



MFS[®] 403(b) Mutual Fund Custodial Agreement

Employer Sponsored Plans Only

IMPORTANT CHANGES TO YOUR MFS 403(b) MUTUAL FUND CUSTODIAL AGREEMENT UNDER THE CARES ACT AND SECURE ACT

This supplement to the MFS 403(b) Mutual Fund Custodial Agreement¹ (the "Agreement") describes changes affecting 403(b) plans and custodial accounts made by the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") and the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") which were recently enacted. The Agreement will be amended to incorporate the SECURE Act and CARES Act changes once future guidance is issued by the Internal Revenue Service. In the interim, this supplement is provided to inform you of the changes. All capitalized terms not defined in this Supplement shall have the meaning assigned to them in the Agreement.

I. CARES ACT CHANGES

Suspension of 2020 Required Minimum Distributions. Required minimum distributions ("RMDs") are waived for 2020. In addition to RMDs for the calendar year 2020, the waiver also applies to 2019 RMDs for those who were required to take their first RMD by April 1, 2020, if the distribution was not taken before January 1, 2020. RMDs that were already taken in 2020 may be rolled into a retirement plan or IRA by August 31, 2020. This repayment is not subject to the one rollover per 12-month period limitation. In addition, if permitted by the Employer's Plan, beneficiaries of 403(b) Participants who died before 2020 and are subject to the 5-year distribution rule can disregard 2020, allowing a total of 6 years to fully distribute the account. **For Participants or beneficiaries who have already set up a schedule of periodic RMD payments, MFS will distribute scheduled 2020 RMD payments, unless the recipient (in the case of a Salary Reduction Only plan) or the Employer (in the case of an Employer-sponsored plan) directs otherwise.**

2020 Coronavirus Distributions. If the Employer's Plan permits, Participants who are qualified individuals may take distributions of up to \$100,000 in 2020 and those distributions may be exempt from the 10% excise tax on premature distributions, and the federal income tax due on the distribution may be spread over 3 years. A "qualified individual" is an individual who meets either of the following requirements:

- An individual who is diagnosed, or whose spouse or dependent is diagnosed, with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or
- An individual who experiences adverse financial consequences as a result of the individual, the individual's spouse, or a member of the individual's household (that is, someone who shares the individual's principal residence):
 - being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19;
 - being unable to work due to lack of childcare due to COVID-19;
 - closing or reducing hours of a business owned or operated by the individual, the individual's spouse or a member of the individual's household due to COVID-19;
 - having pay or self-employment income reduced due to COVID-19; or
 - having a job offer rescinded or start date for a job delayed due to COVID-19.

In addition, the CARES Act allows the individual who received the distribution to recontribute up to the full amount of the distribution into an eligible retirement plan or IRA within the following three-year period. This distribution type is only available if permitted by the Employer's Plan.

¹ The Supplement is applicable to the MFS Employer Sponsored 403(b) Mutual Fund Custodial Agreement and the MFS 403(b) Mutual Fund Custodial Agreement (Salary Reduction Only)

II. SECURE ACT CHANGES

Increased Age for Required Minimum Distributions. The Act increases the age at which RMDs must begin, from age 70½ to age 72. The provision is effective with respect to Participants who attain age 70½ after December 31, 2019. If you attained age 70½ before January 1, 2020, you must commence your RMDs when you attain age 70½. For example, if you attained age 70½ in 2019, you would normally be required to begin receiving RMDs by April 1, 2020. However, because RMDs are waived for 2020, you must begin receiving RMDs by April 1, 2021.

Modification of RMD Rules for Beneficiaries. The Act modifies the RMD rules for post-death distributions to beneficiaries. Generally, if a Participant dies on or after January 1, 2020, the assets in the 403(b) Account must be distributed to the Participant's designated beneficiary by the end of the tenth calendar year following the year of the Participant's death. However, if the beneficiary is an "eligible designated beneficiary" as defined below, such beneficiary may receive RMDs calculated with reference to his or her life expectancy. An "eligible designated beneficiary" is any individual who is:

- The surviving spouse of the Participant;
- A child of the Participant who has not attained the age of majority. However, upon such child attaining the age of majority any remaining assets must be distributed no later than the end of the tenth calendar year after the calendar year in which the child reaches the age of majority;
- Certain disabled and chronically ill individuals; and
- An individual not listed above who is less than 10 years younger than the Participant.

The provision generally applies to the beneficiaries of Participants with a date of death after December 31, 2019, although there is a delayed effective date for governmental and collectively bargained plans.

There is no change to the distribution requirements for beneficiaries of Participants that died before January 1, 2020.

Penalty-free Distributions for Birth or Adoption of a Child. The Act adds a new exception from the 10 percent early distribution penalty for qualified withdrawals from a plan for the birth or adoption of a child made **after December 31, 2019**. Under the new exception:

- Qualified withdrawals are limited to \$5,000 in the aggregate across a Participant's retirement plan and IRA accounts with respect to a birth or adoption.
- The withdrawal must be made within one year after the birth or adoption date.
- The distribution may be recontributed to an eligible retirement plan or IRA, subject to certain rules, and treated as a rollover.

This distribution type is only available if permitted by the Employer's Plan.

MFS EMPLOYER SPONSORED 403(b) MUTUAL FUND CUSTODIAL AGREEMENT

(Effective July 1, 2010)

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MFS EMPLOYER SPONSORED 403(b) MUTUAL FUND CUSTODIAL AGREEMENT

ARTICLE 1: DEFINITIONS

- 1.1. ACCOUNT means the separate Custodial Account(s) for each Participant established and maintained pursuant to this Agreement to hold and manage the Contributions made hereunder for the benefit of a Participant.
- 1.2. AGREEMENT means this MFS Employer Sponsored 403(b) Mutual Fund Custodial Agreement, which may constitute an amendment and restatement of the MFS 403(b) custodial agreement in effect immediately prior to this Agreement (the "Former Agreement") or of another custodial agreement previously adopted and maintained by the Employer in accordance with Code Section 403(b)(7), and the Application, which Application is incorporated into and made a part of this Agreement.
- 1.3. ANNUITY CONTRACT means a nontransferable contract as described in Code Section 403(b)(1), established for a Participant under a Plan, that is issued by an insurance company qualified to issue annuities in a state, a political subdivision of a state, or any agency or instrumentality of a state (and including, for purposes of this definition, the District of Columbia) and that includes payment in the form of an annuity.
- 1.4. BENEFICIARY means the person or persons (including individuals, trusts, estates, partnerships, corporations, associations, charitable or educational organizations, or other similar entities) currently designated as such by the Participant or Beneficiary, as applicable, as entitled to receive the Account balance, if any, upon the Participant's or the Beneficiary's death. The initial Beneficiary shall be the person or persons designated as such on the designation of Beneficiary provided by the Employer or Plan Administrator. The Participant or Beneficiary, as applicable, may modify his or her designation of Beneficiary at any time by executing and filing a new designation of Beneficiary with the Employer or Plan Administrator, which designation shall supersede any prior designation.

Except with respect to non-ERISA Plans, a Participant's Beneficiary shall be the Participant's surviving spouse unless the Participant makes a Qualified Election to have a Beneficiary other than his or her surviving spouse.

If there is no such designated Beneficiary in existence at the time of the Participant's death, the Participant's surviving spouse or, if the Participant does not leave a surviving spouse, the Participant's estate shall be the Participant's Beneficiary. If a Beneficiary dies before all amounts in the Account to which the Beneficiary is entitled have been distributed to that Beneficiary ("predecessor Beneficiary"), the successor Beneficiary of the predecessor Beneficiary shall be the predecessor Beneficiary's estate, unless the predecessor Beneficiary designates a successor Beneficiary on the designation of Beneficiary form provided by the Employer or Plan Administrator. The successor Beneficiary will be entitled to receive any such remaining amounts in the Account upon the death of the predecessor Beneficiary. Where there is more than one person designated as Beneficiary, the Account shall be segregated in accordance with Section 6.5; distributions from the Account shall be made pro rata among those persons designated as Beneficiary who are alive at the time of the distribution, unless specified otherwise in the designation of Beneficiary form.

- 1.5. CODE means the Internal Revenue Code of 1986, as amended, and regulations issued thereunder.
- 1.6. COMPENSATION means all amounts that are treated as wages for federal income tax withholding under Code Section 3401(a) for the Plan year (determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed). For purposes of determining a Participant's "Salary Reduction Contributions," limitations on annual additions to an Account, and determining who is a "highly compensated employee," Compensation shall also include all amounts that would be paid to the Participant during the year but for the Participant's election under a cash or deferred arrangement described in Code Section 401(k), a cafeteria plan described in Code Section 125, a qualified transportation fringe benefit program described in Code Section 132(f)(4), a simplified employee pension described in Code Section 402(h) or an annuity program described in Code Section 403(b), and a plan described in Code Section 457(b). Compensation is determined without regard to any community property laws.

For purposes of Employer Contributions other than Salary Reduction Contributions (unless the Employer is a church within the meaning of Code Section 403(b)(12) (B) ("Church")), Compensation shall be limited by the limit on compensation under Code Section 401(a)(17), which is \$200,000 for any year beginning after December 31, 2002, as adjusted in accordance

with Code Section 401(a)(17)(B). If Compensation is determined for a period of time that contains fewer than 12 calendar months, the annual Compensation limit is an amount equal to the annual Compensation limit for the calendar year in which the Compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by 12. If Compensation for any prior Plan year is taken into account in determining a Participant's benefits for the current year, the Compensation for such prior year is subject to the applicable annual Compensation limit in effect for that prior year.

