

**The Fidelity Retirement Plan  
and Trust Agreement  
Basic Plan Document No. 04**

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## Article 1. Introduction

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 Prototype Plan is intended to qualify under Code section 401(a). Depending upon the Adoption Agreement completed by an adopting Employer, the Prototype Plan may be used to implement:

- (a) a profit sharing plan,
- (b) a money purchase pension plan,
- (c) a safe harbor 401(k)/profit sharing plan, or
- (d) a standardized 401(k)/profit sharing plan.

## 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, with respect to any Participant or Beneficiary, the aggregate of the Participant's Employer Contribution Account, Elective Contribution Account, Nonelective Employer Contribution Account, and, if permitted under Section 4.15, his Employee Nondeductible Contribution Account, if any, as well as amounts attributable to the Participant's rollover/transfer contributions, if any. The Plan Administrator shall 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 Trust Agreement and elects its options under the Plan. The Adoption Agreement may be amended by the Employer from time to time, subject to Sections 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.

**2.6. Beneficiary.** "Beneficiary" means the person or entity (including a trust or an estate, in which case the term may mean the trustee or personal representative acting in his or her fiduciary capacity) designated as such by the Participant under Section 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.

**2.7. 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 500 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).

**2.8. 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.

**2.9. Catch-Up Contribution.** "Catch-Up Contribution" means a contribution described in Section 4.6.

**2.10. 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.

### 2.11. Compensation.

- (a) For an Employee who is not a Self-Employed Individual, "Compensation" means, subject to the limits of this Section 2.11, 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 408(k), 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). Net earnings from a trade or business that is not subject to self-employment tax because a religious exemption is claimed by the individual under Code section 1402(g) shall be included as Compensation.
- (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 Compensation for any prior Plan Year is taken into account in determining a Participant’s allocations for the current Plan Year, the Compensation for the prior Plan Year is subject to the applicable annual compensation limit in effect for that prior Plan Year. For this purpose, in determining allocations in Plan Years beginning on or after January 1, 1989, the annual Compensation limit in effect for Plan Years beginning before that date is \$200,000. In addition, in determining allocations in Plan Years beginning on or after January 1, 1994 and prior to January 1, 2002, the annual Compensation limit in effect for the Plan Years beginning before that date is \$150,000.
- (4) 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 Section 13.2.
- (5) 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 Section 2.11 is effective as of the first day of the Plan Year in which the Plan is adopted.

**2.12. 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.

**2.13. 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).

**2.14. 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 Plan Administrator.

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

**2.16. Effective Date.** “Effective Date” means the date specified in the Adoption Agreement, but no earlier than the PPA Effective Date. 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.

**2.17. Elective Contribution Account.** “Elective Contribution Account” means an account established on the books of the Trust for the purpose of recording Pre-Tax Elective Contributions and Designated Roth Contributions made on behalf of a Participant pursuant to Article 4 and any income, expenses, gains, or losses incurred thereon.

**2.18. Elective Contributions.** “Elective Contributions” means any Employer contributions 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, a 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 408(k)(6), 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)(i). The term “Elective Contributions” includes Pre-Tax Elective Contributions and Designated Roth Contributions. “Elective Contributions” shall not include any amounts properly distributed as Excess Amounts.

**2.19. 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; and (d) any individual treated as an employee of an Affiliated Employer under the “leased employee” rules in Section 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 Section 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.

**2.20. Employee Nondeductible Contribution Account.** “Employee Nondeductible Contribution Account” means an account established on the books of the Trust for the purpose of recording the employee nondeductible contributions held on behalf of a Participant pursuant to Article 4 and any income, expenses, gains, or losses incurred thereon.

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

**2.22. Employer Contribution Account.** “Employer Contribution Account” means an account established on the books of the Trust for the purpose of recording the Employer profit sharing or money purchase contributions made on behalf of a Participant pursuant to Article 4 and any income, expenses, gains, or losses incurred thereon.

**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.”

**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 Plan Year or other 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 Section 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 case, in the following computation period.

**2.26. Nonelective Employer Contribution Account.** "Nonelective Employer Contribution Account" means an account established on the books of the Trust for the purpose of recording the nonelective Employer contributions held on behalf of a Participant pursuant to Article 4 and any income, expenses, gains or losses incurred thereon.

**2.27. Non-Highly Compensated Employee.** "Non-Highly Compensated Employee" means any Employee who is not a Highly Compensated Employee.

**2.28. Normal Retirement Age.** "Normal Retirement Age" means age 59½; provided, however that if the Adoption Agreement provides that the Plan is a money purchase plan, and age 59½ is earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the Employees perform services, effective for Plan Years beginning on or after June 30, 2008, "Normal Retirement Age" means age 62.

**2.29. Owner-Employee.** "Owner-Employee" means the sole proprietor, if the Employer is a sole proprietorship, or a partner who owns more than 10 percent of either the capital interest or the profits interest, if the Employer is a partnership.

**2.30. Paired Plans.** "Paired Plans" mean either (a) a combination of a money purchase plan and a profit sharing plan, both of which use this Prototype Plan, or (b) a combination of a defined benefit standardized form plan and this Plan.

**2.31. Participant.** "Participant" means an Employee who has met the requirements of Section 3.1 or Section 3.2.

**2.32. Plan.** "Plan" means this Plan and Trust Agreement adopted by the Employer as provided herein and the Adoption Agreement executed by the Employer.

**2.33. Plan Administrator.** "Plan Administrator" means the person(s) or entity named to administer the Plan (as set forth in Section 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 of or termination of the Plan, or in the case of change in Plan Year, a period of less than 12 consecutive months may be designated as the Plan Year.

**2.35. PPA Effective Date.** "PPA Effective Date" means either (i) the first Plan Year beginning on or after January 1, 2007, or (ii) in the case of the adoption of this Prototype Plan by the Employer after that Plan Year via an amendment to a preexisting plan, the earlier of the effective date of any PPA-required provisions under the preexisting plan or the effective date of the adoption of this Prototype Plan by the Employer.

**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 time deferred.

**2.37. Prototype Plan.** "Prototype Plan" means the form of this Plan and Trust Agreement, as approved from time to time by the Internal Revenue Service.

**2.38. Prototype Sponsor.** "Prototype Sponsor" means Fidelity Management & Research Company, a Massachusetts corporation, or its successor.

**2.39. 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 Section 7.9.

**2.40. 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 Section 4.8, that may be included in determining whether the Plan meets the ADP test described in Section 12.5.

