss allocable to distributable contributions hereunder for the Plan Year, and is used by the Plan in allocating income or loss to Participants' Accounts.

12.8. Deemed Satisfaction of “ADP” Test. Notwithstanding any other provision of this Article 12 to the contrary, if the Employer elects in the Adoption Agreement to make Safe Harbor Nonelective Employer Contributions, the Plan shall be deemed to have satisfied the “actual deferral percentage” test under Code section 401(k)(3) and the Treasury Regulations thereunder for each Plan Year. The Employer shall provide a notice to each Eligible Participant during each Plan Year describing the following:
(a) the amount of the safe harbor nonelective Employer contribution to be made on behalf of Eligible Participants for the Plan Year who are Non-Highly Compensated Employees (which shall be equal to at least three percent of each such Eligible Participant’s Compensation for the Plan Year);
(b) any other Employer contributions provided under the Plan and any requirements that Eligible Participants must satisfy to be entitled to receive such Employer contributions;
(c) the type and amount of Compensation that may be contributed to the Plan as Elective Contributions;
(d) the procedures for making a cash or deferred election under the Plan and the periods during which such elections may be made or changed; and
(e) the withdrawal and vesting provisions applicable to contributions under the Plan.

The descriptions required in (b) and (c) may be provided by cross references to the relevant sections of an up-to-date summary plan description. Such notice shall be written in a manner calculated to be understood by the average Eligible Participant. The Employer shall provide the notice to each Eligible Participant within one of the following periods, whichever is applicable:
(f) if the Employee is an Eligible Participant 90 days before the beginning of the Plan Year, within the period beginning 90 days and ending 30 days before the first day of the Plan Year; or
(g) if the Employee becomes an Eligible Participant after the date described in paragraph (f) above, within the period beginning 90 days before and ending on the date he becomes an Eligible Participant; provided, however, that such notice shall not be required to be provided to an Eligible Participant earlier than is required under section 1.401(k)-3 of the Treasury Regulations.

Except as otherwise provided in Article 12.9 regarding amendments suspending or eliminating Safe Harbor Nonelective Employer Contributions, in accordance with section 1.401(k)-1(e)(7) of the Treasury Regulations, it is impermissible for the employer to use actual deferral percentage testing for a Plan Year in which it is intended for the Plan through its written terms to be a safe harbor 401(k)/profit sharing plan and the Employer fails to satisfy the requirements of such safe harbor for the Plan Year.

12.9. Changing Testing Methods. In accordance with Treas. Regs. 1.401(k)-1(e)(7), it is impermissible for the Employer to use “ADP” testing for a Plan Year in which it is intended for the Plan through its written terms to be a Code section 401(k) safe harbor plan and the Employer fails to satisfy the requirements of such safe harbor for the Plan Year. Notwithstanding any other provisions of the Plan, if the Employer elects to change between the “ADP” testing method and the safe harbor testing method, the following shall apply:
(a) Except as otherwise specifically provided in this Article 12.9 or Article 12.8, or applicable regulation, the Employer may not change from the “ADP” testing method to the safe harbor testing method unless Plan provisions adopting the safe harbor testing method are adopted before the first day of the Plan Year in which they are to be effective and remain in effect for an entire 12-month Plan Year.
(b) Except as otherwise specifically provided in this Article 12.9, a Plan may not be amended during the Plan Year to discontinue Safe Harbor Nonelective Employer Contributions and revert to the “ADP” testing method for such Plan Year.
(c) A Plan may be amended to reduce or suspend Safe Harbor Nonelective Contributions during a Plan Year and revert to the “ADP” testing method for such Plan Year if either (i) the Employer provides in the notice described in Article 12.8 that the Plan may be amended during the Plan Year to reduce or suspend such contributions or (ii) the Employer is operating at an economic loss (as described in Code Section 412(c)(2)(A)), and all of the following requirements are satisfied:
(1) All Eligible Participants are provided notice of the reduction or suspension describing (i) the consequences of the amendment, (ii) the procedures for changing their salary reduction agreements, and (iii) the effective date of the reduction or suspension.
(2) The reduction or suspension of such contributions is no earlier than the later of (i) 30 days after the date the notice described in paragraph (1) is provided to Eligible Participants or (ii) the date the amendment is adopted.
(3) Eligible Participants are given a reasonable opportunity before the reduction or suspension occurs, including a reasonable period after the notice described in paragraph (1) is provided to Eligible Participants, to change their salary reduction agreements elections.

