



# **401(a) DEFINED CONTRIBUTION PLAN**

**401(a) DEFINED CONTRIBUTION PROGRAM  
(PROFIT SHARING 10-05) W/SELF-DIRECTED  
BROKERAGE  
JANUARY 1, 2007**

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## ARTICLE I: PURPOSE

Effective as of the Effective Date, the Employer hereby adopts a defined contribution plan for the benefit of its eligible employees (the “Plan”). The purpose of the Plan is to provide funds at retirement for eligible employees and, in the event of death, to provide funds for their beneficiaries all through an arrangement by which contributions are made to the Plan by the Employer and Eligible Employees (if so elected by the Employer).

This Plan is intended to be a money purchase pension plan within the meaning of Treas. Reg. Section 1.401-1(b)(1)(i) and is intended to meet the applicable requirements of Sections 401(a), 414(h) and 501(a) of the Internal Revenue Code of 1986, as amended that are applicable to government plans.

## ARTICLE II: DEFINITIONS

For purposes of the Plan, the following terms, when used with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context.

**“Account”** means the amount of money or other property set aside for the Participant in the Trust Fund, evidenced by the last balance posted to the account established for such individual. The Third Party Service Provider may establish and maintain separate subaccounts for each such individual. “Account” shall refer to the aggregate of all separate subaccounts or to individual, separate subaccounts, as may be appropriate in context.

**“Active Participant”** means, for any Plan Year (or any portion thereof), any Eligible Employee who, pursuant to the terms of Article III, has been admitted to, and not removed from, active participation in the Plan since the last date his employment commenced or recommenced.

**“Adoption Agreement”** means the document executed by each Employer adopting this Plan. The terms of the Plan and Trust, as modified by the terms of an adopting Employer’s Adoption Agreement shall constitute a separate Plan and Trust to be construed as a single Plan.

**“Affiliate”** means the Employer and any company, person or organization which is a member of the same controlled group of corporations [within the meaning of Code Section 414(b)] as the Employer; is a trade or business (whether or not incorporated) which controls, is controlled by or is under common control with [within the meaning of Code Section 414(c)] the Employer; is a member of an affiliated service group [as defined in Code Section 414(m)] which includes the Employer; or is required to be aggregated with the Employer pursuant to regulations promulgated under Code Section 414(o). Solely for purposes of Code Section 415 and Section 5.03 of the Plan, the term “Affiliate” as defined in this Section shall be deemed to include corporations that would be Affiliates if the phrase “more than 50 percent” were substituted for the phrase “at least 80 percent” in each place the latter phrase appears in Code Section 1563(a)(1).

**“Annual Addition”** means the sum of the amounts described in Section 5.03(c).

**“Beneficiary”** means the person(s) designated in accordance with Section 7.04 to receive any death benefits that may be payable under the Plan upon the death of a Participant.

**“Break in Service”** means, with respect to an Employee, any consecutive twelve (12) month period during which such Employee fails to complete more than five hundred (500) Hours of Service with the Employer. The consecutive twelve (12) month period shall be measured from the Employment Date and each anniversary thereof. A Break in Service shall not be deemed to have occurred during any period for which an Employee is granted a Leave of Absence if he returns to the Service of an Employer within the time permitted as set forth in the Plan. A Break in Service shall be deemed to have commenced on the first day of the year in which it occurs.

For purposes of determining whether an Employee has incurred a Break in Service, an Employee absent from work due to a Maternity or Paternity Leave shall be credited with the greater of (a) the number of Hours of Service as defined herein or (b)(i) the number of Hours of Service he normally would have been credited but for the Maternity or Paternity Leave, or (ii) if the Employer is unable to determine the hours described in clause (b)(i) hereof, eight (8) hours of Service for each day of absence included in the Maternity or Paternity Leave; provided, the maximum number of Hours of Service credited for purposes of clause (b) shall not exceed five hundred and one (501) hours. Hours of Service credited shall be applied only to the year in which the Maternity or Paternity Leave begins unless such Hours of Service are not required to prevent the Employee from incurring a Break in Service, in which event such Hours of Service shall be credited to the Employee in the immediately following year. No Hour of Service shall be credited under clause (b) due to Maternity or Paternity Leave as described in this Section unless the Employee furnishes proof satisfactory to the Employer (i) that his absence from work was due to a Maternity or Paternity Leave, and (ii) of the number of days he was absent due to the Maternity or Paternity Leave. The Employer shall prescribe uniform and nondiscriminatory procedures by which to make the above determinations.

Notwithstanding any provisions of the Plan to the contrary, the Plan will be operated in compliance with all applicable federal laws, including, but not limited to, the Family and Medical Leave Act of 1993, and USERRA, which may prevent a Participant from incurring a Break in Service.

**“Code”** means the Internal Revenue Code of 1986, as amended, and any succeeding federal tax provisions.

**“Compensation”** means the total of all payments, direct or indirect, made by the Employer to an Employee for services rendered to the Employer for a calendar year, as defined in Code Section 3401(a) for purposes of income tax withholding at the source (that is, income reportable on IRS Form W-2), but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)). Compensation shall include before-tax or salary deferral contributions made under Code Sections 125, 402(g)(3), 457 or 414(h) to the Plan or other plans, on behalf of a Participant for such Plan Year. In its Adoption Agreement, the

Employer may elect to use any other definition of “Compensation” that satisfies Code Section 415(c)(3) and the regulations promulgated thereunder.

Notwithstanding the foregoing, for Plan Years beginning on and after January 1, 2002, in no event shall the annual compensation taken into account under the Plan for the Plan Year (or other applicable period) exceed \$200,000 (as adjusted by the Internal Revenue Service under Code Section 401(a)(17)) and prorated on the basis of months for any period less than 12 months. However, the Code Section 401(a)(17) limits in this section shall not apply to an individual who first became a Participant in the Plan prior to the first day of the first Plan Year beginning after the earlier of (a) the last day of the Plan Year by which a Plan amendment to reflect the amendments made by section 13212 of the Omnibus Budget Reconciliation Act of 1993 (OBRA ‘93) was both adopted and effective; or (b) December 31, 1995, to the extent the application of the limitation would reduce the amount of Compensation that is allowed to be taken into account under the Plan below the amount that was allowed to be taken into account under the Plan as in effect on July, 1, 1993.

**“Contributions”** means, individually or collectively, the Mandatory Employee, Employee After-Tax, Employer Basic, Employer Discretionary, Employer Matching, and Rollover Contributions as elected by the Employer under its Adoption Agreement under the Plan.

**“Disabled”** or **“Disability”** means a Participant is disabled within the meaning of Code Section 72(m)(7) to the extent that the Participant is, or would be, entitled to disability retirement benefits under the federal Social Security, or such other definition as specified in the Employer’s Adoption Agreement.

**“Effective Date”** means the date specified in the Employer’s Adoption Agreement.

**“Eligible Employee”** means any Employee of the Employer (other than leased employees within the meaning of Section 414(a)(2) of the Code), County Commissioner or elected or appointed official, as specified in the Employer’s Adoption Agreement.

**“Eligible Retirement Plan”** means a plan which is a defined contribution plan or deferred compensation plan, the terms of which permit the acceptance of rollover distributions and which is either: (a) an individual retirement account described in Code Section 408(a), (b) an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), (c) a qualified trust described in Code Section 401(a) and exempt from taxation under Code Section 501(a), (d) an annuity plan described in Code Section 403(a). In the case of a distribution to the Spouse, Eligible Retirement Plan means the Plan described in either clause (a) or (b) hereof, and after December 31, 2001 (e) an annuity contract described in Code Section 403(b) or (f) an eligible plan under Code Section 457(b) which is maintained by a state or agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. “Eligible Retirement Plan” shall also apply in the case of a distribution to a surviving spouse or a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

**“Eligible Rollover Distribution”** means any distribution on or after January 1, 1993 to an Eligible Employee of all or any portion of the balance to his credit in a qualified trust (including any distribution to a Participant of all or any portion of his Account); provided an Eligible Employee’s

“Eligible Rollover Distribution” shall not include (a) any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually, (i) for the life of the employee and his beneficiary, or (ii) for a specified period of 10 years or more, (b) any distribution to the extent such distribution is required under Code Section 401(a)(9), and (c) the portion of any distribution that is not includable in gross income of the employee. Effective after December 31, 2001, the portion of a distribution shall not fail to be an eligible rollover distribution because it consists of after tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for after tax employee contributions.

