BATES COLLEGE MONEY PURCHASE PENSION PLAN

Effective January 1, 2019

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BATES COLLEGE MONEY PURCHASE PENSION PLAN

WHEREAS, President and Trustees of Bates College (hereinafter referred to as the "Employer") adopted the Bates College Money Purchase Pension Plan (hereinafter referred to as the "Plan") for the benefit of its Employees, effective as of July 1, 1988; and

WHEREAS, Article IX said Plan provides that the Employer may amend the Plan: and

WHEREAS, the Employer wishes to amend and restate the Plan, effective January 1, 2019, to incorporate prior adopted amendments since the Plan was last restated and make necessary and conforming changes; and

WHEREAS, it is intended that the Plan is to be a qualified plan under Section 401(a) of the Internal Revenue Code and is to be for the exclusive benefit of the Participants and their Beneficiaries;

NOW, THEREFORE, the Plan is hereby amended by restating the Plan in its entirety as follows:

ARTICLE ONE--DEFINITIONS

For purposes of the Plan, unless the context or an alternative definition specified within another Article provides otherwise, the following words and phrases shall have the definitions provided:

1.1 **"ACCOUNT"** shall mean the individual bookkeeping accounts maintained for a Participant under the Plan which shall record (a) the Participant's allocations of Employer contributions, (b) any amounts transferred to this Plan under Article Four from another qualified retirement plan, and (c) the allocation of the Plan's investment experience.

1.2 **"ADMINISTRATOR"** shall mean the Plan Administrator appointed from time to time in accordance with the provisions of Article Eight hereof.

1.3 **"BENEFICIARY"** shall mean any person, trust, organization, or estate entitled to receive payment under the terms of the Plan upon the death of a Participant.

1.4 **"BREAK IN SERVICE"** is defined in Article Two.

1.5 **"CODE"** shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.6 **"COMPENSATION"** shall mean a faculty member's contract salary or any other Employee's regular pay plus overtime or shift differential. For both faculty and for non-faculty, the following are excluded: earnings prior to becoming a Participant, supplemental pay, car and housing allowances, relocation expense reimbursements, special stipends, any amounts of pay through grant sources above the salary stated in the contract (as applicable), severance, terminated vacation payouts and any other amounts that are not included in a faculty member's academic year contract or other employee's regular pay. For both faculty and non-faculty, Compensation shall include elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b).

For purposes of determining who is a Highly Compensated Employee, Compensation shall mean compensation as defined in Code Section 414(q)(4).

In the case of a self-employed individual, Compensation shall mean net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Employer to a qualified plan to the extent deductible under Section 404 of the Code, and by the deduction allowed to the Employer by Code Section 164(f).

The annual Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001 shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months, the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

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

1.7 **"EFFECTIVE DATE"** The Plan's initial Effective Date was July 1, 1988. The Effective Date of this amended and restated Plan, on and after which it supersedes the terms of the existing Plan document, is January 1, 2019, except where the provisions of the Plan shall otherwise specifically provide. The rights of any Participant who separated from the Employer's service prior to this date shall be established under the terms of the Plan as in effect at the time of the Participant's separation from service, unless the Participant subsequently returns to service with the Employer. Rights of spouses and Beneficiaries of such Participants shall also be governed by those documents.

1.8 **"EMPLOYEE"** shall mean a common law employee of the Employer. Employee shall also mean any person employed by the Employer who is classified as a self-employed person, as defined in Code Section 401(c)(1). Employee shall not include any individual who the Employer has classified as an independent contractor solely on account of his or her reclassification by the Internal Revenue Service as an employee.

1.9 **"EMPLOYER"** shall mean the Employer named as party to the Plan and shall include any successor(s) thereto which adopt this Plan. If, under state law, the Employer at any time is not governed by directors but instead by its stockholders, or if the Employer is an unincorporated business and is governed by its owners, reference herein to the Board of Trustees shall be deemed to refer to the individual(s) empowered to vote on the Employer's affairs.

1.10 **"EMPLOYMENT DATE"** shall mean the first date as of which an Employee is credited with an Hour of Service, provided that, in the case of a Break in Service, the Employment Date shall be the first date thereafter as of which an Employee is credited with an Hour of Service.

1.11 **"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.12 **"HIGHLY COMPENSATED EMPLOYEE"** shall mean:

(a) any Employee of the Employer who:

(1) was a five percent (5%) owner of the Employer (as defined in Section 416(i)(1) of the Code) during the current or the preceding year; or

(2) for the preceding year had Compensation from the Employer in excess of $80,000 (as adjusted by the Secretary of the Treasury pursuant to Section 415(d) of the Code).

(b) A former Employee shall be treated as a Highly Compensated Employee if: (1) such

Employee was a Highly Compensated Employee when such Employee separated from service, or (2) such Employee was a Highly Compensated Employee at any time after attaining age 55.

(c) The determination of who is a Highly Compensated Employee, including the determination of the number and identity of the Employees in the top-paid group, will be made in accordance with Section 414(q) of the Code, the regulations thereunder and other applicable guidance.

(d) For purposes of this Section 1.12, the term "Compensation" means compensation within the meaning of Section 415(c)(3) of the Code, as set forth in Section 9.1(b)(2).

(e) For purposes of this Section 1.12, an Employee is in the top-paid group of Employees for any year if such Employee is in the group consisting of the top twenty percent (20%) of the Employees when ranked on the basis of Compensation paid during such year and determined by excluding the following Employees for the year:

(1) Employees who have not completed six (6) months of service;

(2) Employees who normally work less than seventeen and one-half (17½) hours per week;

(3) Employees who normally work less than six (6) months during any year;

(4) Employees who have not attained age twenty-one (21); and

(5) Employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the Employer.

(f) For purposes of this Section 1.12, employers aggregated under Sections 414(b), (c), (m) or (o) of the Code are treated as a single employer.

The provisions of this Section 1.12 are effective for Plan Years beginning after December 31, 1996, except that, in determining whether an Employee is a Highly Compensated Employee in 1997, this provision is treated as having been in effect in 1996.

1.13 **"HOUR OF SERVICE"** shall mean:

(a) each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer. These hours shall be credited to the Employee for the computation period in which the duties are performed; and

(b) each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. No more than 501 Hours of Service shall be credited under this subsection for any single continuous period during which no duties are performed (whether or not such period occurs in a single computation period). An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed shall not be credited to the Employee if such payment is made or

due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws. Hours of Service shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses by the Employee. Hours under this subsection shall be calculated and credited pursuant to Section 2530.200b-2(b) and (c) of the Department of Labor regulations which is incorporated herein by this reference; and

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

1.14 **"LEASED EMPLOYEE"** shall mean any person (other than an Employee of the Employer) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year and such services are performed under primary direction or control by the Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer.

A person will not be considered a Leased Employee if the total number of Leased Employees does not exceed 20% of the Nonhighly Compensated Employees employed by the Employer, and if any such person is covered by a money purchase pension plan providing: (a) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457 of the Code; (b) immediate participation; and (c) full and immediate vesting.

The provisions of this Section 1.14 are effective for Plan Years beginning after December 31, 1996.

1.15 **"NONHIGHLY COMPENSATED EMPLOYEE"** shall mean an Employee of the Employer who is not a Highly Compensated Employee.

1.16 **"NORMAL RETIREMENT DATE"** shall mean a Participant's 65th birthday.

1.17 **"PARTICIPANT"** shall mean any Employee who has satisfied the eligibility requirements of Article Three and who is participating in the Plan.

1.18 **"PLAN"** shall mean this Plan as set forth herein and as it may be amended from time to time.

1.19 **"PLAN YEAR"** shall mean the 12-consecutive-month period beginning January 1st and ending December 31st.

1.20 **"VALUATION DATE"** shall mean each day of the Plan Year.

1.21 **"YEAR OF SERVICE"** or **"SERVICE"** and the special rules with respect to crediting periods of service with the Employer are in Article Two of the Plan.

ARTICLE TWO--SERVICE DEFINITIONS AND RULES

Service is the period of employment credited under the Plan. Definitions and special rules related to Service are as follows:

2.1 **YEAR OF SERVICE**. For purposes of determining an Employee's initial or continued eligibility to participate in the Plan and/or his or her nonforfeitable right to that portion of his or her Account attributable to Employer contributions, a full computation period in which an Employee is credited with 1,000 Hours of Service shall be a Year of Service. The twelve (12) consecutive-month periods commencing with the Employee's Employment Date, and anniversaries of that date, shall be the computation periods. For eligibility purposes, an Employee will be credited with a Year of Service at the end of each 12-month computation period. For vesting purposes, a Year of Service will be credited upon completion of the 1,000th hour in each computation period.

For purposes of vesting computation, service with the Employer shall include the Employee's service, if any, with members of a controlled group of corporations (within the meaning of Section 1563(a) of the Code, determined without regard to Section 1563(a)(4) and 1563(e)(3)(C)) and trades or business (whether or not incorporated) which are under common control, and organizations that are part of an affiliated service group with the Employer under Section 414(m) of the Code. Years of Service shall include service with a predecessor employer which maintained the Plan and service with a predecessor employer as required under Section 414(a)(1) of the Code.

2.2 **BREAK IN SERVICE**. A Break in Service shall be a 12-month computation period (as used for measuring Years of Service for eligibility purposes) in which an Employee or Participant is not credited with at least 501 Hours of Service.

2.3 **LEAVE OF ABSENCE**. A Participant on an unpaid leave of absence pursuant to the Employer's normal personnel policies shall be credited with Hours of Service at his or her regularly-scheduled weekly rate while on such leave, provided the Employer acknowledges in writing that the leave is with its approval. These Hours of Service will be credited only for purposes of determining if a Break in Service has occurred and, unless specified otherwise by the Employer in writing, shall not be credited for eligibility to participate in the Plan, vesting, or qualification to receive an allocation of contributions. Hours of Service during a paid leave of absence will be credited as provided in Section 1.13.

