

**Oswego Community Unit School District #308
457(b) Deferred Compensation Plan**

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1. Establishing and maintaining the Plan

1.1 Purpose of the Plan

The Plan provides an Employee a convenient way to save for his or her retirement. Deferred Compensation is held until paid to the Participant or to his or her Beneficiaries and Alternate Payees according to the provisions of the Plan. With limited exceptions, a Distribution can become available only after the Participant's death or Severance-from-Employment.

1.2 Establishment of the Plan

This document together with the Adoption Agreement and the list of Funding Vehicles states the provisions of this Plan. The Employer established and maintains the Plan for the Employees.

1.3 Previous documents replaced

Except to the extent that the Adoption Agreement specifies otherwise, this document amends, and restates fully, any similar plan or amendment previously in effect.

Further, any provision stated by this restated Plan that was required for the Plan to have met the requirements for an Eligible 457(b) Plan at any time before the restatement that was not correctly stated by the Plan as then-currently in effect at the relevant time is effective for all such earlier time to the extent necessary for the Plan to have met the requirements for an Eligible 457(b) Plan under IRC § 457(b) for all time on or after the Plan's effective date. However, the Plan's exclusive-benefit provision is not retroactive any earlier than January 1, 1997.

1.4 Eligible Plan

The Employer intends to maintain the Plan as a plan that is an Eligible 457(b) Plan.

1.5 Individual-account plan

The Plan is an individual-account plan that provides an Account for each Participant, Beneficiary, and Alternate Payee, and provides Deferred Compensations based solely on the amount of Contributions, income, dividends, interest, gains (or losses), and fees and expenses credited to or charged against the Participant's, Beneficiary's, or Alternate Payee's Account.

1.6 Trust

The Employer and the Trustee have entered into a Trust Agreement (or declaration) to establish and maintain a Trust exclusively for the Plan's purposes. The Trustee holds each Funding Vehicle under the Trust.

1.7 Exclusive benefit

The Plan is established for the exclusive benefit of Participants and their Beneficiaries. All assets and income of the Plan must be held for the exclusive benefit of the Plan's Participants and their Beneficiaries. Any amount, property, or right held under the Plan will not be used for or diverted to any purpose other than for the exclusive benefit of Participants, Beneficiaries, and Alternate Payees, except as otherwise permitted under IRC § 457(g)(1).

1.8 Construction

The Plan will be construed and interpreted according to Part 22 [at page 44].

2. Participation and deferral

2.1 Eligibility for Employee Contributions

An Eligible Employee may make Employee Contributions from his or her Compensation.

Consistent with Section 825 of the *Pension Protection Act of 2006*, an Employee is not precluded from participating in the Plan by reason of having received a distribution under IRC § 457(e)(9) as in effect before the enactment of the *Small Business Job Protection Act of 1996*.

2.2 Eligibility for Employer Contributions

A Participant receives an allocation of Employer Contributions only as specified by the Adoption Agreement and not precluded by the Enabling Statute or other State Law.

2.3 Participation Agreement

An Eligible Employee elects to make Employee Contributions by completing and adopting a Participation Agreement on the form that the Employer prescribes. When entering into or amending his or her Participation Agreement, a Participant must agree to defer the minimum amount that is required under each Funding Vehicle indicated by the Participant's Participation Agreement, and must agree to defer no more than the maximum amount provided by Part 3 ["Deferral Limit" at page 11].

2.4 Deferral agreement must be made before the month of the deferral

Consistent with 26 C.F.R. § 1.457-4(b), Contributions will be deferred for a calendar month only if a Participation Agreement providing for the deferral has been entered into before the beginning of the month. However, a new Employee may defer compensation payable in the month during which he or she first becomes an Employee if he or she has, on or before the first day on which the Employee performs services for the Employer, entered into a Participation Agreement providing for the deferral. This rule is in addition to the Plan's other provisions and the Employer's rules concerning the acceptance of deferral agreements.

2.5 Time for Contributions to begin

Unless the Participation Agreement specifies a later date, Employee Contributions begin as of the next pay date after the Participation Agreement is received in good order by the Employer or the later date required by ¶ 2.4.

2.6 Amendment of Participation Agreement

A Participant may change his or her Participation Agreement. Unless the Participation Agreement specifies a later effective date, an increase in Contributions takes effect as of the next available pay period in the next calendar month.

2.7 Leave of absence

Unless his or her Participation Agreement is otherwise amended, if a Participant is absent from work by a leave of absence Contributions will continue to the extent that compensation continues, or the Participation Agreement will remain in effect and Contributions will resume when the Participant returns to work.

2.8 Disability

A disabled Participant may make Employee Contributions to the extent that he or she has actual Compensation (not imputed compensation and not disability benefits) from which to make Employee Contributions.

2.9 Deferral from Compensation paid after Severance-from-Employment

Subject to ¶ 2.4 and other provisions of this Part, an Employee may, to the extent permitted by 26 C.F.R. § 1.457-4(d), make Employee Contributions from Compensation that will be paid after his or her Severance-from-Employment if the Compensation is paid within 2½ months after his or her Severance-from-Employment and is payments for accrued bona fide sick, vacation, or other leave if the Employee could have used the leave if his or her employment had continued; or is payments that, absent a Severance-from-Employment, would have been paid to the Employee while he or she continued in employment with the Employer and is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation. Without limiting the comprehensive effect of the conditions stated by the preceding sentence, Employee Contributions may not be made from severance pay.

3. Deferral Limit

3.1 Deferral Limit rules

The Plan incorporates by reference the rules, including deferral limits, stated by IRC § 457(b)(2), IRC § 457(b)(3), and 26 C.F.R. § 1.457-4. A use (if any) of IRC § 457(b)(3) is restricted by the Participant's Normal Retirement Age.

3.2 Normal Deferral Limit

The maximum amount deferred for any taxable year of a Participant (not including a Rollover Contribution as provided by ¶ 3.3 or an amount under a qualified excess-benefit arrangement as provided by ¶ 3.7) will not exceed the amount specified by IRC § 457(b)(2), except as provided by ¶ 3.3 or ¶ 3.4.

3.3 NRA catch-up

If the Adoption Agreement so specifies, a Participant may elect a catch-up deferral permitted under IRC § 457(b)(3). For a Participant's taxable year that is one of the three taxable years that ends before the Participant attains Normal Retirement Age, the maximum amount deferred for a Participant (not including a Rollover Contribution as provided by ¶ 3.3 or an amount under a qualified excess-benefit arrangement as provided by ¶ 3.7) will not exceed the amount specified by IRC § 457(b)(3), consistent with ¶ 3.5.

3.4 Age 50 catch-up

Unless the Adoption Agreement specifies otherwise, a Participant may elect an age 50 catch-up deferral permitted under IRC § 457(b)(3). After 2001, the maximum amount deferred for a Participant may include (subject to ¶ 3.5) the amount otherwise permitted by ¶ 3.2 plus the additional amount provided by IRC § 414(v).

3.5 Coordination of NRA catch-up and Age 50 catch-up

For a Participant's taxable year that is one of the three taxable years that ends before the Participant attains Normal Retirement Age and in which ¶ 3.4 could apply, the Participant's deferral limit is the greater of ¶ 3.4 without ¶ 3.3 or ¶ 3.3 without ¶ 3.4.

3.6 Rollover Contribution

The Plan credits to a Participant's Account the amount received as a rollover from an Eligible Retirement Plan. A Rollover Contribution is not subject to ¶¶ 3.2-3.5 and does not count in applying IRC § 457(c).

3.7 Qualified governmental excess-benefit arrangement

Consistent with IRC § 457(e)(14), ¶ 3.2 and IRC § 457(c) do not apply to a qualified excess-benefit arrangement (as defined by IRC § 415(m)(3)), and benefits under such an arrangement are not taken into account in determining whether this Plan is an Eligible 457(b) Plan.

3.8 Post-severance Compensation counts

Compensation that otherwise would count as Compensation for the Deferral Limit does not fail to be Compensation merely because it is paid after a Participant's Severance-from-Employment. Further, compensation that is paid by the later of 2½ months after the Participant's Severance-from-Employment or the end of the Year that includes the Participant's Severance-from-Employment date and that would have been included in Compensation if paid before the Participant's Severance-from-Employment is included in Compensation.

Subject to the conditions stated by the preceding paragraph, Compensation includes an amount if the payment is:

- regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as, overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been paid to the employee before his or her Severance-from-Employment if he or she had continued in employment with the Employer.
- for unused accrued bona fide sick, vacation, or other leave if the employee would have been able to use the leave if his or her employment had continued; or
- received by an employee under a nonqualified deferred compensation plan if the payment would have been paid to the employee at the same time if the employee had continued in employment with the Employer and only to the extent that the payment is includible in the employee's gross income.

Compensation does not include severance pay if it is paid after the Participant's Severance-from-Employment.

3.9 Responsibilities for Deferral Limit

To apply the Deferral Limit, differing responsibilities for the Employer and a Participant apply as follows.

3.9.1 Employer

The Employer must apply the Deferral Limit concerning all deferrals under all plans maintained by the Employer.

3.9.2 Participant

A Participant is responsible for his or her income tax returns, and must apply the Deferral Limit. A Participant must coordinate his or her deferrals among all plans of all employers, including employers unrelated to the Employer.

3.10 Corrective Distribution for excess deferrals

A Corrective Distribution for excess elective deferrals will be paid if there is a designation of excess deferrals under ¶ 3.10.1, ¶ 3.10.2, or ¶ 3.10.3. Such a Corrective Distribution must meet ¶ 3.10.4.

3.10.1 Employer's designation of excess deferrals

If the Employer Finds that a Participant has excess deferrals for the calendar Year (calculated by taking into account only Contributions under this Plan), the Employer will designate the amount of the excess deferrals.

3.10.2 Employer's designation of excess deferrals

If the Employer Finds that a Participant has excess deferrals for the calendar Year (calculated by taking into account only Contributions under this Plan and other plans of the same Employer), the Employer will designate the amount of the excess deferrals.

3.10.3 Participant's designation of excess deferrals

A Participant may designate excess deferrals by delivering to the Employer a written Claim, in the form the Employer prescribes, that certifies and otherwise establishes to the satisfaction of the Employer an amount of excess deferrals.

3.10.4 Amount to be distributed

The amount to be distributed as a Corrective Distribution will be the amount of the excess deferrals designated together with Allocable Income Found.

4. Rollover Contribution

4.1 Rollover Contribution

The Plan accepts a Rollover Contribution from an Eligible Retirement Plan.

4.2 Any Employee

An Employee may make a Rollover Contribution, even if he or she is not otherwise a Participant.

4.3 Rollover Contributions Account

A Rollover Contribution (and Allocable Income) is contributed to and held under the Rollover Contributions Account, which is separate from the rest of the Participant's Plan Account.

5. Investment direction

5.1 Participant's duty of investment direction

Each Participant (and, when applicable, each Beneficiary or Alternate Payee) will, subject to the Employer's Procedures (which may include procedures of a Service Provider), direct the investment of his, her, or its Account.

