GOVERNMENTAL DEFINED BENEFIT
VOLUME SUBMITTER
PLAN AND TRUST

BASIC PLAN DOCUMENT

[DB-BPD #07]

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SECTION 1
PLAN DEFINITIONS

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

1.01 **Account.** To the extent a Participant has made a Rollover Contribution to the Plan, a separate Account will be maintained to hold such amounts. A Participant's Rollover Contribution Account is always 100% vested. The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

1.02 **Accrual Computation Period.** The 12-consecutive month period used for measuring whether an Employee completes a Year of Accrual Service under the Plan. See Section 3.02(b)(2).

1.03 **Accrued Benefit.** Under AA #001 (governmental defined benefit plan), a Participant's Accrued Benefit, at any time, is the benefit determined under the benefit formula selected in AA §6, accrued in accordance with the Fractional Accrual Method or the Unit Accrual Method, as applicable. See Section 3.01. If this Plan is a Fully-Insured Plan (as designated under AA §6-1(c)), each Participant's Accrued Benefit, as of any applicable date, is the cash surrender value of the Participant's insurance contracts, or, if greater, the cash surrender value the Participant's insurance contracts would have had on such applicable date if:

(a) premiums payable for such Participant's years of participation for the current Plan Year and all prior Plan Years under such contracts had been paid before lapse;

(b) no rights under such contracts had been subject to a security interest at any time; and

(c) no policy loans were outstanding at any time.

Under a cash balance plan, a Participant's Accrued Benefit under the Plan is an annuity beginning at Normal Retirement Age that is the Actuarial Equivalent of the Participant's Cash Balance Account. See

1.04 **Accumulation Plan.** A special type of Plan under which a Participant's Normal Retirement Benefit is determined separately for each Plan Year, using Plan Compensation for the Plan Year (instead of Average Compensation). The Participant's Normal Retirement Benefit is the sum of each Plan Year's benefit. See Section 3.02(a)(3).

1.05 **Actuarial Equivalent.** Under AA #001 (traditional defined benefit plan), an Actuarial Equivalent benefit will be determined on the basis of the actuarial assumptions specified in AA §11-1.

Notwithstanding the preceding paragraph, for purposes of determining the amount of a distribution in a form other than an Annual Benefit that is nondecreasing for the life of the participant or, in the case of a qualified pre-retirement survivor, the life of the participant's spouse; or that decreases during the life of the participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the Annual Benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability payments, actuarial equivalence will be determined on the basis of the applicable mortality table and applicable interest rate under section 417(e), if it produces a benefit greater than that determined under the preceding paragraph.

The Employer may elect to determine actuarial equivalence by reference to a specified insurance or annuity contract by entering the information regarding the insurance or annuity contract in AA §11-1(a)(5). If the insurance or annuity contract specifies different interest and mortality assumptions for different purposes under the contract, the Employer may designate the assumptions under the contract that will be used to determine actuarial equivalence in AA §11-1(a)(5)(iv). Any change in the insurance or annuity contract, including the substitution of a different contract, that results in a change in the interest and mortality assumptions used to determine actuarial equivalence under the Plan shall be treated as an amendment of the Plan.

Under a cash balance plan, an Actuarial Equivalent benefit is an alternate form of benefit having the same actuarial value based on the actuarial assumptions specified in AA §11-1. However, a lump sum distribution shall be determined based on the current vested balance in the Participant's Cash Balance Account.

1.06 **Adoption Agreement ("Agreement").** The Adoption Agreement contains the elective provisions that an Employer may complete to supplement or modify the provisions under the Plan. Each adopting Employer must complete and execute the Adoption Agreement. If the Plan covers Employees of an Employer other than the Employer that executes the Employer Signature Page of the Adoption Agreement, such additional Employer(s) must execute a Participating Employer Adoption Page under the Adoption Agreement. (See Section 16for rules applicable to the adoption of the Plan by Participating Employers.)

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

1.08 **Anniversary Years.** An alternative period for measuring Eligibility Computation Periods (under Section 2.03(a)(2)) and Vesting Computation Periods (under Section 7.04). An Anniversary Year is any 12-month period which commences with the

Employee's Employment Commencement Date or which commences with the anniversary of the Employee's Employment Commencement Date.

1.09 **Annual Benefit.** The amount of the retirement benefit under the Plan that is used to apply the Maximum Permissible Benefit limit under Code §415. See Section 5.02.

1.10 **Annuity Starting Date**. The date an Employee commences distribution from the Plan. If a Participant commences distribution with respect to a portion of his/her Accrued Benefit, a separate Annuity Starting Date applies to any subsequent distribution. If distribution is made in the form of an annuity, the Annuity Starting Date may be treated as the first day of the first period for which annuity payments are made.

1.11 **Applicable Interest Rate**. For Plan Years beginning before January 1, 2008, the Applicable Interest Rate is the rate of interest on 30-year Treasury securities as specified by the Commissioner for the Lookback Month and for the Stability Period specified in AA §11-1. For Plan Years beginning on or after January 1, 2008, the Applicable Interest Rate is the adjusted first, second and third segment rates defined in Code §417(e)(3) for the Lookback Month (as defined in AA §11-1(c)) and for the Stability Period (as defined in AA §11-1(b)). For this purpose, the segment rates are the spot segment rates that would be determined for the applicable month under Code §430(h)(2)(C)(iv) without the 24-month averaging under Code §430(h)(2)(D) and determined without regard to the adjustment for the 25-year average segment rates provide in Code §430(h)(2)(C)(iv). For distributions with Annuity Starting Dates occurring during Plan Years beginning on or after January 1, 2008 and before January 1, 2012, these segment rates are adjusted by blending with the rate of interest for 30-year Treasury securities under the transition percentages specified in Code §417(e)(3)(D)(iii).

Notwithstanding any election under AA §11-1, a Plan amendment that changes the date for determining the Applicable Interest Rate (including an indirect change as a result of a change in Plan Year), shall not be given effect with respect to any distribution during the period ending one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the Participant's distribution would be reduced. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

1.12 **Applicable Mortality Table**. For Plan Years beginning before January 1, 2008, the mortality table set forth in Revenue Ruling 2001-62, or successor guidance. Effective for Plan Years beginning on or after January 1, 2008, the applicable annual mortality table within the meaning of Code §417 for the calendar year in which the Stability Period begins under AA §11-1(b). The Applicable Mortality Tables are set forth in Treas. Reg. §1.430(h)(3)-1 and related guidance. However, for purposes of applying the limitation on benefits in Section 5, the Applicable Mortality Table in Treas. Reg. §1.430(h)(3)-1 is not effective (and Rev. Rul. 2001-62 continues to apply) for years beginning before January 1, 2009, unless an earlier date is elected by the employer in AA §11-3.

1.13 **Automatic Rollover.** For Involuntary Cash-Out Distributions (as defined in Section 8.07(b)) made on or after March 28, 2005, the Plan Administrator will make a Direct Rollover to an individual retirement plan (IRA) designated by the Plan Administrator.

1.14 **Average Compensation.** The average of a Participant's annual Plan Compensation during the Averaging Period designated under AA §5-3. See Section 3.02(b)(1) for a complete definition of Average Compensation.

1.15 **Averaging Period.** The period used for determining an Employee's Average Compensation. Unless modified under AA §5-3(a), the Averaging Period is the three (3) consecutive Measuring Periods during the Participant's Compensation History which produces the highest Average Compensation.

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

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

1.18 **Cash Balance Account.** The Plan will maintain a Cash Balance Account for each Participant. The Cash Balance Account is a hypothetical account and is used to determine the amount of retirement benefits under the Plan.

1.19 **Cash-Out Distribution.** A total distribution made to a terminated Participant in accordance with Section 7.08.

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

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

1.22 **Compensation Limit.** The maximum amount of compensation that can be taken into account for any Plan Year for purposes of determining a Participant's Plan Compensation.

For Plan Years beginning on or after January 1, 2002, the Compensation Limit is $200,000, as adjusted cost-of-living increases in accordance with Code §401(a)(17)(B). In determining the Compensation Limit for any applicable period (the "determination period"), the cost-of-living adjustment in effect for a calendar year applies to any determination period that begins with or within such calendar year. For Plan Years beginning on or after January 1, 1994, and before January 1, 2002, the Compensation Limit taken into account for determining benefits provided under the Plan for any Plan Year is $150,000, as adjusted for increases in cost-of-living in accordance with Code §401(a)(17)(B).

If a determination period consists of fewer than 12 months, the Compensation Limit for such period is an amount equal to the otherwise applicable Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. A determination period will not be considered to be less than 12 months merely because compensation is taken into account only for the period the Employee is a Participant.

If compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable Compensation Limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning on or after January 1, 1989, and before January 1, 1994, the Compensation Limit in effect for determination periods beginning before January 1, 1994 is $200,000. In determining benefits in Plan Years beginning on or after January 1, 1994 and before January 1, 2002, the Compensation Limit in effect for determination periods beginning before January 1, 2002 is $150,000. In determining benefits in Plan Years beginning on or after January 1, 2002, the Compensation Limit in effect for determination periods beginning before that date is $200,000.

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

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

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

1.24 **Contribution Credit.** Contribution Credits will be credited to each Participant's Cash Balance Account in the amount specified by the Employer under AA §6-1. Contribution Credits include any increase to a Participant's Cash Balance Account under the Plan that is not an Interest Credit.

1.25 **Custodian.** An organization that has custody of all or any portion of the Plan assets.

1.26 **Defined Benefit Plan.** A plan under which a Participant's benefit is based solely on the Plan's benefit formula without the establishment of separate Accounts for Participants.

1.27 **Defined Contribution Plan.** A plan that provides for individual Accounts for each Participant to which all contributions, forfeitures, income, expenses, gains and losses under the Plan are credited or deducted. A Participant's benefit under a Defined Contribution Plan is based solely on the fair market value of his/her vested Account balance.

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

1.29 **Directed Trustee.** A Trustee is a Directed Trustee to the extent that the Trustee's investment powers are subject to the direction of another person.

1.30 **Direct Rollover.** A rollover, at the Participant's direction, of all or a portion of the Participant's vested Accrued Benefit directly to an Eligible Retirement Plan. See Section 8.06.

1.31 **Disability Benefit.** A retirement benefit available to a Disabled Participant prior to becoming eligible to receive a distribution of his/her Normal Retirement Benefit. The amount of a Participant's Disability Benefit is determined under AA §6-4.

1.32 **Disabled.** Unless modified under AA §9-4(b), an individual is considered Disabled for purposes of applying the provisions of this Plan if the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical

or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence. The Plan Administrator may establish reasonable procedures for determining whether a Participant is Disabled.

1.33 **Discretionary Trustee.** A Trustee is a Discretionary Trustee to the extent the Trustee has exclusive authority and discretion to invest, manage or control the Plan assets without direction from any other person.

1.34 **Distribution Calendar Year.** A calendar year for which a minimum distribution is required.

1.35 **Early Retirement Age.** The age and/or Years of Service set forth in AA §7-3. Early Retirement Age may be used to determine distribution rights and/or vesting rights. The Plan is not required to have an Early Retirement Age.

1.36 **Early Retirement Benefit.** A retirement benefit available to a Participant who has reached his/her Early Retirement Age. The amount of a Participant's Early Retirement Benefit is determined under AA §6-2. If a Participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the Participant will be entitled to elect an Early Retirement Benefit, to the extent available, upon satisfaction of such age requirement.

1.37 **Early Retirement Date.** The date designated under AA §7-4 as of which a Participant may commence receiving an Early Retirement Benefit.

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

1.39 **Elapsed Time.** A special method for crediting service for eligibility, vesting or accrual purposes. See Section 2.03(a)(5) for more information on the Elapsed Time method of crediting service for eligibility purposes, Section 7.03(b)for more information on the Elapsed Time method of crediting service for vesting purposes and Section 3.02(b)(2)(i)(B) for more information on the Elapsed Time method of crediting service for accrual purposes.

1.40 **Elective Deferrals.** Salary deferrals to a 401(k) plan, salary reduction contributions to a SEP described in Code §408(k)(6) (sometimes referred to as a SARSEP), contributions made pursuant to a Salary Reduction Agreement to a contract, custodial account or other arrangement described in Code §403(b), and elective contributions made to a SIMPLE-IRA plan, as described in Code §408(p).

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

1.42 **Eligible Retirement Plan.** A qualified retirement plan or IRA that may receive a rollover contribution. See Section 8.06(a)(2).

1.43 **Eligible Rollover Distribution.** An amount distributed from the Plan that is eligible for rollover to an Eligible Retirement Plan. See Section 8,06(a)(1).

1.44 **Employee.** An Employee is any individual employed by the Employer (including any Related Employers). An independent contractor is not an Employee. An Employee is not eligible to participate under the Plan if the individual is not an Eligible Employee under Section 2.02. For purposes of applying the provisions under this Plan, a Self-Employed Individual is treated as an Employee. A Leased Employee is also treated as an Employee of the recipient organization, as provided in Section 2.02(b)(3).

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

1.46 **Employer Pick-up Contributions.** Contributions made by the Employee and picked up by the Employer in accordance with Code §414(h)(2). See Section 3.08.

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

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

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

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

1.51 **Favorable IRS Letter.** An advisory letter issued by the IRS to a Volume Submitter Sponsor as to the qualified status of a Volume Submitter Plan.

1.52 **Flat Benefit Formula.** A benefit formula under AA §6-1(a) which provides for a Normal Retirement Benefit equal to a specified percentage of Average Compensation. See Section 3.02(a)(1).

1.53 **Fractional Accrual Method.** A method for accruing a Participant's Accrued Benefit. Under the Fractional Accrual Method, a Participant's Accrued Benefit, as of any date, is determined by multiplying the Participant's Normal Retirement Benefit by a fraction (not greater than 1), the numerator of which is the Participant's Years of Credited Service as of such date and the denominator of which is the total Years of Credited Service the Participant will have completed as of his/her Normal Retirement Date. See Section 3.01(a).

1.54 **Fully-Insured Plan.** A Plan for which the Employer elects under AA §6-1(c) to satisfy the requirements of Code §412(e)(3) and the provisions of Section 6.03. An Employer may not combine a cash balance plan with a Fully-Insured Plan.

1.55 **Highest Average Compensation.** A Participant's highest average Total Compensation used to determine the Maximum Permissible Benefit under Code §415. See Section 5.06(g).

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

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

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

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

(d) **Related Employers/Leased Employees.** Hours of Service will be credited for employment with any Related Employer. Hours of Service also include hours credited as a Leased Employee or as an employee under Code §414(o).

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

1.57 **Indian Tribal Government.** The governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary of Treasury, after consultation with the Secretary of Interior, to exercise governmental functions, as defined under Code §7701(a)(40) and regulations thereunder. See Section 4.02 of the Plan for special rules applicable to Indian Tribal Governments.

1.58 **Insurer.** An insurance company that issues a life insurance policy on behalf of a Participant under the Plan in accordance with the requirements under Section 6.

1.59 **Interest Credits.** Interest Credits shall equal the amount determined under AA §6-2 and will be credited to the Cash Balance Account of each Participant who has a Cash Balance Account under the Plan.

1.60 **Interest Crediting Rate.** The Interest Crediting Rate, or effective rate of return, for a period with respect to a Participant equals the total amount of Interest Credits for the period divided by the Participant's Cash Balance Account at the beginning of the period.

1.61 **Late Retirement Benefit.** The amount of a Participant's Accrued Benefit which commences after the Normal Retirement Date. See Section 3.05.

1.62 **Leased Employee.** An individual who performs services for the Employer pursuant to an agreement between the Employer and a leasing organization, and who satisfies the definition of a Leased Employee under Code §414(n). See Section 2.02(b)(3) for rules regarding the treatment of a Leased Employee as an Employee of the Employer.

1.63 **Limitation Year.** The measuring period for determining whether the Plan satisfies the Maximum Permissible Benefit limit under Section 5.06(i).

1.64 **Lookback Month.** The first, second, third, fourth or fifth calendar month, as elected under AA §11-1(c), preceding the first day of the Stability Period.

1.65 **Lump Sum-Based Benefit Formula.** A benefit formula used to determine all or any part of a Participant's Accrued Benefit where the Accrued Benefit provided under the formula is expressed as the current balance of a Participant's Cash Balance Account. Whether a benefit formula is a Lump Sum-Based Benefit Formula is determined based on how the Accrued Benefit is expressed under the terms of the Plan and does not depend on whether the Plan provides for an optional form of benefit in the form of a single-sum payment.

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

1.67 **Measuring Period.** The period for which Average Compensation or Offset Compensation is measured. Unless elected otherwise under AA §5-3(b) or AA §5-4(a), as applicable, the Measuring Period is the Plan Year (or the 12-month period ending on the last day of the Plan Year for a short Plan Year). See Section 3.02(b)(1)(ii).

1.68 **Normal Form of Benefit.** The form of distribution in which benefits will be paid, unless the Participant (and spouse, if applicable) requests an alternative form of benefit. The Normal Form of Benefit is Single Life Annuity, unless designated otherwise. See Section 8.01.

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

Effective May 22, 2007, for Plans initially adopted on or after May 22, 2007, and effective for the first Plan Year beginning on or after July 1, 2008, for Plans initially adopted prior to May 22, 2007, the Normal Retirement Age under the Plan must be reasonably representative of the typical retirement age for the industry in which the Plan Participants work. (The delayed effective date under this paragraph for Plans initially adopted prior to May 22, 2007 will not apply if the Plan has a Normal Retirement Age where it is possible for a Participant hired at age 18 or older to attain Normal Retirement Age before age 40. See Notice 2007-69.) For this purpose, a Normal Retirement Age of 62 or older is deemed to satisfy this requirement. A Normal Retirement Age under age 55 is presumed not to satisfy this requirement unless the Commissioner determines that the facts and circumstances show otherwise. Whether a Normal Retirement Age between 55 and 62 satisfies this requirement depends on facts and circumstances. If the Plan is amended to change the Normal Retirement Age to comply with the requirements of this Section 1.69, such amendment may not result in a violation of Code §§411(a)(9), 411(a)(10), 411(d)(6) or 4980F. Thus, for example, the vested percentage of any Participant will not be reduced solely by a change in the Normal Retirement Age under this Section 1.69. For this purpose, the amendment to a later Normal Retirement Age that is adopted after May 21, 2007 and on or before the last day of the applicable remedial amendment period applicable to the requirements of Treas. Reg. §1.401(a)–1(b)(2) and (3) will not violate the anti-cutback requirements of Code §411(d)(6) merely because it eliminates the right a Participant may have had to receive an in-service distribution prior to the Normal Retirement Age in effect prior to the Plan amendment. A Participant who became or would have become eligible for payment of benefits at the pre-amendment Normal Retirement Age, and who has severed from employment with an Employer maintaining the Plan, continues to be eligible for payment at the same age and in at least the same amount as under the prior plan terms with respect to benefits accrued prior to the applicable amendment date. overn

As a Governmental Plan, the Employer may determine Normal Retirement Age under any method allowed for Governmental Plans provided by the IRS. However, Normal Retirement Age must satisfy the requirments of IRS Revenue Ruling 66-11 and the pre-ERISA regulations under Treas. Reg. §1.401-1(b), which requires full vesting of an Employee's interest under the Plan upon attaining Normal Retirement Age or the stated age and completion of the required Years of Service and any other reasonable requirments under the Plan.

1.70 **Normal Retirement Benefit.** The periodic benefit commencing upon a Participant's Normal Retirement Date (as defined in AA §7-2) determined in accordance with the benefit formula selected under AA §6.

1.71 **Normal Retirement Date.** The date specified under AA §7-2 as of which a Participant may commence receipt of his/her Normal Retirement Benefit under the Plan.

1.72 **Participant.** Except as provided under AA §3-1, a Participant is an Employee (or former Employee) who has satisfied the conditions for participating under the Plan, as described in Section 2.03 and AA §4. A Participant also includes any Employee (or former Employee) who has an Accrued Benefit under the Plan, including a benefit derived from a rollover or transfer from another qualified plan or IRA. A Participant is entitled to accrue a benefit under the Plan for a given year only if the Participant is an Eligible Employee as defined in Section 2.02.

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

1.74 **Participating Employer Adoption Page.** The signature page in the Adoption Agreement for an Employer to adopt the Plan as a Participating Employer.

1.75 **Part-Time Employee.** A Part-Time Employee is an Employee who is normally scheduled to work 20 or fewer hours per week. Notwithstanding the foregoing, if the Employer is a post-secondary educational institution, an Employee who is a teacher shall not be considered a Part-Time Employee if he/ she normally has classroom hours of one-half or more of the number of classroom hours designated by the Employer as constituting full-time employment, provided that such designation is reasonable under all of the facts and circumstances.