(4) The Plan satisfies the Safe Harbor Nonelective Employer Contributions provisions of the Adoption Agreement in effect prior to the amendment with respect to the safe harbor compensation (compensation meeting the requirements of section 1.401(k)-3(b)(2) of the Treasury Regulations) paid through the effective date of the amendment.

If the Employer amends its Plan in accordance with the provisions of this paragraph (c), the “ADP” test described in Article 12.5 shall be applied as if it had been in effect for the entire Plan Year using the current year testing method.

**Article 13. Top-Heavy Provisions**

**13.1. Definitions.** For purposes of this Article, the following special definitions shall apply:

(a) Determination Date. “Determination Date” means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, “Determination Date” means the last day of that Plan Year.

(b) Key Employee. In determining whether the Plan is top-heavy for Plan Years beginning after December 31, 2001, a “Key Employee” means any Employee or Former Employee (and the beneficiary of any such Employee) who at any time during the Plan Year that includes the Determination Date is an officer of the Employer having annual Compensation greater than $130,000 (as adjusted under Code section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1 percent owner of the Employer having an annual compensation of more than $150,000.

For purposes of this paragraph (b), annual Compensation means Compensation within the meaning of Article 12.1(b).

(c) Permissive Aggregation Group. “Permissive Aggregation Group” means the Required Aggregation Group plus any other qualified plans of the Employer or an Affiliated Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code sections 401(a)(4) and 410.

(d) Required Aggregation Group. “Required Aggregation Group” means:

(1) Each qualified plan of the Employer or Affiliated Employer in which at least one Key Employee participates, or has participated at any time during the Plan Year containing the Determination Date or any of the four preceding Plan Years (regardless of whether the plan has terminated), and

(2) any other qualified plan of the Employer or Affiliated Employer which enables a plan described in Article 13.1(e)(1) above to meet the requirements of Code section 401(a)(4) or 410.

(e) Top-Heavy Plan. “Top-Heavy Plan” means a plan in which any of the following conditions exist:

(1) the Top-Heavy Ratio for the plan exceeds 60 percent and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group;

(2) the plan is a part of a Required Aggregation Group but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the Required Aggregation Group exceeds 60 percent; or

(3) the plan is a part of a Required Aggregation Group and a Permissive Aggregation Group and the Top-Heavy Ratio for both groups exceeds 60 percent.

(f) Top-Heavy Ratio. “Top-Heavy Ratio” means:

(1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan which during the 1-year period ending on the Determination Date(s) has or has had accrued benefits, the Top-Heavy Ratio for this Plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date(s) including any part of any account balance distributed in the 1-year period ending on the Determination Date(s) (5-year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the Determination Date(s) (5-year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death or disability), both computed in accordance with Code section 416 and the regulations thereunder.

Both the numerator and denominator of the Top-Heavy Ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Code section 416 and the regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 1-year period ending on the Determination Date(s) has or has had any accrued benefits, the Top-Heavy Ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of all account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of all account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (a) above, and the present value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Code section 416 and the regulations thereunder.

The accrued benefits under a defined benefit plan in both the numerator and denominator of the Top-Heavy Ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the Determination Date (5-year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death or disability).

(3) For purposes of (1) and (2) above the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Code section 416 and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant who is not a Key Employee but who was a Key Employee in a prior year, or (2) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the 1-year period ending on the Determination Date will be disregarded.

The calculation of the Top-Heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code section 416 and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the Top-Heavy Ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same year.