**2.41. Qualified Nonelective Employer Contribution Account.** "Qualified Nonelective Employer Contribution Account" means an account established on the books of the Trust for the purpose of recording the Qualified Nonelective Employer Contributions held on behalf of a Participant pursuant to Article 4 and any income, expenses, gains or losses incurred thereon.

**2.42. 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 Prototype Sponsor 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.

**2.43. Roth Effective Date.** "Roth Effective Date" means January 1, 2013 or such later date as Designated Roth Contributions are allowed under this Prototype Plan, as determined by the Prototype Sponsor. 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.

**2.44. 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.

**2.45. 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 qualified domestic relations order (as defined in Code section 414(p)).

**2.46. Treasury Regulations.** "Treasury Regulation" means a regulation promulgated under the Code by the Internal Revenue Service.

**2.47. Trust.** "Trust" means the trust fund established under Section 14.1, and "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 Prototype Sponsor.

**2.48. Year of Service.** "Year of 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 credited with at least 1,000 Hours of Service; 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.

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## Article 3. Participation

**3.1. General Rule.** Each Employee shall become a Participant on the first day of the calendar month in which he first fulfills the age and service requirements specified by the Employer in the Adoption Agreement. For

purposes of this Section 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 Section 2.19) 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 Section 3.1. If an individual who is not an Employee (as defined in Section 2.19) 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.

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## Article 4. Contributions

**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 (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 Section 14.2.

**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 Sections 12.5 and 12.8, an "Eligible Participant" is a Participant who is an active Employee on any day during the Plan Year, and for purposes of Sections 4.7 and 4.8 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. An Eligible Participant must have Compensation during the Plan Year to receive a contribution under this Article 4.

**4.3. Profit Sharing Plans, Safe Harbor 401(k) /Profit Sharing Plans, and Standardized 401(k) /Profit Sharing Plans.** If the Adoption Agreement provides that the Plan is either a profit sharing plan, a safe harbor 401(k)/profit sharing plan, or a standardized 401(k)/profit sharing plan, the Employer profit sharing contribution shall be made in a discretionary amount determined by the Employer each Plan Year. An Employer may make profit sharing contributions whether or not it has current or accumulated profits. In addition, if the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan or standardized 401(k)/profit sharing plan, Elective Contributions shall be permitted in accordance with Section 4.5. If the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan, nonelective Employer contributions shall be made as specified in Section 4.7. Additionally, if the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan, Elective Contributions under Section 4.5 and Nonelective Employer contributions under Section 4.7 shall remain in effect for an entire 12-consecutive-month Plan Year, except as otherwise permitted by section 1.401(k)-3(e) 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 Adoption Agreement provides that the Plan is a standardized 401(k)/profit sharing plan, Qualified Nonelective Employer Contributions may be made as specified in Section 4.8.

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

**4.5. Elective Contributions.** If the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan or a standardized 401(k)/profit sharing plan, 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 or dollar amount per payroll period,

equal to a whole number multiple of one percent. 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 401(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 of 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 Section 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. Catch-Up 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).

**4.7. Nonelective Employer Contributions.** If the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan, the Employer shall make a Nonelective Employer contribution for each Eligible Participant (as defined in Section 4.2) for the Plan Year in the amount of 3 percent of such Eligible Participant's Compensation for the Plan Year, provided that the conditions of Section 1.401(k)-2(a)(6) of the Treasury Regulations are satisfied.

**4.8. Qualified Nonelective Employer Contributions.** If the Adoption Agreement provides that the plan is a standardized 401(k)/profit sharing 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 Section 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 Section 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.

**4.9. Allocation of Profit Sharing Contributions (Nonintegrated Plans).** If the Plan is a profit sharing plan (including a safe harbor 401(k)/profit sharing plan or a standardized 401(k)/profit sharing plan) and the Plan is not integrated with Social Security, Employer profit sharing contributions for any Plan Year shall be allocated as of the last day of the Plan Year among the Employer Contribution Accounts of the Eligible Participants (as defined in Section 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.

**4.10. Allocation of Profit Sharing Contributions (Integrated Plans).** If the Adoption Agreement provides that the Plan is a profit sharing plan (including a safe harbor 401(k)/profit sharing plan) integrated with Social Security, Employer profit sharing contributions shall be allocated as follows:

- (a) Subject to the overall permitted disparity limits set forth in paragraph (f) below, Employer profit sharing contributions for the Plan Year shall be allocated to Eligible Participants' Accounts in the following manner:

**STEP 1:** Employer profit sharing 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 all Eligible Participants' total Compensation for the Plan Year, but not in excess of 3 percent of each Eligible Participant's total Compensation for that year.

**STEP 2:** Any Employer profit sharing contributions remaining after the allocation in Step One shall be allocated to each Eligible Participant's Account in the ratio that each Eligible Participant's Compensation for the Plan Year in excess of the Integration Level bears to the excess Compensation of all Eligible Participants, but not in excess of 3 percent of each Eligible Participant's excess Compensation. For purposes of this Step Two, in the case of any Eligible Participant who has exceeded the Cumulative Permitted Disparity Limit described below, such Eligible Participant's total Compensation for the Plan Year will be taken into account.

**STEP 3:** Any Employer profit sharing contributions remaining after the allocation in Step Two 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, which may not exceed the Profit

Sharing Maximum Disparity Rate. For purposes of this Step Three, 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 4:** Any remaining Employer profit sharing 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 Section 2.11 of the Plan.
- (d) The "Profit Sharing Maximum Disparity Rate" shall be the lesser of:
  - (1) 2.7 percent; or
  - (2) the applicable percentage determined in accordance with the table below:

If the Integration Level is more than	But not more than	the applicable percentage is:
\$0	X*	2.7 percent
X*	80 percent of TWB	1.3 percent
80 percent of TWB	Y**	2.4 percent

\*X = the greater of \$10,000 or 20 percent of the TWB

\*\*Y = any amount more than 80 percent of the TWB but less than 100 percent of the TWB.

If the Integration Level used is equal to the Taxable Wage Base, the applicable percentage is 2.7 percent.

- (e) "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.
- (f) 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.

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

**4.12. Allocation of Money Purchase Contributions (Integrated Plans).**

If the Adoption Agreement provides that the Plan is a money purchase plan integrated with Social Security, Employer money purchase 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 Section 2.11 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) 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) The Money Purchase Maximum Disparity Rate is equal to the lesser of:
  - (1) 5.7 percent; or
  - (2) the applicable percentage determined in accordance with the table below:

If the Integration Level is more than	But not more than	the applicable percentage is:
\$0	X*	5.7 percent
X*	80 percent of TWB	4.3 percent
80 percent of TWB	Y**	5.4 percent

\*X = the greater of \$10,000 or 20 percent of the TWB  
 \*\*Y = any amount more than 80 percent of the TWB but less than 100 percent of the TWB.