5.2 Procedure for giving investment direction

A Participant, Beneficiary, or Alternate Payee must give his, her, or its investment direction according to this Plan, including any Procedure or form. A Person may render an investment direction only with the Employer's approval (which may be made through its agent).

5.3 Reasonable frequency

The Employer and each Funding Vehicle may, but only on a uniform and consistent basis, impose reasonable restrictions on the frequency with which a Participant, Beneficiary, or Alternate Payee may give investment directions. In addition to such restrictions, a Participant, Beneficiary, or Alternate Payee

may not give more than one investment direction in any Valuation Day, and the latest investment direction in a Valuation Day cancels all earlier inconsistent investment directions in that Valuation Day.

5.4 Who directs investment

During the Participant's life, the Participant directs the investment of his or her Account. During the Participant's disability or incompetence, the Person who has authority to act for the Participant under a Power of Attorney or, if there is no such agent, the Person that is the duly appointed and currently serving conservator or guardian of the estate of the Participant directs the investment of the Participant's Account. After the Participant's death, the Beneficiary directs the investment of his, her, or its Account, or each Beneficiary directs the investment of his, her, or its separate account. If, following a QDRO, the Employer maintains a separate account for an Alternate Payee, the Alternate Payee directs investment of that separate account.

5.5 Investment agent

A Participant, Beneficiary, or Alternate Payee may delegate to an agent performance of his, her, or its investment responsibility by giving written notice acceptable to the Employer and furnishing a Power of Attorney.

5.6 Investment direction must be in writing

Each investment direction must be in writing and is not proper unless the writing is signed or adopted (which may be by electronic means) by the Participant, Beneficiary, or Alternate Payee (or by his, her, or its recognized agent). Except as otherwise specified by an investment-direction Procedure, "writing" and "signed" is construed according to ¶ 20.21. Without limiting the comprehensive effect of the above, a signed writing includes, a proper telephone or Electronic communication made in the manner prescribed by a Procedure.

5.7 Proper Person to receive investment direction

A Participant, Beneficiary, or Alternate Payee must give his, her, or its investment direction only as provided by a uniform written Procedure adopted by the Employer. Unless the Employer specifies otherwise, the Procedure includes rendering an investment direction according to the forms, rules, and procedures of the Funding Vehicle.

5.8 Transfer between Funding Vehicles

An investment direction may take the form of an instruction to transfer an amount or other portion of an Account from a Funding Vehicle to another Funding Vehicle (whether of the same Service Provider or of a different Service Provider).

5.9 Employer not responsible

The Employer need not question any investment direction of a Participant, Beneficiary, or Alternate Payee (or his, her, or its agent). The Employer need not provide any investment advice, education, or information. If the Employer provides any investment advice, education, or information of any kind, the Employer is not liable for any loss arising out of such investment advice, education, or information. Without limiting the comprehensive effect of the preceding sentence, the Employer has no liability for any consequence that results from an investment direction that was given effect.

5.10 Investment direction refused

The Employer or a Service Provider may decline to implement an investment direction if it:

- is made by a Person that an Order has decided Payee is legally incompetent
- could result in a loss in excess of the applicable Account (or sub-Account) balance

- would be contrary to this Plan
- would be contrary to an Order, even if the Order is not a QDRO
- would impair the Plan's (or the Trust's) tax-qualified status
- would generate income that would be taxable to the Trust
- would cause any Person to maintain the indicia of ownership of any investment outside the jurisdiction of the courts of the United States.

5.11 Failure to give investment direction

If a Participant, Beneficiary, or Alternate Payee fails to exercise his, her, or its duty of investment direction (or an investment direction is refused), the Employer may, to the extent of the failure of proper investment direction, cause the Account to be invested under a written Procedure adopted by the Employer.

5.12 Investment direction during domestic-relations matter

Despite any notice to the Employer or any Person that a domestic-relations order is or might be presented, the Participant continues to exercise his or her duty of investment direction as required by the Plan (except as otherwise required by a final court order that binds the Employer or the Person that receives an investment direction). If, following a QDRO, the Employer maintains a separate account for an Alternate Payee, the Alternate Payee directs investment of that separate account.

5.13 Investment direction during bankruptcy matter

Despite any notice to the Employer or any Person of a bankruptcy proceeding, the Participant continues to exercise his or her duty of investment direction as required by the Plan (except as otherwise required by a final court order that binds the Employer or the Person that receives an investment direction).

5.14 Expenses of investment direction

The Employer or a Service Provider may charge the Participant's, Beneficiary's, or Alternate Payee's Account for the reasonable expenses of executing his, her, or its investment direction.

If the execution of an investment direction would incur an unusual charge or any tax under the Funding Vehicle or otherwise under Applicable Law, any Person receiving the investment direction may require the Participant, Beneficiary, or Alternate Payee to confirm in writing that he, she, or it understands each charge or tax and how the charge or tax is determined.

5.15 Relief from responsibility

To the extent of a Participant's, Beneficiary's, or Alternate Payee's investment direction, every Person other than the Participant, Beneficiary, or Alternate Payee is relieved from responsibility and every kind of liability, and is not responsible for or liable for any damage, loss, expense or other claim that arises from that Participant's, Beneficiary's, or Alternate Payee's investment direction or exercise of control (or from that Participant's, Beneficiary's, or Alternate Payee's failure to exercise his, her, or its duty of investment direction and control).

6. Allocation methods

6.1 Employee Contributions

Subject to Part 2 [“Participation and deferral” at page 10], each Employee may elect to defer a portion of his or her Compensation as Employee Contributions under the Plan.

6.1.1 Qualified Roth contribution program

If the Adoption Agreement so specifies, a Participant may, consistent with IRC § 402A, designate all, some, or none of his or her Employee Contributions as Roth Contributions.

6.1.2 Employee Contributions from post-severance compensation

Consistent with ¶ 3.8 [page 12], an Eligible Employee may elect to make Employee Contributions from post-severance compensation.

However, an Eligible Employee may make Employee Contributions from post-severance nonqualified deferred compensation only to the extent affirmatively so provided by the written instrument under which that compensation is provided.

6.2 Employer Contributions are discretionary

Employer Contributions (if any) are discretionary, and are provided to no greater extent than the Adoption Agreement specifies.

6.3 Plan Accounts

The Employer will keep (or cause to be kept) the Account for each Participant, Beneficiary, or Alternate Payee.

6.4 Allocation of Contributions and investment return

Contributions, income, gains, losses, other elements of investment return or contract value, and fees and expenses are allocated each Valuation Day.

6.5 No rights created by allocation

An allocation to an Account does not cause a Participant or any Person to have any right, title, or interest in any assets of the Plan or the Trust, except as expressly provided by the Plan.

6.6 Funding policy

The Plan does not involve a funding obligation. Nonetheless, the Plan’s funding policy, to the extent (if any) required by IRC § 457(b) or IRC § 457(g), is to require each Employer to pay an Employee Contribution within a reasonable time after such amount was segregated from the Employer’s assets.

7. Roth and Non-Roth Accounts

7.1 Roth Account

A Roth Account is a sub-Account of the Employee Contributions Account, or is a sub-Account of the Rollover Contributions Account.

7.2 Separate accounting

If an Account is credited with a Roth Contribution (whether an Employee Contribution or a Rollover Contribution), the Plan accounts for Roth Accounts and Non-Roth Accounts on a reasonable and

consistent basis consistent with maintaining a qualified Roth contribution program according to IRC § 402(e)(1)(C) and IRC § 457(b).

The Employer may decline a Participant's direction to treat all or a portion of an Employee Contribution as a Roth Contribution if the Employer Finds that such a Contribution would be invested under a Funding Vehicle for which its Service Provider would not maintain sufficient separate accounting.

The Employer may decline a Rollover Contribution for which a Roth amount is specified if the Employer Finds that such a Contribution would be invested under a Funding Vehicle for which its Service Provider would not maintain sufficient separate accounting.

7.3 Separate-accounting rules

The following separate-accounting rules apply to allocate amounts between Roth Accounts and Non-Roth Accounts.

7.3.1 Contributions

Roth Contributions are credited to Roth Accounts. All other Contributions are credited to Non-Roth Accounts.

7.3.2 Rollover received

A Rollover Contribution is credited to Roth Accounts and Non-Roth Accounts according to the accounting furnished by the paying Eligible Retirement Plan's insurer, custodian, or plan administrator. If the Plan accepts a Rollover Contribution regarding which such an accounting is not furnished, the Rollover Contribution is credited to Non-Roth Accounts.

7.3.3 Expenses

An expense is debited against Roth Accounts and Non-Roth Accounts in proportion to those sub-Account balances.

7.3.4 Investment results

An investment gain or loss is allocated to a sub-Account according to the Fund Shares and other Funding Vehicles allocated to that sub-Account.

7.3.5 Loan

A Loan to a Participant, Beneficiary, or Alternate Payee is debited against a Roth Account or a Non-Roth Account as the Participant, Beneficiary, or Alternate Payee directs. This direction is a required element of a Participant's, Beneficiary's, or Alternate Payee's Claim for a Loan. Loan repayments are credited to, and a Loan's deemed distribution or offset distribution is debited against, the same sub-Account from which the Loan was debited.

7.3.6 QDRO Distribution

A QDRO Distribution to an Alternate Payee is debited against a Roth Account or a Non-Roth Account as the QDRO provides or, if not so provided, first against Non-Roth Accounts.

7.3.7 Transfer to purchase service credit

An IRC § 457(e)(17) transfer to purchase service credit [see ¶ 11.3 at page 20] is debited against Roth Accounts and Non-Roth Accounts pro rata in the ratio that the amount of the transfer bears to the Account balance determined immediately before the payment of the transfer.

7.3.8 Permitted, Emergency, Retirement, and Death Distributions

A Distribution (other than a Corrective Distribution, QDRO Distribution, or deemed distribution or offset distribution incident to a Loan) is debited against a Roth Account or a Non-Roth Account as the Distributee directs. To the extent that any of the preceding sentences permits a Distributee to direct whether a Distribution is debited against a Roth Account or a Non-Roth Account, the Distributee's direction is a required element of his, her, or its Claim for a Distribution. If a Distribution is required and the Employer cannot require the Distributee's direction, the Distribution is debited first against Non-Roth Accounts.

7.4 In-plan rollover from a Non-Roth Account to a Roth Account

If the Adoption Agreement so specifies, a Participant, Beneficiary, or Alternate Payee may, consistent with IRC § 402A(c)(4), direct an in-Plan qualified rollover contribution into a Roth Account of an amount under a Non-Roth Account that, for a transfer before January 1, 2013, the Participant, Beneficiary, or Alternate Payee otherwise was entitled to receive as an Eligible Rollover Distribution, or for a transfer after December 31, 2012 is consistent with IRC § 402A(c)(4)(E).