Effective January 1, 2009, Compensation shall include any payment that (i) is made by the Employer to an individual with respect to any period during which the individual is performing service in the "uniformed services" (as defined in Chapter 43 of Title 38 of the United States Code) while on active duty for a period of more than 30 days, and (ii) represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer (Differential Wage Payments); provided that this paragraph shall apply only if all Employees performing any service in the uniformed services are entitled to receive Differential Wage Payments 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. For purposes of this paragraph, the provisions of paragraphs (3), (4), and (5) of Code Section 410(b) shall apply.

- 1.7. CONTRIBUTION or EMPLOYER CONTRIBUTION means any Salary Reduction Contribution amount, and any Employer contribution amount other than a Salary Reduction Contribution, transmitted by the Employer to the Custodian and any rollover, Investment Transfer, Exchange, or Plan-to-Plan Transfer to be credited to the Account in accordance with Articles 3 and 5.
- 1.8. CUSTODIAL ACCOUNT means the group or individual custodial account or accounts, as described in Code Section 403(b)(7), established for each Participant by an employer, or by a Participant individually, to hold assets of the Plan.
- 1.9. CUSTODIAN means MFS Heritage Trust Company, and any successor entity that satisfies the requirements of Code Section 401(f)(2), designated as the custodian to hold assets under this Agreement.
- 1.10. DESIGNATED ROTH CONTRIBUTIONS means Contributions that are includable in a Participant's gross income at the time deferred and that have been irrevocably designated as Designated Roth Contributions by a Participant in his or her deferral election with the Employer. Contributions under this Agreement may not include any Designated Roth Contributions.
- 1.11. DESIGNATED VENDOR means a Vendor that is eligible to receive Contributions under the Plan.
- 1.12. DISTRIBUTOR means MFS Fund Distributors, Inc. and any successor entity.
- 1.13. EMPLOYEE means an individual employed by the Employer who has obtained such Employer's consent to participate under this Agreement.
- 1.14. EMPLOYER means the employer named in the Employer Application, provided that such employer is an entity described in Code Section 403(b)(1)(A).
- 1.15. EMPLOYER APPLICATION or APPLICATION means the properly executed MFS Employer Sponsored 403(b) Mutual Fund Application, the execution of which establishes the Agreement.
- 1.16. ERISA means the Employee Retirement Income Security Act of 1974, as amended, and regulations issued thereunder.
- 1.17. EXCHANGE means any investment change from an Annuity Contract or Custodial Account to an Annuity Contract or Custodial Account that is not provided by a Designated Vendor, and that satisfies the requirements of Section 5.2.
- 1.18. FUNDS means the regulated investment companies for which Massachusetts Financial Services Company, and any successor thereto or affiliate thereof ("MFS"), acts as investment adviser (and are distributed by the Distributor).
- 1.19. INVESTMENT TRANSFER means a transfer of assets from an Annuity Contract or Custodial Account that is provided by a Designated Vendor to an Annuity Contract or Custodial Account that is provided by a different Designated Vendor.
- 1.20. NON-ERISA PLAN means a Plan that is a "church plan" within the meaning of ERISA Section 3(33) with respect to which no election has been made under Code Section 410(d) or a "governmental plan" within the meaning of ERISA Section 3(32).

- 1.21. PARTICIPANT means an individual for whom Contributions or other Employer Contributions are currently being made, or for whom Contributions or other Employer Contributions have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.
- 1.22. PLAN means a plan described in Treas. Reg. 1.403(b)-3(b)(3) that the Employer established and maintained for the benefit of its Employees, and has described in the Employer Application.
- 1.23. PLAN ADMINISTRATOR means the Employer, except to the extent that the Employer designates one or more other persons in writing and such person(s) agree in writing to serve as such. The Plan Administrator shall be the "named fiduciary" for purposes of ERISA.
- 1.24. PLAN-TO-PLAN TRANSFER means a transfer of assets between an Annuity Contract or Custodial Account under the Plan and an Annuity Contract or Custodial Account under another employer's plan described in Code Section 403(b) that satisfies the conditions in Section 5.3.
- 1.25. QUALIFIED ELECTION means a valid waiver of a qualified joint and survivor annuity or qualified preretirement survivor annuity, as described in Section 6.3(a), as the case may be. To be valid, the waiver must be made in writing during the applicable election period described in ERISA Section 205 and the Participant's spouse must consent to it in writing. The spouse's consent to the waiver must be witnessed by a notary public or Plan representative and must be either a general or limited consent as described in ERISA Section 205(c)(2)(A). Notwithstanding the foregoing consent requirement, if the Participant certifies in writing to the Employer or Plan Administrator that such written consent may not be obtained because there is no spouse or the spouse cannot be located, a waiver will nonetheless be deemed a Qualified Election. Any consent necessary for a Qualified Election will be valid only with respect to the spouse who signs the consent or is deemed to have signed the consent. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the commencement of distributions. An unlimited number of revocations may be made, but each such revocation shall once again make the qualified joint and survivor annuity or qualified preretirement survivor annuity applicable, as the case may be, and with regard to a matter with respect to which the spouse has given only a limited consent, the spouse must consent to any subsequent waiver in accordance with the requirements of this Section.
- 1.26. RELATED EMPLOYER means the Employer and any other entity which is under common control with the Employer under Code Sections 414(b) or (c).
- 1.27. SALARY REDUCTION CONTRIBUTION shall mean any Employer Contribution that is made to the Plan at the election of a Participant in lieu of cash compensation and that is not includable in such Participant's gross income at the time deferred. With respect to any taxable year, a Participant's Salary Reduction Contributions is the sum of all Employer Contributions made on behalf of a Participant for the purchase of an Annuity Contract or for contribution to a Custodial Account pursuant to a salary reduction agreement. Salary Reduction Contributions shall not include any deferrals properly distributed as excess annual additions.
- 1.28. SEVERANCE FROM EMPLOYMENT means severance from employment with the Employer and any Related Employer. A Severance from Employment occurs on any date on which a Participant ceases to be an employee of a Related Employer, even though the Participant may continue to be employed either by another entity that is treated as the same employer where either that other entity is not an entity that can be an eligible employer (as defined in Code Section 403(b)(1)(A)) or in a capacity that is not employment with an eligible employer.
- 1.29. VENDOR means the investment provider of an Annuity Contract or Custodial Account.

ARTICLE 2: ESTABLISHMENT OF ACCOUNT

- 2.1. **Establishment of Account.** The Custodian shall, in accordance with the terms of this Agreement, establish and maintain an Account for the exclusive benefit of each Participant who has properly become a party to this Agreement and, in the event of the Participant's death, the Participant's Beneficiary. An Account will be established for the benefit of a Participant when (i) the Employer has completed and signed the Employer Application and has delivered the Application and Employer Contribution to the Distributor, (ii) the Custodian has accepted the Application and Employer Contribution, provided, however, that if an Employer has made Employer Contributions pursuant to the Former Agreement, the Employer's payment to the Custodian of any Contribution made in accordance with Article 3 of this Agreement may be deemed to constitute the Employer's Application to adopt this Agreement, and (iii) if and to the extent the Custodian requires, effective January 1, 2009, the Employer has entered into a written agreement with the Custodian to share information to the extent necessary to implement this Agreement and to comply with Code Section 403(b) and the regulations thereunder ("Information Sharing Agreement" or "ISA"). **In addition, effective January 1, 2009, the Custodian may decline to accept Contributions to an Account if the Custodian is not a Designated Vendor under the Plan.** The Account shall become effective on the date the Custodian, or its agent, accepts the Application and Employer Contribution by issuing an investment confirmation or other acknowledgment to the Employer, provided that the Custodian, or its agent, does not notify the Employer to the contrary within 30 days thereafter. This Agreement may constitute an amendment or restatement, in whole or in part, of a custodial agreement previously adopted and maintained by the Employer in accordance with Code Section 403(b)(7) as more specifically provided in the Application.
- 2.2. **Interpretation of Agreement.** Any provisions of the Plan additional to or inconsistent with the provisions of this Agreement shall take precedence over this Agreement, to the extent they are no less restrictive than, and otherwise in compliance with, applicable laws. In the event that the Plan permits a feature, then, to the extent permitted in this Agreement, this Agreement shall be interpreted to permit such feature.

ARTICLE 3: CONTRIBUTIONS

- 3.1. **Permissible Contributions.**
- (a.) **Kinds of Contributions.** The Employer shall make Employer Contributions on behalf of each Participant in accordance with the terms of the Plan, which contributions the Custodian shall credit to the Account. Employer Contributions under this Agreement may include Salary Reduction Contributions, discretionary Employer contributions, or Employer matching Contributions. Employer Contributions under this Agreement may not include any Designated Roth Contributions or other after-tax contributions. Discretionary Employer Contributions, Employer matching Contributions, and Salary Reduction Contributions (and the earnings thereon) shall be allocated to the Account in accordance with the terms of the Employer's Plan, and shall be separately accounted for as required by the regulations under Code Section 401(k) and the terms of the Employer's Plan; gains, losses and other credits and charges will be separately allocated on a reasonable and consistent basis to each contribution type. The Employer shall be solely responsible for determining the proper allocation of Employer Contributions to the Account. The Custodian shall be responsible solely for crediting the Account in accordance with the Employer's instructions. The Employer must specify the amount and type of each Contribution to be credited to each Account in accordance with Section 7.2(a). Contributions will be invested only in accordance with Article 4. No nondeductible Contributions (other than rollovers, Plan-to-Plan Transfers, or Exchanges) shall be permitted under this Agreement.
- (b.) **Salary Reduction Agreements.** Any salary reduction agreement shall be effective only with respect to amounts the Participant earns after the agreement becomes effective and shall otherwise be in accordance with the rules applicable to cash or deferred elections under Code Section 401(k) and Code Section 403(b). A salary reduction agreement may be terminated at any time, but only with respect to amounts the Participant earns after such termination.
- (c.) **Limits on Contributions.** The Employer shall have sole responsibility for determining (i) that the aggregate Employer Contributions made to an Account are made only with respect to the amount of the Participant's Compensation; (ii) that the aggregate "elective deferrals" (within the meaning of Code Section 402(g)) made on the Participant's behalf by the