For any individual who is absent from work for any period by reason of the individual's pregnancy, birth of the individual's child, placement of a child with the individual in connection with the individual's adoption of the child, or by reason of the individual's caring for the child for a period beginning immediately following such birth or placement, the Plan shall treat as Hours of Service, solely for determining if a Break in Service has occurred, the following Hours of Service:

(a) the Hours of Service which otherwise normally would have been credited to such individual but for such absence; or

(b) in any case where the Administrator is unable to determine the Hours of Service, on the basis of an assumed eight (8) hours per day.

In no event will more than 501 of such hours be credited by reason of any such pregnancy or placement. The Hours of Service shall be credited in the computation period which starts after the

leave of absence begins. However, the Hours of Service shall instead be credited to the computation period in which the absence begins if it is necessary to credit the Hours of Service in that computation period to avoid the occurrence of a Break in Service.

2.4 **RULE OF PARITY ON RETURN TO EMPLOYMENT.** An Employee who returns to employment after a Break in Service shall retain credit for his or her pre-Break Years of Service, subject to the following rules:

(a) If a Participant incurs five (5) or more consecutive Breaks in Service, any Years of Service performed thereafter shall not be used to increase the vesting in his or her Account accrued prior to such five (5) or more consecutive Breaks in Service. Separate accounting shall be maintained thereafter with respect to that portion of such Participant's Account accrued before and after such Breaks in Service occurred.

(b) If when a Participant incurred a Break in Service, he or she had not completed sufficient Years of Service to be vested in his or her Account, his or her pre-Break Years of Service shall be disregarded for vesting purposes if his or her consecutive Breaks in Service equal or exceed the greater of five (5) or the aggregate number of pre- Break Years of Service.

2.5 **SERVICE IN EXCLUDED JOB CLASSIFICATIONS, WITH RELATED COMPANIES, OR AS A LEASED EMPLOYEE.**

(a) Preamble. An Employee is not eligible to receive an allocation of Employer contributions or to participate under the Plan if his or her job classification is specifically excluded under Section 3.1. However, Employees in an ineligible job classification are entitled, together with Leased Employees and Employees of certain related businesses, to credit for their Service in the event that such Employees become employed in an eligible job classification.

(b) Definitions.

(1) Eligible Classification: An Employee will be considered in an eligible class of Employees for such period when his or her Employer has adopted the Plan and such Employee is not in an ineligible class of Employees.

(2) Ineligible Classification: An Employee will be considered in an ineligible class of Employees for any period when:

(A) the Employee is a Leased Employee;

(B) the Employee is employed in a job classification which is excluded under Section 3.1; or

(C) the Employee is an employee of an employer who is a member of a controlled group of businesses or an affiliated service group (as defined in Section 414 of the Code), which employer has not adopted this Plan.

(c) Service Rules for Ineligible Classifications. Hours of Service in an ineligible classification will be credited for purposes of determining Years of Service for eligibility to participate in the Plan under Section 3.1 and for purposes of determining the Employee's vesting

percentage in the event the Employee participates in the Plan.

(d) Construction. This Section is included in the Plan to comply with the Code provisions regarding the crediting of Service, and not to extend any additional rights to Employees in ineligible classifications other than as required by the Code and regulations thereunder.

2.6 SPECIAL RULES RELATING TO VETERANS' REEMPLOYMENT RIGHTS.

(a) *General Rule.* Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. The provisions of this Section 2.6 are effective December 12, 1994.

(b) *Death Benefits*. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

(c) *Differential Wage Payments.* For years beginning after December 31, 2008:

(1) an individual receiving a differential wage payment as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment;

(2) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. Section 1.415(c)-2 (*e.g.*, for purposes of Code Section 415, top-heavy provisions of Code Section 416, determination of highly compensated employees under Code Section 414(q), and applying the 5% gateway requirement under the Code Section 401(a)(4) regulations); and

(3) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or corresponding Plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Administrator operationally may determine, for purposes of the provisions described in Code Section 414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes.

This subsection 2.6(c) applies only if all employees of the Employer performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Sections 410(b)(3), (4), and (5)).

ARTICLE THREE--PLAN PARTICIPATION

3.1 **PARTICIPATION.** All Employees participating in this Plan prior to May 1, 2013, shall continue to participate, subject to the terms hereof. Each Employee who is hired on or after May 1, 2013, shall become a Participant under the Plan effective as of the first day of the month coincident with or next following his or her completion of one Year of Service.

Each other Employee who is hired prior to May 1, 2013, shall become a Participant under the Plan effective as of the first day of the month coincident with or next following his or her completion of one month of Service. For purposes of this Section 3.1, an Employee shall be deemed to have completed one Month of Service on the one-month anniversary of his or her Employment Date.

In no event, however, shall any Employee participate under the Plan or be credited for Service under its terms (except as provided in Section 2.5) while he or she is: (a) a student of the Employer; (b) a seasonal or non-benefit eligible employee, provided the employee has not completed one Year of Service, or (c) not regularly scheduled to work at least 20 hours per week, provided the Employee is not expected to complete a Year of Service during his or her first 12 months of employment and has never completed one Year of Service.

3.2 **REEMPLOYMENT OF FORMER PARTICIPANT.** A Participant whose participation ceased because of termination of employment with the Employer will immediately participate upon his or her reemployment.

3.3 **TERMINATION OF ELIGIBILITY.** If a Participant shall become ineligible to participate in the Plan because the Participant's job classification is specifically excluded under Section 3.1 or Section 2.5(b)(2), such Participant shall, except as otherwise provided in Section 2.5, continue to vest in his or her Account under the Plan for each Year of Service completed while an ineligible Employee until such time as his or her Account is distributed pursuant to the terms of the Plan. If a Participant becomes ineligible during a Plan Year, such Participant shall receive an allocation of Employer contributions under Section 4.1 based upon the Participant's Compensation as determined as of his or her termination of eligibility, provided such Participant is eligible to receive an allocation of Employer contributions under Section 4.2. Any such Participant's Account shall continue to share in the allocation of investment experience under Section 5.1.

3.4 **ELECTION NOT TO PARTICIPATE.** An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in the Plan. The election not to participate in the Plan is irrevocable and must be communicated to the Employer, in writing, prior to the Participant's date of initial eligibility to participate in the Plan.

ARTICLE FOUR--EMPLOYER CONTRIBUT IONS AND ROLLOVERS AND TRANSFERS FROM OTHER PLANS

4.1 **EMPLOYER CONTRIBUTIONS.** Effective May 1, 2013, for each Plan Year, the Employer shall contribute to the Account of each eligible Participant an amount equal to nine percent (9%) of the Participant's Compensation for such Plan Year. The Employer contribution for any Plan Year shall be reduced by the amount of any forfeitures, if any, available for allocation in accordance with the provisions of Article Six as of the end of the Plan Year.

In the case of a Participant who qualifies for benefits under the Employer's long-term disability plan, said long-term disability plan shall make contributions to the Plan on behalf of the Participant at the rate prescribed by the long-term disability plan on the basis of the Participant's Compensation immediately prior to the disability. Such contributions are subject to the limitations of Code Section 415 and the terms of the long-term disability plan.

Overall Permitted Disparity Limits.

(a) Annual Overall Permitted Disparity Limit: Notwithstanding the foregoing provisions of this Section 4.1, if in any Plan Year the Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Section 408(k) of the Code, maintained by the Employer that either provides for or imputes permitted disparity (integrates), then such plans will be considered to be one plan and will be considered to comply with the permitted disparity rules if the extent of the permitted disparity of all such plans does not exceed 100%. For purposes of the preceding sentence, the extent of the permitted disparity of a plan is the ratio, expressed as a percentage, which the actual benefits, benefit rate, offset rate, or employer contribution rate, whatever is applicable under the plan, bears to the limitation under Section 401(l) of the Code applicable to such plan. Notwithstanding the foregoing, if the Employer maintains two or more plans, only one plan may provide for permitted disparity.

(b) Cumulative Permitted Disparity Limit: With respect to a Participant who benefits or has benefited under a defined benefit or target benefit plan of the Employer, effective for Plan Years beginning on or after January 1, 1994, the cumulative permitted disparity limit for the Participant is thirty five (35) total cumulative permitted disparity years. Total cumulative permitted disparity years means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer, while such plan either provides for or imputes permitted disparity. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan which neither provides for nor imputes permitted disparity for any year beginning on or after January 1, 1994, then such Participant has no cumulative disparity limit.

For purposes of this Section 4.1, "benefiting" means benefiting under the Plan for any Plan Year during which a Participant received or is deemed to receive an allocation in accordance with Section 1.410(b)-3(a) of the Income Tax Regulations.

4.2 **ELIGIBILITY FOR ALLOCATION OF EMPLOYER CONTRIBUTIONS.** To be eligible for an allocation of Employer contributions in any Plan Year, subject to the provisions of Section 11.3, an Employee must be qualified as a Participant under Section 3.1.

4.3 **PARTICIPANTS OMITTED IN ERROR.** In the event the Administrator determines a Participant is not allocated a share of the Employer contribution as a result of an administrative error in any Plan Year, the Employer shall make an additional contribution on behalf of such omitted Participant in an appropriate amount and allocate such amount to the Participant's Account prior to making the allocations set forth under Section 4.1.