8. Protection of, and reemployment after, Uniformed Service

8.1 Provisions concerning Uniformed Service

To the extent required by USERRA or to state provisions consistent with IRC § 414(u), a Person who is a member of, applies to be a member of, has performed, applies to perform, or has an obligation to perform service in a Uniformed Service will not be denied any Benefit or right under the Plan on the basis of such membership, performance of service, application for service, or obligation. Likewise, a reemployed Person is entitled to the rights required under USERRA or IRC § 414(u). To the extent required by IRC § 457(b) and consistent with IRC § 401(a)(37), if a Participant dies after 2006 while performing Qualified Military Service, an additional benefit (if any), other than benefit accruals relating to the period of Qualified Military Service, is provided as if the Participant had resumed employment and then ended employment on account of death. Consistent with all provisions of USERRA, a Benefit or right under the Plan arising out of or related to reemployment after Service in the Uniformed Services does not apply unless and until: the Person is eligible for reemployment under 38 U.S.C. § 4304 [honorable discharge], the Person applied for reemployment in compliance with 38 U.S.C. § 4312, and the Participant or Employee furnishes to the Employer satisfactory Evidence concerning the Service in the Uniformed Services.

9. Domestic-relations orders

9.1 Procedures

The Employer may adopt written Procedures for Finding whether an order directed to the Plan is a Qualified Domestic Relations Order or QDRO.

9.2 Finding whether an order is a QDRO

The Employer will Find whether a final court order directed to the Plan is a QDRO.

The Employer may delay the commencement of its consideration of any order until the later of the date that is 30 days after the date of the order or the date that the Employer is satisfied that all rehearing and appeal rights on the order have expired.

9.3 Giving effect to a QDRO

If an order is a QDRO, the Employer may instruct the Trustee to pay the Distribution provided under (and to prevent any payment or act that is inconsistent with) the QDRO.

9.4 Segregated Account

If a QDRO does not provide for immediate payment to the Alternate Payee of all of his or her rights, there will be a subaccount, segregated from the Participant's Account, to account for the Alternate Payee's benefit. Except as provided by ¶ 9.6, a Distribution from an Alternate Payee's Account need not relate to the Participant's Account.

9.5 Investment direction after QDRO

If a segregated Account is established under ¶ 9.4, the Alternate Payee will direct investment of his or her segregated Account.

9.6 Required beginning date and minimum distribution

To determine whether and in what amount a minimum distribution is required, the following provisions apply. An Alternate Payee who was the Participant's Spouse is, consistent with 26 C.F.R. § 1.401(a)(9)-8/Q&A-6(a), treated as a Spouse (including a surviving Spouse) of the Participant, even if the QDRO does not so provide. If a segregated Account is established under ¶ 9.4, the Alternate Payee's segregated Account is, consistent with 26 C.F.R. § 1.401(a)(9)-8/Q&A-6(b)(1), treated as a separate account. A distribution from an Alternate Payee's Account must begin no later than the Participant's Required Beginning Date, and must meet 26 C.F.R. § 1.401(a)(9)-8/Q&A-6(b)(1) or (2).

10. Loan

10.1 Participant Loan

Unless the Adoption Agreement specifies otherwise, a Participant (but not a Beneficiary or Alternate Payee) may receive a Loan secured by a portion of his or her Account if the Funding Vehicle provides a loan and the loan meets all requirements of this Part.

10.2 Loan terms

In addition to the Funding Vehicle's and the Plan's provisions, a Loan's terms are provided by its written Loan agreement, in the form that the Employer requires.

10.3 Loan must bear a reasonable rate of interest

A Loan is not made unless the Loan bears a reasonable rate of interest. If not set by the Funding Vehicle, the interest rate is set by a Procedure.

10.4 Not a distribution

A Loan must meet all requirements of IRC § 72(p), IRC § 457(b), and otherwise under the Internal Revenue Code for treatment as a loan that is not a distribution.

10.5 Loan limit

A Loan is not made to the extent that the Participant's Loan (when added to his or her outstanding balance of all other Loans and all plan loans under all other plans of the Employer) would exceed any limit under IRC § 72(p)(2)(A).

10.6 Repayment period

A Loan is not made unless the loan, by its terms, must be repaid within five years; unless the Loan is used to acquire the Participant's principal residence, in which case the Loan must be repaid within 20 years.

10.7 Level amortization

A Loan is not made unless the Loan provides substantially level repayments no less frequently than quarterly over the term of the Loan.

11. Permitted Distribution

11.1 Permitted Distribution for inactive Participant

Consistent with IRC § 457(e)(9)(A), a Participant (but not a Beneficiary or Alternate Payee) may elect to receive a Permitted Distribution if the Participant's Account does not exceed the amount described in IRC § 457(e)(9)(A)(i) and the Participant's Account has not received any Contributions during the two-year period that ends on the date of the Permitted Distribution and the Participant has not previously received any Permitted Distribution under this Plan.

11.2 Permitted Distribution from a Rollover Contributions Account

A Participant is entitled to receive a Permitted Distribution to the extent of his or her Account's Rollover Contributions Account without meeting any condition for a Retirement Distribution.

11.3 Transfer to purchase service credit

If the Participant so instructs, the Employer, to the extent permitted by IRC § 457(e)(17), will pay the portion of the Account the Participant instructs in a direct trustee-to-trustee transfer to a defined-benefit governmental plan if the Participant instructs that the transfer is for the purchase of Permissive Service Credit or similar repayment.

11.4 QDRO Distribution

An Alternate Payee is entitled to receive a QDRO Distribution without the Participant meeting any condition for a Retirement Distribution.

12. Emergency Distribution

12.1 Emergency Distribution

An Emergency Distribution is provided unless the Adoption Agreement specifies otherwise. If, before his or her Severance-from-Employment, a Participant has an unforeseeable emergency that meets ¶ 12.2, the Participant (but not a Beneficiary or Alternate Payee) is entitled to receive as a single sum an Emergency Distribution of the amount that the Employer Finds is reasonably needed to meet the emergency need.

12.2 Definition of unforeseeable emergency

Consistent with IRC § 457(d)(1)(A)(iii) and 26 C.F.R. § 1.457-6(c)(2)(i), an unforeseeable emergency means a severe financial hardship of the Participant (or of his or her Beneficiary) resulting from:

- an illness or accident of the Participant or his or her Beneficiary, of the Participant's Spouse or Dependent, or of the Beneficiary's Spouse or Dependent; or
- loss of the Participant's or his or her Beneficiary's property due to casualty; or

- other similar and extraordinary unforeseeable circumstances (which may include expenses of the Participant's Spouse or Dependent or the Beneficiary's Spouse or Dependent) arising as a result of events beyond the control of the Participant or of his or her Beneficiary.

The Plan incorporates by reference the examples and other guidance stated in 26 C.F.R. § 1.457-6(c)(2)(i) and Revenue Ruling 2010-27 (2010-45 Internal Revenue Bulletin 620) as the Plan's construction and interpretation provisions.

Consistent with 26 C.F.R. § 1.457-6(c)(2)(ii), a Participant's (or his or her Beneficiary's) circumstances is not an unforeseeable emergency to the extent that the financial hardship is or may be relieved:

- through reimbursement or compensation by insurance or otherwise,
- by liquidation of the Participant's other assets to the extent that this liquidation would not itself cause severe financial hardship, or
- by cessation of deferrals under the Plan.

Consistent with 26 C.F.R. § 1.457-6(c)(2)(iii), an Emergency Distribution is limited to the amount reasonably needed to meet the emergency need.

12.3 Cessation of deferrals

Internal Revenue Code § 457(d)(1)(A)(iii), including 26 C.F.R. § 1.457-6(c)(2), does not always or necessarily require as a condition to an Emergency Distribution that a Participant cease deferrals. Nonetheless, as an aid to finding that a financial hardship cannot be relieved by cessation of deferrals under the Plan, a Claim does not state an emergency unless the Participant has made a legally enforceable agreement (which may be stated in the Participant's Claim) that precludes elective deferrals under the Plan for six months after the Participant's receipt of the Emergency Distribution.

12.4 "Gross-up" for income taxes

The amount needed to meet an emergency need includes amounts needed to pay Federal, State, and local income taxes reasonably anticipated to result from the Emergency Distribution.

12.5 Discretionary Findings

For all purposes of this Part and otherwise under the Plan, the Employer in its discretion Finds whether a Participant has an emergency need, and whether a Participant is entitled to an Emergency Distribution. The Employer's Finding considers any facts that the Employer Finds necessary or advisable. A Participant must submit any Evidence of his or her circumstances that the Employer requires. The Employer Finds whether a Participant has a hardship based on the facts of each case. To decide whether a need cannot be relieved from other resources, the Employer may rely on a statement in the Participant's Claim if the Employer lacks actual knowledge that the Participant's statement is false.

12.6 Delegation subject to due process

The Employer may delegate to the Third-Party Administrator some or all of the Findings concerning a Claim for an Emergency Distribution, but any such delegation must include a Procedure to provide due process to a Claimant.

13. Retirement Distribution

13.1 Retirement Distribution

On his or her Severance-from-Employment, a Participant is entitled to receive his or her Account under any Payout Option that meets the provisions of the Plan, including ¶ 13.3.

Beginning with the Year in which the Participant attains age 70½, a Participant is entitled to receive his or her Account under any Payout Option that meets the provisions of the Plan, including ¶ 13.3.

13.1.1 Deemed Distribution

On his or her Severance-from-Employment, if the Participant's Account is no more than \$0 (as of the date of or the Valuation Day next following his or her Severance-from-Employment), the Participant will be deemed to have received a full Retirement Distribution.

13.2 Retired public safety officer's health insurance

To the extent consistent with IRC § 402(l)(6), a Participant who is an eligible retired public safety officer (within the meaning of IRC § 402(l)(4)(B)) may elect that his or her Retirement Distribution (or a portion of it) be paid so that it qualifies for the Federal income tax treatment provided by IRC § 457(a)(3) consistent with IRC § 402(l). The Trustee will pay the amount so instructed directly to the provider of the qualified health insurance to the extent so required by IRC § 402(l)(5)(A) for the amount to enjoy the Federal income tax treatment permitted by IRC § 402(l)(1).

13.3 Minimum distribution

A Retirement Distribution will be made according to a Payout Option that begins no later than the Required Beginning Date and meets the requirements of IRC § 401(a)(9) and IRC § 457(d)(2). Thus, a Retirement Distribution will be distributed, beginning no later than the Required Beginning Date, over the life of the Participant and the MDIB Beneficiary, or over a period no longer than the life expectancy of the Participant and the MDIB Beneficiary. The provisions required by, and alternatives permitted by, those Internal Revenue Code sections and their regulations are incorporated by reference.

13.3.1 Temporary relief from minimum distribution

Nothing in the Plan precludes a Participant's use of the relief provided by IRC § 401(a)(9)(H) or Section 201 of the *Worker, Retiree, and Employer Recovery Act of 2008* (Public Law 110-458).

14. Death Distribution

14.1 Death Distribution

On the Participant's death before a Retirement Distribution has begun, each Beneficiary is entitled to receive his, her, or its separate account under the Participant's Account under any Payout Option that meets the provisions of the Plan, including ¶ 14.2.