1.76 **Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer and which is used to determine an Employee's service under the Elapsed Time method. See Section 2.03(a)(5) for rules regarding eligibility Section 7.03(b)for rules regarding vesting and Section 3.02(b)(2) for rules regarding benefit accruals.

1.77 **Plan.** The Plan is the retirement plan established or continued by the Employer for the benefit of its Employees under this Plan document. The Plan consists of the basic plan document and the elections made under the Adoption Agreement. The basic plan document is the portion of the Plan that contains the non-elective provisions. The Employer may supplement or modify the basic plan document through its elections in the Adoption Agreement or by separate governing documents that are expressly authorized by the Plan.

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

1.79 **Plan Compensation.** Plan Compensation is Total Compensation, as modified under AA §5, which is actually paid to an Employee during the Plan Year. In determining Plan Compensation, the Employer may elect under AA §5-2(b) to exclude all Elective Deferrals), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4). In addition, the Employer may elect under AA §5-2 to exclude other designated elements of compensation.

In no case may Plan Compensation for any Participant exceed the Compensation Dollar Limit (as defined in Section 1.22).

1.80 **Plan Year.** The 12-consecutive month period designated under AA §2-3 on which the records of the Plan are maintained. If the Plan Year is amended to create a Short Plan Year or if a new Plan has an initial Short Plan Year, the Employer may document such Short Plan Year under AA §2-3(d). (See Section 11.07 for special rules that apply to Short Plan Years.)

1.81 **PPA Effective Date**. For purposes of applying the provisions of the Pension Protection Act of 2006, if the Plan was in existence on June 29, 2005, the PPA Effective Date under the Plan is the first day of the first Plan Year beginning on or after January 1, 2008. For Plans adopted after June 29, 2005, the PPA Effective Date is the first Plan Year ending after June 29, 2005. For Plans in existence on June 29, 2005, the Employer may elect under AA §11-6 to apply an earlier PPA Effective Date.

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

1.83 **Pre-Participation Service.** Years of Credited Service earned prior to the establishment of the Plan or prior to the effective date of an amendment to the Plan that affects the computation of a Participant's Accrued Benefit. See Section 3.02(b)(3) for special rules regarding the crediting of Pre-Participation Service under the Plan.

1.84 **Pre-Retirement Death Benefit.** The benefit a Participant's Beneficiary is entitled to if the Participant dies before his/her Annuity Starting Date.

1.85 **Present Value.** The current single-sum actuarial equivalent value of a Participant's Accrued Benefit at the Participant's Normal Retirement Age under the Plan.

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

1.87 **Qualified Transfer.** A transfer of assets that satisfies the requirements under Section 14.04(b).

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

1.89 **Related Employer.** A Related Employer includes all members of a controlled group of corporations (as defined in Code §414(b)), all commonly controlled trades or businesses (as defined in Code §414(c)) or affiliated service groups (as defined in Code §414(m)) of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code §414(o) or other guidance provided by the IRS for determining Related Employer status for Governmental Plans. For purposes of applying the provisions under this Plan, the Employer and any Related Employers are treated as a single Employer, unless specifically stated otherwise. See Section 16.05 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.

1.90 **Required Beginning Date.** The date by which minimum distributions must commence under the Plan. See Section 10.07(f).

1.91 **Retirement Investment Account.** A separate account under the Plan established for Participants who continue employment beyond the Normal Retirement Date. A Retirement Investment Account may be a federally insured interest-bearing savings account and/or a certificate of deposit or any other fixed income investment authorized under the Plan's investment procedures. See Section 3.05(b).

1.92 **Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution (as defined in Section 8.06(a)(1)) from another qualified plan or IRA.

1.93 **Seasonal Employee.** An Employee who normally works on a full-time basis for less than five months during any year.

1.94 **Short Plan Year.** Any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year. See Section 11.07 for the operational rules that apply if the Plan has a Short Plan Year.

1.95 **Stability Period.** The successive period, as elected in AA §11-1(b), that contains the Annuity Starting Date and for which the Applicable Interest Rate remains constant.

1.96 **Straight Life Annuity.** **A**n annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

1.97 **Temporary Employee.** Any Employee performing services under a contractual arrangement with the Employer of two years or less duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement, but only if, under the facts and circumstances, there is a significant likelihood that the Employee's contract will be extended. Future contract extensions are considered significantly likely to occur for purposes of this rule if:

(a) on average 80 percent of similarly situated Employees have had bona fide offers to renew their contracts in the immediately preceding two academic or calendar years; or

(b) the Employee with respect to whom the determination is being made has a history of contract extensions with respect to his or her current position.

An Employee is not considered a Temporary Employee solely because he or she is included in a unit of Employees covered by a collective bargaining agreement of two years or less duration.

1.98 **Theoretical ILP Reserve.** The reserve that would be available at the time of death if for each year of Plan participation a contribution had been made on behalf of the Participant in an amount equal to the Theoretical Contribution.

1.99 **Theoretical Contribution.** The contribution that would be made on behalf of the Participant, using the individual level premium funding method from the age the Participant commenced participation to the Normal Retirement Age, to fund the Participant's entire Theoretical Retirement Benefit without regard to any pre-retirement ancillary benefits. See Section 3.07(a)(3)(B).

1.100 **Theoretical Retirement Benefit.** The retirement benefit based on a Straight Life Annuity and assuming continuation of current salary (no salary scale). See Section 3.07(a)(3)(C).

1.101 **Total Compensation.** A Participant's compensation for services with the Employer, as defined in this Section. Total Compensation may be defined in AA §5-1 to be either W-2 Wages, Wages under Code §3401(a), or Code §415 Compensation. Each definition of Total Compensation includes Elective Deferrals, elective contributions to a cafeteria plan under Code §125 or to an eligible deferred compensation plan under Code §457, and elective contributions that are not includible in the Employee's gross income as a qualified transportation fringe under Code §132(f)(4).

A reference to elective contributions under a Code §125 cafeteria plan includes any amounts that are not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. Such "deemed §125 compensation" will be treated as an amount under Code §125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan. If the Employer elects under AA §5-2(i) to exclude "deemed §125 compensation" from the definition of Plan Compensation, such exclusion also will apply for purposes of determining Total Compensation under this Section.

In determining Total Compensation under the Plan, any amounts paid as compensation to a nonresident alien (as defined in Code §7701(b)(1)(B)) who is not a Participant in the Plan may be excluded 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 after December 31, 1997 used for Code §415 purposes, Total Compensation during such Limitation Year shall include amounts that would otherwise be included in Total Compensation but for an election under § 125(a), §402(e)(3), § 402(h)(1)(B), § 402(k), or § 457(b). For Limitation Years beginning after December 31, 2000, Total Compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of § 132(f)(4).

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

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

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

(3) **Code §415 Compensation.** Wages, differential wage payments under Code §3401(h) made after December 31, 2008, salaries, fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer (without regard to whether or not such amounts are paid in cash) to the extent that the amounts are includible in gross income. Such amounts include, but are not limited to, commissions, compensation for services on the basis of a percentage of profits, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. §1.62-2(c)), and excluding the following:

(i) Employer contributions (other than elective contributions described in Code §402(e)(3), §408(k)(6), §408(p)(2)(A)(i), or §457(b)) to a plan of deferred compensation (including a SEP described in Code §408(k) or a SIMPLE retirement account described in § 408(p), and whether or not qualified) to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified).

(ii) Amounts realized from the exercise of a nonstatutory stock option (i.e., an option other than a statutory stock option as defined in Treas. Reg. §1.421-1(b), or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

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

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

(v) Other items of remuneration that are similar to any of the items listed in subsections (i) through (iv).

(b) **Total Compensation actually paid or made available.** For purposes of applying the limitations of Section 5, Total Compensation for a Limitation Year is the Total Compensation actually paid or made available to an Employee during such Limitation Year. However, the Employer may include in Total Compensation for a Limitation Year amounts earned but not paid in the Limitation Year because of the timing of pay periods and pay days, but only if these amounts are paid during the first few weeks of the next Limitation Year, such amounts are included on a uniform and consistent basis with respect to all similarly-situated Employees, and no amounts are included in Total Compensation in more than one Limitation Year. The Employer need not make any formal election to include accrued Total Compensation described in the preceding sentence.

(c) **Post-severance compensation.** Total Compensation includes compensation that is paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes the date of severance from employment with the Employer and those amounts would have been included as compensation if they were paid prior to the Employee's severance from employment.

The following amounts that are paid after a Participant's severance of employment are included in Total Compensation:

(1) **Regular pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer;

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

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

Other post-severance payments (such as severance pay, parachute payments within the meaning of Code §280G(b)(2), or post-severance payments under a nonqualified unfunded deferred compensation plan that would not had been paid if the Employee had continued in employment) are not included in the definition of Total Compensation, even if such amounts are paid within the time period described in this subsection (c). Total Compensation does include amounts that are includible in the gross income of an Employee under the rules of Code §409A or §457(f)(1)(A) or because the amounts are constructively received by the Employee are items includible as compensation. Back pay, within the meaning of Treas. Reg. §1.415(c)-2(g)(8), shall be treated as compensation for the Limitation Year to which the back pay relates, to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

The Employer may elect to exclude compensation paid after termination of employment from the definition of Plan Compensation under AA §5-2(j) or may elect to exclude any of the specific types of post-severance compensation defined in subsection (c) above, by designating such compensation types under AA §5-2(k).

(d) **Continuation payments for disabled Participants.** The Employer may elect in AA §5-1(c) to include in Total Compensation compensation for a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). For this purpose, compensation is the compensation the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled (if such compensation is greater than the Participant's compensation determined without regard to this subsection (2)), provided Contributions made with respect to amounts treated as compensation under this subsection are nonforfeitable when made. The rule under subsection (c) above does not apply to payments under this subsection.

1.102 **Trust.** The Trust is the separate funding vehicle under the Plan.

1.103 **Trustee.** The Trustee is the person or persons (or any successor to such person or persons) identified in the Adoption Agreement or under a separate Trust document. The Trustee may be a Discretionary Trustee or a Directed Trustee. SeeSection 12for the rights and duties of a Trustee under this Plan.

1.104 **Unit Accrual Method.** A method for accruing a Participant's Accrued Benefit. Under the Unit Accrual Method, a Participant's Accrued Benefit, as of any date, is the Participant's Normal Retirement Benefit calculated as of such date, based on Years of Credited Service as of such date.

1.105 **Unit Benefit Formula.** A benefit formula under AA §6-1(b) which provides for a Normal Retirement Benefit equal to a specified percentage of Average Compensation multiplied by the Participant's Years of Credited Service with the Employer.

1.106 **Valuation Date.** The date or dates upon which Plan assets are valued. Plan assets will be valued at least once a year.

1.107 **Volume Submitter Sponsor.** The Volume Submitter Sponsor is the entity that maintains the Volume Submitter Plan for adoption by Employers. See Section 14.01(a) for the ability of the Volume Submitter Sponsor to amend this Plan.

1.108 **Year of Accrual Service.** An Employee earns a Year of Accrual Service for each Accrual Computation Period during which the Employee satisfies the accrual requirements designated under AA §6-1(d)(2). If no election is made under AA §6-1(d)(2), an Employee earns a Year of Accrual Service for each Plan Year during which the Employee is eligible to participate under the Plan and completes at least 1,000 Hours of Service. Alternatively, the Employer may elect under AA §6-5 to determine a Year of Accrual Service using the Elapsed Time method or the Equivalency method.

1.109 **Year of Credited Service.** Years of Credited Service are used to determine a Participant's Normal Retirement Benefit under the Plan. Unless designated otherwise under AA §6-1(d)(1), a Participant earns a Year of Credited Service for each Year of Accrual Service designated under AA §6-1(d)(2). See Section 3.02(b)(3).

1.110 **Year of Service**. An Employee's Years of Service are used to apply the eligibility and vesting rules under the Plan. Unless elected otherwise under AA §4-3(a), an Employee will earn a Year of Service for purposes of applying the eligibility rules if the Employee completes 1,000 Hours of Service with the Employer during an Eligibility Computation Period. Unless elected otherwise under AA §8-5(a), an Employee will earn a Year of Service for purposes of applying the vesting rules if the Employee completes 1,000 Hours of Service with the Employer during a Vesting Computation Period.

SECTION 2
ELIGIBILITY AND PARTICIPATION

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

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

(a) **Only Employees may participate in the Plan.** To participate in the Plan, an individual must be an Employee. If an individual is not an Employee (e.g., the individual performs services with the Employer as an independent contractor) such individual may not participate under the Plan. If an individual's status as a non-Employee is challenged by the IRS, the reclassification of such individual as an Employee will not create retroactive rights to participate in the Plan. Thus, for example, if the IRS should find that an independent contractor is really an Employee, such individual will be eligible to participate in the Plan as of the date the IRS issues a final determination declaring such individual to be an Employee (provided the individual has satisfied all conditions for participating in the Plan (as described in this Section 2)). For periods prior to the date of such final determination, the reclassified Employee will not have any rights to Accrued Benefits under the Plan, except as agreed to by the Employer and the IRS, or as set forth in an amendment adopted by the Employer.

(b) **Excluded Employees.** The Employer may elect under AA §3-1 to exclude designated classes of Employees.

(1) **Collectively Bargained Employees.** The Employer may elect under AA §3-1(b) to exclude Collectively Bargained Employees. For this purpose, a Collectively Bargained Employee is an Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining. Unless designated otherwise under AA §3-1(g), the exclusion under AA §3-1(b) will not include any unit of Employees to the extent the collective bargaining agreement specifically provides for coverage of such Employees under the Plan.

(2) **Nonresident aliens.** The Employer may elect under AA §3-1(c) to exclude Employees who are nonresident aliens. For this purpose, a nonresident alien is neither a citizen of the United States nor a resident of the United States for U.S. tax purposes (as defined in Code §7701(b)), and who does not have any earned income (as defined in Code §911) for the Employer that constitutes U.S. source income (within the meaning of Code §861). If a nonresident alien Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty.

(3) **Leased Employees.** The Employer may elect under AA §3-1(d) to exclude Leased Employees. Unless designated otherwise under AA §3-1(d), a Leased Employee is treated as an Eligible Employee for purposes of applying the eligibility rules under this Section 2. For this purpose, a Leased Employee is any person (other than an Employee of the Employer) who pursuant to an agreement between the recipient Employer and a leasing organization performs services for the recipient Employer on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control of the recipient Employer. Contributions or benefits provided to a Leased Employee under a plan of the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer.

A Leased Employee shall not be considered an Employee of the recipient Employer if:

(i) such Employee is covered by a money purchase pension plan providing:

(A) a non-integrated Employer contribution of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), but including amounts contributed to a Salary Deferral Election which are excludable from gross income under Code §§125, 402(e)(3), 402(h)(1)(B) or 403(b),

(B) immediate participation and

(C) full and immediate vesting; and

(ii) Leased Employees do not constitute more than twenty percent (20%) of the recipient's Employer's Nonhighly Compensated workforce.

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

(d) **Ineligible Employee becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the Plan's minimum age and service conditions and has passed the Entry Date (as defined in AA §4-2) that would otherwise have applied had the Employee been an Eligible Employee. If the Employee's original Entry Date (determined as if the Employee was always an Eligible Employee) has not passed as of the date the Employee becomes an Eligible Employee, the Employee will not become a Participant until such Entry Date. If an ineligible Employee has not satisfied the Plan's minimum age and service conditions at the time such Employee becomes an Eligible Employee, such Employee will become a Participant on the appropriate Entry Date following satisfaction of the Plan's minimum age and service requirements.

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

(f) **Improper exclusion or inclusion of Employee.** If the Plan improperly excludes an Employee from the Plan or improperly includes an Employee in the Plan, the Employer may take reasonable action to correct such violation, provided such corrective action is consistent with the requirements of the Employee Plans Compliance Resolution System (EPCRS) program.

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

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

(1) **Year of Service.** Unless otherwise modified by the Employer, in applying the minimum service requirements under AA §4-1, an Employee will earn a Year of Service if the Employee completes at least 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in subsection (2) below). The Employer may modify the definition of Year of Service under AA §4-3(a) to require a certain number of Hours of Service to earn a Year of Service. An Employee will receive credit for a Year of Service, as of the end of the Eligibility Computation Period during which the Employee completes the required Hours of Service needed to earn a Year of Service. An Employee need not be employed for the entire Eligibility Computation Period to receive credit for a Year of Service, provided the Employee completes the required Hours of Service during such period.

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

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

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

(3) **Hours of Service.** In calculating an Employee's Hours of Service for purposes of applying the eligibility rules under this Section 2.03, the Employer will count the actual Hours of Service an Employee works during the

year. . The Employer may elect under AA §4-3 to use the Equivalency Method,or Elapsed Time Method or other method (instead of counting the actual Hours of Service an Employee works).

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

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

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

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

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

(5) **Elapsed Time method.** Instead of counting actual Hours of Service in applying the minimum service requirements under this Section2.03(a)(5), the Employer may elect under AA §4-3(c) to apply the Elapsed Time method for calculating an Employee's service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee begins a Period of Severance which lasts at least 12 consecutive months. In calculating an Employee's aggregate period of service, an Employee receives credit for any Period of Severance that lasts less than 12 consecutive months. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

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

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

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

(b) **Entry Dates.** Once an Eligible Employee satisfies the minimum age and service conditions (as set forth in AA §4-1), the Employee will be eligible to participate under the Plan as of his/her Entry Date (as set forth in AA §4-2).

2.04 **Participation on Effective Date of Plan.** Unless designated otherwise under AA §4-4, an Eligible Employee who has satisfied the minimum age and service conditions and reached his/her Entry Date as of the Effective Date of the Plan will be eligible to participate in the Plan as of such Effective Date. If an Employee has satisfied the minimum age and service conditions as of the Effective Date of the Plan but has not yet reached his/her Entry Date, the Employee will be eligible to participate on the appropriate Entry Date. The Employer may modify this rule under AA §4-4.

2.05 **Rehired Employees**. Subject to the Break in Service rules under Section 2.07 or other rules imposed by the Employer under the Plan, if a terminated Employee is subsequently rehired, such Employee will be eligible to participate in the Plan on his/her reemployment date, if the Employee is an Eligible Employee and the Employee had satisfied the Plan's minimum age and service conditions prior to his/her termination of employment. If a rehired Employee had not satisfied the Plan's minimum age

and service conditions prior to termination of employment, such Employee is eligible to participate in the Plan on the appropriate Entry Date following satisfaction of the eligibility requirements under Section 2.03.

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

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

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

(b) **Nonvested Participant Break in Service rule** Under the Nonvested Participant Break in Service rule, if a Participant is totally nonvested (i.e., 0% vested) in his/her Accrued Benefit derived from Employer Contributions, and such Participant incurs five (5) or more consecutive one-year Breaks in Service (or, if greater, a consecutive period of Breaks in Service at least equal to the Participant's aggregate number of Years of Service with the Employer), the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of determining eligibility to participate in the Plan. If the Employee returns to employment with the Employer, such Employee will be treated as a new Employee for purposes of determining eligibility under the Plan.

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

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

If a Participant has service disregarded under the One-Year Break in Service rule, such Participant will have his/her service reinstated upon returning to employment as of the first day of the Eligibility Computation during which the Participant completes a Year of Service. For this purpose, the Eligibility Computation Period is the 12-month period commencing on the date the Employee first performs an Hour of Service following the Break in Service. If a Participant does not complete a Year of Service during the first Eligibility Computation Period following his/her return to employment, subsequent Eligibility Computation Periods will be determined based on Plan Years beginning with the first Plan Year following the Employee's return to employment (unless the Employer selects Anniversary Years as the Eligibility Computation Period under AA §4-3(b).

2.08 **Waiver of Participation.** An Employee may not waive participation under the Plan unless specifically permitted under AA §11-3.

SECTION 3
ACCRUED BENEFITS

3.01 **Accrued Benefit.** A Participant's Accrued Benefit under the Plan, as of any date, is the portion of the Normal Retirement Benefit (as defined in Section 3.02) the Participant has accrued under the Fractional Accrual Method, the Unit Accrual Method, or other accrual method provided for under the Adoption Agreement. A Participant's Accrued Benefit will be adjusted for any early or late commencement of benefits in the manner described under Sections 3.04 and 3.05. A Participant's Accrued Benefit, as determined under this Section 3, is subject to the limitation on benefits under Section 5.

(a) **Fractional Accrual Method.** Under the Fractional Accrual Method, a Participant's Accrued Benefit, as of any date, is determined by multiplying the Participant's Normal Retirement Benefit by a fraction (not greater than 1), the numerator of which is the Participant's Years of Credited Service (as defined in Section 3.02(b)(3)) as of such date and the denominator of which is the total Years of Credited Service the Participant will have completed as of his/her Normal Retirement Age (or the current year, if greater). In applying the Fractional Accrual Method, a Participant's Normal Retirement Benefit is calculated by assuming the Participant will continue to earn his/her current Average Compensation annually until Normal Retirement Age (or the current year, if applicable), taking into account Average Compensation over no more than ten years immediately preceding the determination.