4.4 **ROLLOVERS AND TRANSFERS FROM OTHER PLANS**. With the approval of the Administrator, there may be paid to the Plan amounts which have been held under other plans qualified under Section 401 of the Code either (a) maintained by the Employer which have been discontinued or terminated with respect to any Employee, or (b) maintained by another employer with respect to which any Employee has ceased to participate. Any such transfer or rollover may also be made by means of an individual retirement account qualified under Section 408 of the Code, where the individual retirement account was used as a conduit from the former plan. Any amounts so transferred on behalf of any Employee shall be nonforfeitable and shall be maintained under a separate Plan account, to be paid in addition to amounts otherwise payable under this Plan. The amount of any such account shall be equal to the fair market value of such account as adjusted for income, expenses, gains, losses, and withdrawals attributable thereto.

If an Employee has not satisfied the eligibility requirements of Section 3.1 but has either transferred or rolled over an amount from another qualified retirement plan, the Employee shall be considered a Participant under the Plan but only to the extent of the amount transferred or rolled over to the Plan, provided that in no event shall such a transfer or rollover be permitted if the Employee is an Employee as described in Section 2.5(b)(2).

The Administrator, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this Plan. The Administrator will not accept the rollover of after-tax employee contributions from another plan.

4.5 **LIMITATION ON DEDUCTIONS.** The required Employer contribution in accordance with Section 4.1 shall not exceed the maximum amount permitted as a deduction under Code Section 404(a)(7), except to the extent necessary to satisfy the provisions of Section 11.3.

4.6 **TIMING OF CONTRIBUTIONS.** Employer contributions shall be made to the Plan no later than the time prescribed by Code Section 412(c)(10) including any waivers granted by the Secretary of the Treasury.

4.7 **OBLIGATION OF FIDUCIARIES.** No fiduciary shall be under a duty to inquire into the correctness of the amount of, nor to enforce payment of, any contribution to be made hereunder, and no one shall have any right to question any determination of the Board of Trustees of the Employer concerning the amount of the contribution or the failure to make a contribution in any given year.

ARTICLE FIVE--ACCOUNTING RULES

5.1 INVESTMENT OF ACCOUNTS AND ACCOUNTING RULES.

(a) Investment Funds. The investment of Participants' Accounts shall be made in a manner consistent with the provisions of the Plan. The Administrator, in its discretion, may allow the Plan to provide for separate funds for the directed investment of each Participant's Account.

(b) Participant Direction of Investments. If the Administrator chooses to provide more than one investment fund, then each Participant may direct how his or her Account is to be invested among available investment funds in the percentage multiples established by the Administrator. A Participant may change his or her investment direction after advance notice to the Administrator, in accordance with uniform rules established by the Administrator. An investment direction may apply to the investment of future contributions and/or amounts previously accumulated in the Account. In the event a Participant makes no investment election, his or her Account shall be invested in the investment fund selected by the Administrator for all such similarly situated Accounts. If the Plan's record keeper or investment manager is changed, the Administrator may suspend the Participant's investment direction of his or her Account. If Participant direction of investments is suspended, the Administrator shall invest the Participants' Accounts in an interest-bearing account(s) until such change has been completed.

The Plan is intended to constitute a qualified retirement plan described in Section 404(c) of ERISA, and regulations thereunder. As a result, the fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by a Participant.

(c) Safe lnvestment Option. The Administrator may provide that one of the investment funds offers both a reasonable safety of the principal amount invested and a reasonable rate of interest return. An investment fund composed of guaranteed interest contracts through an insurance company, a pooled fund of short-term bonds and notes, or a money market fund shall be deemed to meet these standards.

(d) Allocation of Investment Experience. As of each Valuation Date, the investment fund(s) of the Plan shall be valued at fair market value, and the income, loss, appreciation and depreciation (realized and unrealized), and any paid expenses of the Plan attributable to such fund shall be apportioned among Participants' Accounts within the fund based upon the value of each Account within the fund as of the preceding Valuation Date. Adjustment of Accounts for investment experience shall be deemed to be made as of the Valuation Date to which the adjustment relates, even if actually made on a later date.

(e) Allocation of Employer Contributions. Employer contributions shall be allocated, for accounting purposes, to the Account of each eligible Participant as of the last day of the period for which the contributions are made.

(f) *Manner and Time of Debiting Distributions.* For any Participant who receives a distribution from his or her Account, distribution shall be made in accordance with the provisions dealing with the timing of commencement of benefit payments in Section 7.2. The distribution

shall be equal to the fair market value of the Participant's vested Account as of the Valuation Date preceding the distribution.

5.2 **SPECIAL ACCOUNTING RULES: SEGREGATED ACCOUNTS.** The Administrator may adopt uniform nondiscriminatory administrative rules under which Participants may request, in writing, segregation of all or part of their Accounts for separate directed investment. The Administrator is not required to adopt this procedure, or the Administrator may provide that the procedure apply only to specific categories of Accounts, such as (but not limited to) Accounts of Participants who have reached a certain age, rollover contribution Accounts, or Accounts of Participants whose benefits are being paid in installments. Segregated Accounts may be charged with additional administrative expenses as determined by the Administrator on an equitable basis.

5.3 **LIMITATION OF PARTICIPANTS' RIGHTS.** Nothing contained in this Article Five or elsewhere in the Plan shall be deemed to give any Participant any interest in any specific part of the Plan's assets or any interest other than his or her right to receive benefits in accordance with the applicable provisions of the Plan.

ARTICLE SIX--VESTING, RETIREMENT AND DISABILITY BENEFITS

6.1 **VESTING**. A Participant shall at all times have a 100% nonforfeitable (vested) right to his or her Account under the Plan.

6.2 **NORMAL RETIREMENT**. A Participant who is in the employment of the Employer at his or her Normal Retirement Age shall have a nonforfeitable interest in 100% of his or her Account. For purposes of this Section 6.2, Normal Retirement Age means the earlier of: (a) the time the Participant attains his or her Normal Retirement Date or (b) the later of (1) the time the Participant attains age 65 or (2) the fifth anniversary of the time a Participant commenced participation in the Plan. A Participant who continues in employment after his or her Normal Retirement Date shall continue to participate under the Plan, but may elect in writing to have his or her Account payable at the time and in the manner specified in Article Seven.

6.3 **PERMANENT AND TOTAL DISABILITY**. If a Participant incurs a permanent and total disability while in the employ of the Employer, the Participant shall have a nonforfeitable interest in 100% of his or her Account. Payment of his or her Account balance will be made at the time and in a manner specified in Article Seven, following receipt by the Administrator of the Participant's distribution request. "Permanent and total disability" shall mean suffering from a physical or mental condition that, in the opinion of the Administrator and based upon appropriate medical advice and examination, can be expected to result in death or can be expected to last for a continuous period of no less than 12 months. The condition must, in accordance with uniform and consistent rules, be determined by the Administrator to prevent a Participant from engaging in substantial gainful activity. Receipt of a Social Security disability award shall be deemed proof of disability.

ARTICLE SEVEN--MANNER AND TIME OF DISTRIBUTING BENEFITS

7.1 **MANNER OF PAYMENT.** The Participant's vested Account shall be distributed to the Participant by any of the following methods, as elected by the Participant, subject to the terms of the applicable funding vehicle:

(a) in a single lump-sum payment or

(b) in periodic installments (at least annually), subject to the minimum distribution rules of Section 7.4, or

(c) in partial withdrawals, subject to the minimum distribution rules of Section 7.4; or

(d) by purchase of a nontransferable annuity from an insurance company.

7.2 **TIME OF COMMENCEMENT OF BENEFIT PAYMENTS.**

(a) *Normal or Late Retirement*. Participants whose employment has terminated shall have distribution of their Account commence as soon as administratively feasible following their Normal Retirement Date, unless the Participant elects to defer receipt of his or her Account. Distributions to a Participant who has reached Normal Retirement Date but has not terminated employment may be permitted at the request of the Participant, subject to the terms of the applicable funding vehicle.

(b) *Disability Retirement.* A Participant whose employment has terminated due to total and permanent disability may request the distribution of his or her Account to commence as soon as administratively feasible following receipt by the Administrator of his or her valid election.

(c) *Pre-retirement Termination of Employment.* If a Participant terminates employment for any reason other than retirement, disability or death, distribution of his or her vested Account balance shall commence:

(1) As soon as administratively feasible following the day on which he or she terminated employment or, if later,

(2) As soon as administratively feasible after a Participant's election to commence payment is delivered to the Administrator.

Unless the Participant elects otherwise, distribution of his or her vested Account shall begin no later than the 60th day after the latest of the close of the Plan Year in which:

(3) the Participant attains age sixty-five (65),

(4) occurs the tenth anniversary of the year in which the Participant commenced participation in the Plan, or

(5) the Participant terminates Service with the Employer.

(d) *Latest Commencement Date.* Effective January 1, 1997, or when first used by the Employer, if later, a Participant may elect to defer receipt of his or her retirement benefits; *provided, however*, in no event shall the distribution of benefits commence later than the April 1st of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½ or (2) the calendar year in which the Participant retires. In the case of a 5-percent owner (as defined in Section 416 of the Code), in no event shall the distribution of benefits commence later than the April 1st of the calendar year following the calendar year in which the Participant attains age 70½. In addition:

(1) Any Participant (other than a 5-percent owner) attaining age 70½ in years after 1995 may elect by April 1st of the calendar year following the year in which the Participant attained age (or by December 31, 1997 in the case of a Participant attaining age 70½ in 1996) to defer distributions until the April 1st of the calendar year following the calendar year in which the Participant retires. If no such election is made, the Participant will begin receiving distributions by the April 1st of the calendar year following the calendar year in which the Participant attained age 70½ (or by December 31, 1997 in the case of a Participant attaining age 70½ in 1996).