The accrued benefit of a Participant other than a Key Employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code section 411(b)(1)(C).

13.2. Minimum Contribution. Except as otherwise specifically provided in this Article 13.2 and regardless of any other provision of the Plan, the minimum contribution made by the Employer on behalf of any Eligible Participant who is not a Key Employee (excluding Elective Contributions and Catch-Up Contributions), when aggregated with the Nonelective and Safe Harbor Nonelective Employer Contributions made for the Plan Year on behalf of such Eligible Participant, shall not be less than the lesser of three percent of such Participant’s Compensation for the Plan Year or, in the case where neither the Employer nor any Affiliated Employer maintains a defined benefit plan which uses the Plan to satisfy Code section 401(a)(4) or 410,
the largest percentage of employer contributions (including Elective Contributions, but excluding Catch-Up Contributions) made on behalf of any Key Employee for the Plan Year, expressed as a percentage of the Key Employee's Compensation for the Plan Year.

The minimum contribution required under this Article 13.2 shall be made to the Account of an Eligible Participant even though, under other Plan provisions, the Participant would not otherwise be entitled to receive a contribution, or would have received a lesser contribution for the Plan Year; provided, however, that no minimum contribution shall be made for a Plan Year to the Account of an Active Participant who is not employed by the Employer or an Affiliated Employer on the last day of the Plan Year.

The minimum contribution for the Plan Year made on behalf of each Eligible Participant who is not a Key Employee and who is a participant in a defined benefit plan maintained by the Employer or an Affiliated Employer shall not be less than five percent of such Participant's Compensation for the Plan Year.

That portion of a Participant's Account that is attributable to minimum contributions required under this Article 13.2, to the extent required to be non-forfeitable under Code section 416(b), may not be forfeited under Code section 411(a)(3)(B).

Compensation shall generally be based on the amount actually paid to the Eligible Participant during the Plan Year.

13.3. Application. If the Plan is a non-safe harbor 401(k) plan and the Plan is or becomes a Top-Heavy Plan in any Plan Year, the provisions of this Article shall apply and shall supersede any conflicting provision of the Plan, unless the Employer maintains multiple plans and completes the 416 Alternative Minimum Contribution addendum to the Adoption Agreement to specify an alternative method of satisfying the minimum contribution requirements. If the Plan is a safe harbor 401(k) plan, a money purchase plan, or a profit sharing only plan (without a 401(k) feature), the Plan is or becomes a Top-Heavy Plan in any Plan Year, the provisions of this Article shall apply and shall supersede any conflicting provision of the Plan, or a profit sharing only plan (without a 401(k) feature), the Plan is deemed to be top heavy within the meaning of Code section 416 and satisfies the requirements for a top-heavy plan under Code section 416 and the Treasury Regulations thereunder without regard to this Article 13, unless the Employer maintains a qualified defined benefit plan that is aggregated with this Plan for top-heavy purposes.

Article 14. Transitional Rules and Protected Benefits

14.1. Applicability. The provisions of this Article 14 apply only to Employers who maintained a qualified retirement plan prior to the adoption of this Plan and which was the predecessor plan to this Plan.

14.2. Joint and Survivor Annuity Rules Applicable to Prior Participants. Any living Participant not receiving benefits on August 23, 1984, who would otherwise be entitled to but would not receive the benefits prescribed by Articles 8.3 through 8.6, must be given the opportunity to elect to have Article 8 apply, if such Participant is credited with at least one Hour of Service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least 10 Years of Service when he separated from service. Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one Hour of Service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his benefits paid in accordance with this Article 14.2. The respective opportunities to elect (as described in the two preceding sentences) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants. Notwithstanding the preceding sentences, such a Participant will not have the opportunity to have his benefits paid in accordance with this Article 14.2 if his Annuity Starting Date is later than the earlier of (i) the 90th day after notice that the forms of benefit described in this Article 14.2 will no longer be available is provided in accordance with Treasury Regulation section 1.411(d)-4 QSA-2(e)(1)(i) and (B) the first day of the second Plan Year following the Plan Year in which such forms of benefit are eliminated by amendment.