14.1.1 Deemed Distribution

On the Participant's death, if the Account is no more than \$0 (as of the date of or the Valuation Day next following his or her Severance-from-Employment), the Beneficiary is deemed to have received a full Death Distribution.

14.2 Minimum distribution

A Death Distribution will be made according to a Payout Option that begins no later than the Required Beginning Date and meets the requirements of IRC § 401(a)(9) and IRC § 457(d)(2). The provisions

required by, and alternatives permitted by, those Internal Revenue Code sections and their regulations are incorporated by reference. A Death Distribution will be distributed within five years after the Participant's death or, beginning no later than the Required Beginning Date and no later than the date required under IRC § 401(a)(9)(B)(iii)(III), over the life of the MDIB Beneficiary, or over a period no longer than the life expectancy of the MDIB Beneficiary. To the extent not precluded by the preceding sentence, a Beneficiary may, consistent with 26 C.F.R. § 1.401(a)(9)-3/A-4(c), elect the life-expectancy rule or the five-year rule, but must make such an election no later than the earlier of the end of the calendar year in which a Distribution would be required to begin under the life expectancy rule or the end of the calendar year that includes the fifth anniversary of the date of the Participant's death. This election becomes irrevocable as of that date, and then applies to all later calendar years.

14.2.1 Temporary relief from minimum distribution

Nothing in the Plan precludes a Beneficiary's use of the relief provided by IRC § 401(a)(9)(H) or Section 201 of the *Worker, Retiree, and Employer Recovery Act of 2008* (Public Law 110-458).

14.3 Disclaimer by Beneficiary

A Beneficiary may renounce or disclaim all or a part of a Benefit by filing a written irrevocable disclaimer no later than 31 days before the Distribution otherwise would begin and before acceptance of any Benefit. A disclaimer is not effective unless the disclaimer document meets all requirements of relevant State Law. Further, a disclaimer is not effective unless the disclaimer document also meets all requirements of IRC § 2518 such that the disclaimer is effective for Federal gift and estate tax purposes (even if such a tax could not apply in the absence of a disclaimer).

15. Beneficiary

15.1 Participant's power to designate his or her Beneficiary

A Participant's right to designate his or her Beneficiary is limited by ¶ 15.1.1 and by all provisions of this Part.

15.1.1 Beneficiary Designation power is personal to the Participant

After the Participant's death, no Person has any right or power to designate a Beneficiary or change any Beneficiary (except a Beneficiary's disclaimer of his, her, or its Benefit as permitted by ¶ 16.9). An attempt to state such a provision in a Beneficiary Designation or otherwise is void.

15.2 Beneficiary Designation

Before his or her death, a Participant may designate a Beneficiary or Beneficiaries, subject to the Plan's provisions. The Participant may change his or her Beneficiary Designation, subject to the Plan's provisions.

A Beneficiary Designation must be in writing on the form the Employer prescribes. A Beneficiary Designation is not effective until the Employer accepts it. Each Beneficiary Designation completely revokes and cancels any and every previous beneficiary designation.

15.2.1 Participant must designate a Beneficiary by name

A Participant must designate each Beneficiary by name. A Participant cannot designate a Beneficiary by relationship or by class, and any such attempted beneficiary designation is void. Notwithstanding the preceding sentence, if the Employer Finds that a Beneficiary Designation sufficiently describes a trust, the Employer may construe the Beneficiary Designation as naming the duly appointed and currently acting trustee of that trust. Likewise, if the Employer Finds that a Beneficiary Designation sufficiently describes

an estate, the Employer may construe the Beneficiary Designation as naming the duly appointed and currently acting Personal Representative of that estate.

A statement in a Beneficiary designation that purports or attempts to state or create a condition or restriction on the Beneficiary's receipt or enjoyment of any Benefit is invalid, and the Beneficiary is entitled to the Benefit without regard to any attempted condition or restriction.

Notwithstanding anything to the contrary in a Beneficiary designation, the Participation Agreement, or any other document or otherwise (including but not limited to any Order), a designation of a Beneficiary cannot be irrevocable, and any such designation is construed as a revocable designation of that Beneficiary.

If a Participant designates as his or her Beneficiary more than one Person, all Persons of the same Beneficiary Designation class (primary or contingent) have equal shares, unless the Participant specifies otherwise.

If a Beneficiary Designation divides a Benefit between or among two or more Beneficiaries, the primary Beneficiary Designation must allocate the share of each such Beneficiary solely by specifying a percentage of the Participant's Account and the contingent Beneficiary Designation must allocate the share of each such Beneficiary solely by specifying a percentage of the Participant's Account. Without limiting the comprehensive effect of the preceding sentence, any division of any Benefit under a Beneficiary Designation will be ineffective to the extent that it would require considering any fact other than the amount of the Participant's Account.

15.2.2 Substantial-compliance doctrine

Any common-law doctrine or construction or interpretation principle of substantial compliance with the rules for making a beneficiary designation or nomination (or under the Law of contracts generally) cannot apply to the Plan.

15.3 Construction of Beneficiary Designation

A Beneficiary Designation is construed according to the following provisions.

15.3.1 Ignore any description of relationship

A statement in a Beneficiary Designation referring to a Beneficiary's relationship to the Participant is for convenience or information only, and has no effect in the construction or interpretation of the Beneficiary Designation.

15.3.2 If shares not specified

If a Participant designated as Beneficiaries more than one Person and the Beneficiary Designation does not specify the share for each Beneficiary, the Beneficiaries have equal shares.

15.3.3 Dispose the full Account

A Beneficiary Designation is construed to dispose all the remaining Plan Account and all Benefits. For example, if a Beneficiary Designation specifies shares that total less than 100 percent of the Benefit, the Employer may adjust the shares pro rata so that the shares equal 100 percent.

15.4 Beneficiary must be alive when the Distribution becomes payable

Notwithstanding any Beneficiary designation or any Law to the contrary, a Person is not a Beneficiary unless he or she is living or it exists when the Distribution otherwise would become payable. Further, a Person who or that would receive a Distribution as a trustee or other fiduciary is not a Beneficiary unless the Person that the trustee or fiduciary serves is living or exists when the Distribution would become

payable. Any right of a Beneficiary is strictly personal to that Beneficiary and lapses on his or her death or its non-existence. An undistributed Benefit that would have been distributable to a Person had he or she lived or it existed is not distributable to that Person's legatees or heirs. On a Beneficiary's death, any undistributed Benefit attributable to that Beneficiary becomes distributable to the remaining primary Beneficiaries or Beneficiary if any, or if none, to the remaining contingent Beneficiaries or Beneficiary, in each case to be distributable in equal shares to all living Beneficiaries of the applicable primary or contingent Beneficiary class.

15.5 Lack of Beneficiary designation

If a Participant failed to name a Beneficiary (including a failure because the Participant's beneficiary designation is invalid or ineffective) or no Beneficiary named by the Participant is living or exists when the Distribution otherwise would become payable, the Participant's estate is the Beneficiary, to the extent of the failure or invalid or ineffective designation.

15.6 A slayer cannot be a Beneficiary

A named beneficiary who feloniously and intentionally kills the Participant or Beneficiary is not a Beneficiary and is not entitled to any Distribution or any other right under the Plan; and any Benefit is available as though the killer had predeceased the Participant or Beneficiary.

15.7 Forgery, incapacity, undue influence, or other doubt

If a Person has submitted information such that there is a reasonable doubt about whether a writing that otherwise would be a Beneficiary Designation is a result of forgery, incapacity, undue influence, or other circumstances such that if those circumstances were found the writing would not be the true act of the Participant, the Employer may (but need not) pursue an interpleader or other equitable relief.

16. Administration of Distribution provisions

16.1 Claim for Distribution

A Distribution is paid only on a completed and properly executed written Claim made in a form acceptable to the Employer that states all facts necessary to the payment of the Distribution, including but not limited to:

- if the Distribution is a Retirement Distribution, Evidence that the Participant has a Severance-from-Employment or has attained age 70½;
- if the Distribution is a Death Distribution, Evidence of the Participant's death;
- if the Distribution is an Emergency Distribution, a written statement consistent with ¶ 12.2;
- the Participant's, Beneficiary's, or Alternate Payee's date-of-birth;
- the date-of-birth of any Person as relevant to the Distribution;
- if the Distribution is an Eligible Rollover Distribution, the Distributee's instruction concerning whether the Distribution (or a portion of the Distribution) is to be paid directly to an Eligible Retirement Plan, and if any amount is to be paid directly to an Eligible Retirement Plan, the name and address of the trustee, custodian, or insurer of that Eligible Retirement Plan together with any other information that the Employer reasonably requests;

- if the Account consists of more than one Funding Vehicle, the order in which any Funding Vehicles are to be redeemed or charged to pay the Distribution;
- if the amount of the Distribution is greater than a uniform amount established by the Employer, appropriate assurance that the Claimant's signature is genuine; and
- any other Evidence that the Employer Finds is relevant to administer a Plan provision in the Distributee's circumstances.

16.2 Delay of payment

The Employer, in its discretion, may delay payment of an approved Claim for a Distribution:

- to permit a valuation of the Account,
- to permit a necessary or appropriate liquidation of assets,
- if a dispute arises concerning the proper Distributee,
- if the Employer has notice of a proceeding that might involve the Account,
- to receive necessary information,
- for any reason described elsewhere in the Plan, or
- for any reason provided by Applicable Law.

Without limiting the comprehensive effect of the above, to the extent that a Distribution requires a redemption or transfer of Fund Shares, the Employer may delay the Distribution during any period: when the New York Stock Exchange is closed other than for a weekend or a holiday, or when trading on the New York Stock Exchange is restricted, or when an emergency exists making disposal of a Fund's securities or valuation of a Fund's net assets not reasonably practicable, or when the SEC has required or permitted the suspension of redemptions or transfers by order, or during any period otherwise described by 15 U.S.C. § 80a-22(e)(1)-(3). Also, the Employer may delay a Distribution if doing so is necessary or appropriate to avoid exceeding a Fund's large-transaction-amount requirement that applies to the Trust.

16.3 Finding Death

When a Natural Person's death is relevant to deciding a Claim, the Employer will Find whether a death occurred, and what date and time a death occurred. The Employer will consider Evidence in its discretion.

16.4 Employer to approve

A Distribution will not begin until the Employer has approved the Claim for the Distribution as meeting the Plan's provisions.

16.5 Payer may rely on apparent entitlement

The Employer or the Trustee [a "payer"] is not liable for having made a payment to a Person not entitled to the payment, or for having taken or omitted any other action in Good Faith reliance on a Person's apparent entitlement under the Plan, before the payer actually received written notice of a claimed lack of entitlement under this Plan.

A payer of any Distribution is not liable for having made a payment or having transferred an item of property to a Person named in a writing reasonably believed to constitute a beneficiary designation who is not entitled to the Distribution, or for having taken any other action in Good Faith reliance on the beneficiary's apparent entitlement under the terms of a beneficiary designation before the payer received written actual notice alleging that the beneficiary was not entitled to the Distribution.