For Accrual Computation Periods that begin after an Accrual Computation Period in which a Participant was not credited with a full Year of Accrual Service, the Participant must accrue the fractional rule benefit which is attributable to the new continuous period of participation at least ratably over the new period.

(b) **Unit Accrual Method.** Under the Unit Accrual Method, a Participant's Accrued Benefit, as of any date, is the Participant's Normal Retirement Benefit calculated as of such date, based on Years of Credited Service as of such date.

3.02 **Normal Retirement Benefit.** A Participant's Normal Retirement Benefit is the periodic benefit that would be payable to the Participant upon termination of employment at or prior to Normal Retirement Age under the Plan. A Participant's Normal Retirement Benefit is determined in accordance with the benefit formula selected under AA §6.

The Employer may designate under AA §2-4 that the Plan is a frozen Plan. As a frozen Plan, Participants will not accrue any additional benefits under the Plan as of the date identified in AA §2-4. In addition, an Employee who first satisfies the eligibility requirements to participate in the Plan on or after the freeze date designated under AA §2-4 will not be treated as a Participant for any purpose under the Plan.

(a) **Benefit Formulas.**

(1) **Flat Benefit Formula.** The Employer may elect under AA §6-1(a) of the Nonintegrated Adoption Agreement to apply a Flat Benefit Formula that provides a Normal Retirement Benefit equal to a specified percentage of Average Compensation.

(2) **Unit Benefit Formula.** The Employer may elect under AA §6-1(b) to apply a Unit Benefit Formula which provides a Normal Retirement Benefit equal to a specified percentage of Average Compensation (or a uniform dollar amount) multiplied by the Participant's Years of Credited Service with the Employer. The Employer may elect to limit the Years of Credited Service taken into account under a Unit Benefit Formula. In determining a Participant's Accrued Benefit under a Unit Benefit Formula, the Unit Accrual Method (as defined in Section 3.01(b)) automatically applies, unless the Employer elects under AA §6-1(d)(4) to apply the Fractional Accrual Method, as defined in Section 3.01(a), or other accrual method.

(3) **Accumulation Plan.** The Employer may elect under AA §6-1(b)(5) to apply the Unit Benefit Formula as an Accumulation Plan. If the Employer elects an Accumulation Plan formula, a Participant's Accrued Benefit is determined separately for each Plan Year, using Plan Compensation for the Plan Year (instead of Average Compensation). The Participant's Accrued Benefit is the sum of each Plan Year's benefit. If an Employee is a Participant for only a portion of a Plan Year, the Employer may elect under AA §6-1(b)(5)(i) to determine Plan Compensation for only the portion of the Plan Year during which the Employee is a Participant or for the entire Plan Year, including amounts earned while the Employee is not a Participant. (See AA §5-2 for the definition of Plan Compensation.)

(b) **Definitions.** The following definitions apply for purposes of applying the benefit formulas described under this Section 3.02.

(1) **Average Compensation.** The average of a Participant's annual Plan Compensation during the Averaging Period, as designated in AA §5-3.

(i) **Averaging Period.** Unless the Employer elects otherwise under AA §5-3(a), the Averaging Period for determining a Participant's Average Compensation is made up of the three (3) consecutive Measuring

Periods during the Participant's Employment Period which results in the highest Average Compensation. The Employer may elect under AA §5-3(a) to apply an alternative Averaging Period which is greater than three (3) consecutive Measuring Periods or may elect to take into account all Measuring Periods during the Participant's Employment Period.

(ii) **Measuring Period.** Unless the Employer elects otherwise under AA §5-3(b), the Measuring Period for determining Average Compensation is the Plan Year. (If the Plan has a Short Plan Year, Average Compensation is based on Plan Compensation earned during the 12-month period ending on the last day of the Short Plan Year.) The Employer may elect under AA §5-3(b) to apply an alternative Measuring Period for determining Average Compensation based on the calendar year or any other designated 12-month period.

(iii) **Employment Period.** Unless the Employer elects otherwise under AA §5-3(c), the Employment Period used to determine Average Compensation is the Participant's entire employment period with the Employer. Instead of measuring Average Compensation over a Participant's entire period of employment, the Employer may elect under AA §5-3(c) to use Averaging Periods only during the period following the Participant's original Entry Date or any other specified period. If the Employer elects an alternative Employment Period under AA §5-3(c), such Employment Period must end in the current Plan Year and may not be shorter than the Averaging Period selected in AA §5-3(a) (or the Participant's entire period of employment, if shorter).

(iv) **Drop-out years.** Unless elected otherwise under AA §5-3(d), all Measuring Periods within a Participant's Employment Period are included for purposes of determining Average Compensation. The Employer may elect under AA §5-3(d) to exclude the Measuring Period in which the Participant terminates employment or any Measuring Period during which a Participant does not complete a designated number of Hours of Service. In determining whether the Averaging Periods used to determine Average Compensation are consecutive (as required under subsection (i) above), any Measuring Period excluded under this subsection (iv) will be disregarded.

(2) **Year of Accrual Service.** An Employee earns a Year of Accrual Service for each Accrual Computation Period during which the Employee is eligible to participate in the Plan and satisfies the accrual requirements designated under AA §6-1(d)(2). If no election is made under AA §6-1(d)(2), an Employee earns a Year of Accrual Service for each Plan Year during which the Employee is a Participant and completes at least 1,000 Hours of Service. The Employer may elect under AA §6-1(d)(2)(iv) to define Years of Accrual Service to include Years of Accrual Service earned prior to the Employee becoming a Participant in the Plan.

(i) **Accrual requirements.** AA §6-1(d)(2) allows the Employer to modify the accrual requirements that must be satisfied to earn a Year of Accrual Service. The Employer may elect under AA §6-1(d)(2)(i) to have no accrual requirements apply or may elect under AA §6-1(d)(2)(i) to require an Employee to complete a specified number of Hours of Service to earn a Year of Accrual Service.

(A) **Hours of Service.** Under AA §6-1(d)(2)(i), the Employer may modify the default accrual requirements.

(B) **Elapsed Time method.** Instead of counting actual Hours of Service, the Employer may elect under AA §6-1(d)(2)(v) to apply the Elapsed Time method for calculating an Employee's service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee begins a Period of Severance which lasts at least 12 consecutive months. In calculating an Employee's aggregate period of service, an Employee receives credit for any Period of Severance that lasts less than 12 consecutive months. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

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

In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (i) by reason of the

pregnancy of the Employee, (ii) by reason of the birth of a child of the Employee, (iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or (iv) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

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

(ii) **Accrual Computation Period.** The Employer may elect under AA §6-1(d)(3) to modify the Accrual Computation Period used to determine Years of Accrual Service. Unless specifically modified under AA §6-1(d)(3), the Accrual Computation Period is the Plan Year. The Employer may elect under AA §6-1(d)(3)(i) to use Anniversary Years as the Accrual Computation Period instead of the Plan Year. For this purpose, an Anniversary Year is the 12-month period beginning on the Employee's Employment Commencement Date (or Reemployment Commencement Date) and subsequent 12-month periods beginning on the anniversary of such date. The Employer may elect an alternative 12-month period under AA §6-1(d)(3)(ii).

(3) **Year of Credited Service.** For purposes of determining a Participant's Accrued Benefit under the Plan, a Participant's Years of Credited Service are defined under AA §6-1(d)(1). Unless elected otherwise under AA §6-1(d)(1)(iii), an Employee's Years of Credited Service are the total Years of Accrual Service (as defined in subsection (2) above) earned by the Employee. The Employer may elect under AA §6-1(d)(1)(i) to disregard any Year of Credited Service completed prior to a designated date.

3.03 **Offset of Benefits – Floor Offset Plan**. The vested portion of the Accrued Benefit that would otherwise be payable to a Participant under the Plan may be reduced (but not below zero) by the vested portion of a Participant's Account Balance attributable to Employer Contributions (plus the Actuarial Equivalent of any prior distributions from such Account) under a Defined Contribution Plan maintained by the Employer (as designated under AA §6-1(d)(5)).

3.04 **Early Retirement Benefit.** If the Employer elects under AA §6-2 to provide an Early Retirement Benefit under the Plan, a Participant who terminates employment on or after his/her Early Retirement Age, as specified in AA §7-3, may commence receiving an Early Retirement Benefit in accordance with the provisions under Section 8.02. If the Early Retirement Age contains both an age and service condition, a Participant who terminates employment after satisfying the service condition, but before satisfying the age condition, will qualify for an Early Retirement Benefit upon attaining the required age under the Plan. The amount of a Participant's Early Retirement Benefit is determined under AA §6-2. The Employer may elect under AA §6-2(a) to provide an Early Retirement Benefit equal to the Participant's Accrued Benefit, without reduction for early commencement. Alternatively, the Employer may elect under AA §6-2(b) to provide a reduced Early Retirement Benefit which is equal to the Actuarial Equivalent of the Participant's Accrued Benefit. For this purpose, the Actuarial Equivalent benefit is determined based on the actuarial assumptions specified under AA §11-1. The Employer may elect alternative reductions under AA §6-2.

3.05 **Late Retirement Benefit.**

(a) **Amount of Late Retirement Benefit.** Unless designated otherwise under AA §6-3(b), if the payment of a Participant's Accrued Benefit commences after his/her Normal Retirement Date, the Participant's Accrued Benefit as of the end of each Plan Year beginning after the Participant's Normal Retirement Date is the greater of (1) the Participant's Normal Retirement Benefit, calculated taking into account the Participant's compensation and Years of Credited Service as of the end of such Plan Year or (2) the Participant's Accrued Benefit determined as of the end of the prior Plan Year, expressed as an Actuarial Equivalent benefit as of the end of the current Plan Year. In calculating the Participant's Normal Retirement Benefit under (1), such amount is offset by the actuarial value of any distributions received from the Plan prior to the close of the Plan Year. The Employer may describe the Late Retirement Benefit under AA §6-3(b).

(b) **Separate Account.** If so elected under AA §6-3, a Participant who continues employment beyond his/her Normal Retirement Date may elect to have the Present Value of his/her Accrued Benefit segregated into a separate Retirement Investment Account. For this purpose, a Retirement Investment Account may be a federally insured interest-bearing savings account and/or a certificate of deposit or any other fixed income investment authorized under the Plan's investment procedures. A separate Retirement Investment Account will be established for each Participant electing to have his/her benefit segregated under this Section. A Participant's Retirement Investment Account remains part of the Plan's Trust but does not share in the general earnings of the Trust. Rather, a Participant's Retirement Investment Account is charged or credited as appropriate with the net earnings, gains, losses and expenses attributable to such account. The Accrued Benefit of a Participant who elects to have his/her benefit segregated into a separate Retirement Investment Account is the greater of the Participant's Accrued Benefit determined under this Section 3 (without regard

to this subsection) or the Actuarial Equivalent of the separate account (expressed in the same form as the Participant's Accrued Benefit).

A new plan (as designated on the Employer Signature Page of the Adoption Agreement) shall not allow Participants to segregate his/her Accrued Benefit into a separate Retirement Investment Account. Segregation in this manner is not permitted unless the Plan allowed for separate accounts prior to years beginning on or after the date the Plan is amended and restated for the Pension Protection Act of 2006. With respect to existing separate accounts, no new additions may be made by Participants after this date.

3.06 **Disability Benefit.** The Employer may elect under AA §6-4 to provide a Disability Benefit for any Participant who becomes Disabled) prior to becoming eligible to receive a distribution of his/her Normal Retirement Benefit under the Plan. If a Disabled Participant also satisfies the requirements for an Early Retirement Benefit, the Participant is entitled to the greater of the Early Retirement Benefit or the Disability Benefit. The amount of a Participant's Disability Benefit is determined under AA §6-4. The Employer may elect under AA §6-4(a)(1) to provide a Disability Benefit equal to the Participant's Accrued Benefit, without reduction for early commencement. Alternatively, the Employer may elect under AA §6-4(a)(2) to provide a reduced Disability Benefit that is equal to the Actuarial Equivalent of the Participant's Accrued Benefit.

3.07 **Pre-Retirement Death Benefit.** If a Participant dies before his/her Annuity Starting Date, the Participant's Beneficiary is entitled to receive a Pre-Retirement Death Benefit under the Plan as designated under AA §6-5.

(a) **Present Value of Accrued Benefit.** The Employer may elect under AA §6-5(b) to provide a death benefit equal to the excess of the Present Value of the Participant's vested Accrued Benefit.

(1) **Present Value of Accrued Benefit or life insurance proceeds.** The Employer may elect under AA §6-5(d) to provide a death benefit equal to the greater of (i) the Present Value of the Participant's vested Accrued Benefit or (ii) the death proceeds under any life insurance contracts purchased on the Participant's life under the Plan, provided the total death benefit may not exceed 100 times the Participant's Anticipated Monthly Retirement Benefit. The Employer must designate under AA §6-5(d) the total face amount of the life insurance policies that may be purchased on behalf of a Participant under the Plan. For this purpose, the total face amount of life insurance may not exceed 100 times the Participant's Anticipated Monthly Retirement Benefit.

(2) **Life insurance proceeds.** The Employer may elect under AA §6-5(c) to provide a death benefit equal to the death proceeds under any life insurance contracts purchased on the Participant's life under the Plan, provided the total death benefit may not exceed 100 times the Participant's Anticipated Monthly Retirement Benefit. The Employer must designate under AA §6-5(c) the total face amount of the life insurance policies which may be purchased on behalf of a Participant under the Plan. For this purpose, the total face amount of life insurance may not exceed 100 times the Participant's Anticipated Monthly Retirement Benefit.

(3) **Life insurance proceeds plus Theoretical ILP Reserve.** The Employer may elect under AA §6-5(e) to provide a death benefit equal to the death proceeds under any life insurance contracts purchased on the Participant's life plus the excess (if any) of the Theoretical ILP Reserve minus the cash value of any life insurance contracts under the Plan. The Employer must designate under AA §6-5(e) the total face amount of life insurance policies that may be purchased on behalf of a Participant under the Plan. For this purpose, the total face amount of life insurance may not exceed 66% of the Theoretical Contribution (for whole (ordinary) life insurance) or 33% of the Theoretical Contribution (for term and/or universal life insurance).

(A) **Theoretical ILP Reserve.** For purposes of determining a Participant's Pre-Retirement Death Benefit under this subsection (3), the Theoretical ILP Reserve is the reserve that would be available at the time of death if for each year during which the Employee was a Participant under the Plan, a contribution had been made on behalf of the Participant in an amount equal to the Theoretical Contribution.

(B) **Theoretical Contribution.** The Theoretical Contribution is the contribution that would be made on behalf of the Participant, using the individual level premium funding method from the age the Participant commenced participation in the Plan to Normal Retirement Age, to fund the Participant's entire Theoretical Retirement Benefit without regard to any pre-retirement ancillary benefits.

(C) **Theoretical Retirement Benefit.** A Participant's Theoretical Retirement Benefit is the Participant's Normal Retirement Benefit expressed as a Straight Life Annuity and assuming the Participant continues to earn the same compensation (with no salary scale).

(b) **Alternative death benefit.** The Employer may designate an alternative death benefit under the AA. Any such benefit must satisfy the incidental death benefit and definitely determinable benefit requirements applicable to qualified plans.

3.08 **Employer Pick-Up Contributions.** The Employer may elect under AA §6-6(c) to make Employer Pick-Up Contributions. An Employer Pick-Up Contribution is a contribution made by an Employee that is "picked up" by the Employer in accordance with Code §414(h)(2). If the Employer elects to provide Employer Pick-Up Contributions under AA §6-6(c), a Participant who meets the eligibility requirements of AA §4-1 shall be deemed to have authorized the Employer to deduct the amount designated under AA §6-6(c) from the Participant's Plan Compensation prior to payment. Contributions picked-up under this Section 3.08 will be withheld from the Employee's compensation and deposited into the Participant's Employer Pick-up Contribution Account. Contributions that are picked up under this Section 3.08 will be treated as Employer Contributions under the Plan and such contributions and earnings thereon will be 100% vested at all times.

To constitute an Employer Pick-up Contribution under this Section 3.08, the Employer must:

(a) specify that the contributions, although designated as Employee contributions, are being paid by the Employer in lieu of contributions by the Employee,

(b) take the action necessary to effectuate the pick-up, which must be completed before the period to which such contributions relate,

(c) exclude from the Employee's gross income the contributions picked up by the Employer until such time as they are distributed to the Employee, and

(d) prohibit an Employee from opting out of the Employer Pick-up Contribution and prohibit the receipt of the contributed amounts directly instead of having them paid by the Employer to the Plan.

To satisfy the requirements of this Section 3.08, the Employer Pick-Up Contributions must be effectuated by a person duly authorized to take such action with respect to the Employer and must be evidenced by a contemporaneous written document, such as minutes from a meeting, a resolution, an ordinance or this Plan document. Any Participating Employee may not enter into a cash or deferred election (within the meaning of Treas. Reg. § 1.401(k)-1(a)(3)) with respect to the designated Employee contributions, at any time from or after the date of the implementation of the Employer Pick-Up Contribution. For example, a Participant may not opt out of the Employer Pick-Up Contribution or receive the contributed amounts directly instead of having them paid by the Employer into the Plan.

3.09 **Employee Contributions.** Unless elected otherwise under AA §6-6 of the Adoption Agreement, Employee contributions are not permitted under the Plan after the date the Plan is restated for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), as indicated under the Employer Signature Page of the Adoption Agreement.

(a) **Separate Account for voluntary Employee contributions.** A separate account shallbe maintained for any voluntary Employee contributions made under the Plan or a prior plan. The assets of the Plan will be valued annually at fair market value. Earnings and losses of the Plan attributable to voluntary Employee contributions will be allocated to each Participant's voluntary Employee contribution Account in the ratio that such Account bears to all such Accounts. Voluntary Employee contributions (as adjusted for investment experience) shall be 100% vested at all times.

(b) **Mandatory After-Tax Employee Contributions.** If Mandatory After-Tax Contributions are (or were) required under the Plan or a prior Plan in order to participate, the Employer-provided Accrued Benefit in all years shall equal the excess, if any, of the Accrued Benefit over the Employee-provided Accrued Benefit.

3.10 **Rollovers from other Plans.** If provided by the employer in the Adoption Agreement, effective January 1, 2013, the Plan will accept direct rollovers made on behalf of Participants of this Plan to be used to increase the annuity otherwise payable under this Plan. If so provided, the Plan will accept direct rollover contributions (excluding amounts attributable to after-tax employee contributions and distributions from designated Roth accounts) from the qualified defined contribution plan(s) of the Employer specified in the Adoption Agreement.

[THIS SECTION 3 WILL PRINT OUT IF THE CASH BALANCE PLAN IS SELECTED IN THE CHECKLIST]
SECTION 3
ACCRUED BENEFIT AND CASH BALANCE ACCOUNTS

3.01 **Accrued Benefit.** A Participant's Accrued Benefit under the Plan as of any determination date (on or prior to Normal Retirement Age) is the Normal Form of Benefit beginning at Normal Retirement Age, calculated by projecting the Participant's hypothetical Cash Balance Account to Normal Retirement Age with interest at the Interest Crediting Rate in effect at the date of determination, and converting the projected account to an Actuarial Equivalent benefit payable in the normal form at Normal Retirement Age. Notwithstanding any provision of the Plan to the contrary, the balance of a Participant's Cash Balance Account, as of any given date of determination, must be greater than or equal to the balance of the Cash Balance Account of any Similarly Situated younger individual who is or could be a Participant.

(a) **Actuarial Equivalent.** An Actuarial Equivalent benefit is an alternate form of benefit having the same actuarial value as the Cash Balance Account as of the Annuity Starting Date based on the actuarial assumptions specified in AA §11-1. However, a lump sum or partial lump sum distribution shall be determined based on the current vested balance in the Participant's Cash Balance Account.

(b) **Definition of Similarly Situated**. For purposes of this Section 3.01, an individual is Similarly Situated to another individual if the individual is identical to that other individual in every respect that is relevant in determining a Participant's benefit under the Plan (including periods of service, compensation, position, date of hire, work history, and any other respect) except for age. In determining whether an individual is Similarly Situated to another individual, any characteristic that is relevant for determining benefits under the Plan and is based directly or indirectly on age is disregarded.

3.02 **Cash Balance Account.** A Cash Balance Account will be maintained for each Participant. The Cash Balance Account is a hypothetical account and is used to determine the amount of retirement benefit payable under this Section 3.02. A Participant's Cash Balance Account shall equal the sum of the Contribution Credits (as determined in subsection (a) below) and the Interest Credits (as determined in subsection (b) below). The Participant shall not have an actual Account and shall have no claim to any particular assets of the Plan. Benefits provided under the Plan shall be paid from the general assets of the Trust in the amounts, in the forms, and at the times provided, under the terms of the Plan.