Any Participant who has elected pursuant to the second sentence of this Article 14.2 to have Article 8 apply, and any Participant who does not so elect under the first sentence of this Article 14.2, or who meets the requirements of the first sentence except that he does not have at least 10 Years of Service when he separates from service, shall have his benefits distributed in accordance with all of the following requirements, if benefits would have been payable in the form of a life annuity:

(a) Automatic joint and survivor annuity. If benefits in the form of a life annuity become payable to a married Participant who:

(1) begins to receive payments under the Plan on or after Normal Retirement Age; or

(2) dies on or after Normal Retirement Age while still working for the Employer; or

(3) begins to receive payments on or after the qualified early retirement age; or

(4) separates from service on or after attaining Normal Retirement Age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits, then such benefits shall be received under the Plan in the form of a qualified joint and survivor annuity, unless the Participant has elected otherwise during his election period. The election period must begin at least six months before the Participant attains the qualified early retirement age and end not more than 90 days before the commencement of benefits. Any election hereunder shall be made in writing and may be changed by the Participant at any time.

(b) Election of survivor annuity. A Participant who is employed after attaining the qualified early retirement age shall be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the Spouse under the qualified joint and survivor annuity if the Participant had retired on the day before his death. Any election under this provision shall be made in writing and may be changed by the Participant at any time.

(c) For purposes of this Article 14.2:

(1) “Qualified early retirement age” is the latest of (i) the earliest date, under the Plan, on which the Participant may elect to receive retirement benefits, (ii) the first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or (iii) the date the Participant begins participation.

(2) “Qualified joint and survivor annuity” is an annuity for the life of the Participant with a survivor annuity for the life of the Spouse, as described in Article 8.1(d).

(3) “Election period” begins on the later of (i) the 180th day before the Participant attains the qualified early retirement age, or (ii) the date on which participation begins, and ends on the date the Participant terminates employment.

14.3. Certain Distributions under Pre-1984 Designations. Subject to the requirements of Article 8, and notwithstanding the provisions of Article 9, distribution on behalf of any Participant, including a 5-percent owner, may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(a) The distribution by the Trust is one which would not have disqualified the trust under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(b) The distribution is in accordance with a method of distribution designated by the Employee whose Account is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.

(c) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.

(d) The Employee had an Account balance under the Plan as of December 31, 1983.

(e) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions shall be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.

A distribution upon death shall not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee. For any distribution that commences before January 1, 1984, but continues after December 31, 1983, the Employee or the Beneficiary to whom such distribution is being made shall be presumed to...
have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a) and (e). If a designation is revoked, any subsequent distribution must satisfy the requirements of Code section 401(a)(9) and the Treasury Regulations thereunder. If a designation is revoked after the date distributions are required to begin, the Trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code section 401(a)(9) and the Treasury Regulations thereunder, but for the designation described in paragraphs (b) through (e). For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in Treasury Regulation section 1.401(a)(9)-2. Any changes in the designation generally shall be considered to be a revocation of the designation, but the mere substitution or addition of another beneficiary (one originally not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case of an amount transferred or rolled over from one plan to another plan, the rules in Q&A 14 and Q&A 15 of Treasury Regulation section 1.401(a)(9)-8 shall apply.

14.4. Other Protected Benefits. If a Participant’s vested Account balance is subject to any optional form of payment not currently offered under the Plan, such optional benefit will no longer be available as of the later of (A) the effective date of the Plan restatement onto this Pre-Approved Plan and (B) the date the restatement is adopted, provided that the Plan offers an otherwise identical single sum distribution option, as described in Treasury Regulation section 1.411(d)-4 Q&A-2(c)(2). If a Participant’s vested Account balance is subject to an in-service withdrawal option not currently offered under the Plan, the following shall apply:

(a) If the in-service withdrawal option is conditioned on hardship (a “hardship withdrawal”), the hardship withdrawal option will no longer be available as of the later of (A) the effective date of the Plan restatement onto this Pre-Approved Plan and (B) the date the restatement is adopted.