16.6 Dispute concerning proper Distributee

If a dispute arises concerning the proper Distributee of any Plan payment, the Employer, in its discretion, may withhold payment until a court decides the dispute or the dispute is settled by all Claimants and potential claimants known to the Employer.

16.7 Distribution to minor Beneficiary

If a Distribution is to be made to a Beneficiary who is a Minor, a payment may be paid according to the following order:

- to the duly appointed and currently acting guardian of the Beneficiary's estate,
- to the Beneficiary's custodial parent,
- to a duly appointed and currently serving custodian for the Beneficiary under an applicable *Uniform Gifts to Minors Act* or *Uniform Transfers to Minors Act*,
- to the court having jurisdiction over the Beneficiary's estate.

The Employer has no duty to supervise or inquire into the use of a Distribution.

If when a Distribution begins the Beneficiary is a Minor and the Employer begins payments to another Person under this Provision, the Employer may continue all payments under the Distribution to the other Person notwithstanding that the Beneficiary might have attained full age, unless the Beneficiary files a written Claim according to all Plan requirements, including furnishing Evidence that he or she is of full age.

16.8 Distribution to incompetent Person

If a Distribution is to be made to a Participant, Beneficiary, or Alternate Payee that the Employer Finds to be unable to manage property effectively for any reason including mental illness, mental deficiency, physical illness, physical disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance, any payment may be paid to the duly appointed and currently acting legal guardian of the estate of the Participant or Beneficiary, or to the court having jurisdiction over the estate of the Distributee.

The Employer has no duty to supervise or inquire into the use of a Distribution.

If when a Distribution begins the Participant or Beneficiary is an incompetent or incapacitated (as described above) and the Employer begins payments to another Person under this Provision, the Employer may continue all payments under the Distribution to the other Person notwithstanding that the Participant, Beneficiary, or Alternate Payee might have become competent or might have been adjudicated as competent, unless the Participant, Beneficiary, or Alternate Payee files a written Claim according to all Plan requirements, including furnishing a satisfactory court order that he or she is competent to manage his or her Plan Benefit.

16.9 Disclaimer by Beneficiary

A Beneficiary may renounce or disclaim all or any part of a death Benefit by filing with the Employer a written irrevocable disclaimer that meets all requirements of ¶ 14.3 no later than 31 days before the Distribution otherwise would begin and before acceptance of any Benefit. An acceptance may be express or may be inferred from the facts and circumstances.

A Benefit disclaimed is distributable as if the Beneficiary who submitted the disclaimer died before the Participant.

17. Direct Rollover

17.1 Direct Rollover

Consistent with IRC § 457(d)(1)(C) and IRC § 401(a)(31), for any Distribution that is an Eligible Rollover Distribution, the Distributee may elect, at the time and in the manner the Employer prescribes, to instruct that his or her Eligible Rollover Distribution be paid directly to an Eligible Retirement Plan specified by the Distributee.

17.2 Eligible Rollover Distribution payable without delay

On the Distributee's request, the Employer may commence the Distribution less than 30 days after the Eligible Rollover Distribution Notice is given (but no earlier than the next Valuation Day that occurs after the date that the Employer receives the Distributee's Claim) if the Distributee affirmatively elects the Distribution.

17.3 Direct Rollover to a designated Roth account or a Roth IRA

Consistent with IRC § 402(c)(2), the Plan does not pay a Direct Rollover that includes a portion that is not includible in gross income unless the Eligible Retirement Plan that would receive the Direct Rollover is a plan described in IRC § 402(c)(2)(B) and its plan administrator has certified that the receiving plan administrator will separately account for amounts paid in a direct rollover with attributable income (or loss), and further will separately account for the portion of the Direct Rollover that would be includible in gross income and the portion that would not be includible. After 2009, a Distributee may, consistent with IRC § 408A(d)(3), instruct a Direct Rollover from a Roth Account to a Roth IRA without regard to the Distributee's modified adjusted gross income.

18. Employer's duties and powers

18.1 Employer has full authority

The Employer has full and complete authority and discretion to control and manage the operation of the Plan. The Employer has every power necessary or appropriate to discharge its duties under the Plan or the Enabling Statute. The Employer has complete discretionary authority to decide all matters and questions under the Plan.

18.2 Employer may decide any matter

The Employer may decide any matter under the Plan. The discretionary decisions of the Employer are final, binding, and conclusive on all interested Persons for all purposes.

Without limiting the comprehensive effect of the above, the Employer's discretionary decisions include any decision concerning:

- whether a Natural Person is an employee,
- whether an Employee belongs to a particular employment classification,
- whether an employee is an eligible Employee,
- the amount of a Participant's Compensation,
- the amount of Contributions to be made,

- whether an amount of Contributions exceeds the Deferral Limit,
- whether an Order is recognized,
- whether a Person has established the presence or absence of a spouse,
- whether a Participant has an unforeseeable emergency,
- whether a Participant has a Severance-from-Employment,
- whether a Beneficiary Designation is valid or effective,
- who is the proper Beneficiary,
- whether a Participant, Beneficiary, or Alternate Payee is a Minor or is of full age,
- whether a Participant, Beneficiary, or Alternate Payee is an incompetent,
- the Person who is a proper payee for a Distributee who is a Minor,
- the Person who is a proper payee for a Distributee who is an incompetent,
- whether any power of attorney is effective and acceptable to act concerning the Plan.

18.3 Employer may rely on Claims

The Employer may in Good Faith rely on a Claim or any other written statement, unless it has actual knowledge to the contrary. If the Employer in Good Faith so relies, the Plan is discharged from liability concerning a Distribution or Benefit.

18.4 Findings to be uniformly made

To the extent necessary to avoid discrimination prohibited by Applicable Law, the Employer must make any Finding or decision according to Procedures that the Employer must establish and maintain.

18.5 Information from Employer

To enable the Employer to perform its responsibilities, each Employer will furnish promptly complete and accurate information on any matter that the Employer requires to make a decision or Finding under the Plan. The Employer may rely on this information as furnished by the Employer, and need not verify this information.

18.6 Employer may delegate

Except as precluded by the Enabling Statute or other State Law, the Employer may, except as the Plan specifies otherwise, delegate the performance of its duties (but cannot delegate responsibility).

18.7 Plan services

The Employer may contract services to assist in the Plan's administration.

A Service Provider who or that performs services regarding the Plan is subject to the supervision and direction of the Employer, and does not have authority to control the Plan's operation.

A Service Provider may rely on any direction, instruction, information, or action (or failure to act) of the Employer (but not of the Employer) as being proper under this Plan, and need not inquire into the propriety or correctness of any such direction, instruction, information, or action.

18.8 Employer official may not decide Personal benefit

A Natural Person will recuse himself or herself from, and will take no part in, any Employer Finding particularly relating to his or her own participation or Benefit, unless his or her abstention would render the Employer incapable of acting on the matter.

19. Amendment, merger, Termination

19.1 Employer may amend the Plan

Subject to the Contracts Clauses, the Employer may amend the Plan.

19.2 Amendment cannot change exclusive benefit

To the extent required by ¶ 1.7 [“Exclusive benefit” at page 9], a Plan amendment is not effective to the extent that the amendment has the effect of causing any Plan asset to be diverted to, or inure to the benefit of, the Employer, or to be used for a purpose other than providing Benefits or Deferred Compensation to Participants, Beneficiaries, and Alternate Payees and defraying the Plan’s reasonable expenses.

19.3 Amendment cannot provide any cutback

An amendment cannot reduce the amount of Deferred Compensation properly credited to an Account before the date of the amendment, and cannot impair the rights of a Person to the Deferred Compensation so credited.

19.4 Retroactive effect

Subject to ¶ 19.2 and ¶ 19.3, a Plan amendment may provide immediate or retroactive effect if that effect does not cause the Plan to fail to meet the requirements of an Eligible 457(b) Plan.

19.5 Procedure for amendment by Employer

The Employer may amend the Plan by doing anything that is its act under State Law.

19.6 Merger or consolidation

If required or permitted by State Law and only to the extent Accounts are funded by a Trust or other exclusive-benefit arrangement in compliance with IRC § 457(g), the Plan may be merged or consolidated with, and such assets and liabilities may be transferred to, another Eligible 457(b) Plan, but only if the transferee plan meets the requirements of IRC § 457(g) and under the successor plan the Deferred Compensation for each Participant, Beneficiary, or Alternate Payee is at least equal to the Deferred Compensation the Person would have received if he, she, or it had received a single-sum distribution under the transferor Plan immediately before the transfer, merger, or consolidation.

19.7 Employer may terminate the Plan

Subject to the Contracts Clauses, the Employer may terminate the Plan.

19.8 Termination Distribution

On Termination, each Participant, Beneficiary, and Alternate Payee will receive a Termination Distribution as one payment of his, her, or its entire Account as soon as administratively practicable after the Plan’s Termination.

20. General provisions

20.1 Action of Employer

The Employer may act by any means that is the act of the Employer under State Law. Without limiting the comprehensive effect of the preceding sentence and in addition to the broad provision of the preceding sentence, the Employer may authorize any of its officers or agents to accept or execute documents on its behalf.

20.2 Anti-alienation

In addition to the Plan's other provisions and any Applicable Law, any Benefit or interest available under the Plan, any right to receive or instruct payments under the Plan, or any Distribution or payment is not subject to alienation, anticipation, assignment, attachment, commutation, execution, garnishment, hypothecation, levy, mortgage, pledge, sale, transfer, or other process that is an alienation within the meaning of IRC § 401(a)(13), whether by the voluntary or involuntary act of any Person, except as provided by an IRS levy or a QDRO.

However, the Employer, a Trustee, or a Service Provider need not incur any expense to defend against a proceeding or set aside an Order concerning an alienation of an Account or Distribution, including in a bankruptcy proceeding, even if the proceeding or order is obviously wrong.

20.3 Audit

The Employer may engage a public accountant to examine the Plan's internal controls and to audit, review, or compile the Plan's financial statements. The fees paid or incurred for those services is a proper Plan expense.

20.4 Claims Procedure

A Claimant (or other aggrieved Person) is not entitled to take any legal action or otherwise seek to enforce a Claim to benefits or rights under the Plan until the Claimant has exhausted all claims and appeals Procedures provided by the Plan.

In considering Claims, the Employer has full power and discretionary authority to construe and interpret the Plan's provisions, and any Law governing, applying to, or relating to the Plan.

20.5 Construction

The Plan is construed and interpreted according to Part 22 [at page 9].

20.6 Expenses

On the Employer's written instruction, the Employer may be reimbursed from the Plan assets, to the extent not inconsistent with Applicable Law, for any reasonable expense (including actual fees of lawyers and legal assistants) incurred in performing services regarding the Plan.

The Plan charges the Accounts of Participants, Beneficiaries, and Alternate Payees for the Plan's expenses. The Employer, in its discretion, decides the allocation of expenses among Accounts.