**“Employee”** means any individual who is employed by the Employer (including elected or appointed officials) and shall include leased employees of the Employer within the meaning of Code Section 414(n). Notwithstanding the foregoing, if leased employees constitute 20 percent or less of the Employer’s non-highly compensated work force within the meaning of Code Section 414(n)(5)(C)(ii), the term “Employee” shall not include those leased employees covered by a plan described in Code Section 414(n)(5)(B).

**“Employee After-Tax Contributions”** mean the contributions made by the Employee on an after tax basis under the terms of the Plan pursuant to Section 4.01, if elected by the Employer in its Adoption Agreement.

**“Employer”** means the governmental entity adopting this Plan, and any Affiliate that affirmatively elects to adopt this Plan for the benefit of its employees.

**“Employer Basic Contributions”** mean the contributions made by the Employer behalf of Participants under the terms of the Plan pursuant to Section 4.02, if elected by the Employer in its Adoption Agreement.

**“Employer Discretionary Contributions”** means the contributions made by the Employer on behalf of Participants pursuant to Section 4.02(b), if so determined by the Employer in its sole discretion.

**“Employer Matching Contributions”** means the Contributions made by the Employer that are based on the Employee’s voluntary contributions to a Code Section 457 Plan pursuant to the terms of Section 4.03 of the Plan, if elected by the Employer.

**“Employment Date”** means the date on which the Employee first performs an Hour of Service for the Employer or Affiliates.

**“Entry Date”** means the date designated in the Employer’s Adoption Agreement that the Eligible Employee shall begin participating in the Plan.

**“Forfeiture”** means, for any Plan Year, the dollar amount of an Account of a Former Participant which is removed from the Account during the Plan Year and used first to reduce

Restoration Contributions and the remaining amount used to reduce future Employer Contributions, if any.

**“Former Participant”** means a Participant whose employment with the Employer has terminated but who has a vested Account balance under the Plan which has not been paid in full and who, therefore, is continuing to participate in the allocation of earnings or losses under the Trust.

**“Hour of Service”** means the increments of time described in sections (a), (b), (c), and (d) hereof (as applicable) subject to any limitations set forth herein:

- (a) Each hour for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties during the Plan Year. The Plan Administrator shall credit Hours of Service under this paragraph (a) to the Employees for the Plan Year in which the Employee performs the duties, irrespective of when paid;
- (b) Each hour for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Plan Administrator shall credit Hours of Service under this paragraph (b) to the Employee for the Plan Year(s) to which the award or the agreement pertains rather than for the Plan Year in which the award, agreement or payment is made; and
- (c) Each hour for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a Plan Year, such as Leave of Absence, vacation, holiday, sick leave, illness, incapacity (including Disability), layoff, jury duty, or military duty, provided:
  - (i) An Employer shall not credit more than five hundred one (501) Hours of Service under this paragraph (c) to an Employee on account of any single continuous period during which the Employee does not perform any duties as an Employee (whether or not such period occurs during a single Plan Year). Employers shall credit Hours of Service under this paragraph (c) in accordance with the rules of paragraphs (b) and (c) of Department of Labor Regulation Section 2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this paragraph (c);
  - (ii) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which he performs no duties as an Employee shall not be credited as an Hour of Service if such payment is made or due under a plan maintained solely to comply with applicable workers’ compensation, unemployment compensation, or disability insurance laws;
  - (iii) Hours of Service shall not be credited to an Employee for a payment that solely reimburses such Employee for medical or medically related expenses incurred by him.
- (d) Each hour for which the Employee is required to be granted leave under USERRA;

- (e) **No Double Counting.** An Employer shall not credit an Hour of Service under more than one (1) of the above paragraphs (a), (b), (c), or (d). If the service counted under this Section can be counted under more than one of these paragraphs, the rule crediting the greatest number of Hours of Service shall apply. The Employer shall resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.
- (f) The Employer shall credit Hours of Service in accordance with Department of Labor Regulation Section 2530.200b-2(b) and (c), 29 CFR Part 2530, as amended, which the Plan, by this reference, specifically incorporates in full, or such other federal regulations as may from time to time be applicable.

**“Investment Fund”** or **“Funds”** means those funds identified and made available by the Third Party Service Provider from time to time.

**“Leave of Absence”** means an excused leave of absence granted to an Employee by the Employer or an Affiliate in accordance with applicable federal or state law. Among other things, Leave of Absence shall mean an Employee who leaves the service of the Employer or an Affiliate, voluntarily or involuntarily

- (a) to enter the Armed Forces of the United States; provided, (i) the Employee is legally entitled to reemployment under the veteran’s reemployment rights provisions as codified at 38 USC 2021, et seq., its predecessors and successors; and (ii) the Employee applies for and reenters service with the Employer or an Affiliate within the time, in the manner and under the conditions prescribed by law; and
- (b) under such other circumstances as the Employer shall determine are fair, reasonable and equitable as applied uniformly among Employees under similar circumstances.

**“Limitation Year”** means the Plan Year, which shall be the “limitation year” for purposes of Code Section 415 and the regulations promulgated thereunder.

**“Mandatory Employee Contributions”** means the amounts paid by the Employer to the Trust Fund on behalf of each Participant pursuant to Section 4.01, if elected by the Employer in its Adoption Agreement.

**“Maternity or Paternity Leave”** means any period during which an Employee is absent from work as an employee of the Employer or an Affiliate (a) because of the pregnancy of such Employee; (b) because of the birth of a child of such Employee; (c) because of the placement of a child with such Employee in connection with the adoption of such child by such Employee; or (d) for purposes of such Employee caring for a child immediately after the birth or placement of such child.

**“Normal Retirement Age”** means age 65 or other age as specified in the Employer’s Adoption Agreement.

**“Normal Retirement Date”** means the first day of the month coincident with or next following the date a Participant attains Normal Retirement Age.

**“Participant”** means any Eligible Employee who has been admitted to, and has not been removed from, participation in the Plan pursuant to the provisions of Article III. “Participant” shall include Active Participants and Former Participants who have an Account under the Plan.

**“Period of Service”** means the aggregate of all service performed by the Employee for the Employer or Affiliate commencing with the Employee’s Employment Date and ending with the first date a Period of Severance or Break in Service begins.

**“Period of Severance”** means a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged or if earlier, the 12-month anniversary of the date on which the Employee was first absent from service. A one-year Period of Severance shall be a Period of Severance of at least 12 consecutive months. A Period of Severance shall not be deemed to have occurred during any period for which he is granted a Leave of Absence if he returns to the service of the Employer or an Affiliate within the time permitted as set forth in the Plan.

(a) **Maternity or Paternity Leave.**

In the case of an Employee absent from work due to a Maternity or Paternity Leave, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance.

(b) **Family and Medical Leave Act.**

For purposes of determining whether or not an Employee has incurred a Period of Severance, and solely for the purpose of avoiding a Period of Severance, to the extent required under the Family and Medical Leave Act of 1993 and the regulations thereunder, an Employee shall be deemed to be performing services for the Employer or an Affiliate during any period the Employee is granted leave under such Act (i) for the birth of a child, (ii) for the placement with the Employee of a child for adoption or foster care, (iii) to care for a spouse, child or parent of the Employee with a serious health condition, or (iv) for a serious health condition that makes the Employee unable to perform the functions of the Employee’s job.

**“Plan”** means the 401(a) Contribution Plan as set forth herein and in the accompanying Adoption Agreement and all amendments thereto. The Plan is intended to be a money purchase plan qualified under the applicable provisions of Code Section 401(a).

**“Plan Administrator”** means the Employer or the individuals designated by the Employer under the separate services agreement to provide directions to the Third Party Service Provider as defined in Code Section 414(g).

**“Plan Year”** means the 12-month period beginning on January 1st of each year and ending on the following December 31st.

**“Reemployment Date”** means the date on which the Employee first performs an Hour of Service following a one year Period of Severance or Break in Service.

**“Restoration Contributions”** mean the amounts paid to the Trust Fund by or on behalf of a rehired individual pursuant to the terms of Section 4.06.

**“Rollover Account”** means the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Rollover Contributions and any earnings or losses thereon.