(a) **Contribution Credits.** Subject to the limitations of Section 5.02, a Contribution Credit will be credited to the Cash Balance Account of each eligible Participant who completes a Year of Accrual Service**,** in accordance with this subsection (a). Contribution Credits will be credited as specified by the Employer under AA §6A-1, whether or not the Participant remains an Employee as of that date.

(1) **Percentage of Plan Compensation or designated dollar amount.** The Employer may elect under AA §6A-1 to provide eligible Participants in the selected Employee group with a Contribution Credit that is determined as a uniform percentage of Plan Compensation for the Plan Year or as a uniform dollar amount. If the Contribution Credit is based on a dollar amount (as opposed to a percentage of Plan Compensation), the Employer may elect to adjust the Contribution Credit.

(2) **Minimum benefit.** The Employer may elect under AA §6A-4 to provide a minimum Contribution Credit to eligible Participants designated under the Agreement. The minimum Contribution Credit may be defined as a specified dollar amount or a specified percentage of Plan Compensation.

(b) **Interest Credits.** Interest Credits shall be credited to the Cash Balance Account of each eligible Participant who has a Cash Balance Account under the Plan based on the Interest Crediting Rate described under subsection (c) below and as selected under AA §6A-2. Interest Credits will be determined by multiplying the applicable Interest Crediting Rate determined as of the end of the period selected under AA §6A-2 by the balance in the Participant's Cash Balance Account as of the beginning of the period under AA §6A-2. Interest Credits will be added to each Participant's Cash Balance Account as of the last day of the period elected under AA §6A-2. However, for any period in which a Plan distribution is made to a Participant, interest shall be credited on the amount of the Participant's Cash Balance Account as of the first day of the applicable period through the end of the month preceding the month in which the distribution is made. In no event will Interest Credits continue to be credited on any portion of the Cash Balance Account that has been distributed to the Participant or Beneficiary nor will the Interest Credits for a Plan Year cause the Cash Balance Account as of the last day of the Plan Year to be less than the accumulated Contributions Credits as of the last day of the Plan Year. No Interest Credits shall accrue to any portion of the Hypothetical Account Balance after the Annuity Starting Date that applies to that portion.

(c) **Interest Crediting Rate**.

(1) **Designation of Interest Crediting Rate.** The Employer will designate the Interest Crediting Rate under the Plan in AA §6A-2.

(2) **Use of Actual Rate of Return**. If elected in the Adoption Agreement, the Interest Crediting Rate applied to a Participant's beginning Hypothetical Account Balance for each Interest Credit Period shall be the Actual Rate of Return on the aggregate assets of the Plan for that period, including both positive and negative returns. If the use of Actual Rate of Return is elected in the Adoption Agreement, plan assets must be diversified so as to minimize the volatility of returns in accordance with Treas. Reg. §1.411(b)(5)-1(d)(5)(ii)(A). The Actual Rate of Return, which includes both realized and unrealized gains and losses, will be calculated as provided in the Adoption Agreement. Additionally, the employer may elect in the Adoption Agreement for purposes of the first Plan Year only of the Plan that the Interest Crediting Rate for such Plan Year shall be the fixed rate specified in the Adoption Agreement and then for all subsequent Plan Years will be the Actual Rate of Return.

(d) **Year of Accrual Service.** An Employee earns a Year of Accrual Service for each Accrual Computation Period during which the Employee is eligible to participate in the Plan and satisfies the accrual requirements designated under AA §6A-5. If no election is made under AA §6A-5, an Employee earns a Year of Accrual Service for each Plan Year during which the Employee is a Participant and completes at least 1,000 Hours of Service. The Employer may elect under AA §6A-5(c) to include service earned prior to the Employee becoming a Participant in the Plan.

(1) **Accrual requirements.** AA §6A-5 allows the Employer to modify the accrual requirements that must be satisfied to earn a Year of Accrual Service. The Employer may elect under AA §6-5(a)(1) to have no accrual requirement apply or may elect under AA §6A-5(a)(2) to require an Employee to complete a specified number of Hours of Service to earn a Year of Accrual Service. The Employer may elect under AA §6A-5(a)(5) to use the Equivalency Method instead of counting actual Hours of Service. See Section 2.03(a)(4) for a description of the Equivalency Method.

(i) **Hours of Service.** Under AA §6A-5(a)(2), the Employer may modify the default accrual requirements to require an Employee to complete a specified number of Hours of Service during an Accrual Computation Period to earn a Year of Accrual Service.

(ii) **Elapsed Time method.** Instead of counting actual Hours of Service, the Employer may elect under AA §6A-5(a)(3) to apply the Elapsed Time method for calculating an Employee's service with the Employer. Under the Elapsed Time method, an Employee receives credit for a Year the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee begins a Period of Severance which lasts at least 12 consecutive months. In calculating an Employee's aggregate period of service, an Employee receives credit for any Period of Severance that lasts less than 12 consecutive months. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

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

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

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

(2) **Accrual Computation Period.** The Employer may elect under AA §6A-5(b) to modify the Accrual Computation Period used to determine Years of Accrual Service. Unless specifically modified under AA §6A-5(b), the Accrual Computation Period is the Plan Year. The Employer may elect under AA §6A-5(b)(1) to use Anniversary Years as the Accrual Computation Period instead of the Plan Year. For this purpose, an Anniversary Year is the 12-month period beginning on the Employee's Employment Commencement Date (or

Reemployment Commencement Date) and subsequent 12-month periods beginning on the anniversary of such date. The Employer may elect an alternative 12-month period under AA §6A-5(b)(2).

(e) Timing and other rules related to Interest Crediting Rate.

(1) Methods to determine Interest Credits. Interest Credits may be determined for each current interest crediting period based on the effective periodic Interest Crediting Rate that applies over the period. Alternatively, if one of the Interest Crediting Rates under subsection (c)(1) or (2) applies, Interest Credits can be determined for a Stability Period based on the Interest Crediting Rate for a specified Lookback Month with respect to that Stability Period, as designated in AA §6A-2(c)(2). The Stability Period and Lookback Month selected under AA §6A-2(c)(2) need not be the same as the Lookback Month and Stability Period selected under AA §11-1 for purposes of Actuarial Equivalence.

(2) Frequency of interest crediting. Interest Credits must be provided on an annual or more frequent periodic basis and Interest Credits for each interest crediting period must be credited as of the end of the period. If Interest Credits are provided more frequently than annually based on one of the annual interest rates described in subsection (c)(1) or (2), each periodic Interest Credit will be no more than a pro rata portion of the applicable annual Interest Crediting Rate. However, if interest is credited daily based on one of the annual interest rates, each daily Interest Credit may be determined using a daily Interest Crediting Rate that is 1/360 of the applicable annual Interest Crediting Rate. Additionally, the interest rate may be compounded more frequently than annually.

(3) Blended rates. A plan may determine the Interest Crediting Rate by applying different rates to different predetermined portions of the Cash Balance Account.

(4) Preservation of capital requirement. A Participant's Cash Balance Account under the Plan as of the Participant's Annuity Starting Date shall be no less than the sum of all Contribution Credits credited under the Plan, reduced to reflect the value any prior distributions. This requirement applies only as of an Annuity Starting Date as of which a distribution of the Participant's entire remaining vested benefit under the Plan commences.

3.03 Offset of Benefits – Defined Contribution Plan. The vested portion of the Accrued Benefit that would otherwise be payable to a Participant under the Plan may be reduced (but not below zero) by the vested portion of a Participant's Account Balance attributable to Employer Contributions (plus the Actuarial Equivalent of any prior distributions from such Account) under a Defined Contribution Plan maintained by the Employer (as designated under AA §6A-3(a)). For purposes of determining the Actuarial Equivalence of distributions under the Defined Contribution Plan, no mortality assumptions shall be applied for purposes of determining the Actuarial Equivalence of any distributions for periods prior to the commencement of benefits under this Plan.

3.04 [Reserved]

3.05 Rollovers from other Plans. If provided by the employer in the Adoption Agreement, effective January 1, 2013, the Plan will accept direct rollovers made on behalf of Participants of this Plan to be used to increase the annuity otherwise payable under this Plan. If so provided, the Plan will accept direct rollover contributions (excluding amounts attributable to after-tax employee contributions and distributions from designated Roth accounts) from the qualified defined contribution plan(s) of the Employer specified in the Adoption Agreement.

SECTION 4
SPECIAL RULES AFFECTING GOVERNMENTAL PLANS AND INDIAN TRIBAL GOVERNMENT PLANS

4.01 **Governmental Plan.** This Governmental Defined Benefit Plan is designed to be adopted by a Govermental Employer. Provided the Plan is properly adopted by an entity that meets the requirements for establishing and maintaining a Governmental Plan under Code §414(d), this Plan is a qualified plan under Code §401(a). The Employer, as a Governmental entity, is exempt from the requirements of ERISA and is exempt from the plan qualification requirements listed in subsection (b)below. The Plan is subject to all other qualification requirements to the extent not specifically listed in subsection (b)below.

(a) **Definition of Governmental Plan.** A Governmental Plan is a Plan established and maintained for its Employees by the U.S. government, any State or political subdivision of a State, any Federal or State agency or instrumentality, or an Indian Tribal Government (provided the requirements under Section 4.02 of the Plan are satisfied), as defined under Code §414(d).

(b) **Governmental Plan exemptions.** As a Governmental Plan, this Plan is exempt from the following qualification requirements underCode §401(a):

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

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

(3) The nondiscrimination requirements under Code §401(a)(4).

(4) The minimum vesting requirements under Code §411, including minimum vesting schedules, consent requirements for plan distribuitions, and the anti-cutback rules under Code §411(d)(6). However, Governmental Plans must satisfy Code §§401(a)(4) and (7) as in effect before the enactment of ERISA.

(5) The top-heavy rules under Code §401(a)(10)(B)(iii) and §416.

(6) The joint and survivor rules under Code §401(a)(11) and §417.

(7) The requirements for protecting benefits pursuant to a plan merger or a transfer of plan assets as prescribed under Code §401(a)(12).

(8) The anti-assignment rules (other than the rules applicable to Qualified Domestic Relations Orders) under Code §401(a)(13). However, the Code provisions relating to the taxability of benefits distributed pursuant to a Qualified Domestic Relations Order (QDRO) are applicable to benefits payable to an alternate payee under the QDRO. See Code §414(p)(11).

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

(10) The protections under Code §401(a)(19).

(c) **No DROP or Code §414(k) Plan provisions.** A Governmental Plan may not include any provisions relating to a deferred retirement option plan (DROP) or a Code §414(k) Plan.

(d) **Adoption Agreement elections.** An Employer's election of provisions similar to requirements applicable to plans covered under Title I of ERISA or to otherwise inapplicable qualification requirements under Code §401(a) will not affect the Plan's status as a Governmental Plan. Provided the Employer is qualified to maintain a Governmental Plan, the Plan remains exempt from ERISA and certain Code requirements as a Governmental Plan.

4.02 **Plan of Indian Tribal Government Treated as Governmental Plan.** A Plan established and maintained by:

(a) an Indian Tribal Government, as defined in Code §7701(a)(40),

(b) a subdivision of an Indian Tribal Government, determined in accordance with Code §7871(d), or

(c) an agency or instrumentality of either subsection (a) or (b)

is treated as a Governmental Plan, provided the conditions in this Section 4.02 are satisfied.

To qualify as a Governmental Plan, the Plan must cover only Employees substantially all of whose services are in the performance of essential government functions, but not in the performance of commercial activities (whether or not essential government functions). The interpretation of these conditions, including the meaning of essential government function and commercial activities, is determined under applicable regulations. Provided the requirements of this Sections 4.02 are satisfied,

the Plan may include a cash or deferred arrangement as provided under Code §401(k).

SECTION 5
CODE §415 BENEFIT LIMITATION

5.01 **In General.** The limitations of this Article 5 shall apply for Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

5.02 **Annual Benefit.** The Annual Benefit otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to the extent necessary so that the benefit does not exceed the Maximum Permissible Benefit.

If a Participant has made voluntary Employee Contributions, or Mandatory Employee Contributions as described in Section 3.09(b), the amount of such contributions is treated as an Annual Addition to a qualified Defined Contribution Plan.

5.03 **Employer Maintains Another Defined Benefit Plan.** If the Participant is, or has ever been, a Participant in another qualified Defined Benefit Plan (without regard to whether the Plan has been terminated) maintained by the Employer or a Predecessor Employer, the sum of the Participant's Annual Benefits from all such Plans may not exceed the Maximum Permissible Benefit. If the Participant's Employer-provided benefits under all such Defined Benefit Plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the Annual Benefit which may be credited to a Participant under this Plan will not exceed the Maximum Permissible Benefit reduced by the Annual Benefit credited to the Participant under any other Defined Benefit Plan maintained by the Employer.

5.04 **No Reduction of Benefits.** The application of the provisions of this Article shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's Accrued Benefit under all the Defined Benefit Plans of the Employer or a Predecessor Employer as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such Defined Benefit Plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code §415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Treas. Reg. §1.415(a)-1(g)(4).

5.05 **Special Rules.** The limitations of this section shall be determined and applied taking into account the rules in Section 5.07.

5.06 **Definitions.**

(a) **Annual Benefit.** A benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Treas. Reg. §1.401(a)-20, Q&A-10(d), and with regard to Treas. Reg. §1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (1) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code §415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Code §411(a)(9) and benefits transferred from another Defined Benefit Plan, other than transfers of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with subsection (1) or (2) below.

(1) **Benefit forms not subject to Code §417(e)(3).**

(i) **Form of benefit.** The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (1) if the form of the Participant's benefit is either:

(A) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or

(B) an annuity that decreases during the life of the Participant merely because of:

(I) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or

(II) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11)).

(ii) **Limitation Years beginning before July 1, 2007.** For Limitation Years beginning before July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

(A) the interest rate and mortality table specified in AA §11-1 for adjusting benefits in the same form; and

(B) a 5 percent interest rate assumption and the Applicable Mortality Table (as defined in Section 1.12) for that Annuity Starting Date.

(iii) **Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the greater of:

(A) the annual amount of the Straight Life Annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and

(B) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the Applicable Mortality Table (as defined in Section 1.12) for that Annuity Starting Date.

(2) **Benefit forms subject to Code §417(e)(3).** The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph if the form of the Participant's benefit is other than a benefit form described in subsection (1) above. In this case, the actuarially equivalent Straight Life Annuity shall be determined as follows:

(i) **Annuity Starting Date in Plan Years beginning after 2005.** If the Annuity Starting Date of the Participant's benefit occur during a Plan Year beginning after 2005, the actuarially equivalent Straight Life Annuity is equal to the greatest of:

(A) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and mortality table specified in AA §11-1 for adjusting benefits in the same form;

(B) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the Applicable Mortality Table (defined in Section 1.12); and

(C) the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the Applicable Interest Rate (defined in Section 1.11) and the Applicable Mortality Table (defined in Section 1.12), divided by 1.05.

However, effective for benefits with Annuity Starting Dates during Limitation Years beginning after December 31, 2008, subsection (C) does not apply to a plan maintained by an eligible Employer under

Code §408(p)(2)(C)(i). For this purpose, an eligible Employer is an Employer which had no more than 100 Employees who received at least $5,000 of compensation from the Employer in the preceding year (as described under Code §408(p)). An eligible Employer who maintains a Defined Benefit Plan for one or more years and who fails to be an eligible Employer in a subsequent year is treated as an eligible Employer for the two years following the last year the Employer was an eligible Employer (provided the reason for the failure to qualify is not due to an acquisition, disposition, or similar transaction involving an eligible Employer.)

(ii) **Annuity Starting Date in Plan Years beginning in 2004 or 2005.**

(A) If the Annuity Starting Date of the Participant's benefit occurs during a Plan Year beginning in 2004 or 2005, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

(I) the interest rate and mortality table specified in AA §11-1 for adjusting benefits in the same form; and

(II) a 5.5 percent interest rate assumption and the Applicable Mortality Table (defined in Section 1.12).

(B) If the Annuity Starting Date of the Participant's benefit is on or after the first day of the first Plan year beginning in 2004 and before December 31, 2004, the application of this Section shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Section, except that the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

(I) the interest rate and mortality table specified in AA §11-1 for adjusting benefits in the same form, as provided under the terms of the Plan in effect as of the date of the distribution;

(II) the Applicable Interest rate (as defined in Section 1.11) and the Applicable Mortality Table (as defined in Section 1.12), as provided under the terms of the Plan in effect as of the date of the distribution; and

(III) the Applicable Interest Rate defined in Section 1.11 (as in effect on the last day of the last Plan year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the Applicable Mortality Table (as defined in Section 1.12).

(b) **Compensation.** Compensation shall mean Total Compensation as defined in Section 1.101.

(c) **Defined Benefit Compensation Limitation.** 100 percent of a Participant's Highest Average Compensation, payable in the form of a Straight Life Annuity.

Unless elected otherwise under AA §11-2, in the case of a Participant who has had a severance from employment with the Employer, the Defined Benefit Compensation Limitation applicable to the Participant in any Limitation Year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the Participant in the prior Limitation Year by the annual adjustment factor under Code §415(d). The adjusted compensation limit shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

In the case of a Participant who is rehired after a severance from employment, the Defined Benefit Compensation Limitation is the greater of 100 percent of the Participant's Highest Average Compensation, as determined prior to the severance from employment, as adjusted pursuant to the preceding paragraph, if applicable; or 100 percent of the Participant's Highest Average Compensation, as determined after the severance from employment, in accordance with subsection (g) below.

(d) **Defined Benefit Dollar Limitation.** Effective for Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation is $160,000, automatically adjusted under Code §415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's

benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Employer may elect in AA §11-2 not to apply the automatic annual adjustment of the Defined Benefit Dollar Limitation under Code §415(d) to participants who have had a separation from employment.

(e) **Employer.** For purposes of this Section 5 Employer shall mean the employer that adopts this Plan, and all members of a controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h)), all commonly controlled trades or businesses (as defined in Code §414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code §415(h)), or affiliated service groups (as defined in Code §414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the Employer pursuant to Code §414(o).

(f) **Formerly Affiliated Plan of the Employer.** A Plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the Employer, such as the sale of a member controlled group of corporations, as defined in Code §414(b), as modified by Code §415(h), to an unrelated corporation, or that causes a Plan to not actually be maintained by the Employer, such as transfer of Plan sponsorship outside a controlled group.

(g) **Highest Average Compensation.** The average Compensation for the three consecutive years of service (or, if the Participant has less than three consecutive years of service, the Participant's longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produces the highest average. For this purpose, a Participant shall be credited with a year of service (computed to fractional parts of a year) for each Accrual Computation Period for which the Participant is credited with at least the number of Hours of Service (or period of service if the Elapsed Time method is used) for benefit accrual purposes, taking into account only service with the Employer or a Predecessor Employer. In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant's Highest Average Compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no Compensation from the Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A Participant's Compensation for a Year of Service shall not include Compensation in excess of the limitation under Code §401(a)(17) that is in effect for the calendar year in which such year of service begins.

(h) **Limitation Year.** The Plan Year, unless the Employer elects another 12-consecutive month period under AA §11-2(a). All qualified Plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(i) **Maximum Permissible Benefit.** The lesser of the Defined Benefit Dollar Limitation or the Defined Benefit Compensation Limitation (both adjusted where required, as provided below).

(1) **Adjustment for less than 10 Years of Participation or Service.** If the Participant has less than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- the numerator of which is the number of Years of Participation (or part thereof, but not less than one year) in the Plan, and the denominator of which is 10. In the case of a Participant who has less than ten Years of Service with the Employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction -- the numerator of which is the number of Years of Service (or part thereof, but not less than one year) with the Employer, and the denominator of which is 10.

(2) **Adjustment of Defined Benefit Dollar Limitation for benefit commencement before age 62 or after age 65.** Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under subsection (i) below, as modified by subsection (iii). If the Annuity Starting Date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under subsection (ii) below, as modified by subsection (iii).

(i) **Adjustment of Defined Benefit Dollar Limitation for benefit commencement before age 62.**

(A) **Limitation Years beginning before July 1, 2007.** If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection (1) above for Years of Participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(I) the interest rate and mortality table specified in AA §11-1; or

(II) a 5-percent interest rate assumption and the Applicable Mortality Table (as defined in Section 1.12).

(B) Limitation Years beginning on or after July 1, 2007.

(I) Plan does not have immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection (1) above for Years of Participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the Applicable Mortality Table (as defined in Section 1.12) for the Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

(II) Plan has immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (I) above and the Defined Benefit Dollar Limitation (adjusted under subsection (1) for Years of Participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this Section 5.