20.7 Forfeiture

To the extent required by Applicable Law and not precluded by ¶ 1.7, if a Participant pleads guilty or is convicted of a crime or offense relating to his or her government office or government employment and an Order provides for restitution relating to such crime or offense, the Participant (or, after the Participant's death, each Beneficiary) – if he or she has not paid promptly the restitution that the Order requires – forfeits his, her, or its Benefit and Deferred Compensation to the extent needed to meet the restitution not paid.

20.8 Governing Law

The Plan is, and actions under or relating to the Plan are, governed by and enforced by, and are construed, to the extent that a construction beyond the written provisions of the Plan (including Part 22 ["Construction" at page 44]) is necessary, according to the internal Laws (without regard to the Law of conflicts) of the State of which the Employer is a political subdivision, agency, or instrumentality.

20.9 Immunity

Nothing in the Plan can be construed to waive any sovereign, governmental, or public officer immunity that any Person might enjoy.

20.10 IRS levy

Notwithstanding any other Plan provision, the Employer may pay to the IRS from a Participant's, Beneficiary's, or Alternate Payee's Account the amount that the Employer Finds is demanded under a proper IRS levy or is sought to be collected by the United States under an Order resulting from an unpaid tax assessment against such Person.

20.11 Irrevocable election no longer provided

Each provision of any earlier document that might have required an irrevocable election so that an amount would not be made available until paid or other than as required for the Plan to be an Eligible 457(b) Plan does not apply to a Distribution or right after November 18, 2009.

20.12 Mistaken contributions

To the fullest extent permitted by IRC § 457(b)&(g), if the Employer pays a contribution (or any portion of a contribution) under a Good Faith mistake of fact, on receipt in good order of a proper request by the Employer, the Trustee will return the amount of the mistaken contribution, except as limited by Applicable Law, to the Employer, or to the extent so instructed and not contrary to maintaining the Plan as an Eligible 457(b) Plan, directly to the Participant.

20.13 Multiple Funding Vehicles

If the Employer approves more than one Funding Vehicle, the Employer (which may act with the assistance of a Third-Party Administrator) must apply all provisions and control instructions to Service Providers so that a use of more than one Funding Vehicle, or an absence or failure of coordination, does not cause a breach of any Plan provision.

20.14 Multiple plans

If the Employer maintains any deferred compensation plan other than this Plan, the Employer must apply all provisions that involve coordination between or among two or more plans. Without limiting the broad effect of the preceding sentence, the Employer must monitor and apply the deferral limits required by IRC § 457(b)(2)-(3) and 26 C.F.R. §§ 1.457-4 and 1.457-5.

20.15 Necessary information

A Participant, Beneficiary, or Alternate Payee will furnish on any request of the Employer any information needed for the Plan's administration, including his, her, or its full legal name, his, her, or its Taxpayer Identifying Number, his, her, or its current address, his or her residence, Evidence of his or her age, Evidence of whether he or she has a spouse. A Participant, Beneficiary, or Alternate Payee will promptly respond to and fully answer any reasonable inquiry related to these purposes. A failure to furnish any information described above or that the Employer Finds necessary or appropriate for its administration of the Plan may result in a delay or refusal to pay a Distribution or provide a Benefit.

The Employer (and any Person acting for it) will have the right to rely on any information given by any Participant, Beneficiary, Alternate Payee, or other Claimant. The Employer will have no duty to inquire into the accuracy, adequacy, or truth of any such information. Any such information will be binding on the Person who states it and all Persons that claim through him or her or it.

Any information furnished by a Participant, Beneficiary, Alternate Payee, Claimant, or other interested Person is furnished under penalties of perjury (under State Law and Federal Law). An absence of a notice does not suggest any inference concerning the application of any Law.

20.16 No contract of employment

The Plan does not constitute or modify any contract of employment, and does not obligate the Employer to continue the services of an Employee.

20.17 Notice

A notice required or permitted under the Plan is deemed given if directed to the proper Person at the current address in any Plan Record and mailed or otherwise delivered to that address. This Provision does not require the mailing or delivery of a notice permitted to be given by Electronic means, posting, or publication.

20.18 Plan is binding

The Plan, and all acts and Findings taken under it, is binding and conclusive, for all purposes, on all Participants, Beneficiaries, and Alternate Payees, and on the heirs, executors, administrators, successors and assigns of all such Persons.

20.19 Power of Attorney

A power of attorney cannot be effective to permit the agent to submit any Claim, instruction, direction, or consent under the Plan or otherwise act regarding the Plan unless the Employer in its discretion Finds that the power of attorney is acceptable.

Without limiting the comprehensive effect of the preceding sentence, the Employer will not accept a power of attorney until it Finds that the power of attorney

- appears on its face to have been made in a form and manner that is valid under relevant State Law or other Applicable Law (including 10 U.S.C. § 1044b),
- indemnifies the Employer and every Person that may rely on the power of attorney against any liability that may arise out of the Employer's acceptance of the power of attorney,
- expressly refers to the Plan and states provisions with sufficient clarity so that there is no confusion or ambiguity concerning whether an express power to act regarding the Plan was intended,
- unambiguously provides one or more powers to act regarding the Plan, and
- meets each other rule reasonably required by the Employer.

That a power of attorney has general or broad effect under State Law does not mean that such a power of attorney meets any of the preceding requirements.

In addition to the above, a power of attorney cannot be effective to exercise any duty, right, or privilege of investment direction under the Plan unless the Employer Finds that the document expressly:

- grants power to act regarding investment direction under the Plan, and
- refers to the Plan with sufficient clarity so that there is no confusion or ambiguity concerning whether an express power to act regarding investment direction under the Plan was intended.

An investment-advisory agreement that conforms to the investment-advisory contract requirements of 15 U.S.C. § 80b-4 and 15 U.S.C. § 80b-5 meets the preceding requirement.

20.20 Records

The Employer must keep Records to the extent required of it by IRC § 6001 and State Law.

In addition to any other power or discretion provided by the Plan or Applicable Law, for any Record or document or writing of any kind that the Employer is required or permitted to keep, the Employer may maintain such Records, documents, and writings by any reasonable means, including electronic document imaging, electronic data interchange technology, microcomputer systems, database management systems, or any other computer-based means.

Consistent with 15 U.S.C. § 7001-7031, the Employer may keep a Record by retaining an Electronic Record of the information in the Record. The Employer will exercise due care to see that such a Record accurately reflects the information set forth in the Record after it was first generated in its final form as an Electronic Record, and remains accessible for the record-retention period provided above.

20.21 Writings and signatures

Notwithstanding anything in the Plan to the contrary, any writing required or permitted to be delivered to the Employer is written or in writing only if written or in writing and delivered according to a Procedure specified by the Employer. But if a Natural Person has a disability that precludes him or her from making a usual signature, a writing is signed if it bears, includes, or incorporates any symbol or mark executed or adopted by the maker with a present intention to authenticate the writing, or the Employer Finds that the maker had (at the relevant time) a present intention to adopt the writing. On receiving anything that appears to be a writing, or anything that appears to be a signature or signed, the Employer is not liable or responsible to any Person to the extent that the Employer acted without actual knowledge that the writing was false or that the signature was a forgery.

21. Definitions

Whenever used in the Plan, each of the following terms has the meaning stated or provided by this Part.

If a term is not defined by this Part and is defined by the Internal Revenue Code or the Enabling Statute, the term has the meaning given by the Internal Revenue Code or the Enabling Statute.

21.1 “Account”

Means the account kept for a Participant, Beneficiary, or Alternate Payee under the Plan.

Account refers also to each of the sub-Accounts.

An Account shows the amount of the Participant’s Deferred Compensation, based on Contributions (including Rollover Contributions), Distributions, Investment gains and losses, and fees and expenses. An Account is reduced by any security interest for an outstanding Loan and reduced by charges, fees, expenses, and taxes.

To the extent necessary to administer the Plan, the Employer will keep a separate sub-Account to receive each kind of Contributions (and Allocable Income). However, the Employer, in its sole discretion, may combine any sub-Accounts if so doing does not impair the Employer’s ability to operate the Plan according to its provisions. Except as otherwise permitted above, sub-Accounts that are fully Vested will not be combined with sub-Accounts that are not fully Vested.

The sub-Accounts are:

- Employee Contributions Account
- Employer Contributions Account
- Rollover Contributions Account

To the extent required by a QDRO, the Employer will maintain a separate sub-Account for the Alternate Payee.

If the Participant designates more than one Beneficiary, on the written request of any Beneficiary or on an approved Claim payable to any Beneficiary and not all Beneficiaries, the Employer will maintain a separate account for the interest of each Beneficiary, beginning as of the next Valuation Day that occurs after the Beneficiary's request or Claim is received by the Employer.

21.1.1 Set-aside not provided by the Plan but ordered by a court

An Account is reduced to the extent that a portion of the Account has been paid or set aside for payment to a Person other than the Participant, Beneficiary, or Alternate Payee for whom the Account otherwise is maintained to the extent that the Employer or the Trustee is or was subject to an Order for the attachment, garnishment, execution, or other alienation of all or any portion of the Account or of any Distribution. The Participant, Beneficiary, or Alternate Payee is deemed to have released every claim to such amounts in any case in which the affected Participant, Beneficiary, or Alternate Payee was served with legal process or otherwise joined in a proceeding relating to such amount and failed to obtain a court order that relieves the Employer or the Trustee, from every duty to comply with the Order.

21.2 “Administrator”

Means the Employer (or an official, committee, or other body of the Employer to which the Employer has delegated authority to administer this Plan).

21.3 “Adoption Agreement”

Refers to a document that the Employer may use to adopt this Basic Plan Document and specify choices concerning that use.

21.4 “Allocable Income”

Means the gain, income, or loss allocable to a Contribution, but concerning an excess deferral means allocable net income within the meaning of 26 C.F.R. § 1.457-4(e).

21.5 “Alternate Payee”

Means a Person who is or was the Spouse of the Participant, or is a Dependent of the Participant, to the extent that such Person has rights under an Order recognized as a QDRO.

21.6 “Applicable Law”

Means Federal Law or State Law if that Law governs the Plan or its administration.

21.7 Basic Plan Document

Refers to this document.

This document is *not* part of a prototype, volume-submitter, or other pre-approved plan document recognized by the Internal Revenue Service.

21.8 “Beneficiary”

Means each Person a Participant named by a valid Beneficiary Designation and according to Part 15 to receive any undistributed Benefit payable on or after the Participant's death.

21.9 “Beneficiary Designation”

Means a valid and effective Beneficiary Designation made according to Part 15.

21.10 “Benefit”

Refers to the right under the Plan of a Participant, Beneficiary, or Alternate Payee to receive a Distribution of all or a portion of his, her, or its Account.

A Benefit under the Plan cannot be paid or payable except as a:

- Corrective Distribution
- Emergency Distribution
- Retirement Distribution
- Death Distribution
- Termination Distribution;

or according to the provisions of a QDRO.