**“Rollover Contributions”** means the amounts contributed to the Plan (and received and accepted by the Trustee) as “rollover” contributions as defined in Code Section 402 as Eligible Rollover Distributions. An amount shall be treated as a Rollover Contribution only to the extent that its acceptance by the Trustee is permitted under the Code (including the regulations and rulings promulgated thereunder).

**“Severance from Service Date”** means the date the Employee quits, is discharged, retires, dies or otherwise ceases to be employed by the Employer.

**“Spouse”** or **“Surviving Spouse”** means, with respect to a Participant, the person who is treated as married to such Participant under the laws of the state in which the Participant resides. The determination of a Participant’s Spouse or Surviving Spouse shall be made as of the earlier of the date as of which benefit payments from the Plan to such Participant are made or commence (as applicable) or the date of such Participant’s death.

**“Terminate”** or **“Termination of Employment”** means an Employee’s termination of employment which may result from retirement, death, disability, voluntary or involuntary termination, unauthorized absence, or by failure to return to active employment with the Employer by the date on which an authorized Leave of Absence expires.

**“Third Party Service Provider”** means the Association County Commissioners of Georgia or its designee.

**“Trust Fund”** means the total amount of cash and other property held by the Trustee (or its nominee) at any time under the Trust Agreement with the Trustee.

**“Trustee(s)”** means the Charles Schwab Trust Company.

**“Trust(s)”** or **“Trust Agreement”** means the separate agreement between the Employer and the Trustee governing the creation of the Trust Fund.

**“Valuation Date”** means each business day or such other date as specified and communicated by the Third Party Service Provider.

**“Year of Service”** means as set forth in the Employer’s Adoption Agreement.

## **ARTICLE III: PARTICIPATION AND SERVICE**

### **3.01 Participation**

Each Eligible Employee shall become a Participant in this Plan effective upon the first Entry Date coincident with or immediately following the date on which he meets the eligibility conditions selected by the Employer in its Adoption Agreement.

### **3.02 Reemployment.**

Upon the reemployment of an Eligible Employee, the following rules shall apply in determining his participation in the Plan under Section 3.01:

- (a) If an Eligible Employee is rehired and was previously a Participant, he shall participate in the Plan as of his date of reemployment.
- (b) An Eligible Employee who satisfies the Plan's eligibility conditions but who terminates employment prior to becoming a Participant shall become a Participant on the later of the date he would have entered the Plan had he not terminated employment or his date of reemployment.

### **3.03 Transfers.**

If a Participant is transferred to employment with any other Affiliate that has not adopted the Plan, his participation under the Plan shall be suspended; provided, however, that during the period of his employment in such ineligible position: (a) he shall continue to participate in allocations of earnings and losses pursuant to Section 5.02(d); (b) his Employer Account shall receive no Employer Contributions; (c) he shall make no Employee Contributions to the Plan during that time and (d) the applicable provisions of Articles V, VI and VII shall continue to apply.

### **3.04 Omission of Eligible Employee.**

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is omitted erroneously and discovery of such omission is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall make a subsequent contribution with respect to the omitted Eligible Employee in the amount which the said Employer would have contributed with respect to him had he not been omitted.

### **3.05 Inclusion of Ineligible Employee.**

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is included erroneously, and discovery of such incorrect inclusion is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall not be entitled to recover the contribution made with respect to the ineligible person. In such event, the amount contributed with respect to the ineligible person shall constitute a Forfeiture for the Plan Year in which the discovery is made and shall be used to reduce the subsequent Employer Contributions due under the Plan.

## ARTICLE IV: CONTRIBUTIONS

### 4.01 Employee Contributions.

#### (a) Mandatory Employee Contributions.

If required by the Employer in its Adoption Agreement, there shall be deducted from the Compensation paid by the Employer to each Eligible Employee who becomes a Participant in the Plan on or after an Entry Date, the percentage of such Compensation as designated by the Employer in its Adoption Agreement, a Mandatory Employee Contribution to the Plan. The Employer or Affiliate shall contribute to the Plan, as applicable, as of each payroll period on behalf of and to the credit of each Participant, the amount of Mandatory Employee Contributions required for participation. No Participant shall be entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the Plan by the Employer in accordance with the preceding sentence. Such contributions shall be made pursuant to Section 414(h) of the Code and shall be treated as employer contributions in determining their federal income tax treatment under the Code. The Employer may reduce the Compensation payable to a Participant in an amount not exceeding the amount of the contribution paid by it on behalf of such individual pursuant to this subsection. Mandatory Employee Contributions made by the Employer on behalf of Plan Participants shall otherwise be treated as Employee contributions for purposes under the Plan.

#### (b) Employee After-Tax Contributions.

If permitted by the Employer in its Adoption Agreement, Participants may contribute to the Plan on an after-tax basis up to ten percent (10%) of Compensation.

### 4.02 Employer Basic and Discretionary Contributions.

#### (a) Basic Contributions

- (i) If elected by the Employer in its Adoption Agreement, the Employer shall contribute on behalf of each Participant a percentage of such Participant's Compensation as designated in the Employer's Adoption Agreement.
- (ii) Should the Employer, for any reason, fail to make a contribution as provided herein, such deficiency shall be corrected as soon as possible. Such contribution shall be paid by the Employer to the Trust and shall equal the amount of the deficiency plus interest at a reasonable rate from the date the contribution was due until the date the deficiency was corrected. All contributions by the Employer shall be made in cash or cash equivalents.

#### (b) Discretionary Contributions.

If elected by the Employer in its Adoption Agreement, the Employer may, but shall not be required to, make a Discretionary Contribution to the Plan for the Plan Year which shall be allocated to the Participant's Account based on one or more of the allocation formulas selected in the Adoption Agreement. Each year the governing authority makes such a Discretionary Contribution, they shall specify, by resolution, the total amount of the contribution and the specific aggregate amounts to be applied to each of the selected allocation formulas.

**4.03 Employer Matching Contributions.**

If elected by the Employer in its Adoption Agreement, Employer Matching Contributions shall be made to the Plan for each Active Participant who is also making voluntary employee contributions under a Code Section 457(b) eligible deferred compensation plan. The Employer shall make an Employer Matching Contribution of a designated percentage of the voluntary contribution made by the Participant to such Code Section 457 Plan for the period selected by the Employer in the Adoption Agreement. The amount of such Employer Matching Contribution may be designated by the Employer in its Adoption Agreement, or may be discretionary from year to year, as selected by the Employer in its Adoption Agreement.

**4.04 Timing of Contribution.**

The Employer shall pay to the Trustee all Contributions no later than the time prescribed by law.

**4.05 Rollover Amount From Other Plans.**

- (a) All Participants shall be eligible to transfer an Eligible Rollover Distribution to the Plan if the Third Party Service Provider, in its sole discretion, agrees to accept such distributions. The procedures approved by the Plan Administrator shall provide that such a transfer may be made only if the following conditions are met:
  - (i) the amount is received directly from an Eligible Retirement Plan or the transfer occurs on or before the 60th day following the Eligible Employee's receipt of the distribution from the Eligible Retirement Plan; and
  - (ii) the amount transferred is equal to any portion of the distribution the Eligible Employee received from the Eligible Retirement Plan, subject to the maximum rollover provisions of Code Section 402(c)(2).
- (b) The Third Party Service Provider shall develop such procedures, and may require such information from an Eligible Employee desiring to make such a transfer, as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of this Section. Upon approval by the Third Party Service Provider, the amount transferred shall be deposited in the Plan and shall be credited to a Rollover Account. Such Rollover Accounts shall be one hundred percent (100%) vested and shall share in earnings and losses (net appreciation or net depreciation) in accordance with Section 5.02(d). Upon Termination of Employment, the total amount of the Employee's Rollover Account shall be distributed in accordance with Article VI.
- (c) If the Employer so designates in its Adoption Agreement, all Eligible Employees, whether or not participating in the Plan, may make Eligible Rollovers to the Plan.

**4.06 Restoration Contributions.**

(a) Restoration Upon Buy-Back.