(2) The pre-retirement age 70½ distribution option is only eliminated with respect to Employees who reach age 70½ in or after a calendar year that begins after December 31, 1998. The pre-retirement age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1st of the calendar year in which an Employee attains age 70½ and ends April 1st of the immediately following calendar year.

The provisions of this Section 7.2(d) (relating to required distributions) are intended to comply with Section 401(a)(9) of the Code, the regulations thereunder and any other applicable guidance, and shall be so interpreted.

(e) Notwithstanding the foregoing provisions of this Section 7.2, a distribution may be made to an "alternate payee" pursuant to and if required by a "Qualified Domestic Relations Order," even if the affected Participant has not separated from service and has not attained the "earliest retirement age" under the Plan. For purposes of this subsection 7.2(e), "Qualified Domestic Relations Order," "alternate payee" and "earliest retirement age" shall have the meanings set forth in Section 414(p) of the Code.

(f) <u>*Suspension of 2009 RMDs*</u>. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

7.3 **FURNISHING INFORMATION.** Prior to the payment of any benefit under the Plan, each Participant or Beneficiary may be required to complete such administrative forms and furnish such proof as is deemed necessary or appropriate by the Employer, Administrator, and/or fiduciary.

7.4 **MINIMUM DISTRIBUTION RULES.**

(a) *In General*

(1) Effective Date. The provisions of this Section 7.4 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

(2) *Coordination With Minimum Distribution Requirements Previously in Effect.* Required minimum distributions for 2002 will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee for calendar year 2002 (i) equals or exceeds the required minimum distributions determined under this Section 7.4, then no additional distributions will be required to be made for 2002 on or after such date to the distributee; or (ii) is less than the amount determined under this Section 7.4, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section 7.4.

(3) Precedence. The requirements of Section 7.4 will take precedence over any inconsistent provisions of the Plan.

(4) Requirements of Income Tax Regulations Incorporated. All distributions required under this Section 7.4 will be determined and made in accordance with the Income Tax Regulations under Section 401(a)(9) of the Code.

(5) TEFRA Section 242(b) Elections. Notwithstanding the other provisions of this Section 7.4, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) *Time and Manner of Distribution*

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

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

(i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, subject to Section 7.4(b)(2)(v) below, distributions to the surviving spouse will begin by December 31st of the calendar year immediately following the calendar year in which the

Participant died, or by December 31st of the calendar year in which the Participant would have attained age 70½, if later.

(ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, subject to Section 7.4(b)(2)(v) below, distributions to the designated beneficiary will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died.

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

(iv) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 7.4(b)(2), other than Section 7.4(b)(2)(i), will apply as if the surviving spouse were the Participant.

(v) Participants or Beneficiaries may elect on an individual basis whether the five-year rule or the life expectancy rule in this Section 7.4(b)(2) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30th of the calendar year in which distribution would be required to be made under this Section 7.4(b)(2), or by September 30th of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with this Section 7.4(b)(2).

For purposes of this Section 7.4(b)(2) and Section 7.4(d), unless Section 7.4(b)(2)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Section 7.4(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.4(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.4(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) *Forms of Distribution.* Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Section 7.4(c) or 7.4(d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Income Tax Regulations issued thereunder.

(c) *Required Minimum Distributions During Participant's Lifetime*

(1) *Amount of Required Minimum Distribution For Each Distribution Calendar Year.* During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of: (1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section

1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or (2) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the income Tax Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) *Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.* Required minimum distributions will be determined under this Section 7.4(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) *Required Minimum Distributions after Participant's Death*

(1) *Death On or After Date Distributions Begin.*

(i) *Participant Survived by Designated Beneficiary.* If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows: (A) the Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year; (B) if the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year; and (C) if the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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

(2) Death Before Distributions Begin

(i) *Participant Survived by Designated Beneficiary.* If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 7.4(d)(1).

(ii) *No Designated Beneficiary.* If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30th of the year following the year of the Participant's death, then, subject to the last paragraph of this Section 7.4(d)(2), distribution of the Participant's entire interest will be completed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(iii) *Death of Surviving Spouse before Distributions to Surviving Spouse Are Required to Begin.* lf the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7.4(b)(2)(i), this Section 7.4(d)(2) will apply as if the surviving spouse were the Participant.

Participants or beneficiaries may elect on an individual basis whether the five-year rule or the life expectancy rule in this Section 7.4(d)(2) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30th of the calendar year in which distribution would be required to be made under Section 7.4(b)(2), or by September 30th of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with this Section 7.4(d)(2).

(e) *Definitions*

(1) *Designated Beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of Code and Section 1.401(a)(9)-1, Q&A-4, of the Income Tax Regulations.

(2) *Distribution Calendar Year.* A calendar year for which a minimum distribution is required: For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date for distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.4(b)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31st of that distribution calendar year.

(3) *Life Expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Income Tax Regulations.

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

(5) *Required Beginning Date.* The date specified in Section 7.2(d) when distributions under Section 401(a)(9) of the Code are required to begin. Required beginning date is the April 1st of the calendar year following the later of: (A) the calendar year in which the Participant attains age 70½; or (B) the calendar year in which the Participant retires. In the case of a 5-percent owner (as defined in Section 416 of the Code), in no event shall the distribution of benefits commence later than the April 1st of the calendar year following the calendar year in which the Participant attains age 70½.

7.5 **JOINT AND SURVIVOR ANNUITY.** This Section shall apply only to a Participant who does not die prior to the "annuity starting date" within the meaning of Code Section 417(a)(3) and regulations thereunder.

(a) If distribution of a Participant's Account balance commences during his or her lifetime, his or her vested Account (subject to the provisions of this Section 7.5) shall be applied to the purchase of an annuity for the life of the Participant or, if the Participant is married as of his or her benefit commencement date, applied to the purchase of a "qualified joint and survivor annuity" for the life of the Participant and his or her "eligible spouse." For this purpose, a "qualified joint and survivor annuity" is an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is 50% of the amount of the annuity which is payable during the joint lives of the Participant and his or her spouse.

(b) The Participant may elect to waive the life annuity or qualified joint and survivor annuity form of benefit at any time during the election period. Such an election must be made in writing in a form acceptable to the Administrator. However, an election to waive a qualified joint and survivor annuity shall not take effect unless the Participant's spouse consents in writing to such election and the spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or a Notary Public. In the event of such an election, distribution of the portion of the Participant's Account otherwise subject to the provisions of this Section shall be paid to the Participant in the manner selected by the Participant under Section 7.1 above.

(c) "Eligible Spouse" is the spouse who (i) is married to the Participant for the one-year period ending prior to the earlier of benefit commencement or the date of the Participant's death, or (ii) becomes married within the one-year period prior to benefit commencement and remains married for at least one year. A divorce occurring after benefit payments have commenced to the Participant will not cause an "eligible spouse" to lose such status, unless the spouse agrees to give up rights hereunder pursuant to the terms of a qualified domestic relations order described in Code Section 414(p). The divorce or death of an "eligible spouse" shall not entitle a subsequent spouse to status as an "eligible spouse."

(d) The spousal waiver made in accordance with this Section must specify the non-spouse beneficiary, if any, and the alternative form of distribution neither of which may be changed unless a new spousal consent is obtained pursuant to Section 7.5(b). In addition, any waiver made in accordance with this Section may be revoked at any time prior to the commencement of benefits under the Plan. A Participant is not limited to the number of revocations or elections that may be made hereunder.

(e) The "election period" wider this Section shall be the 90-day period prior to the "annuity starting date," which date shall be the first day of the first period in which an amount is payable as an annuity or, if such benefit is not payable as an annuity, the first day on which the Participant

may begin to receive a distribution from the Plan.

The written explanation described in Section 417(a)(3)(A) of the Code may be provided after the annuity starting date. The 90-day "applicable election period" to waive the qualified joint and survivor annuity described in Section 417(a)(6)(A) of the Code shall not end before the 30th day after the date on which such explanation is provided. The Secretary of the Treasury may, by regulations, limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment. A Participant may elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement set forth above) if the distribution commences more than seven (7) days after such explanation is provided. The provisions of this Section 7.5(e) are effective for Plan Years beginning after December 31, 1996.

(f) The Administrator shall provide to each Participant, not more than ninety (90) days prior to the commencement of benefits, a written explanation of:

(1) the terms and conditions of the qualified joint and survivor annuity or life annuity;

(2) the Participant's right to make, and the effect of an election to waive, such applicable annuity;

(3) the rights of the Participant's spouse regarding the required consent to an election to waive the qualified joint and survivor annuity; and

(4) the right to make, and the effect of, a revocation of an election to waive the applicable annuity.

(g) Notwithstanding anything contained herein to the contrary, but subject to the terms of the applicable funding vehicle, if the vested balance of the Participant's Account is less than $5,000, distribution of the Participant's Account shall be made in the form of a lump sum payment. However, no distribution shall be made pursuant to this subsection after the first day of the first period for which an amount is received as an annuity unless the Participant and the Participant's spouse, if applicable, consent in writing to such distribution. Notwithstanding the foregoing provisions of this Section 7.5(g), the first sentence of this Section 7.5(g) shall not apply with respect to distributions that are made prior to October 17, 2000, unless the vested balance of the Participant's Account is less than $5,000 at the time of the distribution and at any time prior to the distribution.

7.6 **DEATH BENEFIT**.

(a) *Death While an Employee.* In the event of the death of a Participant while in the employ of the Employer, vesting in the Participant's Account shall be 100% if not otherwise 100% vested under Section 6.1. The Account shall constitute the Participant's death benefit to be distributed under this Article to the Participant's Beneficiary.