If the Integration Level used is equal to the Taxable Wage Base (TWB), the applicable percentage is 5.7 percent.

- (d) 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 Excess 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 the Plan Year 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.

**4.13. Paired Plans.** If an Employer adopts paired profit sharing and money purchase pension plans using this basic plan document, the Adoption Agreement for the money purchase pension plan must provide for a contribution rate of at least 3 percent of each Eligible Participant's Compensation for the Plan Year (unless the Employer has elected a contribution rate of zero (0) percent on the Adoption Agreement for the money purchase pension plan). Only one of the Paired Plans may be integrated with Social Security.

**4.14. Time and Manner of Employer Contributions.** Employer profit sharing, money purchase contributions, nonelective Employer contributions and Qualified Nonelective 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, but not later than the 15th business day of the calendar month following the month in which such amount otherwise would have been paid to the Participant, or within such other time frame as may be determined by applicable regulation or legislation. Each Employer 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 Employer contribution. If the Trustee receives any contribution under the Plan for which instructions have not been furnished, or for which the instructions furnished are, in the opinion of the Trustee, incomplete or unclear, the Trustee may hold the contribution invested in shares of the default investment medium specified in the Adoption Agreement or other form acceptable to the Trustee pending receipt of instructions or clarification acceptable to the Trustee, hold the contribution uninvested pending receipt of instructions or clarification acceptable to the Trustee, or return the contribution to the Employer. In so doing, the Trustee shall not be deemed to have exercised any fiduciary discretion, nor shall the Trustee be liable for any fluctuation in security prices. Each contribution shall also be accompanied by investment instructions pursuant to Section 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. In addition, the Employer may also appoint a trustee to establish a separate trust for claims on behalf of the trust for delinquent contributions under the Plan. The Trustee shall be authorized to provide information and records regarding contributions it has received to the Plan Administrator or other named fiduciary, and may accept contributions and/or carry out related allocation instructions from, such named fiduciary upon its request. As a directed trustee pursuant to ERISA section 403(a)(1) for all purposes, the Trustee shall only pursue any claim that the Plan might have with respect to delinquent loan repayments or Plan contributions as specifically directed to do so by the Plan Administrator or other named fiduciary.

**4.15. Contributions by Participants.** Participants may not make contributions to the Plan (except as provided in Sections 4.5 and 4.6). If the Plan is adopted as an amendment of 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.



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## Article 5. Vesting

**5.1. 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.

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## Article 6. Investment of Contributions

**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 and 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 Section 7.4), who shall direct the investment of the Account in accordance with this Section 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 agent 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 Prototype Sponsor;
- (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. No charge shall be made by Fidelity Management & Research Company for purchase or sale of shares of a Registered Investment Company managed by Fidelity Management & Research Company, other than the charges set forth in the most recent prospectus of such Registered Investment Company.

Provided that the Trustee or its nominee is a bank, trust company or other entity described in Section 2550.403a-1(b) of the DOL Regulations, to the extent applicable, any assets of the Plan may be held in the name of the Trustee or its nominee or nominees, and any assets so held may be commingled with other such assets registered in that name, whether or not held under similar Trust Agreements or in any fiduciary capacity whatsoever; provided, however, that the books of the Trustee shall at all times reflect the identity of the beneficial owners of such assets. The Trustee shall cause to be delivered to each Participant (or, following the death of the Participant, the Beneficiary), at his or her last address of record, all notices, prospectuses, financial statements, proxies and proxy-soliciting materials that may come into the Trustee's possession by reason of the assets held in the Participant's Account. The Participant (or his Beneficiary) may direct the Trustee as to the manner in which any voting rights shall be exercised in a form and manner acceptable to the Trustee and delivered to the Trustee or its designee within the time prescribed by it. The Trustee shall not vote or exercise any other rights with respect to any assets held hereunder except in accordance with the timely written instructions of the Participant for whose Account such assets are held. Notwithstanding the foregoing, to the extent the Plan is subject to ERISA, the requirements of section 2550.403a-1(b) of the DOL Regulations shall be satisfied.

**6.3. Reinvestment of Investment Earnings.** In the absence of investment instructions pursuant to this Article 6, all dividends, capital gains, income, interest and distributions of every nature received in respect of the assets in a Participant's Account (or, following the death of the Participant, the Beneficiary's Account) shall be reinvested as follows:

- (a) a distribution of any nature received in respect of Registered Investment Company Shares shall be reinvested in additional shares of that Registered Investment Company; and
- (b) any other distribution of any nature received in respect of assets in the Account shall be invested as provided in Section 6.1.

Assets of the Plan shall be valued, at their fair market value, on each December 31 and on such other dates as the Trustee considers necessary or convenient. The income, gains, expenses and losses attributable to a Participant's Account (or, following the death of the Participant, the Beneficiary's Account) shall be credited or debited, as applicable, to his Account alone.

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## 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 Section 7.14.

**7.2. Commencement of Benefits.** Upon a distributable event described in Section 7.1, a Participant shall file a claim for benefits with the Plan Administrator, specifying the manner of distribution in accordance with

Section 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 Section 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 Section 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(l), 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 Section 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 Section 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 Section 7.5(b), distribution of installments shall continue after his death to his Beneficiary subject to Section 9.1(d). In the case of a Participant who dies after having received a distribution under Section 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 Section 7.4 and Section 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 Section 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, purchased from an insurance company; and
  - (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 Qualified Joint and 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, as provided in Section 15.4. 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 Section 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 Section 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 Section 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) Section 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 less than 30 days and no more than 180 days prior to the Annuity Starting Date. However, distribution may commence less 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 415. In addition, upon termination of the Plan, if the Plan does not offer an annuity option (under Section 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 certifying that a distribution of a Participant's benefits is payable pursuant to the Plan, and specifying the manner and amount of payment. The Trustee shall be fully protected in acting upon the directions of the Plan Administrator in making benefit distributions, and shall have no duty to determine the rights or benefits of any person under the Plan or to inquire into the right or power of the Plan Administrator to direct any such distribution. A beneficiary designation form completed and filed in accordance with Section 7.4 shall be deemed a direction of the Plan Administrator for purposes of this Section 7.8. The Trustee shall be entitled to assume conclusively that any determination by the Plan Administrator with respect to a distribution meets the requirements of the Plan. The Trustee shall not be required to make any payment hereunder in excess of the net realizable value of the assets of the Trust held for the Participant at the time of such payment, nor to make any payment in cash unless the Plan Administrator has furnished instructions in a form and manner acceptable to the Trustee as to the assets to be converted to cash for the purposes of making payment. The Trustee is expressly authorized to liquidate any assets held in a Participant's Account to make a payment under this Section, but shall not be deemed to have exercised any fiduciary discretion in doing so.