Any Benefit is limited by the rights of an Alternate Payee under a QDRO.

An Eligible Rollover Distribution may be paid as a Rollover Distribution.

21.11 “Claim”

Means a request for a Benefit.

21.12 “Claimant”

Means a Person who submits (or by his, her, or its authorized representative submits) a Claim.

21.13 “Code” “Internal Revenue Code” or “IRC”

Means the Internal Revenue Code of 1986, as amended (which is unofficially codified as Title 26 of the United States Code).

21.14 “Compensation”

Means, except as restricted by IRC § 415(c)(3), the total wages, salaries, fees, and other amounts (except as modified below) paid or payable by the Employer to the Employee for his or her personal services actually rendered in the course of his or her employment with the Employer, including compensation payable as bonuses or as overtime, and excluding compensation received in the form of non-taxable fringe benefits. Compensation includes amounts deferred as Employee Contributions, and amounts of compensation deferred at the Employee's election that would be includible in the Employee's gross income but for IRC §§ 125, 132(f)(4), 401(k), 402(a)(8), 402(e)(3), 402(h)(1)(B), 402(k), 403(b), and 457(b).

21.15 “Contracts Clauses”

Refers to Clause 1 of Section 10 of Article I of the United States Constitution and the similar provisions (if any) of State Law.

21.16 “Contributions”

Means Employee Contributions, Employer Contributions (if any), and Rollover Contributions, deferred under the Plan according to the provisions of the Plan.

21.17 “Corrective Distribution”

Means a Distribution required or permitted to remedy a potential violation or correct a violation of any provision of the Deferral Limit or under ¶ 20.12 [“Mistaken contributions”].

The amounts corrected by a Corrective Distribution are disregarded for all purposes of the Plan, except as otherwise expressly provided by the Plan. A Corrective Distribution is made without regard to the restrictions of IRC § 457(b)(5) and IRC § 457(d)(1)(A). A Corrective Distribution cannot be counted as a required distribution under IRC § 457(d)(2) or IRC § 401(a)(9). A Corrective Distribution is not an Eligible Rollover Distribution.

21.18 “Death Distribution”

Means a Distribution that does not begin before the death of the Participant.

21.19 “Deferral Limit”

Means the limit on Contributions stated by Part 3 and IRC § 457(b)(2)&(3) together with IRC § 457(c).

21.20 “Deferred Compensation”

Means the amount of compensation that the Participant and the Employer agree to defer according to the provisions of the Plan.

The amount or value of the Participant’s Deferred Compensation is the amount or value of the Participant’s Account (including any rights purchased under the Account).

Deferred Compensation may also refer to the right under the Plan of the Participant or Beneficiary to receive a Distribution of all or any portion of the Account.

21.21 “Dependent”

Has the meaning given by IRC § 152, but after December 31, 2004 without regard to IRC § 152(b)(1), IRC § 152(b)(2), or IRC § 152(d)(1)(B), and as further construed or interpreted concerning an Internal Revenue Code provision that is relevant to the Plan’s reference to a Dependent.

The fact that the Employer’s health plan covers a Participant’s child does not make the child the Participant’s Dependent.

21.22 “Direct Rollover”

Means a Plan payment to an Eligible Retirement Plan specified by the Distributee.

21.23 “Distributee”

Means any Person who receives, or but for his, her, or its instruction is entitled to receive, a Distribution.

21.24 “Distribution”

Means, as appropriate in the context, a kind of Distribution or the particular kind of Distribution provided by the Plan, as follows:

- Retirement Distribution
- Death Distribution
- Permitted Distribution
- Emergency Distribution
- Corrective Distribution
- QDRO Distribution.

Except for a delivery of a life insurance contract, a Distribution (including a Direct Rollover) is paid in money.

A Distribution of a life insurance contract is valued at fair market value as of the date of the Distribution.

A Distribution may, to the extent that the Distribution is an Eligible Rollover Distribution, be paid as a Direct Rollover.

21.25 “Eligible Employee”

Means an Employee that the Adoption Agreement specifies as eligible to elect or receive Contributions.

21.26 “Eligible 457(b) Plan”

Has the meaning, consistent with IRC § 457(b), given by 26 C.F.R. § 1.457-2(f) for an “eligible plan”.

21.27 “Eligible Retirement Plan”

Has the meaning given by IRC § 402(c)(8)(B).

21.28 “Eligible Rollover Distribution”

Has the meaning given by the Rollover Rules for the time that a Distribution is paid.

21.29 “Eligible Rollover Distribution Notice”

Means the notice required under IRC § 402(f).

21.30 “Emergency Distribution”

Means a Distribution under Part 12 [at page 20].

21.31 “Employee”

Means a Natural Person who performs services for the Employer as an employee, who has Compensation paid by the Employer, and is described in the Enabling Statute.

21.32 “Employee Contributions”

Means elective deferrals.

21.33 “Employer”

Refers to the Employer that signs or adopts the Adoption Agreement.

21.34 “Employer Contributions”

Means, consistent with 26 C.F.R. § 1.457-2(i), those Contributions made by the Employer that are not Employee Contributions, and which the Participant could not choose to receive in money, or as property or a right other than under the Plan. Employer Contributions may include nonelective and matching contributions.

21.35 “Enabling Statute”

Means the State statute or similar law that grants the Employer authority to maintain this Plan.

21.36 “Evidence”

Means the written statement or other evidence, in the form the Employer prescribes, needed to Find a fact or make a Finding.

Consistent with Applicable Law, every Claim and any Evidence furnished to Claim any Benefit or assert any right regarding the Plan is made under penalties of perjury.

21.37 “Federal Law”

Means Law other than State Law of the United States of America.

21.38 “Find” or “Finding”

Refers to the Employer’s decision, determination, finding, or conclusion of any kind.

21.39 “Fund”

Means a common trust fund, collective trust fund, real estate investment trust, registered investment company, insurance company separate account, or any similar pooled investment.

21.40 “Funding Vehicle”

Means and refers to Fund Shares, an annuity contract, a life insurance contract, or another investment held by the Trustee under the Trust Agreement or as a Trust Substitute; but does not include an investment that the Employer does not approve or that is contrary to the Enabling Statute.

21.41 “Good Faith”

Means honesty in fact, awareness of the Plan’s provisions, and seeking advice when a prudent Person in similar circumstances would seek advice.

21.42 “Investment Law”

Means, as applicable or relevant in the context, Federal Law or State Law relating to banking, insurance, securities, investment companies, investment advice, or commodities trading.

21.43 “IRS”

Refers to the Internal Revenue Service, a division of the Department of the Treasury of the United States, and any related departments, divisions, or offices under the supervision of the Secretary of the Treasury of the USA.

21.44 “Law”

Means any statute, regulation, rule, decision, order, or other government action that has the effect of law of the United States of America, or of any court or government agency of the USA, or, to the extent not preempted by Federal Law, of a State, or of any court or government agency of a State.

21.45 “Loan”

Means a loan under Part 10 [at page 19].

21.46 “MDIB Beneficiary”

Means, solely for ¶ 13.3 [“Minimum distribution” at page 22] or ¶ 14.2 [“Minimum distribution” at page 22], a designated beneficiary as defined by IRC § 401(a)(9)(E).

21.47 “Minor”

Means a Natural Person who has not attained at least 18 or the other age of competence under the relevant State Law.

21.48 “Natural Person”

Means a human being.

21.49 “Normal Retirement Age”

Means, within 26 C.F.R. § 1.457-4(c)(3)(v)(B) and solely to make a Contribution that could not be allowed but for the application of IRC § 457(b)(3), the Participant’s age 65.

A Participant’s Normal Retirement Age is irrevocable once deferrals that could not meet IRC § 457(b)(2) but for the application of IRC § 457(b)(3) have been made. A Normal Retirement Age does not control the time of any Distribution or a right to a Distribution.

A Participant cannot have more than one Normal Retirement Age under all Eligible 457(b) Plans of the Employer. Therefore, a Participant’s Normal Retirement Age that became irrevocable under this Plan or another Eligible 457(b) Plan of the Employer fixes his or her Normal Retirement Age under this Plan and all Eligible 457(b) Plans of the Employer.

21.50 “Order”

Means a judgment, decree, or order that a court may enforce against a Person that is or was subject to the court’s jurisdiction, even if a Person requested to act (or to refrain from acting) in response to it is not and was not subject to the court’s jurisdiction.

21.51 “Participant”

Means a Natural Person for whom Contributions under the Plan have been made and whose Account has not been fully distributed.

21.52 “Participation Agreement”

Means the agreement (in the form the Employer prescribes), as amended from time to time, entered into by and between a Participant and his or her Employer under which the Participant agrees to make and specifies his or her Employee Contributions.

21.53 “Payout Option”

Means, except as limited below, an annuity option or other option for payment.

A Distributee cannot elect a Payout Option that (at the time the Distribution begins or is scheduled to begin) does not meet all applicable provisions of the Plan, including any applicable minimum-distribution requirements under ¶ 13.3 or ¶ 14.2 together with IRC § 457(d)(2) and IRC § 401(a)(9).

21.54 “Permissive Service Credit”

Has the meaning given by IRC § 415(n)(3)(A).

21.55 “Permitted Distribution”

Means a Distribution under Part 11 [at page 20].

21.56 “Person”

Means a Natural Person, a corporation, a limited liability company, an unincorporated association, a partnership, a joint venture, a trust, an estate, and anything that is a Person within the meaning of IRC § 7701(a)(1) or Applicable Law.

21.57 “Personal Representative”

Means the Person duly appointed by an order of the court (or of a registrar or administrator under the court’s supervision) having jurisdiction over the estate of the Participant that grants the Person the authority to receive the property of the deceased Participant and to act as the personal representative of the Participant’s probate estate.

However, despite any small-estate procedure or any Law that permits the succession of an estate by means other than according to an Order, no Distribution is payable (and no Benefit is available) at the instruction of a Person who cannot prove to the Employer that he, she, or it is the Personal Representative duly appointed by and under the supervision of the court.

If there can be no Personal Representative because the Participant's probate estate was closed, no Distribution is available until a Claimant obtains an appropriate court order.

21.58 "Plan"

Means the legal relationship stated by this document.

21.59 "Power of Attorney"

Means a power of attorney that is accepted consistent with ¶ 20.19 [at page 33].

21.60 "Procedure"

Refers to the means by which the Employer administers the Plan, makes discretionary Findings under or concerning the Plan, or otherwise acts (which may include deciding not to act) as required or permitted by the Plan. To the extent that the Internal Revenue Code or State Law requires a procedure to be in writing, the Procedure must be written. To the extent required by Applicable Law, a Procedure must be reasonable, and must apply on a non-discriminatory basis. Subject to these requirements, the Employer may change its Procedures in its discretion. A Procedure may be stated by an explanation furnished to Participants.

21.61 "QDRO"

Means a court order directed to the Plan that pursuant to a State domestic-relations Law creates or recognizes the existence of the right of an Alternate Payee to receive all or a portion of any Deferred Compensation of a Participant and that meets all of the following requirements.