Employer do not exceed the applicable limit on such elective deferrals prescribed in Code Section 402(g) for that year as modified for Participants who have attained age 50 (or will attain age 50 within the applicable Plan Year) as prescribed by Code Section 414(v), if permitted by the Plan; (iii) that the Employer matching Contributions credited to the Account do not exceed the applicable limit on such contributions prescribed in Code Section 401(m) (unless the Employer is a Church or the Plan is a governmental plan within the meaning of Code Section 414(d) that is maintained by a state or local government or a political subdivision thereof (or an agency or instrumentality thereof), ("State Governmental Plan"); and (iv) that Employer Contributions to an Account (together with contributions made on behalf of such Participant to other "defined contribution" plans under the Code) do not exceed the limitations on annual additions contained in Code Section 415(c) and the Treasury regulations thereunder, subject to Code Section 415(k)(4). The Participant or the Employer, whichever is responsible under the Plan, shall have sole responsibility for determining that the aggregate "elective deferrals" made on the Participant's behalf by the Employer, together with those made by any other employer, do not exceed the applicable limit on such elective deferrals prescribed in Code Section 402(g) (as modified by Code Section 414(v)) for that year. If any portion of the Employer's Contribution to the Account for any taxable year (including salary reduction Contributions) constitutes an excess contribution or excess aggregate contribution subject to tax under Code Section 4973 or Code Section 4979, the Custodian, at the direction of the Employer, shall pay to the Participant from his Account the amount of such excess contribution and all income attributable thereto that is derived from Employer Contributions pursuant to a salary reduction agreement, and, to the extent that an excess contribution or excess aggregate contribution remains, the Custodian shall pay to the Employer from the Account the amount of such remaining excess contribution and the income attributable thereto. Effective for Plan years beginning after December 31, 2007 for purposes of determining corrective distributions of "excess contributions," and "excess aggregate contributions," the Employer shall calculate the income or loss on such amount only through the end of the taxable year in which such excess amounts were contributed to the Plan. The Custodian shall make such payment only upon timely receipt from the Employer of a notice to the Custodian made in accordance with Section 7.2(a) that the Account holds excess contributions, which notice must specify the amount of the excess contribution and of any income attributable thereto, request that the excess contribution be distributed, and designate from which subaccount such distribution shall be made. Contributions by the Employer on behalf of the Participant shall not exceed the limits on contributions described in this paragraph; failure to comply with these limits could result in disqualification of the account for federal tax purposes.

3.2. **Nature of Contributions.** All Contributions made pursuant to this Agreement shall be in cash (which includes transmissions of Contributions by Automated Clearing House ("ACH"), by a wire order trade, or by any other electronic means acceptable to the Custodian). Notwithstanding the foregoing, Contributions other than Salary Reduction Contributions may also be made as otherwise permitted by the Custodian. The Participant shall at all times have a 100% nonforfeitable right to all amounts credited to his or her Account attributable to Employer Contributions made pursuant to a salary reduction agreement and to transfer or rollover contributions. The Participant shall have a vested right to amounts credited to his or her Account attributable to other Employer Contributions in accordance with the terms of the Plan.

3.3. **Nondiscrimination.**

(a.) **Salary Reduction Contributions.** If the Employer permits Participants to make Salary Reduction Contributions, the Employer (unless the Employer is a Church) must permit each individual employed by the Employer who is not an "excluded individual," as defined below, to make a salary reduction Contribution of more than \$200 pursuant to a salary reduction agreement to a Custodial Account or Annuity Contract provided by a Designated Vendor. An "excluded individual" is any Employee of the Employer who (i) is eligible to participate in an eligible deferred compensation plan as described in Code Section 457, a qualified cash or deferred arrangement as described in Code Section 401(k), or another 403(b) annuity contract or custodial account, (ii) is a nonresident alien who receives no earned income (within the meaning of Code Section 911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)), or (iii) is a student performing services described in Code Section 3121(b)(10) or an Employee who normally works less than 20 hours per week.

- (b.) **Other Employer Contributions.** With respect to Contributions other than Salary Reduction Contributions, the Plan (unless the Plan is maintained by a Church or is a State Governmental Plan) must
- (1) not discriminate in favor of highly compensated employees (as defined in Code Section 414(q)), as required by Code Section 401(a)(4) and (5);
 - (2) satisfy the compensation limits of Code Section 401(a)(17);
 - (3) satisfy the minimum participation requirements of Code Section 401(a)(26) at all times when that Code section is applicable;
 - (4) to the extent the Employer makes any matching contributions under the Plan, satisfy the special nondiscrimination test for Employer matching contributions, as required by Code Section 401(m), to the extent applicable; and
 - (5) benefit at least 70% of the employees of the Employer who are not highly compensated employees (as defined in Code Section 414(q)), benefit a percentage of employees of the Employer who are not highly compensated employees that is at least 70% of the percentage of highly compensated employees of the Employer benefiting under the Plan, or satisfy the "average benefit percentage test," all as required by Code Section 410(b).

In applying these nondiscrimination rules above, subject to the conditions applicable under Code Section 410(b)(4), a student performing services described in Code Section 3121(b)(10) or an Employee who normally works less than 20 hours per week may be excluded.

- 3.4. **Investment Transfers, Exchanges, Plan-to-Plan Transfers and Rollovers.** If and to the extent permitted under the Plan, the Custodian may accept as a Contribution an Investment Transfer as described in Section 5.1, an Exchange that meets the requirements of Section 5.2, a Plan-to-Plan Transfer that meets the requirements of Section 5.3, or a rollover that meets the requirements of Section 5.5; provided that the Participant and/or Employer provides to the Custodian such instructions or information as the Custodian may reasonably require. The Custodian shall accept such Contributions only upon receipt of such certification as it deems necessary, made in accordance with Section 7.2(a), that such Contribution satisfies the applicable Code provisions for such a Contribution. No Account shall accept rollover contributions of after-tax contributions from any eligible retirement plan.

ARTICLE 4: INVESTMENT OF ACCOUNTS

- 4.1. **Direction of Investment.** Amounts credited to the Account under this Agreement shall be invested only in shares of one or more Funds. The Participant (or the Participant's Beneficiary, if applicable) shall direct the Custodian, in accordance with Section 7.2(a) and in accordance with the Plan, to invest the Account in the shares of one or more Funds. For purposes of this Article 4, if permitted under the Plan, the Participant (or Beneficiary) may appoint an agent or designee to act on his or her behalf to direct the Custodian as to the investment and reinvestment of the Account, whose directions the Custodian shall follow upon the Custodian's receipt of notice in accordance with Section 7.2(a) of such agent's or designee's authority. By giving such investment direction (either directly or through such agent or designee), the Participant shall be deemed to have acknowledged receipt of the then current prospectus of each such Fund. The Custodian shall invest the amounts credited to the Account only in accordance with such direction, subject to any minimum investment limitations or other limitations contained in the prospectus for the applicable Fund or imposed by law. The Custodian shall have no duty to invest Account assets other than pursuant to such properly given directions or to advise the Participant in any way as to the investment of Account assets, nor shall the Custodian, its agents, or the Distributor be liable for any loss resulting from the investment of Account assets in accordance with such investment directions. In the absence of proper investment directions, the Custodian may hold Contributions in cash, and shall not be liable for payment of interest thereon, for such period as the Custodian shall determine in accordance with applicable law. If the Custodian has received no such instructions by the end of any such period, the Custodian shall return such Contributions, without interest, to the Employer.
- 4.2. **Change of Investment within the Account.** Subject to and otherwise in accordance with Sections 4.1, 7.2(a), and the Plan, the Participant (or the Participant's Beneficiary, if applicable) may direct the Custodian to change the investment of

all or any portion of the Account from one or more Funds to one or more other Funds. For Investment Transfers, which are investment changes involving a transfer of funds to another Custodial Account or Annuity Contract, see Article 5.

- 4.3. **Reinvestment of Assets.** All cash dividends, capital gains distributions, and other similar distributions received with respect to shares of a Fund credited to the Account shall be reinvested in shares of that Fund unless the Participant (or the Participant's Beneficiary, if applicable) otherwise directs. The Custodian shall elect to take in kind any dividend or other distribution payable either in cash or in kind.
- 4.4. **Registration and Voting of Fund Shares.** All Fund shares credited to the Account shall be registered in the name of the Custodian or its nominee. The Custodian or its agent shall deliver or cause to be delivered to the Employer all notices, financial statements, prospectuses, contracts, proxies, and proxy materials relating to the Fund shares held in the Account. The Employer or Plan Administrator is responsible for delivering these materials to the proper person in accordance with the terms of the Plan. The Custodian shall vote all Fund shares held in the Account only in accordance with instructions from the Employer or the Plan Administrator. Absent such instructions the Custodian is hereby directed to and shall vote such Fund shares for or against any proposition in the same proportion as all Fund shares of the relevant Fund for which instructions have been received.