**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 Section 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 Section 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 Section 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 the Eligible Recipient, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the 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; any distribution to the extent such distribution is required under Code section 401(a)(9) or is on account of a hardship; except as provided in Treasury Regulations or applicable IRS guidance with respect to Roth 401(k) contributions, the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution that is reasonably expected to total less than \$200 during a year (determined taking into the account the provisions of Treas. Reg. section 1.401(k)-1(f)(4)(ii)). For purposes of the \$200 rule, a distribution from a designated Roth account and a distribution from other accounts under the Plan are treated as made under separate plans. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b), or to a qualified defined contribution plan described in Code section 401(a) or 403(a), or after December 31, 2006 in a direct rollover to an annuity contract described in section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
  - (2) Eligible Plan. An "Eligible Plan" is 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, an individual retirement account described in Code section 408(a), effective for a distribution after December 31, 2007, a Roth individual retirement account described in Code section 408A(b), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), or a qualified plan described in Code section 401(a), that accepts the distributee's eligible rollover distribution. The definition of eligible retirement 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).
  - (3) Eligible Recipient. "Eligible Recipient" means a Participant, the surviving Spouse of a deceased Participant, an Alternate Payee under a QDRO who is either the Spouse or the former Spouse of a Participant.
- (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 that is at least \$500 paid to an Eligible Plan specified by the

Eligible Recipient. Except to the extent provided in Treasury Regulations or applicable IRS guidance with respect to Designated Roth Contributions or Roth rollover contributions, an Eligible Rollover Distribution to an Eligible Recipient who does not make the election described in the preceding sentence 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.

- (c) Notwithstanding (a)(2) above, a direct rollover of a distribution from a Designated Roth Contribution account will only be made to another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) or to a Roth IRA described in Code section 408A, and only to the extent the rollover is permitted under the rules of Code section 402(c).
- (d) Notwithstanding anything in this Section 7.10 to the contrary, for distributions after December 31, 2006, a designated beneficiary (as defined in Code section 401(a)(9)(E)) of a Participant who is not the surviving Spouse of the Participant may elect a direct rollover of an Eligible Rollover Distribution to an inherited individual retirement account or annuity as described in Code section 402(c)(8)(B) which is established for the purposes of receiving such a rollover distribution.

#### 7.11. Benefit Claims Procedure.

- (a) Any claim for benefits under the Plan shall be made in writing to the Plan Administrator. If such claim for benefits is wholly or partially denied, the Plan Administrator shall notify the Participant or Beneficiary of the denial of the claim within 90 days after receipt of the claim (or within 180 days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to the claimant within the initial 90-day period). Notwithstanding the foregoing, if a claim is for distribution of benefits under the Plan as a result of a Disability, written notice of the disposition of the claim shall be furnished to the claimant within 45 days after the application is filed. If the claim is unable to be processed within the initial 45-day period for reasons beyond the control of the Plan Administrator, the time for reviewing the claim may be extended an additional 30 days provided that written notice of the extension is provided to the claimant before the initial 45-day review period expires. If at the end of the 30-day extension period, the claim is still unable to be processed due to reasons beyond the control of the Plan Administrator, the time for reviewing the claim may be extended for an additional 30 days provided that written notice of the extension is provided to the claimant before the 30-day extension period expires. Such notice of denial shall:

- (1) be in writing;
- (2) be written in a manner calculated to be understood by the Participant or Beneficiary; and
- (3) contain:
  - (i) the specific reason or reasons for denial of the claim;
  - (ii) a reference to the specific Plan provisions upon which the denial is based;
  - (iii) a description of any additional material or information necessary to perfect the claim, along with an explanation of why such material or information is necessary; and
  - (iv) an explanation of the claims review procedure and the applicable time limits in accordance with the provisions of this Section, as well as a statement of the claimant's right to bring an action under ERISA section 502(a) following an adverse determination upon review.

- (b) Within 60 days after the receipt by the Participant or Beneficiary of a written notice of denial of the claim, or such later time as shall be deemed reasonable taking into account the nature of the benefit subject to the claim and any other attendant circumstances, the Participant or Beneficiary (or his duly authorized representative) may file a written request with the Plan Administrator that it conduct a full and fair review of the denial of the claim for benefits. However, if the claim that was denied was for distribution of benefits under the Plan as a result of a Disability, a claimant shall have 180 days from the date that the claim was denied to file such a request. As part of such a request, the Participant or Beneficiary (or his duly authorized representative) may submit written comments, documents, records, and other information

relating to the claim for benefits (regardless of whether such information was submitted or considered in the initial benefit determination). A claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.

- (c) The Plan Administrator shall deliver to the Participant or Beneficiary a written decision on the claim within 60 days after the receipt of the aforementioned request for review, except that if there are special circumstances (such as the need to hold a hearing, if necessary) which require an extension of time for processing, the aforementioned 60-day period shall be extended to 120 days (if written notice of such extension and circumstances is given to the claimant within the initial 60-day period). Notwithstanding the foregoing, if the claim is for distribution of benefits under the Plan as a result of a Disability, a final decision shall be made by the Plan Administrator within 45 days of receipt of the appeal. The Plan may extend the review period for an additional 45 days provided that written notice of the extension is provided to the claimant before the initial 45-day review period expires. Such decisions shall:
  - (1) be written in a manner calculated to be understood by the Participant or Beneficiary;
  - (2) include the specific reason or reasons for the decision;
  - (3) contain a reference to the specific Plan provisions upon which the decision is based;
  - (4) include a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits; and
  - (5) include a statement of the claimant's right to bring an action under ERISA section 502(a).
- (d) The decision of the Plan Administrator shall be final and binding on all parties, unless determined by a court of competent jurisdiction to be arbitrary and capricious.

#### 7.12. Statute of Limitations.

A Participant, Beneficiary or Alternate Payee (collective referred to as "Claimant" in this section) 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). Nothing in this Plan should be construed to relieve a Claimant of the obligation to exhaust all claims and review procedures under 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 is 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 Section 7.1, except as provided in this Section 7.14:

- (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(h)(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 Section 7.10 of the Plan and any Participant taking such a distribution shall be suspended from making Deferral Contributions and Employee Contributions under the Plan for a period of 6 months following the date of any such distribution.