(b) If the in-service withdrawal option is not conditioned on hardship (a “non-hardship withdrawal”), the non-hardship withdrawal option will continue in effect with respect to the Participant’s vested Account balance subject to the terms of the Plan as in effect immediately prior to the effective date of the Plan restatement onto this Pre-Approved Plan.
Plan Description: Standardized Pre-Approved Profit Sharing Plan With CODA
FFN: 317E1080004-001 Case: 201800479 EIN: 04-3532603
Letter Serial No: Q702435a
Date of Submission: 11/05/2018

FMR LLC
245 SUMMER STREET
BOSTON, MA 02210

Contact Person:
Janell Hayes

Telephone Number:
513-975-6319

In Reference To: TEGE:EP:7521
Date: 06/30/2020

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable for use by employers for the benefit of their employees under Internal Revenue Code (IRC) Section 401.

We considered the changes in qualification requirements in the 2017 Cumulative List of Notice 2017-37, 2017-29 Internal Revenue Bulletin (IRB) 89. Our opinion relates only to the acceptability of the form of the plan under the IRC. We did not consider the effect of other federal or local statutes.

You must provide the following to each employer who adopts this plan:

. A copy of this letter
. A copy of the approved plan
. Copies of any subsequent amendments including their dates of adoption
. Direct contact information including address and telephone number of the plan provider

Our opinion on the acceptability of the plan’s form is a determination as to the qualification of the plan as adopted by a particular employer only under the circumstances, and to the extent, described in Revenue Procedure (Rev. Proc.) 2017-41, 2017-29 I.R.B. 92. The employer who adopts this plan can generally rely on this letter to the extent described in Rev. Proc. 2017-41. Thus, Employee Plans Determinations, except as provided in Section 12 of Rev. Proc. 2020-4, 2020-01 I.R.B. 148 (as updated annually), will not issue a determination letter to an employer who adopts this plan. Review Rev. Proc. 2020-4 to determine the eligibility of an adopting employer, and the items needed, to submit a determination letter application. The employer must also follow the terms of the plan in operation.

An employer who adopts this plan may not rely on this letter if the coverage and contributions or benefits under the employer’s plan are more favorable for highly compensated employees, as defined in IRC Section 414(q).

Our opinion doesn’t apply for purposes of IRC Sections 415 and 416 if an employer maintains or ever maintained another qualified plan for one or more employees covered by this plan. For this purpose, we will not consider the employer to have maintained another defined contribution plan provided both of the following are true:

. The employer terminated the other plan before the effective date of this plan
. No annual additions were credited to any participant’s account under the other plan as of any date within the limitation year of this plan

Also, for this purpose, we’ll consider an employer as maintaining another defined contribution plan if the
employer maintains any of the following:
. A welfare benefit fund defined in IRC Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees as defined in IRC Section 419A(d)
. An individual medical account as defined in IRC Section 415(l)(2), which is part of a pension or annuity plan maintained by the employer
. A simplified employee pension plan

An employer who adopts this plan may not rely on an opinion letter for either of the following:
. If the timing of any amendment or series of amendments to the plan satisfies the nondiscrimination requirements of Treasury Regulations 1.401(a)(4)-5(a), except with respect to plan amendments granting past service that meet the safe harbor described in Treasury Regulations 1.401(a)(4)-5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees
. If the plan satisfies the effective availability requirement of Treasury Regulations 1.401(a)(4)-4(c) for any benefit, right, or feature

An employer who adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter about whether a prospectively eliminated benefit, right, or other feature satisfies the current availability requirements of Treasury Regulations 1.401(a)(4)-4.