ARTICLE 5: INVESTMENT TRANSFERS, EXCHANGES, PLAN-TO-PLAN TRANSFERS, AND ROLLOVERS

- 5.1. **Investment Transfers.** If and to the extent permitted under the Plan, the Participant may either (i) direct the Custodian to accept an Investment Transfer or (ii) direct an Investment Transfer of all or such portion of the assets credited to the Account as the Participant specifies in accordance with Section 7.2(a); provided that the Participant provides to the Custodian such other instructions, if any, as the Custodian may reasonably require (which may include the Employer's authorization of the Investment Transfer).
- 5.2. **Exchanges.** If and to the extent permitted under the Plan and provided that the conditions set forth below are satisfied, the Participant may direct that either (i) the Custodian accept an Exchange as a Contribution to the Account or (ii) all or such portion of the assets credited to the Account as the Participant specifies in accordance with Section 7.2(a) be Exchanged; provided that the Participant provides to the Custodian such other instructions, if any, as the Custodian may reasonably require (which may include the Employer's consent to the Exchange). An Exchange is not permitted unless the conditions set forth below are satisfied:
- (a.) the Participant or Beneficiary must have an accumulated benefit immediately after the Exchange that is at least equal to the Account balance of that Participant or Beneficiary immediately before the Exchange (taking into account the accumulated benefit of that Participant or Beneficiary under both the Account and the Annuity Contract or Custodial Account before the Exchange);
 - (b.) the Annuity Contract or Custodial Account maintained by the receiving Vendor is subject to distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being Exchanged; and
 - (c.) the Employer enters into an agreement with the receiving Vendor of the Annuity Contract or Custodial Account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:
 - (1) information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contracts or Custodial Accounts to which contributions have been made by the Employer, to satisfy Code Section 403(b), including the following: (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 6.1(a)); (ii) the Vendor notifying the Employer of any hardship withdrawal under Section 6.1(e) if the withdrawal results in a 6-month suspension of the Participant's right to make Contributions under the Plan; and (iii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's Annuity Contracts or Custodial Accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any Plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 6.1(e); and

(2) information necessary in order for the resulting Annuity Contract or Custodial Account, or any other Annuity Contracts or Custodial Accounts to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following: (i) the amount of any Plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies applicable loan limitations, so that any such additional loan is not a deemed distribution under Code Section 72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax contributions in order for a Vendor to determine the extent to which a distribution is includable in gross income.

5.3. **Plan-to-Plan Transfers.** If and to the extent permitted under the Plan and provided that the conditions set forth below are satisfied, the Participant may direct either (i) that the Custodian accept a Plan-to-Plan Transfer as a Contribution to the Account or (ii) a Plan-to-Plan Transfer from the Plan to another plan described in Code Section 403(b) of all or such portion of the assets credited to the Account as the Participant specifies, in accordance with Section 7.2(a); provided that the receiving Vendor (including the Custodian in the case of a Plan-to-Plan Transfer to the Account) is a Designated Vendor of the transferee plan and that the Participant provides to the Custodian such other instructions, if any, as the Custodian may reasonably require and an acceptance of the successor custodian, trustee, or insurance company (which may include consent to the transfer by the Employer and/or the transferee employer). A Plan-to-Plan Transfer between the Plan and another plan described in Code Section 403(b) (as applicable) is not permitted unless each of the following conditions is satisfied:

- (a.) in the case of a Plan-to-Plan Transfer for an Employee, the Employee is a current employee or former employee of the employer (or the business of the employer) for the receiving plan;
- (b.) in the case of a Plan-to-Plan Transfer for a Beneficiary of a deceased Employee, the Employee was an Employee or former Employee of the employer (or business of the employer) for the receiving plan;
- (c.) the receiving plan provides for the receipt of Plan-to-Plan Transfers;
- (d.) the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the Plan-to-Plan Transfer that is at least equal to the accumulated benefit of that Participant or Beneficiary immediately before the Plan-to-Plan Transfer;
- (e.) the receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under Treas. Reg. 1.403(b)-6, the receiving plan imposes restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan;
- (f.) if a Plan-to-Plan Transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the Plan treats the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the Plan.

5.4. **Transfers to Purchase Permissive Service Credit.** If and to the extent permitted under the Plan, a Participant may direct the Custodian to make a direct trustee-to-trustee transfer of amounts held in his Account to a qualified defined benefit plan that is a governmental plan (as defined in Code Section 414(d)); provided (a) that such a transfer may be made only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3) and (b) the Participant provides to the Custodian such other instructions, if any, as the Custodian may reasonably require (which may include the consent of the Employer and/or the transferee employer). The Custodian shall have no responsibility for the tax treatment to the Participant of any such transfer.

5.5. **Rollovers.**

- (a.) **Rollovers to Account.** If and to the extent permitted under the Plan, the Custodian shall accept rollover Contributions (including rollover amounts transferred directly by the former custodian, trustee or insurer to another) and transfers of assets from an existing Annuity Contract or Custodial Account or Code Section 408 individual retirement account or annuity ("IRA"), a plan qualified under Code Sections 401(a) or 403(a), or an eligible plan under Code Section 457(b) sponsored by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state ("eligible State 457(b) Plan") (each an "eligible retirement plan"), provided that the receiving Annuity Contract

or Custodial Account is eligible to receive such Contributions and the rollover meets the requirements of this Section 5.5. However, the Custodian shall accept such rollovers or transfers only upon receipt of such certification, made in accordance with Section 7.2(a), that such Contribution satisfies the applicable Code provisions for such a rollover Contribution or transfer of assets. No Account shall accept rollover contributions of after-tax contributions or Designated Roth Contributions. Notwithstanding anything herein to the contrary, no rollover from an eligible retirement plan may be made to the Account unless the Custodian is a Designated Vendor.

- (b.) **Rollovers from Account.** In addition, if and to the extent permitted under the Plan, the Participant may direct that all or such portion of the assets credited to the Account as the Participant specifies in accordance with Section 7.2(a) be rolled over (including a rollover by direct transfer) or transferred to any eligible retirement plan that the Participant specifies in accordance with Section 7.2(a), provided that (i) the Participant provides to the Custodian such other instructions, if any, as the Custodian may reasonably require and the acceptance of the successor custodian, trustee, or insurance company; and (ii) if the Participant elects to roll over to an eligible State 457(b) Plan, amounts rolled over hereunder must be accounted for separately.
- (c.) **Direct Rollover Procedure.** If one or more distributions from the Account, to be made in accordance with Section 6.1, constitute "eligible rollover distributions," as defined below, the Custodian shall be responsible for giving to the "distributee," as defined below, a written explanation concerning the direct rollover of such distributions in accordance with Code Section 402(f). The distributee shall be given a period of 30 days following the date such explanation was provided to him or her to elect to have all or a portion of the distribution paid directly to an eligible retirement plan. If the distributee affirmatively elects to make or not to make a direct rollover within said 30 day period, the Custodian shall make payment of such distribution as soon as reasonable after receipt of Employer instructions. If the distributee elects a direct rollover, such election must provide the name of the retirement plan to which such payment is to be made, a representation that the retirement plan is eligible to receive rollover contributions from a 403(b) plan and meets the applicable qualifications of the Code, and such other information and/or documentation as the Custodian may deem necessary to effectuate the direct rollover in accordance with Code Section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code Section 402(c)(8)(B). The distributee's election to make or not to make a direct rollover with respect to one distribution that is part of a series of payments will apply to all future distributions until the distributee subsequently changes the election. If the distributee fails to elect whether or not a distribution is to be paid in a direct rollover within said 30 day period, the distributee will be deemed to have elected not to have any portion of the distribution paid in a direct rollover. If the Participant elects to roll over to an eligible State 457(b) plan, the amounts rolled over must be accounted for separately.
- (d.) **Eligible Rollover Distribution Defined.** "Eligible rollover distribution" means any distribution to a distributee of all or any portion of the distributee's Account, as described in Code Section 402(c)(2) and (4) and regulations thereunder (except that the distribution is from a Code Section 403(b) account rather than from a qualified plan); an "eligible rollover distribution" does not include any distribution (i) that is for a specified period of ten years or more; (ii) to the extent it is required under Code Sections 401(a)(9) and 403(b)(10); (iii) that is one of a series of substantially equal annual or more frequent payments 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 Beneficiary; (iv) that is a hardship distribution; or (v) to the extent it is not includable in gross income unless such amount is transferred in a direct trustee-to-trustee transfer to a defined contribution plan that agrees to separately account for the contributions not included in gross income.
- (e.) **Distributee Defined.** A distributee includes a Participant. In addition, the Participant's surviving spouse or nonspouse Beneficiary and the Participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with respect to the interest of the spouse or former spouse or non-spouse Beneficiary.
- (f.) **Direct Transfers by Nonspouse Beneficiaries.** If and to the extent permitted under the Plan, an individual who is a designated Beneficiary of the Participant and who is not the surviving spouse of the Participant may direct that

a trustee-to-trustee transfer of all or such portion of the assets credited to the Account as such individual specifies in accordance with Section 7.2(a) be made to an individual retirement plan described in Code Section 402(c)(8)(B)(i) or Code Section 402(c)(8)(B)(ii) that is established for the purposes of receiving the distribution on behalf of such individual who is a designated Beneficiary of the Participant and who is not the surviving spouse of the Participant, provided that the Custodian is provided with such other instructions, if any, as the Custodian may reasonably require and with the acceptance of the successor custodian, trustee or insurance company.

- 5.6. **Agent or Designee.** The Participant may appoint an agent or designee to act on his or her behalf to direct that all or a portion of the assets credited to the Account be transferred, Exchanged, or rolled over in accordance with Section 5.2, 5.3, or 5.5, as applicable, to such Annuity Contract or Custodial Account as the agent or designee specifies in accordance with Section 7.2(a); the Custodian shall follow such agent or designee's direction upon the Custodian's receipt of notice satisfactory to the Custodian of such agent's or designee's authority.
- 5.7. **No Representation.** Neither the Custodian, or its agents, nor the Distributor shall have any responsibility for determining that no assets transferred to or from the Account are subject after the transfer to less stringent distribution restrictions than those applicable to the account or contract from which the assets are being transferred, or for the income tax treatment to the Participant of any rollover, Investment Transfer, Exchange, Plan-to-Plan Transfer or transfer to purchase permissive service credit.
- 5.8. **Outstanding Loans or After-Tax Contributions.** Notwithstanding anything herein to the contrary, the Custodian may decline to accept an Exchange, a Plan-to-Plan Transfer, or a rollover from a Custodial Account or Annuity Contract that includes an outstanding loan or after-tax contributions, including Designated Roth Contributions.