- (b) **Qualified Reservist Distribution.** 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 Hurricane Distributions.** Qualified Individuals (as defined in subsection (2) below) may designate all or a portion of a qualifying distribution as a Qualified Hurricane Distribution (as defined in subsection (1) below).
  - (1) A "Qualified Hurricane Distribution" means any distribution made on or after the QHD Effective Date (as defined in subsection (3) below) and before the QHD Distribution Date (as defined in subsection (4) below) to a Qualified Individual, to the extent that such distribution, when aggregated with all other Qualified Hurricane 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 Hurricane Distribution must be made in accordance with and pursuant to the distribution provisions of the Plan, except that:
    - (i) A Qualified Hurricane Distribution of amounts attributable to Nonelective Employer Contributions, Deferral Contributions and Qualified Nonelective Employer contributions shall be deemed to be made after the occurrence of any distribution pursuant to distributable events otherwise applicable under Code section 401(k)(2)(B)(i), such as termination of employment (and shall be deemed permissible under Section 7.10), and
    - (ii) The requirements of Code sections 401(a)(31), 402(f) and 3405 and Section 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 Code section 1400M or other federal law which treats such a person as if Code section 1400M applied.
  - (3) The "QHD Effective Date" means the date upon which Code section 1400M would be made applicable to the Qualified Individual in accordance with (2) above.
  - (4) The "QHD Distribution Date" means the date upon which the Qualified Individual is no longer able to take the distribution pursuant to Code section 1400Q or other federal law which provides Code section 1400Q will apply.
  - (5) An Eligible Employee who received a Qualified Hurricane Distribution, as defined herein, may repay to the Plan the Qualified Hurricane Distribution, provided the Qualified Hurricane 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 Hurricane Distribution was received and does not exceed the amount of such distribution.

## Article 8. Joint and Survivor Annuity Requirements

**8.1. Definitions.** The following definitions apply to this Article:

- (a) **Election Period.** "Election Period" means the period beginning on the first day of the Plan Year in which a Participant attains age 35 and ending on the date of the Participant's death. If a Participant separates from service before the first day of the Plan Year in which he reaches age 35, the Election Period with respect to his Account balance as of the date of separation shall begin on the date of separation.
- (b) **Earliest Retirement Age.** "Earliest Retirement Age" means the earliest date on which the Participant could elect to receive retirement benefits under the Plan.
- (c) **Qualified Election.** "Qualified Election" means a waiver of a QJSA or a QPSA. Any such waiver shall not be effective unless: (1) the Participant's Spouse consents in writing to the waiver; (2) the waiver designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the Spouse's consent expressly permits designations by the Participant without any further spousal consent); (3) the Spouse's consent acknowledges the effect of the waiver; and (4) the Spouse's consent is witnessed by a notary public. Additionally, a Participant's waiver of the QJSA shall not be effective unless the waiver designates a form of benefit payment which may not be changed without spousal consent (unless the Spouse's consent expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of the Plan Administrator that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any consent by a Spouse obtained under these provisions (and any establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to the particular Spouse involved. A consent that permits designations by the Participant without any requirement of further consent by the Spouse must acknowledge that the Spouse has the right to limit the consent to a specific Beneficiary and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of those rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 8.5.
- (d) **Qualified Joint and Survivor Annuity (QJSA).** A "QJSA" means an immediate annuity for the life of a Participant, with a survivor annuity for the life of the Spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse, and which is the amount of benefit that can be purchased with the Participant's entire Account Balance. The percentage of the survivor annuity under the Plan shall be 50 percent.
- (e) **Qualified Optional Survivor Annuity (QOSA).** A "QOSA" means an immediate annuity for the life of a Participant, with a survivor annuity for the life of the Spouse which is equal to 75 percent of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse, and which is the amount of benefit that can be purchased with the Participant's vested Account Balance.
- (f) **Qualified Preretirement Survivor Annuity (QPSA).** A "QPSA" is an annuity purchased for the life of a Participant's surviving Spouse, in accordance with Section 8.4.

## 8.2. Applicability.

- (a) Generally. The provisions of Sections 8.3 through 8.6 set forth the joint and survivor annuity requirements of Code sections 401(a)(11) and 417 and shall generally apply to a Participant who is credited with at least 1 Hour of Service on or after August 23, 1984, and such other Participants as provided in Section 15.2.
- (b) **Exception for Certain Profit Sharing Plans.** The provisions of Sections 8.3 through 8.6 shall not apply to a Participant in a profit sharing plan (including a safe harbor 401(k)/profit sharing plan or a standardized 401(k)/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 in accordance with Section 6.3 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 Section 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 Section 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.
- (c) Exception for Certain Amounts. The provisions of Sections 8.3 through 8.6 shall not apply to any distribution made on or after the first day of the first 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)).

**8.3. Qualified Joint and Survivor Annuity.** Unless an optional form of benefit 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 straight life annuity. In either case, the Participant may elect to have such annuity distributed upon his attainment of the Earliest Retirement Age under the Plan. A "straight life annuity" is an annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

**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 be treated as the Spouse or surviving Spouse (and a current Spouse will not 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 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. Notwithstanding the foregoing, in the case of a Participant who separates from service before attaining age 35, notice must be provided within a reasonable period ending after his separation from service.

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 reaches 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 Section 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 Section 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 Section 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).

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## Article 9. Minimum Distribution Requirements

### 9.1. Required Minimum Distributions.

(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).
- (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, or
  - (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

(4) TEFRA Section 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 Section 15.3.

(b) 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 Section 9.1(f), 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 Section 9.1(f), 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 Section 9.1(b)(2), other than Section 9.1(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 9.1(b)(2) and Section 9.1(d), unless Section 9.1(b)(2)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 9.1(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 9.1(b)(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 Section 9.1(b)(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 Section 9.1(c) and (d). 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 section 401(a)(9) of the Code and the Treasury Regulations.

(c) Required Minimum Distributions during Participant's Lifetime.

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

(i) the quotient obtained by dividing the Participant's Account balance by the distribution period 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 Section 9.1(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) 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 Section 9.1(f), 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 Section 9.1(d)(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 Section 9.1(b)(2)(i), this Section 9.1(d)(2) will apply as if the surviving Spouse were the Participant.

- (e) Definitions.
- (1) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 7.4 of the Plan and is the designated Beneficiary under section 401(a)(9) of the Code 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 Section 9.1(b)(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 66½, 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.
- (f) 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 Sections 9.1(b)(2) and 9.1(d)(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 Section 9.1(b)(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 (f), distributions will be made in accordance with Sections 9.1(b)(2) or 9.1(d)(2).