If a Participant who is not 100 percent vested in his Account upon Termination of Employment, has received a distribution of the entire vested portion of his Account [such that he forfeited the nonvested portion of his Account in accordance with the terms of Section 6.03], and such Participant subsequently is rehired as an Eligible Employee prior to the occurrence of 5 consecutive one year Periods of Severance or

Breaks in Service, that individual may repay the full amount of the distribution to the Trustee (unadjusted for gains or losses), prior to the earlier of (i) 5 years after the first date on which he is rehired or (ii) the close of the first period of 5 consecutive one year Periods of Severance or Breaks in Service commencing after the distribution. Upon such repayment, his Account will be credited with (i) all of the benefits (unadjusted for gains or losses) which were forfeited, and (ii) the amount of the repayment.

(b) Restoration of Other Forfeitures.

If a Participant is not 100% vested in his account upon Termination of Employment, and has not received a distribution of the entire vested portion of his Account, but has forfeited his nonvested Account and such Participant subsequently is rehired as an Eligible Employee prior to the occurrence of 5 consecutive one year Periods of Severance or Breaks in Service, his Account shall be credited with all amounts (unadjusted for gains or losses) which were forfeited.

(c) Restoration Contribution.

The assets necessary to fund the Account of the rehired individual (in excess of the amount of the repayment, if any) shall be provided no later than as of the end of the Plan Year following the Plan Year in which repayment occurs (if subsection (a) hereof applies) or in which the individual is rehired (if subsection (b) hereof applies), and shall be provided in the discretion of the Employer from (i) income or gain to the Trust Fund, (ii) Forfeitures arising from the Accounts of Participants employed or formerly employed by the Employer, or (iii) contributions by the Employer.

(d) Notice of Buy-Back Rights.

It shall be the duty of the Plan Administrator to give timely notice to any rehired individual who is eligible to make a repayment, of his right to make such repayment in accordance with this Section by the time required in subsection (a) hereof, and of the consequences of not making such repayment; namely that the nonvested portion of the benefits accrued under the Plan during his previous employment will not be restored by the Plan, will remain forfeited, and will not become vested even though he may perform additional Years of Service.

**4.07 Reemployed Veterans.**

(a) Contributions.

To the extent and in the manner required under the Uniformed Services Employment and Reemployment Rights Act of 1994, a Participant who is absent from employment for service in the uniformed services and returns to employment with the Employer or Affiliate shall be permitted to make Employee Contributions to the Plan with respect to such period of uniformed service, and the Employer or Affiliate shall make any Employer Contributions required to be made under such Act on behalf of such Employee for the period of absence, based on the contribution rates in effect for the Plan Year(s) in which the Employee was in qualified military service. The Employee shall designate the plan year(s) to which Employee Contributions made up by such Employee relate. Such contributions may be made during the period beginning on the date of the reemployment of such Employee, and must be made by the end of the period that is the lesser of (i) the product of 3 times the period of qualified military service, or (ii) five years following the date of such reemployment. In the event any Contributions

are made pursuant to this Section, the Employee shall not be entitled to retroactive earnings on such contributions.

(b) Compensation.

Any Employee who returns to employment with the Employer following a period of qualified military service shall, for purposes of this Section, be treated as receiving Compensation equal to the Compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received but for the absence; provided, however if the Compensation the Employee would have received during such period is not reasonably certain, Compensation for this purpose shall equal the Employee's average Compensation during the 12 months immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(c) Maximum Amounts.

Any contributions made pursuant to subsection (a) above are not subject to the limits under Code Section 415 in the Plan Year(s) in which made; rather, such contributions are subject to such limits in the Plan Year(s) to which the contributions relate as determined according to the Employee's election under subsection (a).

**4.08 Form of Contributions.**

All contributions shall be paid to the Trustee in the form of cash or cash equivalents.

**4.09 Circumstances Permitting Return of Employer Contributions.**

A contribution to the Plan and Trust by the Employer or an Affiliate that was made by a mistake of fact shall be returned to the Employer. Any such contribution shall be returned within one year after the mistaken payment of the contribution. The amount of the contribution that may be returned to the Employer is the excess of (i) the amount contributed over (ii) the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

**4.10 Trustee-to-Trustee Transfer.**

A Participant may request a trustee-to-trustee transfer of all or part of the Participant's vested Account balance under this Plan, to a qualified governmental defined benefit plan (as defined under Code Section 414(d)) for the purpose of purchasing permissive past service credit (as defined under Code Section 415(n)(3)(A)) or for purposes of a repayment of contributions under Code Section 415(k)(3), under the receiving plan. The Plan shall agree to make such a transfer only if:

- (a) the defined benefit plan is sponsored by the same Employer; and
- (b) both plans provide for such transfer.

Such transfer may be made before Termination of Employment.

## ARTICLE V: ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

### 5.01 Individual Accounts.

To the extent appropriate, the Third Party Service Provider shall establish and maintain, on behalf of each Participant or Beneficiary, an Account which shall be divided into segregated subaccounts. The subaccounts may include Mandatory Employee Contribution, Employee After-Tax Contribution, the Employer Basic Contribution, Employer Discretionary Contribution, Employer Matching Contribution, and Rollover Accounts, and such other subaccounts as the Third Party Service Provider shall deem appropriate or helpful. Each Account shall be credited with Contributions allocated to such Account and generally shall be credited with earnings and losses on investments derived from the assets of such Accounts. Each Account of a Participant or Beneficiary shall be maintained until the value thereof has been distributed to or on behalf of such person.

### 5.02 Allocations.

The Accounts of Participants, Former Participants and Beneficiaries shall be adjusted, subject to the provisions of Sections 5.03, 5.04 and 5.05, in accordance with the following:

(a) Employee Contributions.

As of each payroll period for which the Employee Contributions are made, such Employee Contributions shall be allocated and credited directly to such Participant's Employee Contribution Account(s).

(b) Employer Contributions.

At least annually, the Employer shall provide the Plan Administrator with all information required to make a proper allocation of the Employer Contributions (if any) for the period selected by the Employer in the Adoption Agreement. As soon as practicable after the date of receipt by the Plan Administrator of such information, the Plan Administrator shall allocate the Employer Contributions (if any) to each Participant's Employer Contribution Accounts (if any) in accordance with Sections 4.02 and 4.03.

(c) Restoration Contributions.

As of the date on which a Restoration Contribution is received from an Active Participant, such Contribution (together with the nonvested benefits restored by the Plan as a result of such Contribution) shall be credited to the appropriate Account of the Active Participant, in the amounts held by such Account immediately prior to the earlier distribution to such Participant.

(d) Income.

As of each Valuation Date, any earnings or losses (net appreciation or net depreciation) shall be allocated to each Participant's Account. Each segregated Account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

### 5.03 Code Section 415 Limitations on Maximum Contributions.

(a) General Limit on Annual Additions.

For Plan Years beginning after December 31, 2001, in no event shall the Annual Addition to a Participant's Account for any Limitation Year, under the Plan and any other Defined Contribution Plan (as defined below) maintained by an Affiliate, exceed the lesser of:

- (i) \$40,000 or
- (ii) 100 percent of such Participant's Compensation.

(b) Correction of Excess Annual Additions.

If, as a result of either the allocation of Forfeitures to an Account, a reasonable error in estimating a Participant's Compensation or such other occurrences as the Internal Revenue Service permits, the Annual Addition made on behalf of a Participant exceeds the limitations set forth in this Section, the excess amount shall be held in a suspense account and shall be applied to reduce permissible Employer Basic, Employer Discretionary or Employer Matching Contributions in each successive year until such amount is fully allocated; provided, so long as any suspense account is maintained pursuant to this Section: (i) no Employer Basic, Employer Discretionary or Employer Matching Contributions shall be made to the Plan which would be precluded by this Section; (ii) investment gains and losses shall not be allocated to such suspense account; and (iii) amounts in the suspense account shall be allocated in the same manner as Employer Basic, Employer Discretionary or Employer Matching Contributions, until such suspense account is exhausted.

(c) Annual Addition.

For purposes of this Section, the term "Annual Addition" for any Participant means the sum for any Limitation Year of:

- (i) contributions made by the Employer or an Affiliate on behalf of the Participant under all Defined Contribution Plans;
- (ii) contributions made by the Participant under all Defined Contribution Plans of the Employer or Affiliate [excluding Rollover Contributions, contributions made under 403(a)(4), 403(b)(8), 408(d)(3) and 414(h) and contributions of previously distributed benefits which result in such a Plan's restoration of previously forfeited benefits pursuant to Treasury Regulations Sections 1.411(a)-7(d)];
- (iii) forfeitures allocated to the Participant under all Defined Contribution Plans of the Employer or an Affiliate; and
- (iv) amounts allocated for the benefit of the Participant to an individual medical account established under a pension or annuity plan maintained by the Employer or an Affiliate, as described in Code Section 415(l).