ARTICLE 6: DISTRIBUTIONS

- 6.1. **Distribution Events.** Subject to Section 7.2(d) and Section 9.2, the Custodian shall make or commence distribution of assets from the Account only upon receipt of the Employer's instructions given in accordance with Section 7.2(a) for such distribution and of evidence satisfactory to the Custodian that one of the following events has occurred:
- (a.) The Participant has a Severance from Employment;
 - (b.) The Participant has become disabled within the meaning of Code Section 72(m)(7) (e.g., an inability to engage in any substantial gainful activity because of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued or indefinite duration);
 - (c.) The Participant has died;
 - (d.) The Participant has attained age 59½;
 - (e.) If and to the extent permitted under the Plan, the Participant has encountered financial hardship as set forth in Section 6.2, but only with respect to Salary Reduction Contributions (but not earnings thereon) for years beginning after December 31, 1988;
 - (f.) Pursuant to a qualified domestic relations order under Section 9.2 hereof;
 - (g.) If and to the extent permitted under the Plan, a Plan termination; provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative Code Section 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the regulations under Code Section 403(b); or
 - (h.) Effective January 1, 2009, if and to the extent permitted under the Plan, the Participant elects a qualified reservist distribution as defined in Code Section 72(t)(2)(G).

All distributions shall also be subject to the Custodian's right to obtain proper federal income tax withholding election forms from Participants and/or to withhold any income or other taxes it is required to withhold by federal law.

6.2. **Hardship Withdrawals.**

- (a.) **General Rules.** If and to the extent permitted under the Plan, a Participant is eligible to make a hardship withdrawal

to the extent described in this Section 6.2 if the Plan Administrator, who shall have sole responsibility for doing so, determines the withdrawal is for a purpose that is an immediate and heavy financial hardship of the Participant and the withdrawal does not exceed the amount of the financial need, as described in Section 6.2(c). Such election shall be submitted to the Plan Administrator at such time and in such manner as shall be prescribed by the Plan Administrator.

- (b.) **Immediate and Heavy Financial Hardship.** Whether a Participant has an immediate and heavy financial need is to be determined solely by the Plan Administrator based on all the relevant facts and circumstances. The following circumstances have been deemed pursuant to Treas. Reg. 1.401(k)-1(d)(3)(iii)(B) to constitute an immediate and heavy financial hardship of the Participant:
- (1) the payment of tuition, related educational fees, and room and board expenses for the next 12 months of post-secondary education for the Participant, his or her spouse, child, or dependent (as defined in Code Section 152 without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));
 - (2) medical expenses that would otherwise be deductible by the Participant for federal income tax purposes pursuant to Code Section 213 and that are incurred by the Participant, the spouse, or any dependent of the Participant or a distribution necessary for such a person to obtain medical care described in Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of the Participant's "adjusted gross income");
 - (3) the purchase (excluding mortgage payments) of the Participant's principal residence;
 - (4) the need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence;
 - (5) payments for burial or funeral expenses for the Participant's deceased parent, spouse, children, or dependents (as defined in Code Section 152 without regard to Code Section 152(d)(1)(B));
 - (6) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of the Participant's "adjusted gross income");
 - (7) payment of expenses described in Sections 6.2(b)(1), (2), and (5) incurred on behalf of the Participant's named Beneficiary(ies) under the Plan; and
 - (8) any other expense that is deemed to be an immediate and heavy financial need by the Internal Revenue Service.
- (c.) **Distribution Necessary to Satisfy Financial Hardship.** Unless the Plan specifies other methods for determining that the amount of the distribution does not exceed the Participant's financial need, a hardship withdrawal shall be permitted only if the following requirements are satisfied:
- (1) the distribution does not exceed the amount of the immediate and heavy financial hardship expense (including a reasonable amount to enable the Participant to pay taxes and penalties on such withdrawal);
 - (2) the Participant has obtained all distributions other than hardship withdrawals, and all nontaxable loans currently available under all plans maintained by the Employer, unless obtaining such loan would increase the severity of the Participant's hardship; and
 - (3) the Plan and all other plans maintained by the Employer suspend Contributions and other contributions by the Participant for at least six months after the receipt of the hardship withdrawal.

If the Secretary of the Treasury prescribes additional methods for meeting the requirements for hardship withdrawal, such additional methods shall be incorporated herein by reference and shall be deemed to constitute an immediate and heavy financial hardship of the Participant.

- (d.) **Hardship Withdrawal Distributions and Information Exchange.** The Custodian shall make a distribution on account of financial hardship upon receipt of the Plan Administrator's authorization of such withdrawal in accordance with Section 7.2(a). The Plan Administrator shall be solely responsible for determining that the hardship withdrawal is in accordance with the Plan, that the distribution is for an immediate and heavy financial hardship of the Participant, that the

withdrawal does not exceed the amount of the financial need, and that the distribution amount is only of salary reduction contributions to the Plan and not earnings thereon. The Custodian and the Employer shall exchange information to the extent necessary, including in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to Treas. Reg. 1.401(k)-1(d)(3)(iv)(E)), the Custodian notifying the Employer of the withdrawal (the Employer shall be deemed to have been notified of the withdrawal at the time it authorizes such withdrawal).

6.3. **Methods of Distribution.**

- (a.) **Automatic Methods.** Except with respect to Non-ERISA Plans, subject to Section 6.4 below, and unless a Participant (or his or her spouse) elects an optional form of distribution or alternate Beneficiary pursuant to a Qualified Election, distributions from the Account shall be made as follows:
- (1) **Qualified Joint and Survivor Annuity.** A nontransferable fixed or variable annuity contract purchased from an insurance company and delivered to the Participant that provides substantially equal monthly, quarterly, or annual payments (i) for an unmarried Participant, over the life of the Participant or (ii) for a married Participant, over the joint life of the Participant and his or her spouse with a survivor annuity for the life of the spouse in an amount equal to not less than 50% nor more than 100% of the amount payable during the joint lives of the Participant and his or her spouse.
 - (2) **Qualified Preretirement Survivor Annuity.** In the event of the death of a married Participant before distribution to him or her has begun, a nontransferable fixed or variable annuity contract purchased from an insurance company and delivered to the surviving spouse that provides a "Qualified Preretirement Survivor Annuity," as defined in ERISA Section 205(3), commencing on the first day of the month on which the Participant would have attained age 59½, unless after the Participant's death the spouse delivers an election made in accordance with Section 7.2(a) to the Custodian directing that the assets in the Account not be used to purchase such an annuity.
 - (3) **Automatic Rollover of Accounts.** Unless a Plan provides otherwise, subject to Code Section 401(a)(31) notwithstanding (a) or (b) above, if the value of an Account derived from Employer and Participant Contributions exceeds \$1,000 (including rollover contributions) but does not exceed \$5,000 (excluding rollover contributions, unless otherwise provided in the Plan) or such other amount as may be specified in Code Sections 411(a)(11) or 417(e) at the time the Participant has a Severance from Employment and the Participant does not affirmatively elect to have such distribution paid directly to him or her or to an "eligible retirement plan" as provided in Code Section 401(a)(31)(B), the Employer or Plan Administrator may direct the Custodian to distribute the Account to the Participant or to an individual retirement account or annuity under Code Section 408 and/or 408A established for the Participant pursuant to a written agreement between the Employer and the provider of such individual retirement account or annuity that meets the requirements of Code Section 401(a)(31) and the regulations thereunder.
 - (4) **Involuntary Cash-Out of Accounts.** Notwithstanding Sections 6.3(a)(1), (2), or (3) above, if the value of an Account derived from Employer and Participant Contributions does not exceed \$1,000 (or such other amount as may be specified in Code Sections 411(a)(11), 417(e), and 401(a)(31)) at the time the Participant severs employment with his Employer, the Employer or Plan Administrator may direct the Custodian to distribute the Account to the Participant in a single lump sum without regard to the consent of the Participant or the Participant's spouse. For purposes of applying the preceding sentence to distributions, the value of an Account shall be determined without regard to that portion of the Account that is attributable to rollover Contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16), unless the Plan provides otherwise.