## 9.2. Modification of Required Minimum Distributions for 2009.

- (a) Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions specifically equal to the 2009 RMDs, did not receive those distributions for 2009 unless the Participant or Beneficiary elected to receive such distributions.
- (b) Any Participant or Beneficiary who had elected a systematic withdrawal plan ("installments") to satisfy (in part or wholly) a 2009 RMD was permitted to elect to stop those installments.

- (c) For only those Participants and Beneficiaries who have made the election described in 9.2(a), a partial withdrawal was available to allow such a Participant or Beneficiary to withdraw any part of his or her Account prior to December 31, 2009.
- (d) Participants and Beneficiaries described in 9.2(a) were provided the opportunity to elect to receive 2009 RMDs as described in the preceding sentences of Section 9.2.
- (e) Notwithstanding Article 9 of the Plan, and solely for purposes of applying the direct rollover provisions of the plan, 2009 RMDs were treated as eligible rollover distributions.

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## Article 10. Amendment and Termination

**10.1. Prototype Sponsor's Right to Amend.** The Prototype Sponsor may amend any part of the Prototype Plan by delivering written notice of such amendment to the Employer; provided, however, that:

- (a) the Prototype Sponsor shall have no power to amend or terminate the Prototype 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 Section 14.2, 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 Prototype Sponsor shall not have the right to amend the Prototype Plan in a manner that violates Section 10.3;
- (c) the Prototype Sponsor shall have no power to amend the Prototype 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 or determination letter, the Prototype Sponsor will no longer have the authority to amend the Prototype 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. 2011-49 that is not permitted under the M&P program, or (ii) the Internal Revenue Service notifies the Employer, in accordance with section 24.03 of Rev. Proc. 2011-49, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan.

**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 approved Prototype 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 pursuant to Section 14.6. 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; or
- (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 and correct obvious and unambiguous typographical errors and/or cross references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

An election made by the Employer within the terms of the Prototype Plan shall be deemed to continue after amendment of the Prototype Plan by the Prototype Sponsor 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 the amendment satisfies the conditions in (a) and (b) below:

- (a) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of paragraph (a), 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.
- (b) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an Annuity Starting Date earlier than the earlier of: (1) the 90th day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the ERISA requirements at 29 CFR 2520.104b-3 relating to a summary of material modifications or (2) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

**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 Section 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.

**10.8. Transfers to the Pension Benefit Guaranty Corporation upon Plan Termination.** Effective on and after January 1, 2007, in the event that the Employer terminates the Plan, as described in Articles 10.6 and 10.7, and, at the time the whereabouts of one or more distributees are unknown and the Employer so directs the Trustee, subject to applicable guidance, the Trustee shall transfer the Accounts of such distributees to the Pension Benefit Guaranty Corporation.

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## 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) Maintaining all necessary records for administration of the Plan.
    - (v) 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.
    - (vi) 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 QJSAs, QOSAs and QPSAs (under Code section 417(a)), and the Code section 401(k) safe harbor notice described in Section 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 Section 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 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 whose 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:

- (a) 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
- (b) 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).

If permitted by the Trustee in a form and manner acceptable to it, the Plan will accept Participant rollover contributions and/or direct rollovers of distributions made after December 31, 2001 (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 sections 401(a) or 403(a), excluding after-tax employee contributions (except as provided below with respect to Roth 401(k) contributions);
- (2) an annuity contract described in Code section 403(b), excluding after-tax employee contributions (except as provided below with respect to Roth 403(b) 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 instrumentality 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 includible in gross income (except as provided below with respect to Roth IRA contributions).

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 Section 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 Section 11.3 shall be considered Employee nondeductible contributions held under this Plan pursuant to Section 4.15.

Subject to the provisions of Article 14, the Plan Administrator may direct the Trustee to transfer assets held in the Trust for the account of a former Participant to the custodian or trustee 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 Section 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 involves 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 according to the laws of the Commonwealth of Massachusetts to the extent not pre-empted 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. References 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.** If the Plan as maintained by the Employer fails to attain or to maintain qualification under the Code, it shall be considered an individually designed plan and no longer a Prototype Plan; upon knowledge of such event the Trustee shall resign pursuant to Section 14.6. An Employer who is not entitled to rely on the opinion letter issued to the Prototype Sponsor with respect to the Prototype Plan, as set forth in the Adoption Agreement, shall promptly apply for a determination letter as to the Plan.

**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(e)(3), Code section 402(h)(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. Veterans 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 Section 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, to it 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 addressor'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 Prototype Sponsor, nor any affiliate of either the Trustee or the Prototype Sponsor 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 Section and will have no obligation to inquire as to the competence of an individual entitled to receive any payments under this section.

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## Article 12. Limitations on Contributions

**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 Section 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 includible 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) towards the purchase of an annuity described in Code section 403(b) (whether or not the amounts are actually excludable from the gross income of the Employee).

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 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:

- (i) 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
- (ii) 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(u)(1)) 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 section 1.415(c)-2(g)(8) of the Treasury Regulations, 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 non-resident 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.

For Limitation Years beginning on or after July 1, 2007, 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 Section 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) of the Code 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) At the election of the Employer, Qualified Nonelective Employer Contributions.

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) Master or Prototype Plan. "Master or Prototype 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 for Limitation Years beginning on or after January 1, 2002, except for Catch-Up Contributions, 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(f)(2)) which is otherwise treated as an Annual Addition under Code section 415(l)(1) or Code section 419A(d)(2). If a short Limitation Year is created because of an amendment changing the Limitation Year, the Maximum Permissible Amount shall not exceed the Defined Contribution Dollar Limitation multiplied by a fraction of which the numerator is equal to the number of months in the short Limitation Year, and the denominator is 12. If a plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, the plan is treated as if the Plan were amended to change its Limitation Year.

**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 Section 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 such 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 Section 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 Master or Prototype defined contribution plans.

Any Excess Amount attributed to this Plan shall be disposed of in the manner described in Section 12.2.

**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 Section 4.6 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 of an Affiliated Employer. Notwithstanding any other provision of the Plan, Excess Deferrals, plus any income and minus any loss allocable thereto, as determined under Section 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 Section 12.8 below with respect to Adoption Agreements providing that the Plan is a safe harbor 401(k)/profit sharing plan, 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 single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(k).

If this Plan satisfies the requirements of Code section 401(k), 401(a)(4) or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code sections only if aggregated with this Plan, then this Section shall be applied by determining the Deferral Ratios of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code section 401(k) only if they have the same plan year.