(d) Compliance with Code Section 415.

The limitations in this Section are intended to comply with the provisions of Code Section 415 so that the maximum benefits permitted under plans of the Employer shall

be exactly equal to the maximum amounts allowed under Code Section 415 and the regulations promulgated thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Code Section 415 and the regulations promulgated thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of the Code.

**5.04 Construction of Limitations and Requirements.**

The descriptions of the limitations and requirements set forth in this Article are intended to serve as statements of the minimum legal requirements necessary for the Plan to remain qualified under the applicable terms of the Code. The Employer does not desire or intend, and the terms of this Article shall not be construed, to impose any more restrictions on the operation of the Plan than required by law. Therefore, the terms of this Article and any related terms and definitions in the Plan shall be interpreted and operated in a manner which imposes the least restrictions on the Plan.

**5.05 Notice to Participants of Account Balances.**

At least once each calendar quarter, the Plan Administrator shall cause a written statement of a Participant's Account balance to be distributed to the Participant.

**5.06 Good Faith Valuation Binding.**

In determining the value of the Trust Fund and the Accounts, the Plan Administrator and the Trustee shall exercise their best judgment, and all such determinations of value (in the absence of bad faith) shall be binding upon all Participants and Beneficiaries.

**5.07 Errors and Omissions in Accounts.**

If an error or omission is discovered in the Account of a Participant or Beneficiary, the Employer shall make appropriate, equitable adjustments and shall direct the Third Party Service Provider to implement such adjustments as soon as practical.

## **ARTICLE VI: RETIREMENT/TERMINATION BENEFITS**

**6.01 Retirement.**

If a Participant's employment with the Employer is terminated at or after his Normal Retirement Date, he is entitled to receive one hundred percent (100%) of his Account credited as of his Normal Retirement Date. However, the participation of a Participant in the Plan shall continue until his actual retirement date. Upon a Participant's actual retirement date, or as soon thereafter as is practicable, the Trustee shall distribute all amounts credited to such Participant's Account in accordance with this Article VI.

**6.02 Termination for Other Reasons.**

- (a) If a Participant's employment with the Employer is terminated before his Normal Retirement Date for any reason other than death, he is entitled to receive the vested amount of his Account as of the date of benefit commencement.
- (b) All Participants shall at all times be fully vested in their Employee Contributions and Rollover Accounts. Except as provided below, the Employer Accounts of a Participant

- (c) Notwithstanding the rules above, a Participant's Employer Contribution Account shall become 100 percent vested and nonforfeitable upon the occurrence of any of the following events:
- (i) the Participant's attainment of Normal Retirement Age while still employed as an Employee of the Employer or Affiliate;
  - (ii) the Participant's death while still employed as an Employee of the Employer or Affiliate; or
  - (iii) the Participant's becoming Disabled while still employed as an Employee of the Employer or Affiliate.

**6.03 Timing and Application of Forfeitures; Vesting After Restoration Contributions.**

If a Participant who is not yet 100 percent vested in his Employer Matching, Basic or Discretionary Contribution Account Terminates employment with the Employer and all Affiliates and receives an immediate distribution of the vested amounts in his Employer Matching, Discretionary or Basic Contribution Account, the nonvested amounts held in such Accounts shall become a Forfeiture as of the last day of the Plan Year in which the distribution is made. If a Participant has no vested interest in his Account at the time his employment Terminates, he shall be deemed to have received a cash-out distribution at the time his employment Terminates, and the forfeiture provisions of this Section shall apply. Forfeitures shall be used first to reduce the Employer's obligation to make Restoration Contributions, and second to reduce the Employer's obligation to make Employer Contributions. If such a Participant resumes employment with the Employer or an Affiliate after he has incurred 5 or more consecutive one year Periods of Severance or Breaks in Service, his nonvested amount shall not be restored. If such a Participant resumes employment with an Affiliate before he has incurred 5 consecutive one year Periods of Severance or Breaks in Service, the nonvested amount shall be restored as follows:

(a) Reemployment And Vesting After Cash-Out Distribution.

If by the date of reemployment such a Participant has received a distribution of the entire vested interest in his Account not later than the close of the second Plan Year following the Plan Year in which his Termination of Employment with all Affiliates occurred, the provisions of Section 4.06(a) shall apply (requiring repayment by such a Participant as a condition for restoration of the nonvested amount). Upon such repayment, the rehired individual immediately shall be credited on the vesting schedule set forth in Section 6.02(b) with all previously earned Years of Service.

(b) Reemployment And Vesting Before Any Distribution.

If by the date of reemployment such a Participant has not received any distributions of his vested interest in his Account, or if he has no vested interest in his Account, the nonvested amount of his Accounts shall be restored pursuant to the terms of Section 4.06(b) and shall be credited to those Accounts. The Participant's Account then shall be subject to all of the vesting rules in this Article as if no Forfeitures had occurred.

#### **6.04 Benefit Payments.**

(a) Application for Benefits.

Before payment of any benefit hereunder, the Employer shall require that the Participant or Beneficiary, as the case may be, make an application for such benefit and submit the application to the Employer in such form as the Third Party Service Provider shall prescribe.

(b) Effect of Payment.

Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his legal representative, shall, to the extent of the method of computation as well as the amount thereof, constitute full satisfaction of claims hereunder against the Trustee, the Third Party Service Provider and the Employer, any of whom may require such Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor.

#### **6.05 Normal Payment Forms.**

(a) Except in the case of Disability, benefits hereunder shall be paid only in the form of one lump sum distribution.

(b) In the case of Disability, the Employer may elect in its Adoption Agreement to allow for certain periodic cash installments paid monthly, quarterly, semiannually or annually over a designated period of years as selected by the Participant.

(i) If a Participant elects for his benefit to be paid in installment payments over a term certain the following rules shall apply:

(A) The initial value of the obligation for the installment payments shall be equal to the amount of the Participant's Account balance on the day payments are scheduled to commence. Notwithstanding anything herein to the contrary, distributions from the Plan must satisfy the requirements of Section 6.07((f) and Code § 401(a)(9)(G), including the incidental benefit rules as described in Treasury Regulation § 1.401(a)(9)-2.

(B) Notwithstanding anything herein to the contrary, a Participant whose distribution of benefits from the Plan is in the form of installment payments may elect, at any time before his entire benefit has been distributed, to receive the remainder of his Account balance in the form of a single sum payment. The Participant may also elect to change the installment method previously selected, to the extent permitted by the Third Party Service Provider.

(C) If a Participant dies after payment of his benefits from the Plan has begun but before his entire benefit has been distributed, the remaining amount of the Account balance shall be distributed to the Participant's designated Beneficiary; provided, his Beneficiary may elect to receive the remainder of the deceased Participant's Account in the form of a single sum payment.

- (D) A Participant who has elected to receive his benefit in the form of installment payments, shall continue to have the right to direct the investment of that portion of his Account which has not yet been distributed.

**6.06 Assets Distributed.**

Any distribution to a Participant or his Beneficiary shall be made in the form of cash. Cash distributions shall be paid directly from the Trust Fund.