(b) *Death after Termination of Employment.* In the event of the death of a former Participant after termination of employment but prior to the complete distribution of his or her

vested Account balance under the Plan, the undistributed vested balance of the Participant's Account shall be paid to the Participant's Beneficiary.

7.7 **DESIGNATION OF BENEFICIARY.** Each Participant shall file with the Administrator a designation of Beneficiary to receive payment of death benefits payable hereunder if such Beneficiary should survive the Participant. However, no married Participant's designation of a Beneficiary other than his or her "eligible spouse" (as defined in Section 7.5(c)) shall be effective unless the Participant's eligible spouse has signed a written consent witnessed by a Plan representative or a Notary Public, which consent provides for a designation of an alternative Beneficiary and the alternate form of distribution. Such designation of an alternative Beneficiary or alternative form may not be changed unless a new consent is signed by the eligible spouse.

Subject to the above, Beneficiary designations may include primary and contingent Beneficiaries, and may be revoked or amended at any time in similar manner or form, and the most recent designation shall govern. In the absence of an effective designation of Beneficiary, or if the Beneficiary dies before complete distribution of the Participant's benefits, all amounts shall be paid to the surviving spouse of the Participant, if living, or otherwise equally to the Participant's then-surviving children, whether by marriage or adopted, and the surviving issue of any deceased children, per stirpes, or, if none, to the Participant's estate. Notification to Participants of the death benefits under the Plan and the method of designating a Beneficiary shall be given at the time and in the manner provided by regulations and rulings under the Code.

7.8 **TIME AND MODE OF DISTRIBUTING DEATH BENEFITS.** The Beneficiary shall be allowed to designate both the time and the mode of receiving benefits in accordance with Section 7.1 unless the Participant had designated a method or time in writing and indicated that either was not to be revocable by the Beneficiary. The Beneficiary's election shall be delivered to the Administrator no later than the last day of the calendar year following the calendar year in which the Participant died. If such election is not made, payments shall commence at the "required time" specified in the next paragraph and shall be paid in a lump sum, subject to the special rules for surviving spouses.

The "required time" for commencement of distribution of any death benefit hereunder shall be within the period ending on the last day of the calendar year following the calendar year in which the Participant died, or in the case of a surviving spouse, within a reasonable time after the Participant's death or, if the surviving spouse so elects, no later than the last day of the calendar year in which the Participant would have attained age 70½. If a surviving spouse dies before distributions begin, this paragraph shall be applied as if the surviving spouse were the Participant.

If payment commences at the "required time" and if all payments are designated to or for the benefit of one or more natural persons, the following distribution modes shall be available:

(a) a lump sum; or

(b) payments of installments (in a like manner to that in Section 7.4) over a period not to exceed the life expectancy of the Beneficiary calculated as of the "required time" in accordance with Table V of Section 1.72-9 of Income Tax Regulations.

To the extent payments are not designated to or for the benefit of a natural person, or if payments commence after the "required time," the following distribution modes shall be available:

(1) a lump sum payable at any time within five (5) years of the Participant's death; or

(2) payments of installments at such time and in such amount as determined by the Beneficiary, provided that all amounts be paid from the Plan within five (5) years of the Participant's death.

If a Participant dies after payments have commenced, any survivor's benefit must be paid no less rapidly than the method of payment in effect at the time of the Participant's death.

7.9 QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY.

The provisions of this Section shall apply only to a Participant on whose behalf death benefits (including voluntary contributions) would amount to at least $5,000, unless the terms of the applicable funding vehicle also apply the provisions of this Section to smaller distributions.

(a) If a Participant dies before distribution of benefits has commenced and is survived by his or her "eligible spouse" (as defined in Section 7.5(c)), one-half of the entire death benefit payable under the Plan shall be applied to the purchase of an annuity for the life of the Participant's surviving spouse. The Participant's spouse may direct that payment of the pre-retirement survivor annuity commence within a reasonable period after the Participant's death. If the spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Date or age 62. However, the spouse may elect a later commencement date.

(b) The Participant may elect to waive such survivor annuity death benefit during the period commencing on the first day of the Plan Year in which the Participant attains age 35 (or the date he or she terminates employment, if earlier) and ending on the date of his or her death. Such an election must be made in writing and must include the Participant's designation of a Beneficiary which designation may not be changed unless a new consent is signed by the "eligible spouse." Spousal consent, hereunder, shall not take effect unless the Participant's eligible spouse consents in writing to such election which consent acknowledges the effect of such election and is witnessed by a Plan representative or a notary public.

Any waiver made in accordance with this Section 7.9(b) may be revoked at any time prior to the commencement of benefits under the Plan. A Participant is not limited to the number of revocations or elections that may be made under this Section 7.9.

In the event of such an election, any death benefit otherwise subject to the provisions of this Section 7.9, shall be paid to the Participant's Beneficiary in a manner selected by the Beneficiary or Participant, subject to the provisions of Section 7.8.

(c) The Administrator shall furnish each Participant with a written explanation of: (i) the terms and conditions of the survivor annuity; (ii) the Participant's right to make, and the effect of, an election to waive the survivor annuity, and to revoke its election; and (iii) the right of the Participant's eligible spouse to prevent such an election by withholding the necessary consent. Such explanation shall be provided to the Participant within the period beginning on the later of the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the

Plan Year preceding the Plan Year in which the Participant attains age 35 or within a reasonable period after the Participant commences participation in the Plan, or after the Participant separates from Service if the Participant has not attained age 35 at the time of separation from Service.

7.10 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(a) *General Rule*. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Administrator, and to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) *Definitions.*

(1) *Eligible Rollover Distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more, any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any other distribution(s) that is reasonably expected to total less than $200 during a year.

For purposes of this Section 7.10, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined cont1ibution plan described in Section 401(a) or 403(a) of the Code, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) *Eligible Retirement Plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified plan described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. In the case of an Eligible Rollover Distribution to the surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, an Eligible Retirement Plan means any of the foregoing arrangements.

If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or

distributions were made, or a Roth IRA of such individual.

(3) *Distributee:* A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(4) *Direct Rollover:* A direct rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(c) *Direct Rollovers of 2009 RMDs*: Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9) and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009 made at the express election of Participants or Beneficiaries will be treated as eligible rollover distributions. A direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

ARTICLE EIGHT--ADMINISTRATION OF THE PLAN

8.1 **PLAN ADMINISTRATION**. The Employer shall be the Plan Administrator, hereinbefore and hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary. The administration of the Plan, as provided herein, including a determination of the payment of benefits to Participants and their Beneficiaries, shall be the responsibility of the Administrator. The Administrator shall have the right to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any distributions under the Plan to the fullest extent provided by law and in its sole discretion; and interpretations or decisions made by the Administrator will be conclusive and binding on all persons having an interest in the Plan. In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (a) employ agents to carry out nonfiduciary responsibilities, (b) consult with counsel, who may be counsel to the Employer, and (c) provide for the allocation of fiduciary responsibilities among its members. Actions dealing with fiduciary responsibilities shall be taken in writing and the performance of agents, counsel and fiduciaries to whom fiduciary responsibilities have been delegated shall be reviewed periodically.

The expenses of administering the Plan and the compensation of all employees, agents, or counsel of the Administrator, including the accounting fees, the record keeper's fees, and the fees of any benefit consulting firm, shall be paid by the Plan, or shall be paid by the Employer if the Employer so elects. No compensation may be paid by the Plan to full-time Employees of the Employer.

The Administrator shall obtain, not less often than annually, a report with respect to the value of the assets held under the Plan in such form as is required by the Administrator.

The Administrator shall administer the Plan and adopt such rules and regulations as, in the opinion of the Administrator, are necessary or advisable to implement and administer the Plan and to transact its business.

8.2 **CLAIMS PROCEDURE.**

(a) A Participant or Beneficiary (a "Claimant") who asserts a right to any benefit under the Plan he or she has not received, in whole or in part must file a written claim with the Administrator. If the claim is wholly or partially denied, the person or persons so designated shall within a reasonable period of time, but no more than ninety (90) days, of its receipt of the claim provide a written notice of denial to the Claimant setting forth:

(1) Specific reasons for the denial of the claim;

(2) Specific reference to pertinent provisions of the Plan on which the denial is based;

(3) A description of any additional material or information necessary to perfect the claim, and an explanation of why such material or information is necessary; and

(4) An explanation of the Plan's claims review procedure, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

(b) A Claimant whose application for benefits is denied, or who has received neither an affirmative reply nor a notice of denial within ninety (90) days after filing his or her claim, may request a full and fair review of the decision denying the claim. The request must be made in writing to the Administrator within sixty (60) days after receipt of the notice of denial or, if no notice of denial is issued, within sixty (60) days after the expiration of ninety (90) days from the filing of the claim. In connection with the review, the Claimant:

(1) Shall be provided, upon request and free of charge, with reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim; and

(2) May submit issues, comments, documents, records, and other information in writing to the Administrator for review.

A decision on review by the Administrator shall take into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The decision of the Administrator shall be made promptly and not later than sixty (60) days after the receipt by the Administrator of a request for review, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case the Claimant will be so notified of the extension prior to the expiration of the initial sixty (60) day period and the extension notice shall contain the reason(s) for the extension. A decision shall be rendered as soon as possible, and not later than one hundred twenty (120) days after the receipt of the request for review. If an extension is required due to a failure by the Claimant to submit information necessary to decide a claim, the time period for completing the review shall be tolled from the date on which notification of the extension is sent until the date on which the Claimant responds to the request for additional information.

The decision shall be in writing and shall include specific reasons for the decision written in a manner calculated to be understood by the Claimant and specific reference to the pertinent provisions of the Plan on which the decision is based. The decision shall also include a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim, along with a statement of the Claimant's right to bring a civil action under Section 502(a) or ERISA following an adverse benefit determination on review.