The Employer shall maintain records sufficient to demonstrate satisfaction for the "ADP" test and the amount of Qualified Nondiscriminatory Employer Contributions used in such test.

The Trustee shall have no responsibility for conducting the ADP test or for initiating without direction from the Plan Administrator any corrective measures as a result of the Plan not satisfying the ADP test.

**12.6. Allocation and Distribution of Excess Contributions.**

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 thereto, as determined under Section 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.

For Plan Years beginning prior to January 1, 2008, income or loss allocable to Excess Deferrals and Excess Contributions was also calculated for the period of time elapsing between the end of the "determination year" and the date of distribution.

**12.8. Deemed Satisfaction of Actual Deferral Percentage Test.**

Notwithstanding any other provision of this Article 12 to the contrary, if the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan, 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 any guidance published by the Internal Revenue Service.

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.

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**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)(7) 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 Section 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 Section 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 exists:
- (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 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 the 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 (1) 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 Section 13.2, the nonelective Employer contributions made for the Plan Year on behalf of any Eligible Participant who is not a Key Employee 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) 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 Section 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 Section 13.2, to the extent required to be nonforfeitable under Code section 416(b), may not be forfeited under Code section 411(a)(3)(B).

Notwithstanding any other provision of the Plan to the contrary, for purposes of this Article, Compensation shall include amounts that are not includable in the gross income of the Participant under a salary reduction agreement by reason of the application of Code section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b). Compensation shall generally be based on the amount actually paid to the Eligible Participant during the Plan Year.

**13.3. Application.** If the Adoption Agreement provides that the Plan is a standardized 401(k)/profit sharing 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. Notwithstanding the foregoing, if the Adoption Agreement provides that the Plan is a safe harbor 401(k)/profit sharing plan, a money purchase plan, or a profit sharing 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.

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## Article 14. Rights and Duties of Trustees

**14.1. Establishment of Trust.** The Trustee shall accept and hold in the Trust such contributions by or on behalf of Participants as it may receive from time to time from the Employer together with the earnings thereon, and shall open and maintain records of contributions to and withdrawals from the Accounts for such individuals as the Employer shall from time to time certify to it, by name and Social Security number, as Participants in the Plan.

**14.2. Exclusive Benefit and Return of Employer Contributions.** In accordance with Code section 401(a)(2) and ERISA section 403(c) (if applicable), the Trustee shall hold the assets of the Trust 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 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.

**14.3. Reports of the Trustee and the Employer.** Not later than 120 days after the close of each Plan Year where the Plan Year is the calendar year (or after the Trustee's resignation or removal pursuant to Section 14.6), the Trustee shall furnish to the Employer a written report containing such information as shall be reasonably necessary to complete reports and disclosures required of the Employer pursuant to ERISA, including, without limitation, records of the transactions performed in connection with the Plan during the period in question, and either a statement of the fair market value of the assets of each Participant's Account as of the end of the period, or information adequate to permit the Employer to compare such value. Upon the expiration of 60 days following the date on which such a report is furnished to the Employer, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to its acts, transactions, duties, obligations or responsibilities as shown in or reflected by such report, except with respect to any such acts or transactions as to which the Employer shall have filed written objections within such 60-day period or as otherwise required by law. With respect to a Plan Year on other than a calendar basis, the Trustee shall provide the reports described herein upon request.

The Employer shall be responsible for the preparation and filing of such reports and disclosures as may be required by ERISA, and for providing notice to interested parties as required by Code section 7476. The Employer shall also prepare any return or report required as a result of liability incurred by the Plan for tax on unrelated business taxable income, or windfall profits tax, or any return or report necessary to preserve the availability of any credit or deduction with respect thereto.

**14.4. 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.

**14.5. Limitation of Duties and Liabilities.** The Trustee shall not be responsible in any way for the purpose or propriety of any distribution made pursuant to Article 7 or any other action or nonaction taken pursuant to the request of the Employer, the Plan Administrator, a Participant or a Beneficiary; the validity or effect of the Plan and Trust Agreement; the qualification of the Plan or the Trust under the Code and ERISA; or the examination of the Plan by the Internal Revenue Service or the Department of Labor. Except as provided in Section 4.14, the Trustee shall have no authority to inquire into the correctness of any amounts contributed and remitted to the Trustee or to determine whether any contribution is payable under Article 4.

The Employer and the executor, administrator, or successor of the Employer, as appropriate, shall at all times fully indemnify and save harmless the Trustee, and its successors and assigns from any liability arising from distributions so made or actions so taken, and from any and all liability whatsoever which may arise in connection with the Plan, except liability arising from the gross negligence or willful misconduct of the Trustee.

The Trustee shall not be under any duty to take any action other than as herein specified with respect to the Trust, unless the Employer shall furnish the Trustee with instructions in proper form and such instructions shall have been specifically agreed to by the Trustee, or to defend or engage in any suit with respect to the Trust unless the Trustee shall have first agreed to do so and shall have been fully indemnified to its satisfaction.

The Trustee and its agents may conclusively rely upon and shall be protected in acting upon any written order from the Employer or its delegate or any other notice, request, consent, certificate or other instrument or paper believed by it to be genuine and to have been properly executed, and, so long as it acts in good faith, in taking or omitting to take any other action. The Trustee may delegate to one or more corporations the performance of record-keeping and other ministerial services in connection with the Plan, for a reasonable fee to be borne by the Trustee and not by the Plan or the Trust. Any such agent's duties and responsibilities shall be confined solely to the performance of such services, and shall continue only for so long as the Trustee named in the Adoption Agreement serves as Trustee. The Trustee shall not have any liability with respect to money transferred to an insurance company pursuant to the Plan.