**6.07 Time of Payment.**

- (a) Except as provided below, benefits payable to a Participant under this Section shall be distributed, or shall commence to be distributed, as soon as administratively feasible after the date the benefits are requested by the Participant following such Participant's Termination of Employment for any reason other than death.
- (b) Notwithstanding the foregoing, in the event that the value of the Participant's Account exceeds \$5,000 at the time of benefit commencement (excluding any Rollover Contribution and any earnings and losses attributable thereto), benefits shall not be distributed to such Participant at the time set forth in subsection (a) hereof without the Participant's written election, on a form prepared by the Third Party Service Provider. In order for such Participant's election to be valid, his employment must actually Terminate, his election must be filed with the Plan Administrator within the 90-day period beginning on the date of termination, and the Plan Administrator (no later than 30 days and no earlier than 90 days before his distribution) must have presented him with a notice informing him of his right to defer his distribution. If the Participant does not consent in writing to the distribution of his benefit at such time, his benefit shall be distributed as soon as practicable after he files an election with the Plan Administrator requesting such payment. If a Participant fails to file an election specifying the time of payment, his benefit shall be distributed as soon as administratively feasible after the end of the Plan Year in which he attains Normal Retirement Age, but in no event later than the 60th day after the end of such Plan Year. Effective on and after January 1, 2006, in the event of a mandatory distribution greater than \$1,000, if a Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with the terms of the Plan, then the Third Party Service Provider shall distribute such distribution in a direct rollover to an individual retirement plan designated by the Third Party Service Provider.
- (c) Notwithstanding anything in the Plan to the contrary, in no event shall payment of a Participant's benefit be made later than 60 days after the end of the Plan Year which includes the latest of (i) the date on which the Participant attained Normal Retirement Age, (ii) the date which is the 10th anniversary of the date he commenced participation in the Plan, or (iii) the date he actually Terminates Employment as an Employee of the Employer and all Affiliates; provided, if the amount of the payment cannot be ascertained by the date as of which payments are scheduled to be made hereunder, payment shall be made no later than 60 days after the earliest date on which such

- (d) Time and Manner of Distribution. The provisions of Section 6.07 (d), (e), (f), and (g), will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (i) If the Participant's Surviving Spouse is the Participant's sole Beneficiary, then 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 70 1/2, if later.
  - (ii) If the Participant's Surviving Spouse is not the Participant's sole Beneficiary, distributions to the Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies.
  - (iii) If there is no Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iv) If the Participant's Surviving Spouse is the Participant's sole Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, then section (d)(ii), (iii), or (iv) of the section will apply as if the Surviving Spouse were the Participant.

For purposes of this Section 6.07(d) and Section 6.07(f), unless Section 6.07(d)(iv), applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 6.07(d)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the Surviving Spouse under Section 6.07(d)(i).

- (e) Required Minimum Distributions During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (ii) if the Participant's sole Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this section (i) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(f) Required Minimum Distributions After Participant's Death.

- (i) Death On or After Date Distributions Begin with no Beneficiary. If the Participant dies on or after the date distributions begin and there is no Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) Death On or After Date Distributions Begin with a Beneficiary. If the Participant dies on or after the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Beneficiary, determined as follows:
  - (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - (B) If the Participant's Surviving Spouse is the Participant's sole 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

(C) If the Participant's Surviving Spouse is not the Participant's sole Beneficiary, the 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.

(iii) Death Before Date Distributions Begin.

(A) If the Participant dies before the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's Beneficiary, determined as provided in Section 6.07(f)(i).

(B) If the Participant dies before the date distributions begin and there is no 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.

(C) If the Participant dies before the date distributions begin, the Participant's Surviving Spouse is the Participant's sole Beneficiary, and the Surviving Spouse dies before distributions are required to begin to the Surviving Spouse under section 6.07(d)(i), this section 6.07(f)(ii) will apply as if the Surviving Spouse were the Participant.

(g) Definitions

(i) Designated Beneficiary. The individual who is designated as the Beneficiary under section 7.04 of the Plan and is the Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(ii) 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

- (iii) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (iv) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (v) Required Beginning Date. The date specified in section 6.07(d) of the Plan.

**6.08 Nonalienation of Benefits.**

Except with respect to federal income tax withholding, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former spouse or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void.

**6.09 Forfeiture of Benefits.**

Notwithstanding any other provision to the contrary, a Participant's Employer Basic, Employer Discretionary and Employer Matching Contribution Accounts under the Plan shall be forfeited in the manner and to the extent provided under O.C.G.A. Sections 47-1-21 through Sections 47-1-24, if convicted of a public employment, drug related or other covered crime.

**6.10 Unclaimed Benefits.**

In the event a Participant becomes entitled to benefits under the Plan other than death benefits and the Plan Administrator is unable to locate such Participant (after sending a

letter, return receipt requested, to the Participant's last known address, and after such further diligent efforts as the Plan Administrator in its sole discretion deems appropriate) within one year from the date upon which he becomes so entitled, the Plan Administrator shall direct that such benefits be paid to the person(s) who have been designated as the Participant's Beneficiary or, if none, who have been designated as the Beneficiary by operation of the Plan; and, provided further, if the distribution is payable upon termination of the Plan, the Plan Administrator shall not be required to wait until the end of such 1-year period. If neither the Participant nor his Beneficiary can be located and all of them fail to claim such benefits by the end of the fifth Plan Year following the Plan year in which such Participant becomes entitled to such benefits, then the full Account of the Participant shall be deemed abandoned and treated as a Forfeiture; provided, in the event such Participant or Beneficiary is located or makes a claim subsequent to the allocation of the abandoned Account but prior to the expiration of the time within which any such person's claim to the Account would expire under appropriate state law, then the amount of the abandoned Account (unadjusted for any investment gains or losses from the time of abandonment) shall be restored (from abandoned Accounts, Trust earnings or Contributions made by the Employer) to such Participant or Beneficiary, as appropriate; and, provided further, the Plan Administrator, in its sole discretion, may delay the deemed date of abandonment of any such Account for a period longer than the prescribed five Plan Years if it believes that it is in the best interest of the Plan to do so.

**6.11 Maintenance of Account.**

Upon the entitlement of a Participant or his Beneficiary to benefits under the Plan, the amount from which benefits are payable, may be retained in the Trust Fund as such Participant's Account. Any such Account shall benefit proportionately from any earnings of the Trust Fund and any appreciation in the value of its assets and shall suffer the detriment of any losses or depreciation in the value of the Trust assets. The Account balance shall be distributed to the Participant or his Beneficiary at such time and in such manner as provided in the Plan.

**6.12 Request for Benefit.**

(a) Procedure.

Request for benefits under the Plan shall be approved by the Plan Administrator or its designee.

(b) Review Procedure.

Any Participant or Beneficiary who has been denied a benefit, or his duly authorized representative, shall be entitled, upon request to the Plan Administrator, to appeal the denial of his claim. To do so, the claimant must obtain a form from the Plan Administrator on which to request further consideration of his position. The claimant, or his duly authorized representative, may review pertinent documents related to the Plan and in the Employer's or the Plan Administrator's possession in order to prepare the appeal. The form containing the request for review, together with a written statement of the claimant's position, must be filed with the Plan Administrator no later than 60 days after receipt of the written notification of denial of a claim. The Plan Administrator's decision shall be made within 120 days following the filing of the request for review and shall be communicated in writing to the claimant. If

unfavorable, the notice of decision shall explain the reason or reasons for denial and indicate the provisions of the Plan or other documents used to arrive at the decision.

**6.13 Explanation of Certain Rollover Distributions.**

Within a reasonable period of time [as defined for purposes of Code Section 402(f)] before making an Eligible Rollover Distribution from the Plan to a Participant or Beneficiary, the Plan Administrator shall provide such Participant or Beneficiary with a written explanation of: (a) the provisions under which the distributee may have the distribution directly transferred to another Eligible Retirement Plan, (b) the provisions which require the withholding of tax on the distribution if it is not directly transferred to another Eligible Retirement Plan, (c) the provisions under which the distribution will not be subject to tax if transferred to an Eligible Retirement Plan within 60 days after the date on which the distributee receives the distribution, and (d) such other terms and provisions as may be required under Code Section 402(f) and the regulations promulgated thereunder.

## **ARTICLE VII: DEATH BENEFITS**

**7.01 Death.**

If the termination of employment of a Participant is caused by his death, or if a Former Participant dies before he receives a distribution of his Account, his death benefit shall be equal to one hundred percent (100%) of his Account credited as of the Valuation Date coincident with or next following his date of death and the Beneficiary is entitled to receive the entire amount in his Account to be paid in one lump sum payment. The Participant's Beneficiary shall be the person(s) designated pursuant to Section 7.04. The Employer may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Account of a deceased Participant or a deceased Former Participant, as the Plan Administrator may deem desirable. The Employer's determination of death and of the right of any person to receive payment shall be conclusive.

Payment of benefits due under this Section shall be made in accordance with the provisions of this Article VII.

**7.02 Payment of Survivor Benefits.**

(a) Payments to Spouse.