(c) The Administrator shall have discretionary authority to interpret and apply the provisions of the Plan with respect to, and to make any factual determination in connection with, any benefit claim.

8.3 **TRUST AGREEMENT**. The Plan is funded exclusively by means of contracts and/or custodial accounts issued by an insurance company, as provided under Section 401(f) of the Code. As of January 1, 2019, the name of the Plan's insurance company is Teachers Insurance and Annuity Association of America or TIAA. In accordance with Section 401(f) of the Code, the Employer has not entered into a Trust Agreement.

ARTICLE NINE--LIMITATIONS ON ANNUAL ADDITIONS TO A PARTICIPANT'S ACCOUNT

9.1 RULES AND DEFINITIONS.

(a) *Rules.* The following rules limit additions to Participants' Accounts:

(1) If the Participant does not participate, and has never participated, in another qualified plan maintained by the Employer, the amount of annual additions which may be credited to the Participant's Account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this Plan. If the Employer contribution that would otherwise be allocated to the Participant's Account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.

(2) Prior to determining the Participant's actual Compensation for the limitation year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the limitation year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual Compensation for the limitation year.

(4) If as a result of the allocation of forfeitures, if any, a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant, or other facts and circumstances to which Regulation Section 1.415-6(b)(6) shall be applicable, there is an excess amount, the excess will be disposed of as follows:

(A) Any elective deferral contributions, to the extent they would reduce the excess amount, will be returned to the Participant.

(B) If an excess amount still exists after the application of subparagraph (A) and the Participant is covered by the Plan at the end of the limitation year, the excess amount in the Participant's Account will be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next limitation year, and each succeeding limitation year if necessary.

(C) If an excess amount still exists after the application of subparagraphs (A) and (B) and the Participant is not covered by the Plan at the end of the limitation year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer contributions (including allocation of any forfeitures, if any) for all remaining Participants in the next limitation year, and each succeeding limitation year if necessary.

(D) In lieu of or in addition to the procedure described in subparagraphs (A), (B) and above, the Employer may, if it so elects, reduce its contribution to the Plan for allocation to the Account of the Participant in question, by the amount necessary to eliminate the excess amount.

(E) If a suspense account is in existence at any time during the limitation year pursuant to this Section, it will not participate in the allocation of the Plan's investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer or any Employee contributions may be made to the Plan for that limitation year Excess amounts may not be distributed to Participants or former Participants.

(F) If, in addition to this Plan, the Participant is covered under another defined contribution plan maintained by the Employer during any limitation year, the annual additions which may be credited to a Participant's Account under all Plans for any such limitation year will not exceed the maximum permissible amount. Benefits will be reduced under any defined contribution discretionary contribution plan before they are reduced under any defined contribution pension plan. If both plans are discretionary contribution plans, benefits shall first be reduced under this Plan. Any excess amount attributable to this Plan will be disposed of in the manner described in Section 9.1(a)(4).

(b) *Definitions.*

(1) *Annual Additions:* The following amounts credited to a Participant's Account for the limitation year are treated as annual additions to a defined contribution plan.

(A) Employer contributions; and

(B) Employee contributions; and

(C) Forfeitures; and

(D) Amounts allocated to an individual medical account, as defined in Section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer. Also, amounts derived from contributions paid or accrued in taxable years ending after such date which are attributable to post- retirement medical benefits allocated to the separate account of a Key Employee, as defined in Section 419A(d)(3), and amounts under a welfare benefit fund, as defined in Section 419(e), maintained by the Employer, are treated as annual additions to a defined contribution plan; and

(E) Allocations under a simplified employee pension.

For this purpose, any excess amount applied under Section 9.1(a)(4) in the limitation year to reduce Employer contributions will be considered annual additions for such limitation year.

Annual additions for purposes of Code Section 415, however, *shall not include* the following amounts:

(F) *Restorative Payments*. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law,

where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered annual additions.

(G) *Other Amounts*. Annual additions for purposes of Code Section 415 shall not include: (1) the direct transfer of a benefit or employee contributions from a qualified plan to *this* Plan; (2) rollover contributions (as described in Code Section 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) repayments of loans made to a participant from the Plan, to the extent loans are allowed under the Plan; and (4) repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Code Section 411(a)(7)(C)) and Code Section 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code Section 414(d)) as described in Code Section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(H) *Date of Tax-Exempt Employer Contributions*. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant's account for a particular limitation year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

(2) <u>*Compensation*</u>*:* For purposes of determining maximum permitted benefits under this Section, compensation is defined as wages, salaries, and fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid to salesmen, compensation for services on foe basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or expense allowances under a nonaccountable plan (as described in Regulation Section 1.62-2(c)), and excluding the following:

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

(B) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

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

(D) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

For any self-employed individual, compensation shall mean earned income.

Compensation shall be measured on the basis of compensation paid in the limitation year. In general, for purposes of applying the limitations of this Article Nine, compensation for a limitation year is the compensation actually paid or made available in gross income during such limitation year.

Compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 132(t)(4) or 457.

Amounts under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage (deemed Code Section 125 compensation). An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(3) *Defined contribution dollar limitation:* Notwithstanding any other provisions of the Plan, contributions and other additions with respect to a Participant exceed the limitation of Code Section 415(c) if, when expressed as an annual addition (within the meaning of Code Section 415(c)(2)) to the Participant's Account, such annual addition is greater than the lesser of:

(A) $40,000, as adjusted for increases in the cost-of-living under Code Section 415(d); or

(B) 100% of the Participant's Compensation (as defined in Section 9.1(b)(2)).

The compensation limit referred to in this Section 9.1(b)(3) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

The provisions of this Section 9.1(b)(3) are effective for limitation years beginning on or after January 1, 2002.

(4) *Employer:* This term refers to the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code, as modified by Section 415(h)), commonly-controlled trades of businesses (as defined in Section 414(c) as modified by Section 415(h)), or affiliated service groups (as defined in Section 414(m))

of which the adopting employer is a part.

(5) *Limitation Year:* The Plan Year shall be the 12-consecutive-month period used to measure Compensation in this Plan for benefit purposes.

(6) *Maximum Annual Additions:* This amount is the lesser of the defined contribution dollar limitation or 100% of the Participant's Compensation for the limitation year. If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive-month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

(7) *Projected Annual Benefit:* This is the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the Plan assuming:

(A) the Participant will continue employment until normal retirement age under the Plan (or current age, if later), and

(B) the Participant's Compensation for the current limitation year and all other relevant factors used to determine benefits under the Plan will remain constant for all future limitation years.

9.2 **COMPENSATION PAID AFTER SEVERANCE FROM EMPLOYMENT.** For limitation years beginning on or after July 1, 2007, Compensation that is counted as to any Participant for purposes of Code Section 415 (hereinafter referred to as 415 Compensation), shall be adjusted, as set forth herein, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2½ months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.

(a) *Regular Pay.* 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(b) *Leave Cashouts and Deferred Compensation.* Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the Participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(c) *Salary Continuation Payments for Military Service Participants.* 415 Compensation does not include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(d) *Salary Continuation Payments for Disabled Participants.* 415 Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

9.3 **ADMINISTRATIVE DELAY ("THE FIRST FEW WEEKS") RULE.** 415 Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no compensation is included in more than one limitation year.

9.4 **INCLUSION OF CERTAIN NONQUALIFIED DEFERRED COMPENSATION AMOUNTS**. If the Plan's definition of Compensation for purposes of Code Section 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant.

9.5 **CHANGE OF LIMITATION YEAR**. The Plan's limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

9.6 **EXCESS ANNUAL ADDITIONS.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code Section 415) are exceeded for any

Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2016-51 or any superseding guidance, including, but not limited to, the preamble of the Final Section 415 regulations.

9.7 AGGREGATION AND DISAGGREGATION OF PLANS.

(a) *Other Plans of Employer*. For purposes of applying the limitations of Code Section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Section 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code Section 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship , such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a Participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) *Break-Up of an Affiliate Employer or an Affiliated Service Group.* For purposes of aggregating plans for Code Section 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code Section 415 limitations to the Employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an Employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Sec. 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) Mid-Year Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code Section 415(t) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code Section 415 with respect to a Participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

9.8 **PLAN COMPENSATION.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted in the same manner as 415 Compensation pursuant to Section 9.2, except in applying Section 9.2, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

ARTICLE TEN--AMENDMENT AND TERMINATION

10.1 **AMENDMENT.** The Employer shall have the right to amend, alter, or modify the Plan at any time, or from time to time, in whole or in part. Any such amendment shall become effective under its terms upon adoption by the Employer. The amendment shall be adopted by formal action of the Board of Trustees. However, no amendment affecting the duties, powers or responsibilities of a fiduciary may be made without the written consent of the fiduciary. No amendment shall be made to the Plan which shall:

(a) make it possible (other than as provided in Section 12.3) for any part of the corpus or income of the Plan assets (other than such part as may be required to pay taxes and administrative expenses) to be used for or diverted to purposes other than the exclusive benefit of the Participants or their beneficiaries; or

(b) alter the schedule for vesting in a Participant's Account with respect to any Participant with three (3) or more Years of Service without his or her consent or deprive any Participant of any nonforfeitable portion of his or her Account.

Notwithstanding the foregoing provisions of this Section 10.1, no amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to an amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

Notwithstanding the other provisions of this Section or any other provisions of the Plan, any amendment or modification of the Plan may be made retroactively if necessary or appropriate to conform to or to satisfy the conditions of any law, governmental regulation, or ruling, and to meet the requirements of ERISA.