(III) Decrease in dollar limit. Notwithstanding any other provisions of this subsection (i), the age-adjusted dollar limit applicable to a Participant shall not decrease on account of an increase in age or the performance of additional services.

(ii) Adjustment of Defined Benefit Dollar Limitation for benefit commencement after age 65.

(A) Limitation Years beginning before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection (1) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(I) the interest rate and mortality table specified in AA §11-1; or

(II) a 5-percent interest rate assumption and the Applicable Mortality Table (as defined in Section 1.12).

(B) Limitation Years beginning on or after July 1, 2007.

(I) Plan does not have immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection (1) for years of participation less than 10, if required), with

actuarial equivalence computed using a 5 percent interest rate assumption and the Applicable Mortality Table (as defined in Section 1.12) for that Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

(II) **Plan has immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement.** If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (I) above and the Defined Benefit Dollar Limitation (adjusted under subsection (1) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) **No mortality adjustment.** Notwithstanding the other requirements of this subsection (2), in adjusting the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date under subsections (i)(A), (i)(B)(I), (ii)(A) and (ii)(B)(I), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code §417(c), upon the Participant's death.

(3) **Minimum benefit permitted.** Notwithstanding anything else in this Section 5 to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

(i) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other Defined Benefit Plans (without regard to whether a Plan has been terminated) ever maintained by the Employer do not exceed $10,000 multiplied by a fraction:

(A) the numerator of which is the Participant's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the Employer, and

(B) the denominator of which is 10; and

(ii) the Employer (or a Predecessor Employer) has not at any time maintained a Defined Contribution Plan in which the Participant participated (for this purpose, mandatory employee contributions under a Defined Benefit Plan, individual medical accounts under Code §401(h), and accounts for postretirement medical benefits established under Code §419A(d)(1) are not considered a separate Defined Contribution Plan).

(j) **Predecessor Employer.** If the Employer maintains a Plan that provides a benefit which the Participant accrued while performing services for a former employer, the former employer is a Predecessor Employer with respect to the Participant in the Plan. A former entity that antedates the Employer is also a Predecessor Employer with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(k) **Severance from Employment.** An Employee has a severance from employment when the Employee ceases to be an Employee of the Employer maintaining the Plan. An Employee does not have a severance from employment if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee.

(l) **Year of Participation.** The Participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each Accrual Computation Period for which the following conditions are met:

(1) the Participant is credited with at least the number of Hours of Service (or period of service if the Elapsed Time Method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the Accrual Computation Period, and

(2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the Accrual Computation Period.

If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such Accrual Computation Period. A Participant who is permanently and totally disabled within the meaning of Code §415(c)(3)(C)(i) for an Accrual Computation Period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an Accrual Computation Period, the Plan must be established no later than the last day of such Accrual Computation Period. In no event shall more than one Year of Participation be credited for any 12-month period.

5.07 **Other Rules.**

(a) **Benefits under terminated Plans.** If a Defined Benefit Plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all Plan Participants and a Participant in the Plan has not yet commenced benefits under the Plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated Plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated Plan.

(b) **Benefits transferred from the Plan.** If a Participant's benefits under a Defined Benefit Plan maintained by the Employer are transferred to another Defined Benefit Plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a Defined Benefit Plan maintained by the Employer are transferred to another Defined Benefit Plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), the transferred benefits are treated by the Employer's Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the plan. If a Participant's benefits under a Defined Benefit Plan maintained by the Employer are transferred to another Defined Benefit Plan in a transfer of distributable benefits pursuant to Treas. Reg. §1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor Plan.

(c) **Formerly Affiliated Plans of the Employer.** A Formerly Affiliated Plan of an Employer shall be treated as a Plan maintained by the Employer, but the Formerly Affiliated Plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the Plan and had purchased annuities to provide benefits.

(d) **Plans of a Predecessor Employer.** If the Employer maintains a Defined Benefit Plan that provides benefits accrued by a Participant while performing services for a Predecessor Employer, the Participant's benefits under a Plan maintained by the Predecessor Employer shall be treated as provided under a Plan maintained by the Employer. However, for this purpose, the Plan of the Predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the Predecessor Employer relationship with sufficient assets to pay Participants' benefit liabilities under the Plan, and had purchased annuities to provide benefits; the Employer and the Predecessor Employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the Plan of the Predecessor Employer.

(e) **Suspension of benefits.** If, as a result of additional benefit accruals after a Participant attains Normal Retirement Age, the Accrued Benefit of such Participant would exceed the limitations under this Section 5 for the Limitation Year, then immediately before the additional benefit accrues that would cause such participant's benefit to exceed the limitations of this Section 5, payment of benefits to such Participant will be suspended, if applicable. If benefit payments are not suspended, distribution of the Participant's benefit will commence in accordance with the provisions ofSection 8.

(f) **Corrective provisions.** If the Plan violates the benefit limitation under this Section 5, corrections after the close of the Limitation Year may only be made through the Employee Plans Compliance Resolution System ("EPCRS").

(g) **Special rules.** The limitations of this Article shall be determined and applied taking into account the rules in Treas. Reg. §1.415(f)-1(d), (e) and (h).

5.08 **Aggregation with Multiemployer Plans.** If the Employer maintains a multiemployer plan (as defined in Code §414(f)), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the Employer shall be treated as benefits provided under a plan maintained by the Employer for purposes of this Section 5. Effective for Limitation Years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of determining the Defined Benefit Compensation Limitation under Section 5.06(c) for a plan which is not a multiemployer plan.

SECTION 6
INVESTMENT IN LIFE INSURANCE

6.01 **Investment in Life Insurance.** The Employer has the discretion to permit, prohibit or restrict life insurance investments under the Plan through separate investment procedures, a separate funding policy or in any other manner. If the Employer prohibits investments in life insurance, this Article does not apply. If the Employer permits investments in life insurance, a group or individual life insurance policy purchased by the Plan may be issued on the life of a Participant, a Participant's spouse, a Participant's child or children, a family member of the Participant, or any other individual with an insurable interest. For this purpose, a life insurance policy includes any type of policy, including a second-to-die policy and key person insurance, provided that the holding of a particular type of policy is not prohibited under rules applicable to qualified plans.

(a) **Plan Administrator discretion.** Subject to the pre-retirement death benefit requirement under Section 6.02(a) below, the Plan Administrator has complete discretion to decide whether insurance shall be purchased under the Plan and the source of that insurance. The Plan Administrator may delegate this responsibility to the Trustee.

(b) **Insurability.** Prior to purchasing a life insurance policy, the Trustee may require the individual whose life is being insured to provide evidence of insurability, such as a physical examination, as may be required by the Insurer. If a Plan Participant satisfies the Insurer's conditions for insurability at standard rates, the Plan Administrator may purchase an appropriate life insurance policy. If a Participant is only insurable at substandard rates, the Plan Administrator may purchase a life insurance policy providing graded benefits based on the premium that would be paid for a standard rate policy.

(c) **Issue date.** To the extent possible, each insurance policy shall have an issue date consistent with the anniversary date of the Participant. For this purpose, the anniversary date is the Participant's date of initial entry (or reentry) into the Plan and for changes to policies the date as of which the Plan Administrator calculates the Participant's Accrued Benefit.

(d) **Dividends and refunds.** Dividends and refunds attributable to a Participant's life insurance policy will be used to reduce the policy's next premium. If no additional premium is due, the dividends or refund will be used as part of the death benefit payable on behalf of the Participant.

6.02 **Limitations on Life Insurance.** Any insurance purchased on the life of a Participant under the Plan must satisfy the incidental death benefit and definitely determinable benefit requirements for qualified pension plans.

(a) **Determination of the Pre-Retirement Death Benefit.** A Participant who dies prior to his/her Annuity Starting Date is entitled to the pre-retirement death benefit designated in the Adoption Agreement.

(b) **Adjustments to life insurance amounts.** If, because of compensation, service or other changes, a Participant's monthly retirement benefit increases by $10 or more, the Plan Administrator will adjust any applicable life insurance coverage as of the appropriate anniversary date.

(c) **No limitations on the use of Rollover Contribution Account to purchase life insurance.** With the Participant's consent, the Plan Administrator has the discretion to direct the investment of any portion of the Participant's Rollover Contribution Account in a group or individual life insurance policy for the benefit of such Participant, without regard to the incidental life insurance rules.

6.03 **Fully-Insured Plans.** If this is a Fully-Insured Plan which satisfies the requirements under Code §412(e)(3) rules, the following requirements apply. [An Employer may not combine a cash balance plan with a Fully-Insured Plan.]

(a) **Funding.** A Fully-Insured Plan is funded exclusively by the purchase of individual insurance contracts. The Plan will purchase contracts to provide all benefits for Participants. All contracts will provide for level annual premium payments to be paid for the period commencing with the date that each individual became a Participant in the Plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective) and extending to the Normal Retirement Age for each such individual.

(b) **Benefits.** Benefits provided by a Fully-Insured Plan are equal to the benefits provided under each contract at Normal Retirement Age under the Plan and are guaranteed by an insurance carrier (licensed under the laws of a state to do business with the Plan) to the extent premiums have been paid.

(c) **Benefit increase**. If so elected under AA §6-1(c), the amount of retirement benefit provided by insurance or annuity contracts under a Fully-Insured Plan will not be provided or increased until the Participant's compensation is large enough to provide or increase the retirement benefit by a specified minimum amount. This minimum amount can be no greater than $120 per year or $10 per month. It can also be expressed in terms of an increase in the face amount of the pre-retirement death benefit under a contract, if the minimum increase in face amount does not exceed $1,000.

(d) **Benefiting after Normal Retirement Age.** The premium payments for a Participant who continues benefiting after Normal Retirement Age are equal to the amount necessary to fund additional benefits that accrued under the Plan's benefit formula for the Plan Year.

(e) **Contracts have same terms.** All benefits are funded through contracts of the same series which must have cash values based on the same terms (including interest and mortality assumptions) and the same conversion rights. A Plan does not fail to satisfy this requirement, however, if any prospective change in the contract series or insurance carrier applies on the same terms to all Participants in the Plan.

(f) **No security interests or loans.** No rights under any contracts will be subject to a security interest at any time, and no policy loans, including loans to Participants, will be made at any time.

(g) **Participant's Accrued Benefit.** Each Participant's Accrued Benefit as of any applicable date is the cash surrender value of the Participant's insurance contracts, or, if greater, the cash surrender value the Participant's insurance contracts would have had on such applicable date if (1) premiums payable for such Participant's Years of Participation for the current Plan Year and all prior Plan Years under such contracts had been paid before lapse, (2) no rights under such contracts had been subject to a security interest at any time, and (3) no policy loans were outstanding at any time.

(h) **Treatment of insurance dividends and other credits.** No contract will be purchased under the Plan unless such contract or a separate definite written agreement between the Employer (or Trustee, if any) and the Insurer provides that:

(1) no value under contracts providing benefits under the Plan or credits (on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits) with respect to such contracts may be paid or returned to the Employer or diverted to or used for other than providing Plan benefits for the exclusive benefit of Employees or their beneficiaries;

(2) any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution;

(3) any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits with respect to contracts under the Plan shall be applied by the Insurer toward each premium next due for contracts under the Plan before any further contributions made by the Employer are so applied by the Insurer, and not later than the due date for such premiums;

(4) any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits in excess of plan benefits with respect to contracts distributed to provide Plan benefits, will be applied as provided in subsection (3);

(5) if upon the cessation of benefit accruals or upon Plan termination, all benefits provided under the Plan with respect to service before cessation of accruals or termination have been purchased, any credits on account of dividends, earnings or other experience rating credits, or surrender or cancellation credits with respect to contracts under the Plan will revert to the Employer; and

(6) where credits are applied by the Insurer before Employer contributions are made that are sufficient in addition to the credits to pay each premium next due, such credits will be applied proportionately toward each premium next due so that the same percentage of each premium next due is paid.

6.04 **Ownership of Life Insurance Policies.** The Trustee is the owner of any life insurance policies purchased under the Plan in accordance with the provisions of this Section. Any life insurance policy purchased under the Plan must designate the Trustee as owner and beneficiary under the policy. The Trustee will pay the appropriate amount of the proceeds of any life insurance policies to the Beneficiary of the Participant for whom such policy is held in accordance with the distribution provisions under the Plan.

6.05 **Distribution of Insurance Policies.** Life insurance policies under the Plan which are held on behalf of a Participant must be distributed to the Participant or converted to cash upon the later of the Participant's Annuity Starting Date or termination of employment. Any life insurance policies that are held on behalf of a terminated Participant must continue to satisfy the incidental life insurance and definitely determinable benefit applicable to a qualified plan.

6.06 **Discontinuance of Insurance Policies.** Investments in life insurance may be discontinued at any time, either at the direction of the Trustee or other fiduciary responsible for making investment decisions. Where life insurance investment options are being discontinued, the Plan Administrator, in its sole discretion, may offer the sale of the insurance policies to the Participant, or to another person, provided that the prohibited transaction exemption requirements prescribed by the Department of Labor are satisfied.

6.07 **Protection of Insurer.** An Insurer that issues a life insurance policy under the terms of this Section, shall not be responsible for the validity of this Plan and shall be protected and held harmless for any actions taken or not taken by the Employer, Plan Administrator or Trustee, or any actions taken in accordance with written directions from the Employer, Plan Administrator or Trustee (or any duly authorized representatives). An Insurer shall have no obligation to determine the propriety of any premium payments or to guarantee the proper application of any payments made by the insurance company to the Trustee.

The Insurer is not and shall not be considered a party to this Agreement and is not a fiduciary with respect to the Plan solely as a result of the issuance of life insurance policies under this Section 6.

6.08 **No Responsibility for Act of Insurer.** Neither the Employer, the Plan Administrator nor the Trustee shall be responsible for the validity of the provisions under a life insurance policy issued under this Section 6 or for the failure or refusal by the Insurer to provide benefits under such policy. The Employer, the Plan Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the life insurance policy or which renders the policy invalid or unenforceable in whole or in part.

6.09 **Conflict between Plan and Life Insurance Policy.** If there is a conflict between the provisions of the Plan and the provisions of a life insurance policy held by the Trustee, the Plan provisions will control.

SECTION 7
PARTICIPANT VESTING

7.01 **Vesting of Accrued Benefit.** A Participant's vested interest in his/her Accrued Benefit, including his/her Cash Balance Account, is determined based on the vesting schedule elected in AA §8-2. A Participant is always fully vested in his/her Rollover Contribution Account. As a Governmental Plan, the minimum vesting requirements and other rules under Code §411 do not apply. Plan provisions may be modified accordingly. However, Governmental Plans must satisfy Code §§401(a)(4) and (7) as in effect before the enactment of ERISA.

7.02 **Vesting Schedules.** A Participant's vested interest in his/her Accrued Benefit is determined by multiplying the Participant's vesting percentage (determined under the applicable vesting schedule selected in AA §8-2) by the total Accrued Benefit.

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

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

(2) **7-year graded vesting schedule.** Under the 7-year graded vesting schedule, an Employee vests in his/her Accrued Benefit in the following manner:

After 3 Years of Service – 20% vesting
After 4 Years of Service – 40% vesting
After 5 Years of Service – 60% vesting
After 6 Years of Service – 80% vesting
After 7 Years of Service – 100% vesting

(3) **6-year graded vesting schedule.** Under the 6-year graded vesting schedule, an Employee vests in his/her Accrued Benefit in the following manner:

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

(4) **5-year cliff vesting schedule.** Under the 5-year cliff vesting schedule, an Employee is 100% vested after 5 Years of Service. Prior to the fifth Year of Service, the vesting percentage is zero.

(5) **3-year cliff vesting schedule.** Under the 3-year cliff vesting schedule, an Employee is 100% vested after 3 Years of Service. Prior to the third Year of Service, the vesting percentage is zero.

(6) **Modified vesting schedule.** As a Governmental Plan, the Plan is not subject to the requirements of Code §411 and may modify the vesting schedule, provided the Plan satisfies the requirements of Code §§401(a)(4) and (7) as in effect before the enactment of ERISA. For this purpose, the modified vesting schedule must be at least as favorable as one of the following safe harbor vesting schedules:

(i) **15-year cliff vesting schedule.** The Participant is fully vested after 15 years of creditable service. Service can be based on years of employment, years of participation or other creditable years of service.

(ii) **20-year graded vesting schedule**. The Participant is fully vested based on a graded vesting schedule of 5 to 20 years of creditable service. Service can be based on years of employment, years of participation or other creditable years of service.

(iii) **20-year cliff vesting for qualified public safety employees**. Participant os fully vested after 20 years of creditable service. Service can be based on years of employment, years of participation or other creditable years of service. The safe harbor schedule is available only with respect to the vesting schedule applicable to a group in which substantially all of the participants are qualified public safety employees (within the meaning of Code §72(t)(10(B).

(b) **Special vesting rules.**

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

(2) **100% vesting upon death, disability, or Early Retirement Age.** The Employer may elect under AA §8-4 to allow a Participant's vesting percentage to automatically increase to 100% if the Participant dies, becomes Disabled, and/or attains Early Retirement Age while employed by the Employer.

(3) **Vesting upon merger, consolidation or transfer.** No accelerated vesting will be required solely because a Defined Benefit Plan is merged with another Defined Benefit Plan, or because assets are transferred from a Defined Benefit Plan to another Defined Benefit Plan.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or (iv) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

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

7.04 **Vesting Computation Period.** Generally, the Vesting Computation Period is the Plan Year. Alternatively, the Employer may elect under AA §8-5(b)(1) to use the 12-month period commencing on the Employee's date of hire (or reemployment date, if applicable) and each subsequent 12-month period commencing on the anniversary of such date or the Employer may elect to use any other 12-consecutive month period as the Vesting Computation Period.

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

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

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

7.06 **Service with Predecessor Employers.** To the extent provided, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer may be treated as service with the Employer for purposes of applying the provisions of this Plan.

7.07 **Break in Service Rules.** In addition to any service excluded under Section 7.05, the Employer may elect under AA §8-6 to disregard an Employee's vesting service with the Employer earned prior to a Break in Service. For this purpose, an Employee incurs a Break in Service for any Vesting Computation Period (as defined in Section 7.04) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects under AA §8-6(a) to require less than 1,000 Hours of Service to earn a vesting Year of Service, a Break in Service will occur for any Vesting Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn a vesting Year of Service. In applying these Break in Service rules, Years of Service and Breaks in Service are measured on the same Vesting Computation Period.

7.08 **Cash-Out Distribution.** To the extent permitted under Section 8 and AA §9, a Participant may elect to receive a lump sum distribution of the entire present value of his/her vested Accrued Benefit upon termination of employment (a "Cash-Out Distribution"). If a Participant elects to receive a Cash-Out Distribution, the nonvested portion (if any) of the Participant's Accrued Benefit is treated as a forfeiture. If a Participant has his/her nonvested Accrued Benefit forfeited as a result of a Cash-Out Distribution, such Participant may t be given the right to "buy-back" the forfeited benefit, as provided in subsection (b) below, if such Participant returns to covered employment with the Employer. If a Participant terminates employment with the Employer with a vested Accrued Benefit of zero, the Participant is treated as receiving a "deemed" Cash-Out Distribution from the Plan. Upon a deemed Cash-Out, the nonvested portion of the Participant's Accrued Benefit will be forfeited. The Employer may modify the cash-out distribution rules under the Adoption Agreement.

(a) **Application of cash-out rules.** The rules under this Section 7.08 apply only if the Participant is less than 100% vested in his/her Accrued Benefit. If the Participant is 100% vested in his/her Accrued Benefit, no forfeiture of benefits will occur solely as a result of the Cash-Out Distribution.

(b) **Buy-back/restoration.** If a Participant receives (or is deemed to receive) a Cash-Out Distribution that results in a forfeiture under this Section 7.08, and the Participant subsequently resumes employment covered under the Plan, the Participant may "buy-back" the forfeited portion of his/her Accrued Benefit by repaying to the Plan the full amount of the Cash-Out Distribution, plus interest. (See subsection (1) below.) A Participant may buy back the forfeited portion of his/her Accrued Benefit by repaying the full amount of the Cash-Out Distribution to the Plan at any time prior to the earlier of (i) five (5) years after the first date on which the Participant is subsequently re-employed by the Employer, or (ii) the date the Participant incurs five consecutive Breaks in Service (as defined in Section 7.07). If a Participant receives a deemed Cash-Out Distribution (as described in Section 7.08 above), and the Participant resumes

employment covered under this Plan before the date the Participant incurs five consecutive Breaks in Service, the Participant is deemed to repay the Cash-Out Distribution immediately upon his/her reemployment.