Except as provided in Section 6.10, if the Participant's Spouse is his Beneficiary and is eligible to receive a survivor benefit under Section 7.01, payment of such benefit shall be made as soon as practical following the later of (i) the date on which the Participant would have attained his Normal Retirement Age (if he had survived) or (ii) the Participant's date of death; provided, if the Participant dies before his Normal Retirement Age, his spouse instead may elect (on a form provided for this purpose) for the payment of his survivor benefit to be paid as of the first day of any calendar month following the Participant's date of death.

(b) Payments to a Non-Spouse Beneficiary.

If a Beneficiary who is not the Participant's spouse is eligible to receive a survivor benefit under Section 7.01, payment of such benefit shall be made as soon as practical following the Participant's date of death.

(c) Minimum Benefit Rules.

All distributions will be made in accordance with Code Section 401(a)(9), the regulations promulgated under Code Section 401(a)(9), including Treasury Regulation Section 1.401(a)(9)-2 and any other provisions reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service; and the terms of the Plan reflecting the requirements of Code Section 401(a)(9) override the distribution options (if any) in the Plan which are inconsistent with those requirements.

**7.03 Cash-Out Payment of Survivor Benefits.**

If the Participant's vested Account balance is \$5,000 or less on the Participant's date of death, the full amount of such vested Account balance automatically shall be paid to his Beneficiary in one single-sum, cash-out distribution as soon as practicable after the Participant's date of death.

**7.04 Beneficiary Designation.**

In accordance with the terms of this Section 7.04, Participants shall designate and from time to time may redesignate their Beneficiary or Beneficiaries in such form and manner as the Plan Administrator may provide. If a Participant dies without designating a Beneficiary, or the Beneficiary designated by a Participant cannot be located within one year after the date benefits are to commence to said person; then the Beneficiary shall be the Participant's Surviving Spouse. If there is no Surviving Spouse, any benefits that remain payable shall be paid to the estate of the Participant.

**7.05 Distribution for Minor Beneficiary.**

In the event a distribution is to be made to a minor, then the Employer may, in its sole discretion, direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or similar statute, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer and Plan from further liability on account thereof.

## **ARTICLE VIII: TRUST FUND**

**8.01 Establishment of Trust Fund.**

All Contributions are to be paid over to the Trustee to be held in the Trust Fund and invested in accordance with the terms of the Plan and the separate Trust Agreement which is incorporated herein and made a part hereof.

## **8.02 Investment Funds.**

### **(a) Named Investment Funds.**

The Third Party Service Provider shall select and make available the array of Investment Funds for the investment of Contributions and Accounts. The Investment Funds in such array may be selected, modified or eliminated from time to time without necessity of amendment to the Plan.

### **(b) Reinvestment of Cash Earnings.**

Any investment earnings received in the form of cash with respect to any Investment Fund (in excess of the amounts necessary to pay Plan or Trust expenses) shall be reinvested in such Investment Fund.

### **(c) Self Directed Brokerage Accounts**

Investment Funds may include but are not limited to self directed brokerage accounts. The Employer shall determine the extent to which Participants may utilize such self directed brokerage accounts by making certain elections under its Adoption Agreement.

## **8.03 Participant Direction of Investments.**

Each Participant or Beneficiary generally may direct the manner in which his Accounts shall be invested in and among the Investment Funds as provided in the Employer's Adoption Agreement; provided, such investment directions shall be made in accordance with the following terms:

### **(a) Investment of Account.**

As of each business day, Contributions, plus earnings (or losses) thereon, will be transferred to the Investment Funds in the proportion designated by such Participant pursuant to his most recent election, as described below. If the Participant does not make an investment election, his contributions shall be allocated to the investment fund determined by the Third Party Service Provider as the default fund.

In addition, effective as of each day following his Entry Date into the Plan, each Participant (or Beneficiary) may elect, the percentage of his Account that will be invested in each Investment Fund. Each such election shall remain in effect until changed by such Participant or Beneficiary. In the event an individual fails to make an election for his Accounts pursuant to the terms of this subsection or if an investment election is incomplete or insufficient in some manner, the Accounts will continue to be invested in the same manner provided under the terms of the most recent election affecting such Accounts.

### **(b) Conditions Applicable to Elections.**

Allocations of investments in the various Investment Funds, as described in subsection (a) hereof, shall be made in whole percentages as directed by the Participant or Beneficiary. Such procedures may include, but are not limited to, the format of the election forms, use of interactive telephone system, the deadline for filing elections and the effective date of such elections; provided, elections must be permitted at least once every three months. Any procedures proscribed by the separate service agreement between the Employer and the Third Party Service Provider that are inconsistent with

the deadlines specified in this Section shall supersede such provisions of this Section without the necessity of a Plan amendment.

**8.04 Expenses.**

To the extent permitted by law, all expenses for administration of the Plan may be paid by the Trust; provided however, the Employer may pay all expenses in the administration of the Plan outside of the Plan, if it chooses not to pay them out of the Trust.

**8.05 Voting and Tender Offer Rights with Respect to Investment Funds.**

Only if, to the extent and in the manner, permitted by the Trust and/or any documents establishing or controlling any of the Investment Funds, shall Participants and Beneficiaries be given the opportunity to vote and tender their interests in each such Investment Funds. Otherwise, such interests shall be voted and/or tendered by the Investment Manager or other fiduciary that controls such Investment Fund, as may be provided in the controlling documents.

## **ARTICLE IX: ADMINISTRATION**

**9.01 Plan Administrator's Powers and Responsibility.**

The Plan Administrator shall have complete control of the administration of the Plan hereunder, with all powers necessary to enable it properly to carry out its duties as set forth in the Plan and the Trust Agreement. The Plan Administrator shall have the following duties and responsibilities which may be delegated in whole or in part to the Third Party Service Provider in a separate service agreement:

- (a) to construe the Plan and to determine all questions that shall arise thereunder;
- (b) to select the Third Party Service Provider and Trustee, provided however, that by adopting this Plan, the Plan Administrator is deemed to have selected ACCG as the Third Party Service Provider and Charles Schwab Trust Company as the Trustee.
- (c) to decide all questions relating to the eligibility of Employees to participate in the Plan;
- (d) to determine the benefits of the Plan to which any Participant or Beneficiary may be entitled;
- (e) to maintain and retain records relating to Participants and Beneficiaries;
- (f) to prepare and furnish to Participants all information required under state or federal law or provisions of the Plan to be furnished to them;
- (g) to prepare and furnish to the Third Party Service Provider and Trustee sufficient employee data and the amount of Contributions received from all sources so that the Third Party Service Provider and Trustee may maintain separate accounts for Participants and Beneficiaries and make required payments of benefits;
- (h) to prepare and file or publish with all other appropriate government officials all reports and other information required under law to be so filed or published;

- (i) to provide directions to the Trustee with respect to methods of benefit payment and all other matters where called for in the Plan or requested by the Trustee;
- (j) to engage assistants and professional advisers;
- (k) to arrange for fiduciary bonding, if necessary;
- (l) to provide procedures for determination of claims for benefits; and
- (m) to delegate any or all of these responsibilities.

#### **9.02 Directions.**

Any notice, direction, order, request, certification or instruction to the Third Party Service Provider or to the Trustee shall be in writing and shall be signed by a Plan Administrator. The Trustee and every other person shall be entitled to rely conclusively upon any and all such notices, directions, orders, requests, certifications and instructions received from the Plan Administrator and reasonably believed to be properly executed, and shall act in accordance therewith.

#### **9.03 Reporting and Disclosure.**

The Plan Administrator shall keep all individual and group records relating to Participants and Beneficiaries and all other records necessary for the proper operation of the Plan. Such records shall be made available to each Participant and Beneficiary for examination during normal business hours except that a Participant or Beneficiary shall examine only such records as pertain exclusively to the examining Participant or Beneficiary and the Plan and Trust Agreement. The Plan Administrator shall prepare and shall file as required by law or regulation all reports, forms, documents and other items required by the Code and every other relevant statute, each as amended, and all regulations thereunder. This provision shall not be construed as imposing upon the Plan Administrator the responsibility or authority for the preparation, preservation, publication or filing of any document required to be prepared, preserved or filed by the Trustee to whom such responsibilities are delegated by law or by the Plan or trust.