10.2 **TERMINATION OF THE PLAN.** The Employer reserves the right at any time and in its sole discretion to discontinue payments under the Plan and to terminate the Plan. In the event the Plan is terminated, or upon complete discontinuance of contributions under the Plan by the Employer, or in the event of a partial termination of the Plan, the rights of each Participant to his or her Account on the date of such termination or discontinuance of contributions, to the extent of the fair market value, shall become fully vested and nonforfeitable. The Employer shall direct the distribution of the Plan assets in accordance with the Plan's distribution provisions to the Participants and their Beneficiaries, each Participant or Beneficiary receiving a portion of the Plan's assets equal to the value of his or her Account as of the date of distribution. These distributions may be implemented by the continuance of a Trust and the distribution of the Participants' Account shall be made in such time and such manner as though the Plan had not terminated, or by any other appropriate method, including rollover into Individual retirement accounts. Upon distribution of the Plan's assets, the fiduciaries shall be discharged from all obligations under the Plan and no Participant or Beneficiary shall have any further right or claim therein. If a partial termination of the Plan is deemed to have occurred, this Section shall apply only to those Participants affected by such partial termination.

ARTICLE ELEVEN--TOP-HEAVY PROVISIONS

11.1 **APPLICABILITY.** The provisions of this Article Eleven shall become applicable only for any Plan Year in which the Plan is a Top-Heavy Plan. The determination of whether the Plan is a Top-Heavy Plan shall be made each Plan Year by the Administrator.

11.2 **DEFINITIONS.** For purposes of this Article, the following definitions shall apply:

(a) *Key Employee*: Key Employee shall mean, for Plan Years beginning before January 1, 2002, any Employee or former Employee (and the Beneficiaries of such Employee) who, at any time during the determination period, was (i) an officer of the Employer earning Compensation greater than 50% of the dollar limitation under Section 415(b)(1)(A) of the Code, (ii) an owner (or considered an owner wider Section 318 of the Code) of both more than a one-half percent (½%) interest in the Employer and one of the ten largest interests in the Employer if such individual's Compensation exceeds the dollar limitation under Section 415(c)(1)(A) of the Code, (iii) a 5% owner of the Employer, or (iv) a 1% owner of the Employer who has an annual Compensation of more than $150,000. The determination period of the Plan is the Plan Year containing the determination date as defined in Section 11.2(b)(2)(D) and the four preceding Plan Years. The determination of who is a Key Employee (including the terms "5% owner" and "1% owner") will be made in accordance with Section 416(i)(1) of the Code and the regulations thereunder. "Non-Key Employee" shall mean any Employee or Beneficiary of such Employee or former Employee or Beneficiary of such former Employee who is not or was not a Key Employee during the Plan Year ending on the determination date, nor during the four preceding Plan Years.

Effective for Plan Years beginning after December 31, 2001, "Key Employee" shall mean any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than $130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), 5% owner of the Employer, or a 1% owner of the Employer having annual compensation of more than $150,000. For this purpose, annual compensation means compensation within the meaning of Section 9.1(b)(2). The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(b) *Top-Heavy Plan:* Top-Heavy Plan shall mean a Plan where any of the following conditions exist:

(1) Top-Heavy status defined:

(A) The Plan is a Top-Heavy Plan if the top-heavy ratio for the Plan exceeds 60% and the Plan is not part of any required aggregation group or permissive aggregation group of plans; or

(B) The Plan is a Top-Heavy Plan if the Plan is a part of a required aggregation group of plans (but is not part of a permissive aggregation group) and the top-heavy ratio for the group of plans exceeds 60%; or

(C) The Plan is a Top-Heavy Plan if the Plan is a part of a required aggregation group of plans and part of a permissive aggregation group and the top-heavy ratio for the permissive aggregation group exceeds 60%.

(2) *Definition of terms for Top-Heavy status:*

(A) *"Top-heavy ratio"* shall mean the following:

(l) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer has not maintained any defined benefit plans which during the five-year period ending on the determination date has or has had accrued benefits, the top-heavy ratio is a fraction, the numerator of which is the sum of the Account balances of all Key Employees as of the determination date (including any part of any Account balance distributed in the one-year period ending on the determination date) (five-year period ending on the determination date in the case of a distribution made for reasons other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of the Account balances (including any part of any Account balance distributed in the one-year period ending on the determination date) (five-year period ending on the determination in the case of a distribution made for reasons other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002) of all Participants as of the determination date, both determined in accordance with Section 416 of the Code and the regulations issued thereunder. Both the numerator and the denominator shall be increased by any contributions not actually made as of the determination date, but which is required to be taken into account on that date under Section 416 of the Code and the regulations issued thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer maintains or has maintained one or more defined benefit plans which during the five-year period ending on the determination date has or had any accrued benefits, the top-heavy ratio is a fraction, the numerator of which is the sum of account balances under the defined contribution plans for all Key Employees and the actuarial equivalent of accrued benefits under the defined benefit plans for all Key Employees, and the denominator of which is the sum of the account balances under the defined contribution plans for all Participants and the actuarial equivalent of accrued benefits under the defined benefit plans for all Participants, all determined in accordance with Section 416 of the regulations issued thereunder. Both the numerator and denominator of the top-heavy ratio shall include any distribution of an account balance or an accrued benefit made in the one-year period ending on the determination date (five-year period ending on the determination date in the case of a distribution made for reasons other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002).

(3) For purposes of (1) and (2) above, the value of Account balances and the actuarial equivalent of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in Section 4l 6 of the Code and regulations issued thereunder for the first and second plan year of a defined benefit plan. The accrued benefits and Account balances of Participants (i) who are not Key Employees but who were Key Employees in a prior year or (ii) who have not been

credited with at least one hour of service with any employer maintaining the Plan at any time during the one-year period (five-year period in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002) ending on the determination date will be disregarded. The calculations of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account, will be made under Section 416 of the Code and regulations issued thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same Plan Year.

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

(B) *"Permissive aggregation group"* shall mean the required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(C) *"Required aggregation group"* shall mean (i) each qualified plan of the Employer (including any terminated plan) in which at least one Key Employee participates or participated at any time during the Plan Year containing the determination date or any of the four preceding Plan Years (regardless of whether the Plan has terminated), and (ii) any other qualified plan of the Employer which enables a plan described in (i) to meet the requirements of Sections 401(a)(4) or 410 of the Code.

(D) *"Determination date"* shall mean, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" shall mean the last day of that Plan Year.

(E) *"Valuation Date"* shall mean the last day of the Plan Year.

11.3 ALLOCATION OF EMPLOYER CONTRIBUTIONS FOR A TOP-BEAVY PLAN YEAR.

(a) Except as otherwise provided below, in any Plan Year when the Plan is a Top-Heavy Plan the Employer contributions allocated on behalf of any Participant who is a Non-Key Employee shall not be less than the lesser of 3% of such Participant's Compensation as defined in Section 9.1(b)(2) or the largest percentage of Employer contributions (including elective deferrals) as a percentage of the Key Employee's Compensation, as limited by Section 401(a)(17) of the Code, allocated on behalf of any Key Employee for that Plan Year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the Plan Year because of insufficient Employer contributions under Section 4.1 or the Participant's failure to complete 1,000 Hours of Service (or any equivalent provided in the Plan), regardless of the Participant's level of Compensation.

(b) The minimum allocation under this Section shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

(c) The minimum allocation under this Section shall be reduced by any allocation of Employer contributions under Section 4.1 and will be used as an offset against any such required allocation under any other defined contribution plan of the Employer with a Plan Year ending in the same calendar year as the Valuation Date.

(d) Neither elective deferrals nor matching contributions (as defined in Code Sections 402(g)(3) and 401(m)(4)(A), respectively) shall be taken into account for the purpose of satisfying the minimum allocation requirements of this Section, but are included for purposes of determining the percentage of Employer contributions allocated to Key Employees.

(e) There shall be no duplication of the minimum benefits required under Code Section 416. Benefits shall be provided under defined benefit plans before under any defined contribution plans. If a defined benefit plan (active or frozen) is part of the permissive or required aggregation group of plans of the Employer, the minimum allocation in subparagraph (a) shall be deemed to be 5% and shall be offset by a Participant's accrued benefit under a defined benefit plan according to the following equivalencies: a 1% "qualifying benefit accrual" under a defined benefit plan equals a 2.5% allocation under a defined contribution plan. To be a "qualifying benefit accrual," the pension under the defined benefit plan must be converted to a pension payable for life based on the average of the five consecutive years of the Participant's highest compensation, payable at that plan's normal retirement date. Accordingly, for a Participant whose "qualifying benefit accrual" equals 2% multiplied by each year of his or her participation in the Plan while a Top-Heavy Plan, there shall be no minimum allocation hereunder. If the "qualifying benefit accrual" is a lesser amount than 2% for each such year, the minimum allocation under this Plan shall be provided on a pro rata basis, adjusted on the basis of the above equivalencies. Except as provided in subparagraph (f), in no event will additional minimum allocations be provided for any Participant who has earned a "qualifying benefit accrual" equal to 20% of his or her Compensation (as defined in Article Nine) averaged over the five consecutive years in which such Compensation was the highest.

11.4 **VESTING.** The provisions contained in Section 6.1 relating to vesting shall continue to apply in any Plan Year in which the Plan is a Top-Heavy Plan, and apply to all benefits within the meaning of Section 411(a)(7) of the Code except those attributable to Employee contributions related to elective deferrals, including benefits accrued before the effective date of Section 416 and benefits accrued before the Plan became a Top- Heavy Plan. Further, no reduction in vested benefits may occur in the event the Plan's status as a Top-Heavy Plan changes for any Plan Year and the vesting schedule is amended. In addition, if a Plan's status changes from a Top-Heavy Plan to that of a non-Top-Heavy Plan, a Participant with three (3) or more Years of Service for vesting purposes shall continue to have his or her vested rights determined under the schedule which he or she selects, in the event the vesting schedule is subsequently amended. Payment of a Participant's vested Account balance under this Section shall be made in accordance with the provisions of Article Seven.