(1) **Amount of buy-back.** To receive a restoration of the forfeited portion of his/her Accrued Benefit, a Participant must repay the entire Cash-Out Distribution, plus interest compounded annually from the date of distribution at the rate determined under Code §411(c)(2)(C). For this purpose, the Cash-Out Distribution is the total value of the Participant's vested Accrued Benefit that is distributed at any time following the Participant's termination of employment.

(2) **Restoration of forfeited benefit.** Upon a Participant's proper repayment of a Cash-Out Distribution in accordance with subsection (1) above, the forfeited portion of the Participant's Accrued Benefit will be restored, including any optional forms of benefit and subsidies relating to such benefit. The forfeited portion of the Participant's Accrued Benefit will be restored in the Plan Year in which the Participant repays the Cash-Out Distribution in accordance with subsection (b) above. Although the Plan Administrator may permit a Participant to make a partial repayment of a Cash-Out Distribution, no portion of the Participant's forfeited Accrued Benefit will be restored until the Participant repays the entire Cash-Out Distribution in accordance with subsection (b) above. If a Participant received a deemed Cash-Out Distribution, the Participant's forfeited Accrued Benefit will be restored in the Plan Year in which the Participant returns to employment with the Employer.

(c) **Missing Participant or Beneficiary.** If the Plan is able to make a distribution to a Participant or Beneficiary without consent (as permitted under Section 8.02) and such Participant or Beneficiary cannot be located within a reasonable period following a reasonable diligent search, the Plan Administrator may forfeit the missing Participant's or Beneficiary's Accrued Benefit, as provided in subsection (2) below. An Employer will be deemed to have performed a reasonable diligent search if it performs the actions described in subsection (1) below. In determining whether a reasonable period has elapsed following a reasonable diligent search, the Plan Administrator may follow any applicable guidance provided under statute, regulation, or other IRS guidance of general applicability. However, the Plan Administrator will be deemed to have waited a reasonable period following a reasonable diligent search if the Plan Administrator waits at least 6 months following the completion of the actions described in subsection (1) below. For purposes of applying this subsection (c), a Participant or Beneficiary is considered missing only if the Plan may make a distribution to such Participant or Beneficiary without consent.

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

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

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

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

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

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

SECTION 8
PLAN DISTRIBUTIONS

8.01 **Distribution Timing and Options.** A Participant may receive a distribution of his/her vested Accrued Benefit as soon as administratively feasible after the Participant's severance from employment date. In general, the Plan may not pay benefits to a Participant prior to the Participant's death, termination of employment or the termination of the Plan. However, the Employer may elect under AA §10-1 to permit an in-service distribution upon attainment of Normal Retirement Age or upon the attainment of a specified age not earlier than age 62. A Participant may withdraw at any time, upon written request, all or any portion of his/her benefit attributable to After-Tax Contributions or Rollover Contributions, provided such amounts are held in a Separate Account.

Distributions from the Plan will be determined with reference to the Normal Form of Benefit. The Normal Form of Benefit is a Straight Life Annuity payable at the Participant's Normal Retirement Date. However, a Participant may elect a distribution in any available alternative form, such as a lump sum. [A Normal Form of Benefit other than a Straight Life Annuity could result in a violation of the limitations imposed by Code §415.] Any distribution from the Plan may be subject to the Participant consent requirements under Section 8.05 and the spousal consent requirements under Section 9.02. Any payment in an alternative form will be the Actuarial Equivalent of the Normal Form of Benefit to which the Participant is entitled. The Participant also may elect distribution in the form of installment payments in order to satisfy the minimum distribution rules under Section 10.

8.02 **Distributions After Termination of Employment.** Subject to the required minimum distribution provisions under Section 10, a Participant whose employment with the Employer is terminated for any reason (other than death) is entitled to receive a distribution of his/her vested Accrued Benefit in accordance with this Section 8.02. The Participant must receive proper notice and must consent in writing, in accordance with Section 8.05, prior to receiving a distribution from the Plan. If the Participant does not consent to a distribution upon terminating employment with the Employer, distribution will be made in accordance with Section 10. If a Participant dies while employed by the Employer or dies before distribution of his/her vested Accrued Benefit is completed, distribution will be made in accordance with Section 8.03.

(a) **Accrued Benefit not exceeding $5,000.** If the present value of a Participant's vested Accrued Benefit does not exceed $5,000 at the time of distribution, the only distribution option available under the Plan is a lump sum option. The Participant will be eligible to receive a distribution of his/her vested Accrued Benefit as of the date selected in AA §9-3(b). (The Employer may elect in AA §9-5(a) to require a Participant to consent to a distribution where his/her vested Accrued Benefit does not exceed $5,000. However, this will not change the distribution options described in this subsection (a), unless the Employer specifically modifies such options under AA §9-3(b)(5). See Section 8.05 for a further discussion of the consent requirements under the Plan.)

(b) **Accrued Benefit exceeding $5,000.** If the present value of a Participant's vested Accrued Benefit exceeds $5,000 at the time of distribution, the Participant may elect to receive a distribution of his/her vested Accrued Benefit in any form permitted under AA §9-1. The Participant will be eligible to receive a distribution of his/her vested Accrued Benefit as of the date selected in AA §9-3(a). (See Section 8.05 for a discussion of the consent requirements under the Plan.)

8.03 **Distribution Upon Death.** Subject to the required minimum distribution rules in Section 10, a Participant's vested Accrued Benefit will be distributed to the Participant's Beneficiaries in accordance with this Section 8.03. (See subsection (c) for rules regarding the determination of Beneficiaries upon the death of the Participant.) The form of benefit payable with respect to a deceased Participant will depend on whether the Participant dies before or after distribution of his/her vested Accrued Benefit has commenced. If a Participant commences distribution prior to death only with respect to a portion of his/her Accrued Benefit, then the rules in subsection (a) apply to the portion for which distribution has commenced and the rules in subsection (b) apply to the rest of the Accrued Benefit.

(a) **Death after commencement of benefits.** If a Participant dies after commencing distribution of his/her benefits under the Plan, the death benefit is any remaining benefit under the form of payment in effect at the time of the Participant's death.

(b) **Death before commencement of benefits.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the death benefit will be paid in accordance with the death benefit provisions set forth in Section 3.07.

(c) **Determining a Participant's Beneficiary.** The Participant may designate a Beneficiary to receive the death benefits described in this Section. Any Beneficiary designation is subject to the rules below. A Participant may change or revoke a Beneficiary designation at any time by filing a new designation with the Plan Administrator.

(1) **Default beneficiaries.** To the extent a death benefit is payable under the Plan and a Beneficiary has not been named by the Participant on the appropriate Beneficiary Designation forms and a Beneficiary is not designated under the terms of this Plan to receive all or any portion of the deceased Participant's death benefit, such amount shall be distributed to the Participant's surviving spouse (if the Participant was married at the time of death). If the Participant does not have a surviving spouse at the time of death, distribution will be made to the

Participant's surviving children, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant's estate. The Employer may modify the default beneficiary rules described in this subparagraph by attaching appropriate language as an addendum to the Adoption Agreement.

(2) **Identification of Beneficiaries.** The Plan Administrator may request proper proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan in any form or manner the Plan Administrator may deem appropriate. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor Beneficiary, payments may be made to the person's legal guardian, conservator, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. If a distribution is to be made to an incompetent beneficiary, payments must be made to a valid power of attorney, a court appointed guardian or any other person authorized under state law to receive such distribution. The Plan Administrator or Trustee will not be liable for any payments made in accordance with this subsection (2) and are not required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan.

(3) **Death of Beneficiary.** Unless specified otherwise in the Participant's Beneficiary designation form, if a Beneficiary does not predecease the Participant but dies before distribution of the death benefit is made to the Beneficiary, the death benefit will be paid to the Beneficiary's estate.

(4) **Divorce from spouse.** If a Participant designates his/her spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and spouse are divorced, the designation of the spouse as Beneficiary under the Plan is automatically rescinded unless specifically provided otherwise under a divorce decree or QDRO, or unless the Participant enters into a new Beneficiary designation naming the prior spouse as Beneficiary.

8.04 **Distribution to Disabled Employees.** Unless elected otherwise under AA §9-4, no special distribution rules apply to Disabled Employees. However, the Employer may elect in AA §9-4 to permit a distribution at an earlier date for Disabled Employees.

8.05 **Participant Consent.** To the extent elected under AA §9-5, if the value of a Participant's entire vested Accrued Benefit exceeds the Involuntary Cash-Out threshold (as defined in subsection (a) below), the Participant must consent to any distribution of such Accrued Benefit prior to his/her Required Beginning Date (as defined in Section 10.07(f)) or, if so provided in AA §9-5(d), as of the date the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62. .

(a) **Involuntary Cash-Out threshold.** For purposes of determining whether a distribution is subject to the Participant consent, the Involuntary Cash-Out threshold is $5,000 unless another amount is designated under AA §9-5(a).

(b) **Rollovers disregarded in determining value of Accrued Benefit for Involuntary Cash-Outs.** For purposes of determining whether a Participant's vested Accrued Benefit exceeds the Involuntary Cash-Out threshold described in subsection (a), then effective for distributions made after December 31, 2001, the value of the Participant's vested Accrued Benefit shall be determined without regard to that portion of the Accrued Benefit that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Code §§402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16). The Employer may elect in AA §9-5(c) to include Rollover Contributions (and earnings allocable thereto) in determining whether the Participant's vested Accrued Benefit exceeds the Involuntary Cash-Out threshold.

(c) **Participant notice.** Prior to receiving a distribution from the Plan, a Participant will be notified of his/her distribution rights under the Plan.

(d) **Special rules.** The consent rules under this Section 8.05 apply to distributions made after the Participant's termination of employment and to distributions made prior to the Participant's termination of employment. However, the consent of the Participant (and the Participant's spouse, if applicable) shall not be required to the extent that a distribution is required to satisfy the required minimum distribution rules under Section 10.

8.06 **Direct Rollovers.** Notwithstanding any provision in the Plan to the contrary, a Distributee may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a Direct Rollover. If an Employee elects a Direct Rollover of only a portion of an Eligible Rollover Distribution, the Plan Administrator may require that the amount being rolled over equals at least $500. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving spouse or to a Participant's spouse or former spouse who is the Alternate Payee under a QDRO, as defined in Section 11.05(b)(1).

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

(a) Definitions.

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

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

(ii) any distribution to the extent such distribution is a required minimum distribution under Code §401(a)(9), as described under Section 10.

(2) Eligible Retirement Plan. For purposes of applying the Direct Rollover provisions under this Section 8.06, an Eligible Retirement Plan is:

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

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

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

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

(v) a tax-sheltered annuity plan described in Code §403(b); or

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

The definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a QDRO, as defined in Section 11.05(b)(3).

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

(4) Distributee. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code §414(p), are distributees with regard to the interest of the spouse or former spouse. For distributions occurring in plan years beginning after December 31, 2009, a distributee also includes the Participant's nonspouse designated beneficiary under Section 10.07(b) of the Plan. In the case of a nonspouse beneficiary, the direct rollover may be made only to a traditional IRA or Roth IRA that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). Also, in this case, the determination of any required minimum distribution under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

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

If a Participant terminates employment with a total vested Accrued Benefit that does not exceed the Involuntary Cash-Out threshold (as defined in Section 8.05(a)) and the Participant does not respond to the Direct Rollover notice indicating whether a Direct Rollover is desired and the name of the Eligible Retirement Plan to which the Direct Rollover is to be made, the Plan Administrator will distribute the Participant's entire vested Accrued Benefit in the form of an Automatic Rollover (pursuant to Section 8.07) no earlier than 30 days and no later than 180 days (90 days for Plan Years beginning before January 1, 2007) following the provision of the Direct Rollover notice. (However, see Section 8.07(b)for special rules that apply to Involuntary Cash-Out Distributions below $1,000.) The Direct Rollover notice

must describe the procedures for making an Automatic Rollover, including the name, address, and telephone number of the IRA trustee and information regarding IRA maintenance and withdrawal fees and how the IRA funds will be invested. The Direct Rollover notice also must describe the timing of the Automatic Rollover and the Participant's ability to affirmatively opt out of the Automatic Rollover.

(c) **Direct Rollover by non-spouse beneficiary.** Effective for taxable years beginning on or after January 1, 2007, a non-spouse beneficiary (as defined in Code §401(a)(9)(E)) may elect to directly rollover an Eligible Rollover Distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). Also, in this case, the determination of any required minimum distribution under §401(a)(9) that is ineligible for rollover shall be made in accordance with Q&A 17 and 18 of Notice 2007-7. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution. A non-spouse rollover made prior to January 1, 2010, will not be subject to the direct rollover requirements under Code §401(a)(31), the direct rollover notice requirements under subsection (b) or the mandatory withholding requirements under Code §3405(c). A non-spouse rollover made on or after January 1, 2010, will be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under subsection 8.06(b) and the mandatory withholding requirements under Code §3405(c).

(d) **Direct Rollover of non-taxable amounts.** Notwithstanding any other provision of the Plan, a distribution shall not fail to be an Eligible Rollover Distribution merely because the distribution consists of after-tax contributions which are not includible in gross income. However, the portion of the distribution attributable to after-tax contributions may be transferred only to:

(1) an individual retirement account or annuity described in Code §408(a) or (b);

(2) for taxable years beginning after December 31, 2001 and before January 1, 2007, to a qualified trust which is part of a Defined Contribution Plan 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; or

(3) for taxable years beginning after December 31, 2006, to a qualified defined benefit or defined contribution plan or to an annuity contract described in Code §403(b), if such plan or contract provides for separate accounting for amounts so transferred (including interest thereon), 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.

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

8.07 **Automatic Rollover.** The Automatic Rollover rules in this Section 8.07 are effective for all Involuntary Cash-Out Distributions (as defined in subsection (b)) made on or after March 28, 2005.

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

(b) **Involuntary Cash-Out Distribution.** An Involuntary Cash-Out Distribution is any distribution that is made from the Plan without the Participant's consent. Unless elected otherwise under AA §9-5(b), an Involuntary Cash-Out Distribution, for purposes of applying the Automatic Rollover requirements under this Section 8.07, does not include any amounts below $1,000.

(c) **Treatment of Rollover Contributions.** Unless elected otherwise under AA §9-5(c), for purposes of determining whether an Involuntary Cash-Out Distribution is greater than $1,000, the portion of the Participant's distribution attributable to any Rollover Contribution is excluded.

8.08 **Correction of Qualification Defects.** Nothing in this Section 8 precludes the Plan Administrator from making a distribution to a Participant to correct a qualification defect consistent with the correction procedures under the IRS' voluntary compliance

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

SECTION 9
JOINT AND SURVIVOR ANNUITY REQUIREMENTS

9.01 **Application of Joint and Survivor Annuity Rules.** As a Governmental Plan, the Qualified Joint and Survivor Annuity rules under Code §§401(a)(11) and 417 do not apply to the Plan. The Employer may elect to require spousal consent for Plan distributions under AA §9-2(b).

9.02 **Spousal consent.** If the Employer elects under AA §9-2(b) to require spousal consent to a Plan distribution, the Spouse's consent will be required with respect to a distribution as designated in AA §9-2(b).

SECTION 10
REQUIRED DISTRIBUTIONS

This Section 10 provides for the required commencement of distributions upon certain events. In addition, this Section 10places limitations on the period over which distribution may be made to the Participant or Beneficiary. To the extent the distribution provisions of this Plan are inconsistent with the provisions of this Section 10, the provisions of this Section control.

10.01 **Precedence and Effective Date.** The requirements of this Section 10 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 Section 10 apply to calendar years beginning on or after January 1, 2003. All distributions required under this Section 10 shall be determined and made in accordance with Code §401(a)(9), including the incidental death benefit requirements under Code §401(a)(9)(G) and the regulations thereunder.

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

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

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

(c) the Participant terminates service with the Employer.

A Participant who terminates employment after attaining Normal Retirement Age (or age 62, if later) and who does not elect to defer the receipt of benefits in accordance with this Section will begin receiving a distribution of his/her Accrued Benefit within an administratively practicable time following termination of employment.

A terminated Participant is deemed to defer the commencement of benefits as required by this Section if the Participant (and spouse, if applicable) does not consent to receive a distribution which is subject to any Participant (and spousal) consent requirements under the Plan.

10.03 **Required Minimum Distributions.**

(a) **Limitations on period of distribution.** 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:

(1) the life of the Participant,

(2) the joint lives of the Participant and a Designated Beneficiary,

(3) a period certain not extending beyond the life expectancy of the Participant, or

(4) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and a Designated Beneficiary.

The Participant's entire interest will be distributed or begin to be distributed no later than the Participant's Required Beginning Date (as defined in Section 10.07(f)).

(b) **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 subsection (c) and Section 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and Treas. Reg. §1.401(a)(9).

(c) **Determination of amount to be distributed each year.**

(1) **General annuity requirements.** If the Participant's interest is to be paid in the form of an annuity under the Plan, payments under the annuity shall satisfy the following requirements:

(i) the annuity distributions must be paid in periodic payments made at uniform intervals not longer than one year;

(ii) the distribution period must be over a life (or lives) or over a period certain not longer than the period described in subsection (4)below;

(iii) once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;

(iv) payments will either be nonincreasing or increase only as follows:

(A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(B) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the Annuity Starting Date, or if later, the date of the most recent percentage increase;

(C) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;

(D) as a result of dividend or other payments that result from Actuarial Gain (as defined in Section 10.07(a)), provided:

(I) Actuarial Gain is measured not less frequently than annually,

(II) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

(III) the Actuarial Gain taken into account is limited to Actuarial Gain from investment experience,

(IV) the assumed interest rate used to calculate such Actuarial Gains is not less than 3 percent, and

(V) the annuity payments are not increased by a constant percentage as described in subsection (C) above;

(E) to the extent of the reduction to the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Designated Beneficiary whose life was being used to determine the distribution period dies or is no longer the Participant's beneficiary pursuant to a QDRO within the meaning of Code §414(p);

(F) to provide a final payment upon the participant's death not greater than the excess of the actuarial present value of the participant's accrued benefit (within the meaning of Code §411(a)(7)) calculated as of the Annuity Starting Date using the Applicable Interest Rate and the Applicable Mortality Table (or, if greater, the total amount of Employee contributions) over the total of payments before the Participant's death;

(G) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

(H) to pay increased benefits that result from a plan amendment.

(2) **Amount required to be distributed by Required Beginning Date and later payment intervals.** The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin pursuant to Section 10.04(b)(1)(i) and (ii) below) shall be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received (e.g., bimonthly, monthly, semi-annually, or annually). All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

(3) **Additional accruals after first Distribution Calendar Year**. Any additional benefits accruing to the Participant after the first Distribution Calendar Year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(4) Requirements for annuity distributions that commence during Participant's lifetime.

(i) Joint Life Annuities where the Beneficiary is not the Participant's spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Treas. Reg. §1.401(a)(9)-6, Q&A-2(c)(2), in the manner described in Q&A-2(c)(1), to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

(ii) Period certain annuities. Unless the Participant's spouse is the sole Designated Beneficiary and the form of distribution is a period certain (with no life annuity feature), the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treas. Reg. §1.401(a)(9)–9, Q&A-2 for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Treas. Reg. §1.401(a)(9)–9, Q&A-2, plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's spouse is the sole Designated Beneficiary and the form of distribution is a period certain (with no life annuity feature), the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subsection (ii), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)–9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the Annuity Starting Date.

10.04 Requirements for Minimum Distributions after Participant's Death.

(a) Death after distributions begin. If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this Article, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.

(b) Death before distributions begin.

(1) Time and manner of distribution. If the Participant dies before 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, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death unless distributions to the Designated Beneficiary begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. Unless designated otherwise under AA §10-3, the Participant or Designated Beneficiary may elect on an individual basis to apply the five-year or one-year distribution method. If distributions commence by December 31 of the calendar year immediately following the calendar year in which the Participant died, the Designated Beneficiary may take distributions over his/her life expectancy, as described in subsection (2)(i) below.

(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 subsection (1), other than subsection (i) above, will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.04 unless subsection (iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (iv) applies, distributions are considered to begin on the

date distributions are required to begin to the surviving spouse under subsection (i) above). If distributions under an annuity meeting the requirements of this Article commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (i) above), the date distributions are considered to begin is the date distributions actually commence.

(2) Period of distribution.

(i) Participant survived by Designated Beneficiary. If the Participant dies before the commencement of distribution and there is a Designated Beneficiary, the Participant's entire interest may be distributed, beginning no later than the time described in subsection (1)(i) or (1)(ii) above, over the life of the Designated Beneficiary or over a period certain not exceeding:

(A) unless the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the birthday in the calendar year immediately following the calendar year of the Participant's death; or

(B) if the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the birthday in the calendar year that contains the Annuity Starting Date.