An order is not a QDRO unless the court order on its face and without reference to any other document meets all conditions to be treated as a qualified domestic relations order under IRC § 414(p), applied without IRC § 414(p)(11).

An order is not a QDRO unless the court order on its face and without reference to any other document unambiguously specifies the amount or percentage of the Participant's Account to be paid to, or segregated for the separate sub-Account of, the Alternate Payee.

An order is not a QDRO if it includes a provision that would require determining an amount to be paid or segregated in a manner not readily calculable by using only the Funding Vehicle's available Records.

21.62 "QDRO Distribution"

Means a Distribution to an Alternate Payee required or permitted following a QDRO.

21.63 "Qualified Military Service"

Has the meaning given by IRC § 414(u).

21.64 "Record"

Means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, or that is kept by any other means permitted consistent with Applicable Law.

21.65 “Required Beginning Date”

Has the meaning given by IRC § 401(a)(9), including any special rules under those provisions.

21.66 “Retirement Distribution”

Means a Distribution - other than a Corrective Distribution, Permitted Distribution, Emergency Distribution, or QDRO Distribution - that begins before the death of the Participant.

21.67 “Rollover Contribution”

Means an amount received into the Plan according to the Rollover Rules and Part 4, and for a Year that began or begins on or after January 1, 2002 includes any rollover contribution described in IRC § 411(a)(11)(D).

21.68 “Rollover Distribution”

Means an Eligible Rollover Distribution that is to be paid, directly or indirectly, to an Eligible Retirement Plan as a rollover under the Rollover Rules, including IRC § 457(d)(1)(C).

21.69 “Rollover Rules”

Includes IRC § 401(a)(31), IRC § 402(c), IRC § 402(f), IRC § 457(d)(1)(C), and IRC § 457(e)(16).

21.70 “Roth Account”

Means a sub-Account of the Employee Contributions Account, or of the Rollover Contributions Account, that is, consistent with IRC § 402A, a designated Roth account. The Plan separately accounts between Roth Accounts and Non-Roth Accounts as provided by Part 8 [“Roth and Non-Roth Accounts” at page 13].

21.71 “Roth Contribution”

Means an Employee Contribution that the Participant designated, consistent with IRC § 402A(e)(1)(C) and IRC § 457(b), as a Roth Contribution; or a Rollover Contribution to the extent that its payer specified the amount attributable to a designated Roth account under an Eligible Retirement Plan other than an IRA.

21.72 “SEC”

Means and refers to the Securities and Exchange Commission, an agency of the government of the USA, established by 15 U.S.C. § 78d(a).

21.73 “Service in the Uniformed Services”

Means, consistent with USERRA [38 U.S.C. § 4303(13)], the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a Person is absent from a position of employment for an examination to determine the fitness of the Person to perform any such duty.

21.74 “Service Provider”

Includes the Third-Party Administrator (if any), a Person that provides a Funding Vehicle, and a Person that provides services regarding the Plan.

For example, this term may include an accountant, actuary, consultant, investment adviser, lawyer, physician, or other service provider if he, she, or it provides a service regarding the Plan.

21.75 “Severance-from-Employment”

Means a severance from employment within the meaning of IRC § 457(d)(1)(A)(ii).

21.76 “Shares”

Means shares or similar units of interest in a Fund.

21.77 “Spouse”

Means a Natural Person who is or was the Participant’s spouse under relevant Law, and is not (or was not) precluded from being the Participant’s spouse under Federal Law, including 1 U.S.C. § 7 to the extent that such statute is not unconstitutional.

21.78 “State”

Means a State of the United States of America or the District of Columbia, and includes the meaning given by IRC § 7701(a)(10).

21.79 “State Law”

Means the Law (other than Federal Law) of a State.

21.80 “Taxpayer Identifying Number”

Has the meaning given by IRC § 6109.

21.81 “Termination”

Has the meaning given by 26 C.F.R. § 1.457-10(a)(1)or(2)(ii).

21.82 “Third-Party Administrator”

Refers to OMNI Group, Inc. or the Person that the Employer engages to provide services regarding the Plan that are distinct from services incident to a Funding Vehicle.

21.83 “Trust”

Means and refers to an entity and the legal relationship created by a Trust Agreement concerning the Plan. Each trust must be for the exclusive benefit of Participants and their Beneficiaries.

21.84 “Trust Agreement”

Means the written agreement or declaration (as amended from time to time) made by the Employer and the Trustee to establish the Trust.

21.85 “Trust Substitute”

Means a custodial account or an annuity contract that is treated as a trust under 26 C.F.R. § 1.457-8(a)(3).

21.86 “Trustee”

Means the Trustee duly appointed and currently serving under a Trust Agreement and, to the extent that a vacancy otherwise would result, the Employer.

21.87 “Uniformed Service”

Means, consistent with USERRA [38 U.S.C. § 4303(16)], any one or more of the Armed Forces, the Army National Guard or the Air National Guard when engaged in active duty for training or inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, or any other category of Persons designated by the President of the USA in time of war or emergency.

21.88 “USA”

Means the United States of America.

To the extent that the Plan states a provision that is intended meets a requirement of IRC §§ 401(a), 457(b)-(e), or 501(a), USA will be construed according to IRC § 7701(a)(9), except as otherwise required or permitted by the Internal Revenue Code for the applicable requirement.

21.89 “USERRA”

Means the *Uniformed Services Employment and Reemployment Rights Act of 1994* (Public Law No. 103-353) [October 13, 1994] (unofficially codified as 38 U.S.C. §§ 4301-4318).

21.90 “Valuation Day”

Means a day on which the Service Provider or other Person that is (or was) required or permitted to receive investment directions, required or permitted to act, or entitled to receive notice is (or was) open for regular business at his, her, or its principal office or regular place of business.

A Valuation Day ends at the earliest of:

- 4:00 p.m. New York time,
- the time that the New York Stock Exchange closes trading, or
- the time that any Fund must value its assets and price its Shares,
- the time that the Person required or permitted to act, or entitled to receive notice, closed his, her, or its regular business for the day.

A Funding Vehicle may include provisions governing the time of day after which an instruction is treated as received on the next Valuation Day. In addition, the Employer may make reasonable rules governing the time of day after which an instruction is treated as received on the next Valuation Day.

21.91 “Year”

Means the calendar year.

To the extent not inconsistent with the Internal Revenue Code, the Employer may apply administrative-convenience rules in counting when a Year ends. For example, for counting Contributions against a Year’s Deferral Limit, a Year might end with the last pay period that begins in December.

The Employer may assume that a Participant’s, Beneficiary’s, or Alternate Payee’s taxable year is the calendar Year, unless the Person gives written notice specifying his, her, or its taxable year.

22. Construction

22.1 Construction

This Part governs the construction or interpretation of the Plan. These rules of construction and interpretation apply for all provisions.

22.2 Construction as an Eligible 457(b) Plan

The Employer intends that the Plan conform to the Internal Revenue Code’s requirements for Federal income tax treatment as an eligible deferred compensation under IRC § 457(b) and for Deferred Compensation to be counted as income only according to IRC § 457(a)(1)(A). Therefore, the Employer will construe and interpret the Plan to state provisions that conform to the applicable requirements of IRC § 457(b).

22.3 Construction with Enabling Statute

The Employer must construe and interpret the Plan to state provisions that conform to the Enabling Statute.

22.4 Construction of the Internal Revenue Code

A reference to a subtitle, chapter, subchapter, part, subpart, section, or further subdivision of the Internal Revenue Code also refers to any successor provision. A reference to a provision of a Federal tax regulation or guidance of general applicability also refers to any successor provision, and to any guidance that extends, amplifies, or modifies the regulation or guidance.

In construing the Internal Revenue Code, the Employer is not imprudent if it reasonably relies on an IRS ruling or written determination.

22.5 Administrative Law

The Plan refers to relevant rules, including Treasury regulations, without regard to whether a rule is substantive or interpretive, and without regard to whether a rule is proposed, temporary, interim, or final; but any provision that refers to a rule is construed to refer to the rule in the sense of the appropriate legal effect (under administrative-procedure Law and otherwise) that the rule currently has at the time the construction is made.

22.6 USA Constitution and State Constitutions

When applying any of the preceding construction rules, the Employer need not consider any statute, rule, or other source of Law (other than a court order) to the extent that its application is contrary to the Constitution of the United States of America or is contrary to the Constitution of the relevant State. Except to the extent that State Law provides otherwise, the Employer is not imprudent if it presumes that a Law is not unconstitutional until a published controlling court decision expressly holds that the Law is contrary to a Constitution.

22.7 Furnish includes causing to be furnished

A reference in the Plan to “furnish” includes “or cause to be furnished” as long as the party that must or may furnish information expressly adopts the information furnished or the circumstances make it reasonable for the relying party to believe that the other party adopted the information.

22.8 Performance includes causing performance

A reference in the Plan to an action includes causing performance of the action.

22.9 References to or within the Plan

The phrase “under the Plan” refers to the Plan as a whole, and not merely to a Part or Provision in which the phrase appears. A reference to a Part of the Plan refers to the whole Part. A reference to a Definition or Provision of the Plan refers to the whole Definition or Provision, unless the reference specifies a particular portion or paragraph of the Provision.

22.10 Usage conventions

The Plan must be construed according to this Provision’s usage rules, even if such a usage otherwise would result in a construction contrary to a reader’s expectation.

22.10.1 Gender

A use of a word of one gender includes the corresponding words of the other genders.

22.10.2 Series

A reference to a series of numbers or letters includes the first and the last number or letter.

22.10.3 Tense

A use of a word in the present tense includes the future tense.

22.10.4 Person includes successors

A reference to a Person will be construed to include his, her, or its successor, assignee, receiver, administrator, executor, or personal representative.

22.11 Words deliberately used

The words and phrases defined below have the meanings stated by this Provision, even if such a meaning otherwise would be contrary to a reader's expectation.

22.11.1 "As", "if"

A use of the word "as" or "if" includes the phrase "to the extent that".

22.11.2 "Includes", "including"

A use of the word "includes" includes the phrase "but is not limited to". A use of the word "including" includes the phrase "but not limited to".

22.11.3 "May"

The word "may" confers a power, authority, right, or privilege. A use of the word "may" includes the phrases "but need not" and "but is not required to".

22.11.4 "May not", "must not", "will not"

The words "may not", "must not", or "will not" preclude a power.

22.11.5 "Must"

The word "must" states an obligation, requirement, or condition precedent.

22.11.6 "Shall"

The Plan does not use the word "shall"; instead, the word "will" includes both "will" and "shall".

22.11.7 "Will"

The word "will" states an obligation, requirement, or condition precedent.

22.12 Common usage

Unless a phrase or word is defined by the Plan, the Internal Revenue Code, or a statute or rule cited by the Plan, the phrase's or word's meaning is according to its context, the rules of grammar, and common usage.

Adopting the Plan

Signing or adopting the accompanying Adoption Agreement adopts this Model Plan.