**14.6. Substitution, Resignation or Removal of Trustee.** The Prototype Sponsor may at any time appoint as a substitute for the Trustee named in the Adoption Agreement another institution that is a bank or is a nonbank trustee that has received approval from the Internal Revenue Service; provided that the Prototype Sponsor shall notify the Employer in writing at least 30 days in advance of the effective date of any such appointment. The Trustee may resign at any time upon 30 days' notice in writing to the Employer, and may be removed by the Employer at any time upon 30 days' notice in writing to the Trustee. Upon resignation of the Trustee, the Prototype Sponsor may propose a successor trustee. Upon removal of the Trustee, the Employer shall appoint a successor Trustee, but in that event the Plan shall be considered an individually designed plan for purposes of Section 10.2. Upon receipt by the Trustee of written acceptance of appointment by a substitute or successor trustee, the Trustee shall transfer and pay over to such successor the assets of the Trust. The Trustee is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all its fees, compensation, costs and expenses, or for payment of any other liabilities constituting a charge on or against the assets of the Trust or on or against the Trustee, with any balance of such reserve remaining after the payment of all such items to be paid over to the substitute or successor trustee. The Trustee and the Prototype Sponsor shall not be liable for the acts or omissions of any substitute or successor trustee. If within 90 days after the Trustee's resignation or removal a successor Trustee has not been appointed, the Trustee shall terminate the Trust pursuant to Section 10.6. The Trustee named in the Adoption Agreement has accepted its appointment, and intends to serve, only for so long as the Employer's plan is a Prototype Plan. If the Plan is no longer a Prototype Plan, the Trustee shall resign in accordance with this Section 14.6. Notwithstanding the foregoing, any successor to the Trustee or successor trustee, either through sale or transfer of the business or trust department of the Trustee or successor trustee, or



through reorganization, consolidation, or merger, or any similar transaction of either the Trustee or successor trustee, shall, upon consummation of the transaction, become the successor trustee under this Agreement.

## Article 15. Transitional Rules

**15.1. Applicability.** The provisions of this Article 15 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.

**15.2. 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 Sections 8.3 and 8.4, 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 Section 15.2. 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 Section 15.2 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 Section 15.2 will no longer be available is provided in accordance with Treasury Regulation section 1.411(d)-4 Q&A-2(e)(1)(i) and (ii) 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 Section 15.2 to have Article 8 apply, and any Participant who does not so elect under the first sentence of this Section 15.2, 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 early 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 Section 15.2:

- (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 Section 8.1(d).
- (3) "Election period" begins on the later of (i) the 90th 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.

**15.3. 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 J-2 and Q&A J-3 of Treasury Regulation section 1.401(a)(9)-1 shall apply.

**15.4. Other Protected Benefits.** If a Participant's vested Account balance is subject to any optional form of benefit (including an in-service withdrawal) not currently offered under the Plan, such Participant shall be entitled to elect such optional form of benefit until the earlier of (A) the 90th day after notice that such optional benefit will no longer be available is provided in accordance with Treasury Regulation section 1.411(d)-4 Q&A-2(e)(1)(i) and (B) the first day of the second Plan Year following the Plan Year in which the amendment eliminating such optional form of benefit is adopted.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Plan Description: Prototype Standardized Profit Sharing Plan With CODA  
FFN: 31218740004-001 Case: 201200231 EIN: 04-2033129  
Letter Serial No: J293786a  
Date of Submission: 04/04/2012

FIDELITY MANAGEMENT & RESEARCH CO  
82 DEVONSHIRE STREET  
BOSTON, MA 02109

Contact Person:  
Janell Hayes  
Telephone Number:  
513-263-3602  
In Reference To: TEGE:EP:7521  
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the sponsor on behalf of employers must provide the date of adoption by the sponsor.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). The employer can generally rely on the letter as described in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, provided the terms of the plan are followed in operation.

Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

An employer that adopts this plan may not rely on this opinion letter with respect to: (1) whether any amendment or series of amendments to the plan satisfies the nondiscrimination requirements of section 1.401(a)(4)-5(a) of the regulations, except with respect to plan amendments granting past service that meet the safe harbor described in section 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; or (2) whether the plan satisfies the

effective availability requirement of section 1.401(a)(4)-4(c) of the regulations with respect to any benefit, right or feature.

An employer that adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter with respect to whether a benefit, right or other feature that is prospectively eliminated satisfies the current availability requirements of section 1.401(a)(4)-4 of the regulations.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 570 U.S. 12 (2013), which invalidated that section.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter in these circumstances by filing an application with Employee Plans Determinations on Form 5300, without restating for the Cumulative List in effect when the application is filed.

If you, the master or prototype sponsor, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the master or prototype sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

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You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Plan Description: Prototype Standardized Money Purchase Pension Plan  
FFN: 31218740004-002 Case: 201200232 EIN: 04-2033129  
Letter Serial No: J293787a  
Date of Submission: 04/04/2012

FIDELITY MANAGEMENT & RESEARCH CO  
82 DEVONSHIRE STREET  
BOSTON, MA 02109

Contact Person:  
Janell Hayes  
Telephone Number:  
513-263-3602  
In Reference To: TEGE:EP:7521  
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the sponsor on behalf of employers must provide the date of adoption by the sponsor.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). The employer can generally rely on the letter as described in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, provided the terms of the plan are followed in operation.

Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

An employer that adopts this plan may not rely on this opinion letter with respect to: (1) whether any amendment or series of amendments to the plan satisfies the nondiscrimination requirements of section 1.401(a)(4)-5(a) of the regulations, except with respect to plan amendments granting past service that meet the safe harbor described in section 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; or (2) whether the plan satisfies the

effective availability requirement of section 1.401(a)(4)-4(c) of the regulations with respect to any benefit, right or feature.

An employer that adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter with respect to whether a benefit, right or other feature that is prospectively eliminated satisfies the current availability requirements of section 1.401(a)(4)-4 of the regulations.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 570 U.S. 12 (2013), which invalidated that section.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter in these circumstances by filing an application with Employee Plans Determinations on Form 5300, without restating for the Cumulative List in effect when the application is filed.

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Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Plan Description: Prototype Standardized Profit Sharing Plan With CODA  
FFN: 31218740004-003 Case: 201200233 EIN: 04-2033129  
Letter Serial No: J293788a  
Date of Submission: 04/04/2012

FIDELITY MANAGEMENT & RESEARCH CO  
82 DEVONSHIRE STREET  
BOSTON, MA 02109

Contact Person:  
Janell Hayes  
Telephone Number:  
513-263-3602  
In Reference To: TEGE:EP:7521  
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the sponsor on behalf of employers must provide the date of adoption by the sponsor.

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Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

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effective availability requirement of section 1.401(a)(4)-4(c) of the regulations with respect to any benefit, right or feature.

An employer that adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter with respect to whether a benefit, right or other feature that is prospectively eliminated satisfies the current availability requirements of section 1.401(a)(4)-4 of the regulations.

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Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Plan Description: Prototype Standardized Profit Sharing Plan With CODA  
FFN: 31218740004-004 Case: 201200234 EIN: 04-2033129  
Letter Serial No: J293789a  
Date of Submission: 04/04/2012

FIDELITY MANAGEMENT & RESEARCH CO  
82 DEVONSHIRE STREET  
BOSTON, MA 02109

Contact Person:  
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513-263-3602  
In Reference To: TEGE:EP:7521  
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