Unless designated otherwise under AA §10-4, the Participant or Designated Beneficiary may elect on an individual basis to apply the life expectancy method described in this subsection (i). The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under subsection (1) above or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule under subsection (1)(ii) above.

(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 begin. If the Participant dies before the commencement of distributions, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (2) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to subsection (1)(i) above.

10.05 Changes to Annuity Payment Period.

(a) Permitted changes. An annuity payment period may be changed only in association with an annuity payment increase described in Section 10.03(c)(1)(iv) or in accordance with subsection (b) below.

(b) Reannuitization. An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in subsection (c) are satisfied and:

(1) the modification occurs when the Participant retires or in connection with a Plan termination;

(2) the payment period prior to modification is a period certain without life contingencies; or

(3) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a Designated Beneficiary, the Participant's spouse is the sole Designated Beneficiary, and the modification occurs in connection with the Participant's becoming married to such spouse.

(c) Conditions. The conditions in this subsection (c) are satisfied if:

(1) the future payments after the modification satisfy the requirements of Code §401(a)(9), Treas. Reg. §1.401(a)(9), and this Article (determined by treating the date of the change as a new Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

(2) for purposes of Code §§415 and 417, the modification is treated as a new Annuity Starting Date;

(3) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code §415 (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and

(4) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the Employee at the original Annuity Starting Date under Code §401(a)(9) and this Article.

10.06 Payments to a Surviving Child.

(a) **Special rule.** For purposes of this Article, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments become payable to the surviving spouse upon cessation of the payments to the child.

(b) **Age of majority.** For purposes of this Section 10.06, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code §72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

10.07 Definitions.

(a) **Actuarial Gain.** The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the Actuarial Gain is determined.

(b) **Designated Beneficiary.** The individual who is designated by the Participant, the Participant's surviving spouse, or the Plan as the beneficiary of the Participant's interest under the Plan and who is the Designated Beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4.

(c) **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 pursuant to Section 10.04.

(d) **Eligible cost-of-living index.** An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Treas. Reg. §1.401(a)(9)–6, Q&A-14.

(e) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9, Q&A-1.

(f) **Required Beginning Date.** A Participant's Required Beginning Date is the later of the date the Participant attains age 70½ or the Participaant retires.

10.08 TEFRA § 242(b)(2) Elections.

(a) Notwithstanding the other requirements of this Article and subject to the joint and survivor annuity requirements under the Plan, distribution on behalf of any Employee, including a Five-Percent Owner, who has made a designation under §242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "§242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

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

(2) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the plan is being distributed or, if the Employee is deceased, by a beneficiary of such Employee.

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

(4) The Employee had accrued a benefit under the Plan as of December 31, 1983.

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

(b) A distribution upon death will 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.

(c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will 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)(1) and (a)(5) above.

(d) If a designation is revoked any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan 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 §401(a)(9) and the regulations thereunder, but for the §242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one 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).

(e) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treas. Reg. §1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

SECTION 11
PLAN ADMINISTRATION AND OPERATION

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

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

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

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

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

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

(e) **Indemnification of Plan Administrator.** The Employer will indemnify, defend and hold harmless the Plan Administrator (including the individual members of any administrative committee appointed by the Employer to handle administrative functions of the Plan or any Employees who have administrative responsibility for the Plan) with respect to any liability, loss, damage or expense resulting from any act or omission (except willful misconduct or gross negligence) in their official capacities in the administration of this Trust or Plan, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

11.03 **Duties, Powers and Responsibilities of the Plan Administrator.** The Plan Administrator will administer the Plan for the exclusive benefit of the Plan Participants and Beneficiaries, and in accordance with the terms of the Plan. If the terms of the Plan are unclear, the Plan Administrator may interpret the Plan, provided such interpretation is consistent with the rules of Code §401. This right to interpret the Plan is an express grant of discretionary authority to resolve ambiguities in the Plan document and to make discretionary decisions regarding the interpretation of the Plan's terms, including who is eligible to participate under the Plan, and the benefit rights of a Participant or Beneficiary. Unless an interpretation or decision is determined to be arbitrary and capricious, the Plan Administrator will not be held liable for any interpretation of the Plan terms or decision regarding the application of a Plan provision.

(a) **Delegation of duties, powers and responsibilities.** The Plan Administrator may delegate its duties, powers or responsibilities to one or more persons. Such delegation must be in writing and accepted by the person or persons receiving the delegation. The Employer must agree to such delegation by an alternative Plan Administrator.

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

(1) To interpret and enforce the provisions of the Plan, including those related to Plan eligibility, vesting and benefits;

(2) To communicate with the Trustee and other responsible persons with respect to the disbursement of Plan distributions and other relevant matters;

(3) To develop separate procedures (if necessary) consistent with the terms of the Plan to assist in the administration of the Plan, including the adoption of a separate or modified loan policy (see Section 13) and procedures for determining whether domestic relations orders are QDROs (see Section 11.05);

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

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

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

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

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

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

11.04 **Plan Administration Expenses.** All reasonable expenses related to plan administration will be paid from Plan assets, except to the extent the expenses are paid (or reimbursed) by the Employer. For this purpose, Plan expenses include, but are not limited to, all reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Trust (including such reasonable compensation to the Trustee as may be agreed upon from time to time between the Employer or Plan Administrator and the Trustee and any fees for legal services rendered to the Trustee). If liquid assets of the Trust are insufficient to cover the fees of the Trustee or the Plan Administrator, then Trust assets shall be liquidated to the extent necessary for such fees. In the event any part of the Trust becomes subject to tax, all taxes incurred will be paid from the Trust.

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

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

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

(1) **QDRO**. A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with respect to a Participant under the Plan. (See Code §414(p).) The QDRO must contain certain information and meet other requirements described in this Section 11.05.

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

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

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

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

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

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

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

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

(e) **Impermissible QDRO provisions.**

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

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

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

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

(f) **Distribution to Alternate payee before Earliest Retirement Age.** A domestic relations order will not violate the provision in subsection (e)(4) above solely because the order requires the Plan to pay benefits to an Alternate Payee:

(1) in the case of any payment before a Participant has separated from service, on or after the date on which the Participant attains (or would have attained) the QDRO earliest retirement age;

(2) as if the participant had retired on the date on which such payment is to begin under the order (but taking into account only the Present Value of the benefits actually accrued and not taking into account the Present Value of any Employer subsidy for early retirement); and

(3) in any form in which such benefits may be paid under the Plan to the Participant (other than a joint and survivor annuity with respect to the Alternate Payee and his or her subsequent spouse).

For purposes of this subsection (f), the QDRO earliest retirement age is the earlier of: (i) the date which the Participant is entitled to a distribution under the Plan, (ii) the later of: (A) the date the Participant attains age 50, or (B) the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

Nothing in this subsection (f) would prevent the Plan from making a distribution to an Alternate Payee prior to the earliest retirement age, provided such distribution is consistent with the QDRO provisions.

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

(h) **Special QDRO rule.** Effective April 6, 2007, a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order (QDRO) under Code §414(p)(3) shall not fail to be treated as a QDRO solely because:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.06 **Claims Procedure.** The Plan Administrator may establish procedures for administering benefit claims. Such benefit claims procedures should provide claimants with a reasonable opportunity to have a full and fair review of a denied claim. The Plan Administrator is authorized to conduct an examination of the relevant facts to determine the merits of a Participant's or Beneficiary's claim for Plan benefits. Any claims procedure will incorporate the guidelines under this Section 11.06. To the extent any of the time periods specified in this Section 11.06 are amended by law or Department of Labor regulations, the time frames specified herein shall automatically be changed in accordance with such law or regulation.

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

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

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

(c) If a Permitted Disparity Benefit Formula applies for a Short Plan Year, the Integration Level will be prorated to reflect the number of months (or partial months) included in the Short Plan Year.

(d) The Compensation Limit, will be prorated to reflect the number of months (or partial months) included in the Short Plan Year unless the compensation used for such Short Plan Year is a period of 12 months.

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

SECTION 12
TRUST PROVISIONS

12.01 **Establishment of Trust.** In conjunction with the establishment of this Plan, the Employer establishes a Trust to hold Plan assets, including cash and other property, which are paid or delivered to the Trust in accordance with the terms of the Plan. The Trustee is to hold all Plan assets for the exclusive benefit of Plan Participants and Beneficiaries.

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

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

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

(2) **Direction of Trustee.** The Employer is a Named Fiduciary for investment purposes if the Employer directs investments pursuant to this subsection. Any investment direction shall be made in writing by the Employer, Investment Manager, or Named Fiduciary, as applicable. A Directed Trustee must act solely in accordance with the direction of the Plan Administrator, the Employer, any employees or agents of the Employer, a properly appointed Investment Manager or other fiduciary of the Plan, a Named Fiduciary, or Plan Participants.

(3) **Restriction on Trustee.** The Employer may direct the Directed Trustee to invest in any media in which the Trustee may invest, as described in Section 12.03(b). However, the Employer may not borrow from the Trust or pledge any of the assets of the Trust as security for a loan to itself; buy property or assets from or sell property or assets to the Trust; charge any fee for services rendered to the Trust; or receive any services from the Trust on a preferential basis.

(b) **Discretionary Trustee.** A Discretionary Trustee has exclusive authority and discretion with respect to the investment, management or control of Plan assets. Notwithstanding a Trustee's designation as a Discretionary Trustee, a Trustee's discretion is limited, and the Trustee shall be considered a Directed Trustee, to the extent the Trustee is subject to the direction of the Plan Administrator, the Employer, a properly appointed Investment Manager, or a Named Fiduciary under an agreement between the Plan Administrator and the Trustee. A Trustee also is considered a Directed Trustee to the extent the Trustee is subject to investment direction of Plan Participants.

12.03 **Responsibilities of the Trustee.** In addition to the powers, rights and responsibilities enumerated under this Section, the Trustee has all powers necessary to carry out its duties in a prudent manner. The Trustee's powers, rights and responsibilities may be modified, supplemented or limited by a separate trust agreement, investment policy, funding agreement, or other binding document entered into between the Trustee and the Plan Administrator or Employer. Such binding document must designate the Trustee's responsibilities with respect to the Plan. A separate trust agreement, investment policy, funding agreement, or other binding document must be consistent with the terms of this Plan and must comply with all qualification requirements under the Code and regulations. To the extent the exercise of any power, right or responsibility is subject to discretion, such exercise by a Directed Trustee must be made at the direction of the Plan Administrator or the Employer. As a Governmental Plan, the Trustee is not subject to Title I of ERISA, but may be subject to state law and common law.

(a) **Responsibilities regarding administration of Trust.**

(1) The Trustee, the Employer and the Plan Administrator shall each discharge their assigned duties and responsibilities under this Agreement and the Plan solely in the interest of Participants and their Beneficiaries in the following manner:

(i) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;

(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(iii) in accordance with the provisions of the Plan.

(2) The Trustee will receive all contributions, earnings and other amounts made to and under the terms of the Plan. The Trustee is not obligated in any manner to ensure that such amounts are correct in amount or that such amounts comply with the terms of the Plan or the Code.

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

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

(5) The Trustee shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the Employer and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Trustee or the Plan Administrator. A Participant may examine only those records pertaining directly to him.

(6) Except as provided in Section 15.02, at no time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under the Plan shall any part of the corpus or income of the Fund be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, or for defraying reasonable expenses of administering the Plan.

(b) Responsibilities regarding investment of Plan assets.

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

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

(3) The Trustee may hold any securities or other property in the name of the Trustee or in the name of the Trustee's nominee, and may hold any investments in bearer form, provided the books and records of the Trustee at all times show such investment to be part of the Trust. If securities are held on behalf of the Plan in the name of the Trustee's nominee, such securities must be held by:

(i) A bank or trust company that is subject to supervision by the United States or a State, or a nominee of such bank or trust company;

(ii) A broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer; or

(iii) A clearing agency, as defined in section 3(a)(23) of the Securities Exchange Act of 1934, or its nominee.

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

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

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

(7) The Trustee may pay expenses out of Plan assets as necessary to administer the Trust and as authorized under the Plan.

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

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

(10) The Trustee, upon the written direction of the Plan Administrator, is authorized to enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any Employee of the Employer. The Trustee is also authorized, upon the written direction of the Plan Administrator, to transfer some or all of a Participant's vested Accrued Benefit to another qualified retirement plan on behalf of such Participant. A transfer agreement entered into by the Trustee does not affect the Plan's status as a Volume Submitter Plan.

(11) If the Employer maintains more than one Plan, the assets of such Plans may be commingled for investment purposes. The Trustee must separately account for the assets of each Plan. A commingling of assets does not cause the Trusts maintained with respect to the Employer's Plans to be treated as a single Trust, except as provided in a separate document authorized in the first paragraph of this Section 12.03.

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

(13) The Trustee is authorized to invest Plan assets in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for this Plan.

12.04 **Responsibilities of the Employer.** The Employer will provide to the Trustee written notification of the appointment of any person or persons as Plan Administrator, Investment Manager, or other Plan fiduciary, and the names, titles and authorities of any individuals who are authorized to act on behalf of such persons. The Trustee shall be entitled to rely upon such information until it receives written notice of a change in such appointments or authorizations.

The Employer may authorize the Trustee to enter into a merger agreement with the Trustee of another plan to effect such merger or consolidation. A merger agreement entered into by the Trustee is not part of this Plan and does not affect the assets transferred to this Plan from another plan.

12.05 **Effect of Plan Amendment.** Any amendment that affects the rights, duties or responsibilities of the Trustee or Plan Administrator may only be made with the Trustee's or Plan Administrator's written consent. Any amendment to the Plan must be in writing and a copy of the resolution (or similar instrument) setting forth such amendment (with the applicable effective date of such amendment) must be delivered to the Trustee.

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

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

12.08 **Reporting to Plan Administrator and Employer.** Within 120 days after the end of each Plan Year, or within 120 days after its removal or resignation, the Trustee shall file with the Plan Administrator a written account of the administration of the Trust showing all transactions effected by the Trustee from the last preceding accounting to the end of such Plan Year or date of removal or resignation. The accounting will include a statement of cash receipts, disbursements and other transactions effected by the Trustee since the date of its last accounting, and such further information as the Trustee and/or Employer deems appropriate. Upon approval of such accounting by the Plan Administrator, neither the Employer nor the Plan Administrator shall be entitled to any further accounting by the Trustee. The Plan Administrator may approve such accounting by written notice of approval delivered to the Trustee or by failure to express objection to such accounting in writing delivered to the Trustee within 90 days from the date on which the accounting is delivered to the Plan Administrator. The Trustee shall have sixty (60) days following its receipt of a written disapproval from the Employer to provide the Employer with a written explanation of the terms in question. If the Employer again disapproves of the accounting, the Trustee may file its accounting with a court of competent jurisdiction for audit and adjudication.

12.09 **Reasonable Compensation.** The Trustee shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Trustee. The Trustee also will be reimbursed for any reasonable expenses or fees incurred in its function as Trustee. An individual Trustee who is already receiving full-time pay as an Employee of the Employer may not receive any additional compensation for services as Trustee. The Plan will pay the reasonable compensation and expenses incurred by the Trustee, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Trustee is not an Employer Contribution to the Plan.

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

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

(a) any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion given to the Trustee by the Employer, the Plan Administrator, Investment Manager, Named Fiduciary or legal counsel of the Employer, or any person or entity appointed by any of them and authorized to give any information, instruction, direction, or opinion to the Trustee;

(b) the failure of the Employer, the Plan Administrator, Investment Manager, Named Fiduciary or any person or entity appointed by any of them to make timely disclosure to the Trustee of information which any of them or any appointee knows or should know if it acted in a reasonably prudent manner; or

(c) any breach of fiduciary duty by the Employer, the Plan Administrator, Investment Manager, Named Fiduciary or any person or entity appointed by any of them, other than such a breach which is caused by any failure of the Trustee to perform its duties under this Trust.

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

The Employer agrees that the Trustee shall have no liability with regard to the investment or management of illiquid Plan assets transferred from a prior Trustee, and shall have no responsibility for investments made before the transfer of Plan assets to it, or for the viability or prudence of any investment made by a prior Trustee, including those represented by assets now transferred to the custody of the Trustee, or for any dealings whatsoever with respect to Plan assets before the transfer of such assets to the Trustee. The Employer shall indemnify and hold the Trustee harmless for any and all claims, actions or causes of action for loss or damage, or any liability whatsoever relating to the assets of the Plan transferred to the Trustee by any prior Trustee of the Plan, including any liability arising out of or related to any act or event, including prohibited transactions, occurring prior to the date the Trustee accepts such assets, including all claims, actions, causes of action, loss, damage, or any liability whatsoever arising out of or related to that act or event, although that claim, action, cause of action, loss, damage, or liability may not be

asserted, may not have accrued, or may not have been made known until after the date the Trustee accepts the Plan assets. Such indemnification shall extend to all applicable periods, including periods for which the Plan is retroactively restated to comply with any tax law or regulation.

12.13 **Appointment of Custodian.** The Plan Administrator may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the same powers, rights and responsibilities as a Directed Trustee. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an Investment Manager, a Named Fiduciary or other third party with authority to provide direction to the Custodian. The Custodian may designate its acceptance of the responsibilities and obligations described under this Plan document by executing the Trustee Declaration Page. The Employer also may enter into a separate agreement with the Custodian. Such separate agreement must be consistent with the responsibilities and obligations set forth in this Plan document. If there is no Custodian that will be executing the Trustee Declaration, the provisions of the Trustee Declaration addressing the Custodian (i.e., the Custodian signature provisions) may be removed from the Trustee Declaration Page.

12.14 **Modification of Trust Provisions**. The Employer may amend the administrative trust or custodial provisions under this Plan (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the Plan and do not cause the plan to fail to qualify under Code §401(a). The Employer may document any amendment modifying the trust or custodial provisions under this Plan or other overriding language in an Addendum to the Adoption Agreement.

SECTION 13
PARTICIPANT LOANS

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

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

13.02 **Must be Available in Reasonably Equivalent Manner**. Participant loans must be made available to Participants in a reasonably equivalent manner. The Employer may elect under AA §B-7 to limit the availability of Participant loans to specified events. For example, the Employer may limit the availability of Participant loans to the occurrence of specified hardship events. However, if this Plan is a Fully-Insured Plan, no Participant loans shall be made under this Plan.

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

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

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

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

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

(a) **Loan renegotiation.** A Participant may renegotiate a loan without violating the one outstanding loan requirement to the extent such renegotiated loan is a new loan (i.e., the renegotiated loan separately satisfies the reasonable interest rate requirement under Section 13.05, the adequate security requirement under Section 13.06, and the periodic repayment requirement under Section 13.07) and the renegotiated loan does not exceed the limitations under Section 13.03 above, treating both the replaced loan and the renegotiated loan as outstanding at the same time. However, if the term of the renegotiated loan does not end later than the original term of the replaced loan, the replaced loan may be ignored in applying the limitations under Section 13.03 above.

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

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

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

13.06 **Adequate Security.** All Participant loans must be adequately secured. The Participant's vested Accrued Benefit shall be used as security for a Participant loan provided the outstanding balance of all Participant loans made to such Participant does not exceed 50% of the Participants vested Accrued Benefit, determined immediately after the origination of each loan, and if applicable, the spousal consent requirements described in Section 13.08 have been satisfied. The Plan Administrator (with the consent of the Trustee) may require a Participant to provide additional collateral to receive a Participant loan if the Plan Administrator determines such additional collateral is required to protect the interests of Plan Participants. A separate loan policy or written modifications to this loan policy may prescribe alternative rules for obtaining adequate security. However, the 50% rule in this paragraph may not be replaced with a greater percentage.

13.07 **Periodic Repayment.** A Participant loan must provide for level amortization with payments to be made not less frequently than quarterly. A Participant loan must be payable within a period not exceeding five (5) years from the date the Participant receives the loan from the Plan, unless the loan is for the purchase of the Participant's principal residence, in which case the loan may be payable within ten (10) years or such longer period that is a reasonable time commensurate with the repayment period permitted by commercial lenders for similar loans. Loan repayments must be made through payroll withholding, except to the extent the Plan Administrator determines payroll withholding is not practical given the level of a Participant's wages, the frequency with which the Participant is paid, or other circumstances.

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

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

13.08 **Spousal Consent.** A Participant may not use his/her Accrued Benefit as security for a Participant loan unless the Participant's spouse, if any, consents to the use of such Accrued Benefit as security for the loan. The spousal consent must be made within the 180-day period (90-day period for Plan Years beginning before January 1, 2007) ending on the date the Participant's Accrued Benefit is to be used as security for the loan. Spousal consent is not required, however, if the value of the Participant's total vested Accrued Benefit does not exceed $5,000.