Our opinion doesn’t apply to Treasury Regulations 1.401(a)-1(b)(2) requirements for a money purchase plan or target benefit plan where the normal retirement age under the employer’s plan is lower than age 62.

Our opinion doesn’t constitute a determination that the plan is an IRC Section 414(d) governmental plan. This letter is not a ruling with respect to the tax treatment to be given contributions that are picked up by the governmental employing unit within the meaning of IRC Section 414(h)(2).

Our opinion doesn’t constitute a determination that the plan is an IRC Section 414(e) church plan.

Our opinion may not be relied on by a non-electing church plan for rules governing pre-ERISA participation and coverage.

The provisions of this plan override any conflicting provision contained in the trust or custodial account documents used with the plan, and an adopting employer may not rely on this letter to the extent that provisions of a trust or custodial account that are a separate portion of the plan override or conflict with the provisions of the plan document. This opinion letter does not cover any provisions in trust or custodial account documents.

An employer who adopts this plan may not rely on this letter when:
. the plan is being used to amend or restate a plan of the employer which was not previously qualified
. the employer’s adoption of the plan precedes the issuance of the letter
. the employer doesn’t correctly complete the adoption agreement or other elective provisions in the plan
. the plan is not identical to the pre-approved plan (that is, the employer has made amendments that cause the plan not to be considered identical to the pre-approved plan, as described in Section 8.03 of Rev. Proc. 2017-41)

Our opinion doesn’t apply to what is contained in any documents referenced outside the plan or adoption agreement, if applicable, such as a collective bargaining agreement.

Our opinion doesn’t consider issues under Title I of the Employee Retirement Income Security Act (ERISA) which are administered by the Department of Labor.

If you, the pre-approved plan provider, have questions about the status of this case, you can call the telephone number at the top of the first page of this letter. This number is only for the provider’s use. Individual participants or adopting eligible employers with questions about the plan should contact you.
You must include your address and telephone number on the pre-approved plan or the plan's adoption agreement, if applicable, so that adopting employers can contact you directly.

If you write to us about this plan, provide your telephone number and the best time to call if we need more information. Whether you call or write, refer to the letter serial number and file folder number at the top of the first page of this letter.

Let us know if you change or discontinue sponsorship of this plan.

Keep this letter for your records.

Sincerely Yours,

Khin M. Chow
Director, EP Rulings & Agreements
Plan Description: Standardized Pre-Approved Money Purchase Pension Plan
FFN: 317E1080004-002 Case: 201800480 EIN: 04-3532603
Letter Serial No: Q702436a
Date of Submission: 11/05/2018

FMR LLC
245 SUMMER STREET
BOSTON, MA 02210

Contact Person:
Janell Hayes

Telephone Number:
513-975-6319

In Reference To: TEGE:EP-7521
Date: 06/30/2020

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You must provide the following to each employer who adopts this plan:
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Our opinion on the acceptability of the plan's form is a determination as to the qualification of the plan as adopted by a particular employer only under the circumstances, and to the extent, described in Revenue Procedure (Rev. Proc.) 2017-41, 2017-29 I.R.B. 92. The employer who adopts this plan can generally rely on this letter to the extent described in Rev. Proc. 2017-41. Thus, Employee Plans Determinations, except as provided in Section 12 of Rev. Proc. 2020-4, 2020-01 I.R.B. 148 (as updated annually), will not issue a determination letter to an employer who adopts this plan. Review Rev. Proc. 2020-4 to determine the eligibility of an adopting employer, and the items needed, to submit a determination letter application. The employer must also follow the terms of the plan in operation.

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- The plan is not identical to the pre-approved plan (that is, the employer has made amendments that cause the plan not to be considered identical to the pre-approved plan, as described in Section 8.03 of Rev. Proc. 2017-41)

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Let us know if you change or discontinue sponsorship of this plan.

Keep this letter for your records.

Sincerely Yours,

Khin M. Chow
Director, EP Rulings & Agreements

Letter 6186 (June-2020)
Catalog Number 72434C