- (b.) **Optional Methods.** Subject to Section 6.4, a Participant may elect, pursuant to a Qualified Election unless the Plan is a Non-ERISA Plan (a Qualified Election is not required if the Plan is a Non-ERISA Plan), one of the following forms of distribution, provided that any such distribution shall comply with the applicable Treasury Regulations interpreting Code Section 401(a)(9) concerning minimum distributions and to the extent that any provision of this Agreement conflicts with those regulations, the regulations shall govern (to determine whether the distribution is eligible for a direct rollover or, for nonspouse beneficiaries, a direct transfer, see Section 5.5 above):
- (1) A lump-sum payment in cash or Fund shares of all or any portion of an Account;
 - (2) Substantially equal monthly, quarterly, semiannual, or annual payments in cash or in Fund shares over a period certain not to exceed the life expectancy of the Participant or the joint and last survivor life expectancy of the Participant and the Participant's Beneficiary;
 - (3) Installment payments which may vary in amount (including a lump-sum payment of payments which, in the aggregate, constitute an amount that is less than a Participant's benefit in the Account). Subject to Section 6.4, the payments made pursuant to this Section 6.3(b)(3) are not required to be paid over a period certain or at regular intervals of time but may not exceed the life expectancy of the Participant or the joint and last survivor life expectancy of the Participant and the Participant's Beneficiary; or
 - (4) A nontransferable fixed or variable annuity contract, purchased from an insurance company and delivered to the Participant, that provides substantially equal monthly, quarterly, semiannual, or annual payments over the life of the Participant or over the joint lives of the Participant and his or her Beneficiary with a survivor annuity for the life of the survivor in an amount equal to not less than 50% nor more than 100% of the amount payable during the joint lives of the Participant and Beneficiary, and that otherwise satisfies applicable regulations and rulings under Code Sections 403(b) and 401(a)(9). Such an annuity also may provide for an annuity certain feature for a period not exceeding the life expectancy of the Participant or, if the Participant has a Beneficiary, the joint life and last survivor expectancy of the Participant and the Beneficiary. Any annuity contract distributed under this Agreement must provide for nonincreasing payments. If this annuity option is selected, the Custodian shall transfer the assets credited to the Account under this Agreement to the annuity provider upon receipt of the Employer's instructions given in accordance with Section 7.2(a).
- (c.) **Beneficiary's Election.** If the Participant has not begun to receive a distribution in the form of an annuity contract (Section 6.3(a) or Section 6.3(b)(3) above) and distribution is not required to be made to the Beneficiary pursuant to Section 6.3(a)(2) or in a form specified by the Participant, the Participant's Beneficiary shall be entitled to elect the method of distribution of all assets in the Account remaining at the death of the Participant.
- (d.) **Disclosure Concerning Distribution Methods.** Except with respect to Non-ERISA Plans, upon receipt of notification that a distribution event, as described in Section 6.1 above, has occurred, the Employer or Plan Administrator shall provide to the Participant a written explanation of the terms and conditions of the qualified joint and survivor annuity, the Participant's right to make, and the effect of, an election to receive distributions in a form other than such an annuity, the right of the Participant's spouse, if any, to withhold consent to such an election, and the Participant's right to revoke an election prior to commencement of distributions. A comparable description of the qualified preretirement survivor annuity shall be provided within the applicable election period specified in ERISA Section 205.
- 6.4. **Required Distributions.** In general, distributions from the Account must be made as required pursuant to the minimum distribution rules under Code Section 403(b)(10), Treas. Reg. 1.403(b)-6, and Code Section 401(a)(9) and Treas. Reg. 1.401(a)(9)-1 to 1.401(a)(9)-8 (the "minimum distribution rules"), as described in this Section 6.4. The minimum distribution rules permit calculation of minimum required distributions by excluding the Account balance valued as of December 31, 1986 but including all earnings (whether on contributions made before or after January 1, 1987) and contributions after December 31, 1986; the amount attributed to the pre-1987 account balance must be reduced under this method by the amount of any distributions from the Account after December 31, 1986 that are not required under the minimum distribution rules. This required minimum distribution calculation method is permitted only if records of the Account have been kept that

are sufficient to enable identification and maintenance of the pre-1987 account balance amount. The Custodian has not maintained such records. Alternatively, the other applicable minimum distribution rules of Treas. Reg. 1.403(b)-6 can be applied to the Participant's entire Account balance; this is the only method of calculation available if the pre-1987 account balance amount either cannot be, or is not, calculated. The incidental benefit provisions of Code Section 403(b)(10), Treas. Reg. 1.403(b)-6(g), and Treas. Reg. 1.401-1(b)(1)(i) (the "incidental benefit rule") shall also apply to the Account to the extent required thereunder. The minimum distribution rules, the incidental benefit rule, and any other regulations or rulings then in effect thereunder, are incorporated herein by this reference, and shall be deemed to modify the provisions in this Section to the extent such provisions are inconsistent with said rules. If the Participant has more than one Annuity Contract or Custodial Account ("403(b)"), the Participant may elect to receive the total amount of the required minimum distributions under all of the 403(b)s from any one or more of the 403(b)s, as provided in Treas. Reg. 1.403(b)-6(e)(7). Distribution instructions for the first required minimum distribution must be received, in accordance with Section 7.2(a), by the Custodian by March 1 in order to be processed by April 1.

- (a.) **Required Beginning Date.** The applicable Account balance of a Participant must be, or commence to be, distributed by April 1 of the calendar year next following the later of the calendar year in which the Participant attains age 70½ or the calendar year in which he retires from employment with the Employer (the "required beginning date"). The minimum amount required to be distributed once the Participant reaches the required beginning date is described in this Section 6.4. Any monthly, quarterly, or semiannual payment shall be one-twelfth, one-fourth, or one-half, respectively, of the relevant annual payment.
- (b.) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Section 6.4, 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.
- (c.) **Death Of Participant Before Distributions Begin.** 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:
 - (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as provided in the Agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, except as provided in the Agreement, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies.
 - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) 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 6.4(c), other than Section 6.4(c)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 6.4(c) and Sections 6.4(f) and 6.4(g), unless Section 6.4(c)(4) above applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.4(c)(4) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (i) above. If distributions under an annuity 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 subsection (i) above, the date distributions are considered to begin is the date distributions actually commence.

- (d.) **Forms Of Distributions.** 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 (i) for distributions beginning prior

to the Participant's death, the calendar year containing such Participant's required beginning date, or (ii) for distributions beginning after a Participant's death, the calendar year distributions must begin under Code Section 401(a)(9) (the "first distribution calendar year"), distributions will be made in accordance with this Section 6.4. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9).

- (e.) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that is required be distributed for each Calendar Year for which a distribution is required ("distribution calendar year") is the lesser of
- (1) The quotient obtained by dividing the Account balance by the distribution period in the Uniform Lifetime Table set forth in Treas. Reg. 1.401(a)(9)-9, 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 Account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. 1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.
- (f.) **Lifetime Required Minimum Distributions Continue Through Year Of Participant's Death.** Required minimum distributions will be determined under this Section 6.4(f) and Section 6.4(g) beginning with the first distribution calendar year and up to and including a subsequent distribution calendar year that includes the Participant's date of death.
- (g.) **Death On Or After Distributions Begin – Participant Survived by Designated Beneficiary.**
- (1) If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that is required to be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the 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:
 - (2) 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.
 - (3) 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.
 - (4) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designed 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.
- (h.) **Death On or After Date Distributions Begin – No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the 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.
- (i.) **Death Before Date Distributions Begin.**
- (1) **Participant Survived By Designated Beneficiary.** Except as provided in the Agreement, if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that is required to be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by

dividing the Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 6.4(g)(1).

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

(3) **Death Of Surviving Spouse Before Distributions To Surviving Spouse Are Required To Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.4(c)(1), this Section 6.4(i)(3) will apply as if the surviving spouse were the Participant.

(j.) **Designated Beneficiary.** The individual who is designated as the Beneficiary under Section 1.4 hereof and is the designated Beneficiary under Code Section 401(a)(9) and Treas. Reg. 1.401(a)(9)-1, Q&A-4.

(k.) **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 6.4(c). The required minimum distribution for the Participant's First Distribution Calendar Year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(l.) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treas. Reg. 1.401(a)(9)-9.

(m.) **Account Balance.** The account balance as of the last day in the calendar year immediately preceding the distribution calendar year increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in such year after and decreased by distributions made in such year. The account balance for the year includes any amounts rolled over or transferred to such year.

(n.) **Waiver of 2009 Required Minimum Distribution.** If and to the extent set forth in the Plan, a Participant or Beneficiary who would have been required to receive a required minimum distribution for 2009 but for the enactment of Code Section 401(a)(9)(H) ('2009 RMD'), and who would have satisfied that requirement by receiving a distribution that is (1) equal to the 2009 RMD or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMD) 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"), shall not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. If and to the extent set forth in the Plan, the Plan Administrator will give Participants and Beneficiaries described in the preceding sentence the opportunity to elect to receive the distributions described in the preceding sentence. If and to the extent set forth in the Plan, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

6.5. **Multiple Beneficiaries.** If there are two or more Beneficiaries who are simultaneously entitled to receive a benefit upon the death of the Participant or a prior Beneficiary, that benefit shall be segregated into separate accounts representing each Beneficiary's separate interest in that benefit. Following such segregation of benefits, each Beneficiary's separate account shall be maintained as though it were a benefit payable solely to that Beneficiary, and no Beneficiary shall have any interest in or claim to any portion of the original benefit other than the separate account representing his or her interest in that benefit.

6.6. **Loans.** Loans from the Account are not permitted under this Agreement.

ARTICLE 7: THE CUSTODIAN

7.1. **Duties of the Custodian.** The Custodian shall

- (a.) Receive Contributions transmitted to it in accordance with this Agreement;
- (b.) Invest and reinvest Account assets in Fund shares in accordance with this Agreement;
- (c.) Make distributions from the Account in accordance with instructions from the Employer or the Plan Administrator given in accordance with Section 7.2(a);
- (d.) Maintain accurate records of all the transactions in the Account;
- (e.) File with the Internal Revenue Service and/or any other governmental agency such returns, reports, forms, and other information as may be required of it as Custodian; provided that the necessary information is provided by the Employer, if applicable;
- (f.) Provide to the Employer or the Participant at least one time each calendar year a statement of all transactions in the Account during the preceding year and a statement showing the value of assets held in the Account as of the end of such year. To the extent permitted by law, 30 days after providing the Employer or Participant, as applicable, with the statements described above, the Custodian shall be released and discharged from all liability to the Employer and the Participant or any third party as to the matters contained in such statement unless the Employer or Participant, as applicable, files objections thereto, given in accordance with Section 7.2(a), with the Custodian within such 30-day period; and
- (g.) Perform all other duties and services consistent with the purposes and intentions of this Agreement. The Custodian may perform any of its administrative duties through other persons designated by the Custodian from time to time.

7.2. **Limitations on Duties and Liabilities.** As used in this Section 7.2, the terms "Custodian" and "Distributor" shall include their agents, affiliates, successors, assigns, officers, directors, and employees.

- (a.) All notices, elections, declarations, requests, applications, forms, designations (including Beneficiary designations), instructions and directions (including investment, distribution and other directions), as well as all other communications (collectively, "communication" or "communications") to or from the Custodian or the Distributor, as applicable, shall be made by such method as the Custodian or the Distributor, as applicable, may from time to time prescribe or permit, which methods shall include in writing, telephonically, or electronically, to the extent such method is in accordance with applicable law. The Custodian shall be entitled to rely on any such communication filed with or otherwise received by it and believed by it to be genuine or properly given, including but not limited to any such communication from an agent or designee appointed in accordance with Section 4.1 or Section 5.6, and shall have no duty of inquiry with respect to any of the matters stated therein or the consequences to the Participant or Beneficiary thereof, and shall be fully protected in acting or omitting to take any action in reliance upon any such communication. Any such communication may be proved by original copy or reproduced copy thereof, including, and without limitation, a photocopy, a facsimile transmission, an electronic image, or any other electronic reproduction. For the purposes of this Agreement, the Custodian and/or the Distributor, as applicable, may (but are not required to) give the same effect to a telephonic instruction, voice recording, or any instruction received through electronic commerce as it gives to a written instruction, and the Custodian's and/or the Distributor's, as applicable, action in doing so shall be protected to the same extent as if such telephonic or electronic instructions were, in fact, a written instruction. Any such instruction may be proved by audio-recorded tape, electronic reproduction, or other means acceptable to the Custodian, or the Distributor, as applicable, as the case may be. If any disputes arise as to the person(s) who constitute the Beneficiary(ies) hereunder, the proper allocation or disposition of the Account assets, or otherwise relating to the rights or obligations of persons with respect to the Account, it shall be solely the responsibility of the affected person(s) to seek judicial or other appropriate resolution of such dispute, and neither the Custodian nor any affiliate thereof shall have any such responsibility or authority; provided that, in the event such a dispute arises and none of the affected persons seeks appropriate resolution, the Custodian shall have the right, but not any obligation, to apply to a court of competent jurisdiction for a determination of the relative rights

and obligations of the affected persons and the resolution of such dispute. Further, to the extent agreed to by the Custodian or Distributor (as applicable), in each instance concerning forms, documents, notices, disclosure, or other communication ("Communications," in the aggregate), including those documents that require a signature by any party, between the Custodian or Distributor and the Employer maintaining the Plan or a Participant, in which this Agreement provides that such Communications must be "written" or "in writing," such Communications will be permitted telephonically, electronically, or through any other similar method to the extent such method is in accordance with applicable law (including the Electronic Signatures in Global and National Commerce Act of 2000 ("E-Sign Act"), applicable Internal Revenue Service or Department of Treasury Regulations, and Department of Labor regulations to the extent they are applicable to ERISA Plans).

- (b.) The Custodian shall be fully protected in acting or omitting to take any action in reliance upon any direction, instruction, or other document or order believed by the Custodian to be genuine or properly given. The Custodian shall also be fully protected in acting or omitting to take any action in reliance on its belief that any such direction, instruction, document, or other order either is not genuine or is not properly given. The Custodian shall not be required to carry out any instructions not given in accordance with this Agreement and neither the Custodian nor the Distributor shall be liable for loss of income or for appreciation or depreciation in Fund Share value that shall result from the Custodian's failure to follow instructions not given in accordance with this Agreement. If instructions are received that, in the opinion of the Custodian, are unclear, neither the Custodian nor the Distributor shall be liable for loss of income or for appreciation or depreciation in Fund Share value during the period preceding the Custodian's receipt of clarification of the instructions.
- (c.) Neither the Custodian nor the Distributor shall have any responsibility with regard to the initial or continued qualification of the Account under Code Section 403(b)(7).
- (d.) Neither the Custodian nor the Distributor shall be held responsible for determining the amount, character, or timing of any distribution to the Participant. The Custodian shall have no responsibility to make any distribution to or process any withdrawal by the Participant or Beneficiary unless and until it receives the requisite instructions given in accordance with this Agreement and any and all applications, certificates, tax waivers, signature guarantees, and other documents deemed necessary or advisable by the Custodian.
- (e.) The Custodian shall neither assume nor have any duty to inquire about any matter arising under the Agreement.
- (f.) To the extent permitted by law, the Employer and the Participant shall fully indemnify the Custodian and the Distributor and hold them harmless from and against any and all liability whatsoever, including without limitation damages, amounts agreed upon in settlement, attorneys' fees, court costs, and other fees and expenses, which may arise either (i) in connection with this Agreement and matters which it contemplates (except for direct damages solely and directly caused by the indemnitee's negligence, willful misconduct, actual fraud, or criminal activity) or (ii) with respect to making or failing to make any distribution other than for failure to make a distribution in accordance with instructions therefore which are in full compliance with the provisions of this Agreement.
- (g.) Except as required by law, neither the Custodian nor the Distributor shall be obligated or expected to commence or defend a legal action or proceeding in connection with this Agreement, unless the Custodian, the Distributor, the Employer, and the Participant or Beneficiary agree that the Custodian or the Distributor, as applicable, will defend a given legal action and the Custodian or the Distributor, as applicable, is fully indemnified for so doing to its satisfaction from and against any and all liability whatsoever, including without limitation damages, amounts agreed upon in settlement, attorneys' fees, court costs, and other fees and expenses. The Employer, the Participant and the Beneficiary, as applicable, shall notify the Custodian and the Distributor immediately upon the receipt of notice of any such legal action or proceeding. Each of the Employer, the Participant, and the Beneficiary shall furnish any requested information to, and otherwise cooperate fully with, the Custodian and the Distributor in connection with their defense and/or settlement of any such legal action or proceeding. The Custodian and the Distributor shall have the sole right to control the defense and/or settlement of any such legal action or proceeding, including without limitation the right to select counsel.

(h.) **IN NO EVENT SHALL THE CUSTODIAN OR THE DISTRIBUTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SUFFERED OR INCURRED BY THE EMPLOYER, THE PARTICIPANT, THE BENEFICIARY OR ANY OTHER PARTY.** This provision shall survive termination of this Agreement.

- 7.3. **Compensation.** In consideration for its services hereunder, the Custodian shall be entitled to receive the applicable fees specified in its fee schedule at the time the Application is completed, or in accordance with any fee schedule subsequently adopted by the Custodian, upon 30 days' notice to the Employer in accordance with Section 7.2(a). The Employer and/or Participant, as permitted in the Plan, may pay the Custodian's fee directly; if not so paid, said fee shall be payable from the Account.
- 7.4. **Expenses.** The Custodian shall have a right to pay out of the Account all expenses, fees and administrative costs incurred by the Custodian in the performance of its duties as Custodian (including fees for legal services rendered to the Custodian) or taxes levied or assessed upon or in respect of the Account. The Custodian is authorized, to the extent permitted under the terms of the Plan, either to redeem Fund Shares and use the proceeds of redemption to pay the foregoing expenses, fees, administrative costs, or taxes, or to charge the Participant directly therefor. In addition, the Custodian may, upon such terms and conditions (including without limitation receipt of such documentation) as the Custodian deems necessary, agree to pay directly from the Account certain advisory or other similar fees at the direction, given in accordance with Section 7.2(a), of the Employer or Participant, whichever the Plan provides, or his or her designee.
- 7.5. **Resignation and Removal of the Custodian.** The Employer delegates to the Distributor the power and authority to remove the Custodian. The Distributor may remove the Custodian hereunder at any time upon notice to the Custodian. The Custodian may resign at any time upon notice to the Distributor. Any such notice of resignation or removal shall take effect on the date specified therein, which shall not be less than 30 days after the delivery thereof, unless such notice shall be waived by the party entitled to the notice. Upon such resignation or removal of the Custodian, the Distributor shall designate a successor custodian qualified pursuant to Section 1.9 of this Agreement, which successor custodian shall accept such appointment in accordance with Section 7.2(a). Upon receipt by the Custodian of the acceptance of appointment by the successor custodian, the Custodian shall transfer to the successor custodian the assets and records (or copies thereof) of the Account; provided, however, that the Custodian may retain whatever assets it reasonably deems necessary for payment of its fees, costs, expenses, compensation, and any other liabilities which constitute a charge on or against the assets of the Account or on or against the Custodian.

ARTICLE 8: AMENDMENT AND TERMINATION

- 8.1. **Amendment.** The Employer and the Participant delegate to the Distributor the power to amend this Agreement (including retroactive amendments) in whole or in part at any time. The Distributor shall provide prompt notice and a copy of any such amendment to the Employer and Custodian in accordance with Section 7.2(a). The Employer shall provide a notice and a copy of any such amendment to the Participant as soon as practicable after the Employer's receipt of notice from the Distributor. The Employer shall be deemed to have accepted such amendment unless the Employer objects thereto, in accordance with Section 7.2(a), to the Distributor within 30 days after the date the amendment is transmitted to the Employer. The Employer may amend the Agreement by amendment of the Application, which amended Application must be completed and submitted in accordance with Article 2 to be effective.

However, no amendment shall be made that (i) would impose any additional duties on the Custodian without its consent, given in accordance with Section 7.2(a); (ii) would cause or permit any part of the Account to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participant or Beneficiary, except to the extent required by law, or cause or permit any portion of such assets to revert to or become the property of the Employer; or (iii) would retroactively deprive any Participant or Beneficiary of any benefit to which he or she is entitled under the Agreement, unless such amendment is necessary to conform the Agreement to or satisfy the conditions of any law, governmental regulation, or ruling.

- 8.2. **Termination.** The Account of a Participant shall automatically terminate when all assets held in the Account have been distributed. In addition, the Employer directs that the Accounts of Participants shall terminate and be distributed by the Custodian upon the occurrence of any of the following events: (i) the Employer's termination of the Plan and this Agreement; (ii) an order or a direction by the Department of Labor, by a trustee in bankruptcy, or by a court of competent jurisdiction that requires a distribution of Plan assets; (iii) the merger, consolidation, or reorganization of the Employer, unless all assets are

merged into the surviving entity's plan and custody agreement or the surviving entity adopts the Plan and this Agreement within a reasonable period following such merger, consolidation, or reorganization; and/or (iv) when the Employer or Plan Administrator fails to provide such rollover, transfer, or distribution instructions following the liquidation, dissolution, or complete cessation of the Employer's business. Upon such termination, the Custodian shall distribute or transfer all assets in the Accounts in accordance with the directions of the Employer or the Plan Administrator, or in the absence of such instructions, in accordance with the directions of the Participants or the Participants' Beneficiaries and in accordance with Article 6.

ARTICLE 9: MISCELLANEOUS

- 9.1. **Nonalienability; Exclusive Benefit.** No interest of the Participant or Beneficiary in the Account shall be subject in any manner to anticipation, assignment, alienation, sale, transfer, pledge, encumbrance, trustee process, garnishment, attachment, execution, or levy of any kind, except in accordance with the terms of a "qualified domestic relations order," as provided under ERISA Section 206(d), with regard to payments of the expenses of the Custodian or its agents as authorized under this Agreement, or to the extent otherwise required by law. The assets of the Account shall not be used for or diverted to purposes other than for the exclusive benefit of the Participant or the Participant's Beneficiary.
- 9.2. **Qualified Domestic Relations Orders.**
- (a.) **Right to Benefit.** The right to receive benefits payable hereunder may be assigned to the Participant's spouse, former spouse, child, or other dependent ("alternate payee") pursuant to the terms of a domestic relations order if the order is determined to be a qualified domestic relations order within the meaning of Code Section 414(p) and ERISA Section 206 ("QDRO"). The existence and validity of a QDRO shall be determined by the Employer or other person designated as the Plan Administrator. Any distribution pursuant to a QDRO shall be effected only at the direction of the Employer or other Plan Administrator given in accordance with Section 7.2(a), accompanied by such other information as the Custodian may reasonably require including, without limitation, a statement that the distribution is subject to and in accordance with Code Section 414(p) and ERISA Section 206.
- (b.) **Distribution Pursuant to Order.** Any benefit payable from the Account to an alternate payee pursuant to the terms of a QDRO shall be payable as soon as administratively reasonable after the order is determined to be a QDRO, without regard to whether the Participant has reached his or her "earliest retirement age" as defined in Code Section 414(p) and ERISA Section 206(d). The actual time and manner of such payment shall be as provided under the QDRO consistent with applicable law and the distribution provisions of this Agreement.
- 9.3. **Claims Procedure.**
- (a.) **In General.**
- (1) The Plan Administrator or its delegate will review a Participant's or Beneficiary's claim for benefits within a reasonable period of time not to exceed 90 days. If special circumstances require an extension of time, the Plan Administrator may take up to an additional 90 days, in which case the Participant or Beneficiary will be notified of the delay prior to termination of the initial 90-day period. The extension notice shall indicate (i) the special circumstances requiring the extension and (ii) the date by which the Plan Administrator expects to reach a benefit determination.
- (2) If a claim is wholly or partially denied, the Participant or Beneficiary will receive in writing (i) the specific reason or reasons for denial; (ii) the specific reference to the provision(s) of the Agreement on which the denial is based; (iii) a description of any additional materials or information required before the claim can be processed and an explanation of why such material or information is required; and (iv) a list of the steps to be taken if the Participant or Beneficiary wants the denial of claims reviewed including a statement of the claimant's right to bring litigation under Section 502(c) of ERISA.
- (3) If a claim has been denied, the claimant has the right to request a review of the denied claim, to be represented by legal counsel, to review relevant documents (within the meaning of Section 2560.503-1(m)(8) of the ERISA Regulations), and to submit any comments in writing. To obtain a review, the claimant must mail or deliver a letter

for review to the Plan Administrator within 60 days from the receipt of the denial of claim or from the time the claim is deemed denied.

- (4) Upon receipt of the request for review of a denied claim, the Plan Administrator will make a prompt decision based upon all the comments and documents submitted without regard to whether such items were previously provided within 60 days after the request for review is received, unless special circumstances require an extension of time of up to an additional 60 days, in which case the claimant will receive an extension notice prior to the end of the 60 day period. The extension notice shall indicate (i) the special circumstances necessitating the extension and (ii) the date by which the Plan Administrator expects to render a benefit determination.
- (5) If on review of a denied claim the Plan Administrator again determines that the claim should be denied, the notice of that decision shall be written in a manner calculated to be easily understood by the claimant and will give specific reasons for the denial as well as refer to the provision(s) of the Agreement on which the decision is based. An adverse benefit decision on appeal shall be written in a manner calculated to be understood by the claimant and shall set forth (i) the specific reason or reasons for the adverse determination, (ii) the specific reference to the Plan provisions on which the denial is based, (iii) 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 (the relevance of a document, record, or other information will be determined in accordance with Section 2560.503-1(m)(8) of the ERISA Regulations) and (iv) a statement of the claimant's right to bring a legal action under Section 502(a) of ERISA.

(b.) Disability Claim Procedures.

- (1) If a claim for disability benefits is denied, an initial reviewer of the Plan Administrator (the "initial reviewer") shall notify the claimant, in accordance with Section 2560.503-1(g) of the ERISA Regulations, of the Plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the Plan. This period may be extended by the initial reviewer for up to 30 days, provided that the initial reviewer both determines that such an extension is necessary due to matters beyond the control of the initial reviewer and notifies the claimant prior to the expiration of the initial 45-day period of the circumstances requiring the extension of time and the date by which the initial reviewer expects to render a decision. If prior to the end of the first 30-day extension period, the initial reviewer determines that, due to matters beyond the control of the initial reviewer, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the initial reviewer notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the initial reviewer expects to render a decision. In the case of any extension, the notice shall specifically explain the standards on which entitlement to a disability benefit is based, the unresolved issues that prevent a decision on the claim and the additional information needed to resolve those issues, and the fact that the claimant will be allowed at least 45 days within which to provide the specified information.
- (2) Any claimant whose claim for a disability retirement benefit described in paragraph (a) is denied may, within 180 days after the claimant's receipt of notice of the denial; request a review of the denial by notice given in writing to the initial reviewer. Such review shall (i) not afford deference to the initial adverse benefit determination; (ii) provide for the identification of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with the initial adverse determination, without regard to whether the advice was relied upon in making the initial determination; and (iii) shall be conducted by an individual or committee who is neither the individual who made the adverse benefit determination that is the subject of the appeal nor the subordinate of such individual ("appeal reviewer"). In deciding an appeal that is based in whole or in part on a medical judgment, the appeal reviewer shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment and who was not consulted in connection with the initial adverse determination and is not the subordinate of any such individual.

- 9.4. **Applicable Law.** To the extent not superseded by federal law, this Agreement shall be governed by the laws of the State of New Hampshire generally with respect to the duties, rights, and responsibilities of the Custodian, but shall be governed by the laws of the Commonwealth of Massachusetts with respect to matters relating to or arising out of any payment(s) made or to be made from the Account.
- 9.5. **Successors.** This Agreement shall be binding upon and inure to the benefit of the successors in interest of the parties hereto.
- 9.6. **Construction.** It is intended that this Agreement qualify as a Custodial Account under Code Section 403(b)(7). Pursuant to that intent, this Agreement shall be construed and administered in accordance with, and limited by, all applicable laws.
- 9.7. **Separability.** If any provision of this Agreement shall be held invalid or illegal for any reason, the Agreement shall be construed and enforced as if such invalid or illegal provision had never been included in this Agreement, and such determination shall not affect any remaining provisions of this Agreement.
- 9.8. **Retention and Proof of Agreement and Employer Application.** The Custodian and the Distributor reserve the right to keep all records related to the Agreement and the Employer Application in such form or forms as the Custodian and/or the Distributor may elect, including, without limitation, electronically, to the extent permissible by law (including Section 2520.107-1 of the Department of Labor Regulations or such other applicable guidance as may be in effect from time to time) and destroy any paper records, which are kept electronically, without the necessity of retaining an original or written copy. The electronic recordkeeping system will ensure the integrity, accuracy, authenticity, and reliability of the underlying records. Records will be maintained in reasonable order and in a safe and accessible place, so that they can be inspected or examined if necessary. Electronic records will be readily convertible into legible and readable paper copy as necessary to satisfy any requirements of the law. This Agreement and the signatures on the Employer Application may be proved by original copy or reproduced copy, including, without limitation, a photocopy, a facsimile transmission, an electronic image, or any other electronic reproduction.
- 9.9. **Written Communications.** All references in this Agreement to a requirement that notices, explanations, consents, elections, designations, waivers, instructions, and directions between a Participant and/or a Beneficiary and the Employer or Plan Administrator are to be written or in writing are subject to the Department of Labor's Final Rules Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (Regulation 2520.104b-1 and 2520.107-1 printed in 67 FR 17264, April 9, 2002), the IRS Final Regulations on New Technologies in Retirement Plans (T.D. 8873 printed in 65 FR 6001, February 8, 2000), Proposed Treasury Regulation §1.401(a)-21 and any other relevant IRS regulations, and the Electronic Signatures in Global and National Commerce Act of 1999 (Pub. L. No. 106-229, 114 Stat. 404). To the extent permitted in such regulations, such communications may be provided electronically.
- 9.10. **Death Benefits.** If a Participant dies on or after January 1, 2007, while performing Qualified Military Service (as defined below), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan had the Participant resumed employment with the Employer and then terminated employment on account of death. For purposes of this Agreement, "Qualified Military Service" shall mean any service in the "uniformed services" (as defined in Chapter 43 of Title 38 of the United States Code) by any Employee if such Employee is entitled to reemployment rights under such Chapter with respect to the Employer for such service.