#### **9.04 Construction of the Plan.**

The Employer shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Employer shall interpret the Plan and shall determine the questions arising in the administration, interpretation and application of the Plan. The Employer shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any person and so as to treat all persons in similar circumstances uniformly. The Employer shall correct any defect, reconcile any inconsistency or supply any omission with respect to the Plan.

#### **9.05 Assistants and Advisers.**

##### **(a) Delegation.**

The Employer and the Plan Administrator shall have the right to delegate any of its responsibility hereunder and to hire such professional assistants and consultants as it, in its sole discretion, deems necessary or advisable. To the extent that the costs for such assistants and advisers are not paid by the Employer, they may be paid from the Trust Fund as an expense of the Trust Fund.

(b) Funding Policy and Investment.

The Employer shall delegate its responsibilities for establishing and carrying out a funding policy and selecting investment funds to the Third Party Service Provider.

(c) Reliance

The Employer shall be entitled to rely upon all certificates and reports made by an accountant, attorney or other professional adviser selected pursuant to this Section and shall be fully protected in respect to any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such accountant, attorney or other professional adviser; and any action so taken or suffered shall be conclusive upon each of them and upon all other persons interested in the Plan.

**9.06 Direction of Trustee.**

The Third Party Service Provider shall provide the Trustee with general investment policy guidelines and directions to assist the Trustee respecting investments made in compliance with, and pursuant to, the terms of the Plan.

**9.07 Bonding.**

The Employer shall arrange for fiduciary bonding if required by law, but no bonding in excess of the amount required by law shall be required by the Plan.

## **ARTICLE X: ALLOCATION OF AUTHORITY AND RESPONSIBILITIES**

**10.01 General Responsibilities.**

The Employer is a fiduciary with respect to the Plan and has the following authority and responsibilities:

- (a) to appoint the Plan Administrator, and to monitor its performance;
- (b) to communicate such information to the Trustee and the Third Party Service Provider as each needs for the proper performance of its duties;
- (c) to provide channels and mechanisms through which the Third Party Service Provider and the Trustee can communicate with Participants and Beneficiaries;
- (d) to delegate responsibilities to officers, employees or to other individuals;
- (e) to perform such duties as are imposed by law or by regulation.
- (f) In the event any of the areas of authority and responsibilities of the Employer overlap with that of any other Plan fiduciary, the Employer shall coordinate with such other fiduciaries the execution of such authority and responsibilities; provided, the decision of the Employer with respect to such authority and responsibilities ultimately shall be controlling.

**10.02 Third Party Service Provider.**

The Third Party Service Provider shall have the authority and responsibilities as delegated under a separate service agreement or as provided herein. With respect to said authority and responsibilities, the Third Party Service Provider shall not be a fiduciary, and as such, shall

have no authority or responsibilities other than as granted in the Plan or as imposed as a matter of law.

**10.03 Trustee.**

To the extent provided in the Trust Agreement, the Trustee shall be a fiduciary with respect to investment of Trust Fund assets and shall have the powers and duties set forth in the Trust Agreement.

**10.04 Limitations on Obligations of Fiduciaries.**

No fiduciary shall have authority or responsibility to deal with matters other than as delegated to it under the Plan, under the Trust Agreement, other written agreement or by operation of law. A fiduciary shall not in any event be liable for breach of fiduciary responsibility or obligation by another fiduciary if the responsibility or authority for the act or omission deemed to be a breach was not within the scope of such fiduciary's authority or delegated responsibility.

**10.05 Delegation.**

Fiduciaries shall have the power to delegate specific fiduciary responsibilities (other than Trustee responsibilities). Such delegations may be to officers or employees of the Employer or to other persons, all of whom shall serve at the pleasure of the fiduciary making such delegation and, if full-time employees of the Employer, without compensation. Any such person may resign by delivering a written resignation to the delegating fiduciary. Vacancies created by any reason may be filled by the appropriate fiduciary or the assigned responsibilities may be reabsorbed or redelegated by the fiduciary.

**10.06 Multiple Fiduciary Roles.**

Any person may hold more than one position of fiduciary responsibility and shall be liable for each such responsibility separately.

## **ARTICLE XI: MISCELLANEOUS**

**11.01 No Guarantee of Employment.**

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

**11.02 Rights to Assets.**

No Employee or Beneficiary shall have any right to, or interest in, any assets of the Plan upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Plan. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Plan and none of the fiduciaries shall be liable therefor in any manner.

**11.03 Nonforfeitability of Benefits.**

Subject only to the specific provisions of this Plan, nothing shall be deemed to divest a Participant of his right to the nonforfeitable benefit to which he becomes entitled in accordance with the provisions of this Plan.

**11.04 Governing Law.**

The Plan shall be governed by the laws of the State of Georgia to the extent applicable, and to the extent not applicable, by federal law.

**11.05 Construction.**

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. The words “hereof,” “herein,” “hereunder” and other similar compounds of the word “here” shall mean and refer to the entire Plan and not to any particular provision or Section. Article and Section headings are included for convenience of reference and are not intended to add to, or subtract from, the terms of the Plan.

**11.06 Action by the Employer.**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter, it shall be done and performed by a duly authorized individual.

**11.07 Uniformity.**

All provisions of the Plan shall be interpreted and applied in a uniform and nondiscriminatory manner.

## **ARTICLE XII: AMENDMENT, TERMINATION AND ADOPTION**

**12.01 Amendments.**

(a) Adoption Agreement.

The provisions of the Adoption Agreement may be amended at any time and from time to time by written amendment approved by the governing body of the Employer, provided:

- (i) No amendment shall increase the duties or liabilities of the Trustee without the consent of such party;
- (ii) No amendment shall impair the contract rights of any Eligible Employee; and
- (iii) No amendment shall be made which would divert any of the assets of the Trust Fund to any purpose other than the exclusive benefit of Participants and Beneficiaries, except that the Plan and Trust Agreement may be amended retroactively and to affect the Accounts of Participants and Beneficiaries if necessary to cause the Plan and Trust to be qualified under the Code.

(b) Plan.

The provisions of the Plan may be amended at any time and from time to time by written amendment approved by both the governing body of the Employer and the Third Party Service Provider.

**12.02 Termination.**

(a) Right to Terminate.

The Employer expects the Plan to be continued indefinitely, but it reserves the right to terminate the Plan or to completely discontinue Contributions to the Plan at any time by action of the governing body of the Employer. In either event, the Third Party Service Provider and the Trustee shall be promptly advised of such decision in writing.

(b) Vesting Upon Complete Termination.

If the Plan is terminated by the Employer or Contributions to the Plan are completely discontinued, the Accounts of all Participants and Beneficiaries or other successors in interest as of such date shall become 100 percent vested and nonforfeitable. Upon termination of the Plan, the Plan Administrator, in its sole discretion, shall instruct the Trustee either (i) to continue to manage and administer the assets of the Trust for the benefit of the Participants and their Beneficiaries pursuant to the terms and provisions of the Trust Agreement, or (ii) if there is no successor plan or no benefits subject to the restrictions in said Section, to pay over to each Participant or Beneficiary the value of his interest in a single sum and to thereupon dissolve the Trust.

(c) Dissolution of Trust.

In the event that the Employer decides to dissolve the Trust, as soon as practicable following the termination of the Plan or the Employer's decision, whichever is later, the assets under the Plan shall be converted to cash or other distributable assets, to the extent necessary to effect a complete distribution of the Trust assets as described below.

Following completion of the conversion, on a date selected by the Employer, each individual with an Account under the Plan on such date shall receive a distribution of the total amount then credited to his Account. The amount of cash and other property distributable to each such individual shall be determined as of the date of distribution. In the case of a termination distribution as provided herein, the Plan Administrator may direct the Trustee to take any action dealing with unclaimed benefits, except that it shall not be necessary to hold funds for any period of time stated in such Section. Within the expense limitations set forth in the Plan, the Employer may direct the Trustee to use assets of the Trust Fund to pay any due and accrued expenses and liabilities of the Trust and any expenses involved in termination of the Plan.

(d) Vesting Upon Partial Termination.

In the event of a partial termination of the Plan, the Accounts of those Participants and Beneficiaries affected shall become 100 percent vested and nonforfeitable and, unless transferred to another qualified plan, shall be distributed in a manner and at a time consistent with the terms of this Section.