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

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

If a Participant defaults on a Participant loan, the Plan may not offset the Participant's Accrued Benefit until the Participant is otherwise entitled to an immediate distribution of the portion of the Accrued Benefit which will be offset and such amount being offset is available as security on the loan, pursuant to Section 13.06. For this purpose, a loan default is treated as an immediate distribution event to the extent the law does not prohibit an actual distribution of the type of benefits which would be offset as a result of the loan default, so long as spousal consent was properly obtained at the time of the loan, if required under Section 13.08). The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

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

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

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

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

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

13.10 Termination of Employment.

(a) Offset of outstanding loan. A Participant loan becomes due and payable in full immediately upon the Participant's termination of employment. Upon a Participant's termination, the Participant may repay the entire outstanding balance of the loan (including any accrued interest) within a reasonable period following termination of employment. If the Participant does not repay the entire outstanding loan balance, the Participant's vested Accrued Benefit will be reduced by the remaining outstanding balance of the loan.), to the extent such Accrued Benefit is available as security on the loan, pursuant to Section 13.06, and the remaining vested Accrued Benefit will be distributed in accordance with the distribution provisions under Section 8. If the outstanding loan balance of a deceased Participant is not repaid, the outstanding loan balance shall be treated as a distribution to the Participant and shall reduce the death benefit amount payable to the Beneficiary under Section8.03.

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

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

SECTION 14
PLAN AMENDMENTS, TERMINATION, MERGERS AND TRANSFERS

14.01 Plan Amendments.

(a) **Amendment by the Volume Submitter Sponsor.** Effective February 17, 2005, the Volume Submitter Sponsor may amend the Plan on behalf of all adopting Employers, including those Employers who have adopted the Plan prior to the amendment, for changes in the Code, regulations, revenue rulings, and other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments will be applied to all Employers who have adopted the Plan. (Employer notice and signature requirements have been met for all adopting Employers before the effective date of February 17, 2005.)

The Volume Submitter Sponsor will no longer have the authority to amend the plan on behalf of any adopting Employer as of either: (1) the date the IRS requires the Employer to file Form 5300 as an individually designed plan as a result of an Employer amendment to the plan to incorporate a type of plan not allowable in the Volume Submitter program, as described in Rev. Proc. 2015-36, or (2) as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments. If the Employer is required to obtain a determination letter for any reason in order to maintain reliance on the Favorable IRS Letter, the Volume Submitter Sponsor's authority to amend the plan on behalf of the adopting Employer is conditioned on the Plan receiving a favorable determination letter.

The Volume Submitter Sponsor will maintain, or have maintained on its behalf, a record of the Employers that have adopted the Plan, and the Volume Submitter Sponsor will make reasonable and diligent efforts to ensure that adopting Employers have actually received and are aware of all plan amendments and that such Employers adopt new documents when necessary.

(b) **Amendment by the Employer.** The Employer shall have the right at any time to amend the Adoption Agreement in the following manner without affecting the Plan's status as a Volume Submitter Plan. (The ability to amend the Plan as authorized under this subsection (b) applies only to the Employer that executes the Employer Signature Page of the Adoption Agreement. Any amendment to the Plan by the Employer under this subsection (b) also applies to any other Employer that participates under the Plan as a Participating Employer, unless specifically indicated otherwise.)

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

(2) The Employer may add overriding language to the Adoption Agreement when such language is necessary to satisfy Code §415 because of the required aggregation of multiple plans.

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

(4) The Employer may amend administrative provisions of the trust or custodial document, including the name of the Plan, Employer, Trustee or Custodian, Plan Administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate.

(5) The Employer may add certain sample or model amendments published by the IRS which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan.

(6) The Employer may adopt any amendments that it deems necessary to satisfy the requirements for resolving qualification failures under the IRS' compliance resolution programs.

The Employer may amend the Plan at any time for any other reason. If such amendment is not deemed to be significant, the Plan will not lose its status as a Volume Submitter Plan. However, if the Employer modifies the language of the Plan or Adoption Agreement (other than the completion of optional selections (e.g., Describe lines), the Employer will not be able to rely on the Favorable IRS Letter issued with respect to the Plan and will need to submit the Plan to the IRS for a favorable determination letter to retain reliance. If an amendment to the Plan is deemed significant, such amendment could cause the Plan to lose its status as a Volume Submitter Plan and become an individually designed plan.

(c) **Effective Date of Plan Amendments.** If the Plan is restated or amended, such restatement or amendment is generally effective as of the Effective Date of the restatement or amendment (as designated on the Employer Signature Page with respect to such amendment), except where the context indicates a reference to an earlier Effective Date. The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A of the Adoption Agreement.

(1) **Retroactive effect of certain provisions.** This Plan is designed to comply with the Code, regulations, and general guidance applicable to qualified retirement plans, including the provisions of the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). If this Plan is being restated or amended to comply with the provisions of such laws, the Plan contains special effective dates that apply with respect to such provisions. If the Plan is amended within the remedial amendment period for retroactive compliance with the provisions of PPA, HEART and/or WRERA, the special effective dates for such provisions will apply, even if such special effective dates precede the Effective Date of the amendment designated on the Employer Signature Page of the Adoption Agreement. Thus, if the Plan is being restated or amended to comply with PPA, HEART and/or WRERA, and the Effective Date of this restatement or amendment is later than the special effective date applicable to of any of the provisions described below, such special effective dates will apply and any prior plan being replaced by this Plan will be considered to have been timely amended for the PPA, HEART and/or WRERA provisions.

(2) **Merged plans.** Except for retroactive application of the Plan provisions pursuant to subsection 0 above, if one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the Effective Date of the plan merger(s), unless provided otherwise under Appendix A of the Adoption Agreement.

14.02 **Plan Termination.** The Employer may terminate this Plan at any time by delivering to the Trustee and Plan Administrator written notice of such termination.

(a) **Full and immediate vesting.** Upon a full or partial termination of the Plan, all Accrued Benefits credited to an affected Participant (to the extent funded) become 100% vested, regardless of the Participant's vested percentage determined under Section 7.02. In accordance with applicable law, the Plan Administrator shall determine, based on all the facts and circumstances, whether a partial termination has occurred.

(b) **Distribution upon Plan termination.** Upon the termination of the Plan, the Plan Administrator shall direct the distribution of Plan assets to Participants in accordance with the provisions under Section 8. For purposes of applying the provisions of this subsection (b), distribution may be delayed until the Employer receives a favorable determination letter from the IRS as to the qualified status of the Plan upon termination, provided the determination letter request is made within a reasonable period following the termination of the Plan.

(1) **General distribution procedures.** Upon termination of the Plan, distribution shall be made to Participants whose vested Accrued Benefit have a present value of $5,000 or less in lump sum as soon as administratively feasible following the Plan termination, regardless of any contrary election under AA §9. No consent is necessary for a distribution to Participants whose vested Accrued Benefit have a present value of $5,000 or less. For Participants whose vested Accrued Benefit have a present value in excess of $5,000, distribution will be made through the purchase of deferred annuity contracts., unless a Participant elects to receive an immediate distribution in any form of payment permitted under the Plan. If an immediate distribution is elected in a form other than a lump sum, the distribution will be satisfied through the purchase of an immediate annuity contract. Distributions will be made as soon as administratively feasible following the Plan termination, regardless of any contrary election under AA §9.

(2) **Plan termination not distribution event if assets are transferred to another Plan.** If, pursuant to the termination of the Plan, the Employer enters into a transfer agreement to transfer the assets of the terminated Plan to another plan maintained by the Employer (or by a successor employer in a transaction involving the acquisition of the Employer's stock or assets, or other similar transaction), the termination of the Plan is not a distribution event and the distribution procedures above do not apply. Prior to the transfer of the assets, distribution of a Participant's Accrued Benefit may be made from the terminated Plan only to a Participant (or Beneficiary, if applicable) who is otherwise eligible for distribution without regard to the Plan's termination. Otherwise, benefits will be distributed from the transferee plan in accordance with the terms of that plan (subject to the protection of any Protected Benefits that must be continued with respect to the transferred assets).

(c) **Termination upon merger, liquidation or dissolution of the Employer.** The Plan shall terminate upon the liquidation or dissolution of the Employer or the death of the Employer (if the Employer is a sole proprietor) provided however, that in any such event, arrangements may be made for the Plan to be continued by any successor to the Employer. If the Plan Administrator or Trustee is still in existence, the Trustee or Plan Administrator may engage in any actions necessary to complete the termination of the Plan. If there is no person serving as Trustee or Plan Administrator, another person or entity may be designated to carry out the termination of the Plan. Such person or entity may be selected in writing by a majority of Participants whose Accounts under the Plan have not been fully distributed. In the case of a sole proprietor, the executor of the estate of such sole proprietor may serve as Plan Administrator for purposes of completing the termination of the Plan, unless an alternative person is designated by a majority of the Participants

under the Plan. If no person or entity is designated to terminate the Plan, a qualified termination administrator (QTA) (or other entity permitted by the IRS) may terminate the Plan in accordance with rules promulgated by the IRS.

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

14.04 **Transfer of Assets or Merger of Plans.** The Plan may accept a transfer of assets (including the merger of Plan documents) from another qualified retirement plan on behalf of any Employee, even if such Employee is not eligible to accrue benefits under the Plan. If a transfer of assets is made on behalf of an Employee prior to the Employee's becoming a Participant, the Employee shall be treated as a Participant for all purposes with respect to such transferred amount. Any assets transferred to this Plan from another plan must be accompanied by written instructions designating the name of each Employee for whose benefit such amounts are being transferred, the current value of such assets, and the sources from which such amounts are derived.

The Plan Administrator may refuse to accept a transfer of assets if the Plan Administrator reasonably believes the transfer (1) is not being made from a proper qualified plan; (2) could jeopardize the tax-exempt status of the Plan; or (3) could create adverse tax consequences for the Plan or the Employer. Prior to accepting a transfer of assets, the Plan Administrator may require evidence documenting that the transfer of assets meets the requirements of this Section. The Trustee will have no responsibility to determine whether the transfer of assets meets the requirements of this Section; to verify the correctness of the amount and type of assets being transferred to the Plan; or to perform a due diligence review with respect to such transfer.

(a) **Transfers from a Defined Contribution Plan.** The Plan will not accept a transfer of assets from a Defined Contribution Plan unless such transfer qualifies as a Qualified Transfer (as defined in subsection (b) below) or the assets transferred from the Defined Contribution Plan are in the form of paid-up annuity contracts which protect all of the Participant's protected benefits (as defined under Code §411(d)(6)) under the Defined Benefit Plan.

(b) **Qualified Transfer.** The Plan may eliminate certain protected benefits (as provided under subsection (2) below) related to plan assets that are received in a Qualified Transfer from another plan. A Qualified Transfer is a plan-to-plan transfer of a Participant's benefits that meets the requirements under subsection (1) below.

(1) **Elective transfer.** A plan-to-plan transfer of a Participant's benefits from another qualified plan is a Qualified Transfer if such transfer satisfies the following requirements.

(i) The Participant must have the right to receive an immediate distribution of his/her benefits under the transferor plan at the time of the Qualified Transfer. The Participant must not be eligible at the time of the Qualified Transfer to take an immediate distribution of his/her entire benefit in a form that would be entirely eligible for a Direct Rollover.

(ii) The Participant on whose behalf benefits are being transferred must make a voluntary, fully informed election to transfer his/her benefits to this Plan.

(iii) The Participant must be provided an opportunity to retain the protected benefits under the transferor plan. This requirement is satisfied if the Participant is given the option to receive an annuity that protects all protected benefits under the transferor plan or the option of leaving his/her benefits in the transferor plan.

(iv) The Participant's spouse must consent to the Qualified Transfer if the transferor plan is subject to the Joint and Survivor Annuity requirements under Section 9. The spouse's consent must satisfy the requirements for a Qualified Election.

(v) The amount transferred (along with any contemporaneous Direct Rollover) must not be less than the value of the Participant's vested benefit under the transferor plan.

(vi) The Participant must be fully vested in the transferred benefit.

(2) **Treatment of Qualified Transfer**. If the Plan Administrator directs the Trustee to accept on behalf of a Participant a transfer of assets that qualifies as a Qualified Transfer, the Plan Administrator will treat such amounts as a Rollover Contribution and will deposit such amounts in the Participant's Rollover Contribution Account. A Qualified Transfer may include benefits derived from after-tax contributions.

(c) **Trustee's right to refuse transfer.** If the assets to be transferred to the Plan under this Section 14.05 are not susceptible to proper valuation and identification or are of such a nature that their valuation is incompatible with other

Plan assets, the Trustee may refuse to accept the transfer of all or any specific asset or may condition acceptance of the assets on the sale or disposition of any specific asset.

(d) **Transfer of Plan to unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated taxpayer.

SECTION 15
MISCELLANEOUS

15.01 **Exclusive Benefit.** Except as provided under Section 15.02, no part of the Plan assets (including any corpus or income of the Trust) may revert to the Employer prior to the satisfaction of all liabilities under the Plan nor will such Plan assets be used for, or diverted to, a purpose other than the exclusive benefit of Participants or their Beneficiaries.

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

If Plan benefits are provided through the distribution of annuity or insurance contracts, any refunds or credits in excess of Plan benefits (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) will be paid to the trust or custodial account.

15.02 **Return of Employer Contributions.** Upon written request by the Employer, the Trustee must return any Employer contributions provided that the circumstances and the time frames described below are satisfied. The Trustee may request the Employer to provide additional information to ensure the amounts may be properly returned. Any amounts returned shall not include earnings, but must be reduced by any losses.

(a) **Mistake of fact.** Any Employer contributions made because of a mistake of fact must be returned to the Employer.

(b) **Failure to initially qualify.** Employer contributions to the Plan are made with the understanding, in the case of a new Plan, that the Plan satisfies the qualification requirements of Code §401(a) as of the Plan's Effective Date. In the event that the Internal Revenue Service determines that the Plan is not initially qualified under the Code, any Employer Contributions (and allocable earnings) made incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which the plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

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

15.04 **Military Service.** To the extent required under Code §414(u), an Employee who returns to employment with the Employer following a period of qualified military service will receive any contributions, benefits and service credit required under Code §414(u), provided the Employee satisfies all applicable requirements under the Code and regulations. In the case of a Participant who dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits, including any ancillary life insurance or survivor benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. In addition, a Participant who dies while performing qualified military service will also be credited with service for vesting purposes under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007.

Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the Employer:

(1) such individual will be treated as an Employee of the Employer making the payment, and

(2) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit based on Differential Pay. To the extent provided under AA §5-2, the Employer may elect to exclude Differential Pay

from the definition of Plan Compensation.

Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. Uniformed Services are services as described in Code §3401(h)(2)(A).

15.05 **Annuity Contract.** Any annuity contract distributed under the Plan must be nontransferable. In addition, the terms of any annuity contract purchased and distributed to a Participant must comply with all requirements under this Plan.

15.06 **Use of IRS compliance programs.** Nothing in this Plan document should be construed to limit the availability of the IRS' voluntary compliance programs, An Employer may take whatever corrective actions are permitted under the IRS voluntary compliance programs, as is deemed appropriate by the Plan Administrator or Employer. The Plan will not be treated as individually designed if a closing agreement under the Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program has been issued with respect to the Plan with regard to the amendment. The Sponsor's or Employer's adoption of certain interim or discretionary amendments also will not cause the Plan to be considered an individually designed plan.

15.07 **Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state in which the Trustee has its principal place of business. The foregoing provisions of this Section shall not preclude the Employer and the Trustee from agreeing to a different state law with respect to the construction, administration and enforcement of the Plan.

15.08 **Waiver of Notice.** Any person entitled to a notice under the Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by law, regulation or other pronouncement.

15.09 **Use of Electronic Media.** The Plan Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution, may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

15.10 **Severability of Provisions.** In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.

15.11 **Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

SECTION 16
PARTICIPATING EMPLOYERS

16.01 **Participation by Participating Employers.** An Employer (other than the Employer that executes the Employer Signature Page of the Adoption Agreement) may elect to participate under this Plan by executing a Participating Employer Adoption Page under the Adoption Agreement. A Participating Employer (including a Related Employer) may not contribute to this Plan unless it executes the Participating Employer Adoption Page. If an unrelated Employer executes a Participating Employer Adoption Page, the Plan will be a Multiple Employer Plan (see Section 16.06 for special rules applicable to Multiple Employer Plans).

16.02 **Participating Employer Adoption Page.**

(a) **Application of Plan provisions.** By executing a Participating Employer Adoption Page, a Participating Employer adopts all the provisions of the Plan, including the elective choices made by the signatory Employer under the Adoption Agreement.

(b) **Plan amendments.** In addition, a Participating Employer is bound by any amendments made to the Plan in accordance with Section 14.01.

(c) **Trustee designation.** The Participating Employer agrees to use the same Trustee as is designated on the Trustee Declaration under the Agreement, except as provided in a separate trust agreement.

16.03 **Compensation of Related Employers.** In applying the provisions of this Plan, Total Compensation includes amounts earned with a Related Employer, regardless of whether such Related Employer executes a Participating Employer Adoption Page. The Employer may elect under AA §5-2(h) to exclude amounts earned with a Related Employer that does not execute a Participating Employer Adoption Page for purposes of determining an Employee's Plan Compensation.

16.04 **Discontinuance of Participation by a Participating Employer.** A Participating Employer may discontinue its participation under the Plan at any time. To document a Participating Employer's cessation of participation, the following procedures should be followed: (1) the Participating Employer should adopt a resolution that formally terminates active participation in the Plan as of a specified date, (2) the Employer that has executed the Employer Signature Page of the Adoption Agreement should reexecute such page, indicating an amendment by page substitution through the deletion of the Participating Employer Adoption Page executed by the withdrawing Participating Employer, and (3) the withdrawing Participating Employer should provide any notices to its Employees that are required by law. Discontinuance of participation means that no further benefits accrue after the effective date of such discontinuance with respect to employment with the withdrawing Participating Employer. The portion of the Plan attributable to the withdrawing Participating Employer may continue as a separate plan, under which benefits may continue to accrue, through the adoption by the Participating Employer of a successor plan (which may be created through the execution of a separate Adoption Agreement by the Participating Employer) or by spin-off of the portion of the Plan attributable to such Participating Employer followed by a merger or transfer into another existing plan, as specified in a merger or transfer agreement.

16.05 **Operational Rules for Related Employer Groups.** If an Employer has one or more Related Employers, the Employer and such Related Employer(s) constitute a Related Employer group. In such case, the following rules apply to the operation of the Plan.

(a) If the term Employer is used in the context of administrative functions necessary to the operation, establishment, maintenance, or termination of the Plan, only the Employer executing the Employer Signature Page of the Adoption Agreement, and any Related Employer executing a Participating Employer Adoption Page, is treated as the Employer.

(b) Hours of Service are determined by treating all members of the Related Employer group as the Employer.

(c) The term Excluded Employee is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.

(d) Compensation is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.

(e) An Employee is not treated as terminated from employment if the Employee is employed by any member of the Related Employer group.

(f) The Maximum Permissible Benefit described in Section 5.06(i) are applied by treating all members of the Related Employer group as the Employer.

In all other contexts, the term "Employer" generally means a reference to all members of the Related Employer group, unless the context requires otherwise. If the terms of the Plan are ambiguous with respect to the treatment of the Related Employer

group as the Employer, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.

16.06 **Special Rules for Multiple Employer Plans.** If an Employer (other than a Related Employer) executes a Participating Employer Adoption Page under the Adoption Agreement, the Plan is treated as a Multiple Employer Plan. Treatment of the Plan as a Multiple Employer Plan will not affect reliance on the Favorable IRS Letter issued to the Volume Submitter Sponsor or any determination letter issued on the Plan. If the Plan is a Multiple Employer Plan, the following qualification rules apply.

(a) **Eligibility requirements.** If the Plan is a Multiple Employer Plan, the eligibility rules under Section 2 are applied as if the Employees of all Employers participating in the Multiple Employer Plan are employed by a single Employer.

(b) **Vesting rules.** If the Plan is a Multiple Employer Plan, the vesting rules under Section 7 are applied as if the Employees of all Employers participating in the Multiple Employer Plan are employed by a single Employer.

(c) **Code §415 Limit.** If the Employer is a Multiple Employer Plan, the benefit limitations described in Section 5 are applied as if the Employees of all Employers participating in the Multiple Employer Plan are employed by a single Employer. Thus, if a Participant accrues a benefit with respect to service earned with more than one Employer within the Multiple Employer Plan, such accruals must be aggregated for purposes of applying the benefit limitations under Section 5. For this purpose, Total Compensation from all participating Employers may be considered in applying the benefit limitations under the Plan.

(d) **Other rules applicable to Multiple Employer Plans.** To the extent not addressed in this Section 16.06, the rules under Code §413(c) and applicable regulations will apply to a Multiple Employer Plan.