11.5 **ADDITIONAL RULES.**

(a) *Determination of Present Values and Amounts.* This Section 11.5 shall apply effective for Plan Years beginning after December 31, 2001, for purposes of determining the present values of accrued benefits and the amounts of Account balances of Employees as of the determination date.

(1) *Distributions During Year Ending on the Determination Date.* The present value of accrued benefits and the amounts of Account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death or disability, this provision shall be applied by substituting "5-year period" for "l-year period."

(2) *Employees Not Performing Services during Year Ending on the Determination Date.* The accrued benefits and Accounts of any individual who has not performed services for the Employer during the 1-year period ending on the determination date shall not be taken into account.

(b) *Minimum Benefits.*

(1) *Matching Contributions.* Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan, or, if the Plan provides that the minimun1contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401(m) of the Code.

(2) *Contributions under Other Plans.* The Employer may provide that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met).

ARTICLE TWELVE--MISCELLANEOUS PROVISIONS

12.1 **PLAN DOES NOT AFFECT EMPLOYMENT.** Neither the creation of this Plan nor any amendment thereto nor the creation of any fund nor the payment of benefits hereunder shall be construed as giving any legal or equitable right to any Employee or Participant against the Employer, its officers or Employees, or against any fiduciary, and all liabilities under this Plan shall be satisfied, if at all, only out of the Plan's assets. Participation in the Plan shall not give any Participant any right to be retained in the employ of the Employer, and the Employer hereby expressly retains the right to hire and discharge any Employee at any time with or without cause, as if the Plan had not been adopted, and any such discharged Participant shall have only such rights or interests in the Plan's assets as may be specified herein.

12.2 **SUCCESSOR TO THE EMPLOYER.** In the event of the merger, consolidation, reorganization or sale of assets of the Employer, under circumstances in which a successor person, firm, or corporation shall carry on all or a substantial part of the business of the Employer, and such successor shall employ a substantial number of Employees of the Employer and shall elect to carry on the provisions of the Plan, such successor shall be substituted for the Employer under the terms and provisions of the Plan upon the filing in writing of its election to do so.

12.3 **REPAYMENTS TO THE EMPLOYER.** Notwithstanding any provisions of this Plan to the contrary, and in the sole discretion of the Employer:

(a) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer because of a mistake of fact may be returned to the Employer within one year after the date of contribution. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the excess contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had the amount not been contributed, then the amount to be returned to the Employer must be limited so as to avoid such reduction.

(b) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer for any fiscal year for which Initial Plan qualification under the Code is denied may be refunded to the Employer within one year after the date such qualification of the Plan is denied or within one year of the resolution of any judicial or administrative process with respect to the disallowance.

(c) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer may be refunded to the Employer, to the extent the income tax deduction for such contribution is disallowed, within one taxable year after the date of such disallowance or within one year of the resolution of any judicial or administrative process with respect to the disallowance.

Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the excess contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had

the amount not been contributed, then the amount to be returned to the Employer must be limited so as to avoid such reduction.

12.4 **BENEFITS NOT ASSIGNABLE**. Except as provided in Section 414(p) of the Code with respect to "qualified domestic relations orders," the rights of any Participant or his or her Beneficiary to any benefit or payment hereunder shall not be subject to voluntary or involuntary alienation or assignment. Notwithstanding the prior provisions of this Section 12.4, an offset to a Participant's benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Sections 401(a)(13)(C) and of the Code.

12.5 **PARTICIPANT LOANS.** No Participant or Beneficiary loans are allowed under the Plan.

12.6 **MERGER OF PLANS.** In the case of any merger or consolidation of this Plan with, or transfer of the assets or liabilities of the Plan to, any other plan, the terms of such merger, consolidation or transfer shall be such that each Participant would receive (in the event of termination of this Plan or its successor immediately thereafter) a benefit which is no less than what the Participant would have received in the event of termination of this Plan immediately before such merger, consolidation or transfer.

12.7 **INVESTMENT EXPERIENCE NOT A FORFEITURE.** The decrease in value of any Account due to adverse investment experience will not be considered an impermissible "forfeiture" of any vested balance.

12.8 **DISTRIBUTION TO LEGALLY INCAPACITATED PERSON.** Subject to the terms of the applicable funding vehicle, in the event any benefit is payable to a minor or to a person deemed to be incompetent or to a person otherwise under legal disability, or who is by sole reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his or her property, the Administrator may direct the distribution of the whole or any part of such benefit to the valid power of attorney or court appointed guardian having jurisdiction over the person or to any other person authorized under the applicable state law. The receipt of any such payment or distribution is a complete discharge of liability for Plan obligations.

12.9 **CONSTRUCTION.** Wherever appropriate, the use of the masculine gender shall be extended to include the feminine and/or neuter or vice versa: and the singular form of words shall be extended to include the plural; and the plural shall be restricted to mean the singular.

12.10 **USE OF ELECTRONC MEDIA.** Wherever appropriate, the reference to an action in writing shall be extended to include the use of electronic media.

12.11 **GOVERNING DOCUMENTS.** A Participant's rights shall be determined under the terms of the Plan as in effect at the Participant's date of separation from eligible Service.

12.12 **GOVERNING LAW.** The provisions of this Plan shall be construed under the laws of the State of Maine, except to the extent such laws are preempted by Federal law.

12.13 **HEADINGS.** The Article headings and Section numbers are included solely for ease of reference. If there is any conflict between such headings or numbers and the text of the Plan, the text shall control.

12.14 **COUNTERPARTS.** This Plan may be executed in any number of counterparts, each of which shall be deemed an original; said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

12.15 **LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN.** Subject to the terms of the applicable funding vehicle, in the event that all or any portion of the distribution payable to a Participant or to a Participant's Beneficiary hereunder shall, at the expiration of five (5) years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, the amount so distributable shall be reallocated pursuant to this Plan. In the event a Participant or Beneficiary is located subsequent to the reallocation of his or her Account balance, such Account balance shall be restored without interest or adjustment for interim valuation experience, by a special Employer contribution or from the next succeeding Employer contribution as appropriate.

ARTICLE THIRTEEN--MULTIPLE EMPLOYER PROVISIONS

13.1 **ADOPTION OF THE PLAN.** With the Employer's consent, this Plan may be adopted by any other corporation or entity for its employees, which adopting Employer shall be known as a "Participating Employer." All assets may either be held within one Fund, or each Participating Employer may maintain a separate fund attributable to its portion of Plan assets. Separate accounting shall be maintained for the Accounts of employees of each adopting Participating Employer.

13.2 **SERVICE.** For purposes of vesting, eligibility to participate in the Plan, and determining eligibility for allocation of Participating Employer contributions, an Employee shall be credited with all of his or her Hours of Service with any Participating Employer which has adopted the Plan after the effective date of that adoption. Pre-adoption Service will be credited in accordance with the rules in Article Two for such periods of time when the Employees were part of a controlled group of corporations, trades or businesses under common control or affiliated service group. Service during such time when there was no controlled or affiliated service group will be credited only for eligibility to participate in the Plan. These rules may be modified by an instrument of adoption.

13.3 **PLAN CONTRIBUTIONS**. All contributions made by a Participating Employer, as provided for in this Plan and unless modified by an instrument of adoption, shall be determined separately by each Participating Employer, and shall be paid to and held by the Plan for the exclusive benefit of the Employees of such Participating Employer and the Beneficiaries of such Employees, subject to all the terms and conditions of this Plan. Any forfeiture by an Employee of a Participating Employer subject to al location during each Plan Year shall be allocated only for the exclusive benefit of the Participants of such Participating Employer in accordance with the provisions of this Plan, unless modified by an instrument of adoption.

13.4 **DETERMINING COMPENSATION.** In the case of any Employee who is paid by more than one Participating Employer, all of his or her Compensation from the Participating Employers shall be aggregated for purposes of determining benefits if the Plan is integrated with Social Security.

13.5 **TRANSFERRING EMPLOYEES.** The Administrator shall adopt equitable procedures whereby contributions and forfeitures are equitably allocated in the case of Employees transferring from the employment of one Participating Employer to another Participating Employer. Similarly, rules shall be adopted whereby Account records may be transferred from the records of one Participating Employer to another Participating Employer.

13.6 **DELEGATION OF AUTHORITY.** Each Participating Employer who has adopted the Plan may delegate to the Employer the right to name the Administrator and fiduciaries of the Plan.

13.7 **TERMINATION.** Any termination of the Plan or discontinuance of contributions by any one Participating Employer shall operate with regard only to the Participants employed by that Participating Employer. All Employees affected thereby shall have a 100% nonforfeitable interest in their Accounts.

In the event any Participating Employer terminates its participation in this Plan, or in the event that any such Participating Employer shall cease to exist through sale, reorganization or bankruptcy, the Fund shall be allocated, in accordance with the direction of the Administrator, into separate funds. The amount to be allocated to the Plan of the terminating Participating Employer shall be equal to the value of Account balances of its Participants as of the most recent date as of which Plan assets were valued under Article Five, unless a special valuation is agreed to by the Administrator and the terminating Participating Employer.

* * *

IN WITNESS WHEREOF, the Employer, by its duly authorized representative, has caused this Plan to be executed on this, the 18th day of March, 2019.

PRESIDENT AND TRUSTEES OF BATES COLLEGE

By: Geoffrey S Swift

Vice President for Finance Administration and Treasurer.

Its: