the affected Participant and each alternate payee of the order and has determined that the order is a qualified domestic relations order as defined in Code Section 414(p)(1)(A). The alternate payee shall be paid the present value (using the actuarial assumptions contained in the Plan) of his/her specific amount or his/her percentage of the Participant's Accrued Benefit in a lump-sum payment notwithstanding the value of such lump-sum payment unless the domestic relations order specifies a different manner of payment permitted by the Plan; the alternate payee shall not be required to consent to such lump-sum payment. The Board of Trustees shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions thereunder.

(B) Any rights of a former Eligible Spouse, or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Eligible Spouse of the Participant.

(C) The Fund shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Eligible Spouses or other parties in making determinations and, unless such reliance is arbitrary or capricious, the Fund's determinations shall be final and binding and shall discharge the Fund from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Fund shall not be liable for duplicate benefits with respect to the same Participant, or for surviving Eligible Spouse benefits in excess of the actuarial present value of the benefits, determined as of the Effective Date of Benefits of the Participant's pension or, if earlier, the date of the Participant's death.

4.10 Direct Rollovers. Notwithstanding any other provision of the Plan, for distributions made after December 31, 2001 the Contract Administrator shall advise any distributee entitled to receive an eligible rollover distribution, at the same time as the notice required to be given pursuant to Section 4 (or such other time as is permitted by law) of his/her right to elect a direct rollover to an eligible retirement plan, pursuant to the provisions of this Section. To elect a direct rollover the distributee must request in writing to the Contract Administrator that all or a specified portion of the eligible rollover distribution be transferred directly to an eligible retirement plan.

The distributee shall not be entitled to elect a direct rollover pursuant to this Section unless he/she has obtained a waiver of any applicable Qualified Joint and Survivor Annuity, as required pursuant to Section 4.08.

For purposes of this Section, the following definitions shall apply:

(A) A "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.

(B) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Eligible Spouse and the Employee's (or

former Employee's) Eligible Spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the Eligible Spouse or former spouse. A distributee also includes the Participant's non-spouse designated Beneficiary. In the case of a non-spouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is established on behalf of the designed Beneficiary and that will be treated as an inherited individual retirement account pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(C) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution. However, in the case of an "eligible rollover distribution" to the surviving Eligible Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Eligible Spouse, or to an Eligible Spouse or former Eligible Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p). The Contract Administrator may establish reasonable procedures for ascertaining that the eligible retirement plan meets the preceding requirements.

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

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to: (1) an indi-

vidual retirement account or annuity described in Code Section 408(a) or (b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) or taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

A Participant or Beneficiary (including a non-Spousal Beneficiary, to the extent permitted under the Plan) may roll over an eligible rollover distribution (as defined in Code Section 402(c)(4)) to a Roth IRA, provided the Participant (or Beneficiary) satisfies the requirements for making a Roth contribution under Code Section 408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code Section 408A(d)(3)(A).

4.11 A deceased Participant's designated non-spousal Beneficiary, designated within the meaning of Code Section 401(a)(9)(E), shall be permitted to direct a trustee-to-trustee transfer of any portion of a distribution from this Plan to an individual retirement plan described in Code Section 408(a) or (b) that is established for purposes of receiving the distribution on behalf of the designated non-spousal Beneficiary. The direct trustee-to-trustee rollover must be made to an individual retirement account established on behalf of the designated non-spousal Beneficiary that will be treated as an inherited individual retirement account pursuant to the provisions of Code Section 402(c)(11). In order to be able to roll over the distribution, the distribution must otherwise satisfy the definition of an eligible rollover distribution (as defined in Code Section 402(c)(4)). In applying this Section, a non-Spouse rollover will be subject to the direct rollover requirements under Code Section 401(a)(31), the rollover notice requirements under Code Section 402(f), and the mandatory withholding requirements under Code Section 3405(c).

4.12 Incompetence or Incapacity of a Pensioner. In the event it is determined that any Participant or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, the Trustees may pay the benefits due to such Participant or Beneficiary to his or her legal guardian, conservator, committee, or other legal representative, or in the absence of any of them, to any relative by blood or marriage who is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. If such a Participant or Beneficiary resides in a residential health care facility, is not mentally competent, and lacks both a legal representative and a relative acting in his or her interest, the Trustees may pay the benefits due to the Participant or Beneficiary to the residential health care facility in which he or she resides and which is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. Payment by the Trustees hereunder to a legal representative, relative or residential health care facility shall operate to discharge the Trustees from any liability to such Par-

ticipant or Beneficiary or to anyone representing the Participant or Beneficiary's interest. Payments to a legal representative, relative or a residential health care facility hereunder will not be deemed an assignment of benefits; and the relative or residential health care facility must acknowledge in writing that they will apply the amounts paid solely in the interest of the Participant or Beneficiary and that they have no right enforceable against the Fund to any part of the Participant or Beneficiary's Pension benefit or any other assets of the Fund. No payment will be made hereunder to a governmental or private agency, institution, or facility if the Participant or Beneficiary is not legally required to pay for his or her care and maintenance.

## SECTION 5: LIMITATION ON CONTRIBUTIONS AND BENEFITS

5.01 Limitations on Benefits.

(A) The limitations of this Section shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

(B) The annual benefit otherwise payable to a Participant under the Plan at any time shall not exceed the maximum permissible benefit. If the benefit the Participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

(C) If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a predecessor Employer, the sum of the Participant's annual benefits from all such plans may not exceed the maximum permissible benefit.

(D) The application of the provisions of this Section shall not cause the maximum permissible benefit for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of the Employer or a predecessor Employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Treasury Regulations.

(E) The limitations of this Section shall be determined and applied taking into account the rules in Paragraph (G).

(F) Definitions.

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

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

The determination of the annual benefit shall take into account social security supplements described in Code Section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c), of the Treasury Regulations, but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of Actuarial Equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Paragraphs (F)(1)(a) or (F)(1)(b).

(a) Benefit Forms Not Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Paragraph (F)(1)(a) if the form of the Participant's benefit is either (1) a nondecreasing annuity (other than a

straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a Qualified Pre-Retirement Survivor Annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

(i) Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that annuity starting date.

(ii) Limitation Years Beginning On Or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that annuity starting date.

(b) Benefit Forms Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section if the form of the Participant's benefit is other than a benefit form described in Paragraph (F)(1)(a). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(i) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially

equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan; and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan, divided by 1.05.

(ii) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan.

If the annuity starting date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, the application of this Paragraph (F)(1)(b)(ii) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Section, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

(I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form;

(II) the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan; and

(III) the applicable interest rate defined in Section 1.02 of the Plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table defined in Section 1.02 of the Plan.

(2) Compensation: Compensation shall mean one of the following:

(a) Information Required To Be Reported Under Code Sections 6041, 6051, And 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code Section 3401(a) 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)).

(b) Code Section 3401(a) Wages. Compensation is defined as wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401 (a)(2)).

(c) 415 Safe-Harbor Compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe

benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c)of the Treasury Regulations), and excluding the following:

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

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

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

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

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

(d) For any self-employed individual, Compensation shall mean earned income.

(e) Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year. Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and con-

sistent basis with respect to all similarly situated Employees, and no compensation is included in more than one limitation year.

(f) For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2½ months after an Employee's severance from employment with the Employer maintaining the Plan or the end of the limitation year that includes the date of the Employee's severance from employment with the Employer maintaining the Plan, if:

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

(ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or

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

(g) Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment, except, (a) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; or (b) compensation paid to a Participant who is permanently and totally disabled, as defined in Code Section 22(e)(3), provided salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated Employee, as defined in Code Section 414(q), immediately before becoming disabled.

(h) Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Treasury Regulations, shall be treated as compensation for the limi-

tation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(i) For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in Compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

(j) For limitation years beginning after December 31, 2000, Compensation shall also include any elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4).

(k) For limitation years beginning after December 31, 2001, Compensation shall also include deemed Code Section 125 compensation. Deemed Code Section 125 compensation is an amount that is excludable under Code Section 106 that is not available to a Participant in cash in lieu of group health coverage under a Code Section 125 arrangement solely because the Participant is unable to certify that he or she has other health coverage. Amounts are deemed Code Section 125 compensation only if the Employer does not request or otherwise collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(l) Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(3) Defined Benefit Compensation Limitation: 100 percent of a Participant's high three-year average compensation, payable in the form of a straight life annuity.

(a) In the case of a Participant who has had a severance from employment with the Employer, the defined benefit compensation limitation applicable to the Participant in any limitation year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the Participant in the prior limitation year by the annual adjustment factor under Code Section 415(d) that is published in the Internal Revenue Bulletin. The adjusted compensation limit shall apply to limitation years ending with or within the calendar year of the

date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(b) In the case of a Participant who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the Participant's high three-year average compensation, as determined prior to the severance from employment, as adjusted pursuant to the preceding paragraph, if applicable; or 100 percent of the Participant's high three-year average compensation, as determined after the severance from employment under Paragraph (F)(7).

(4) Defined Benefit Dollar Limitation: effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is $160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the defined benefit dollar limitation under Code Section 415(d) shall apply to Participants who have had a separation from employment.

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

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

(7) High Three-Year Average Compensation: The average compensation for the three consecutive years of service (or, if the Participant has less than three consecutive years of service, the Participant's longest consecutive period of

service, including fractions of years, but not less than one year) with the Employer that produces the highest average. A year of service with the Employer is the 12-consecutive month period. In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant's high three-year average compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no compensation from the Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A Participant's compensation for a year of service shall not include compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which such year of service begins.

(8) Limitation Year: A calendar year. All qualified plans maintained by the Employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

(9) Maximum Permissible Benefit: The lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

(a) Adjustment for Less than 10 Years of Participation or Service: If the Participant has less than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan, and (ii) the denominator of which is 10. In the case of a Participant who has less than ten years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of service with the Employer, and (ii) the denominator of which is 10.

(b) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the Participant's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Paragraph (F)(9)(b)(i), as modified by Paragraph (F)(9)(b)(iii). If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Paragraph (F)(9)(b)(ii), as modified by Paragraph (F)(9)(b)(iii).

(i) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before age 62:

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

(II) Limitation Years Beginning on or After July 1, 2007.

aa. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

bb. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement: If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the lesser of the limitation determined under Paragraph (F)(9)(b)(i)II[AA] and the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section.

(ii) Adjustment of defined benefit dollar limitation for Benefit Commencement After Age 65:

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

(II) Limitation Years Beginning Before July 1, 2007.

a. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required), with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

b. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the lesser of the limitation determined under Paragraph (F)(9)(b)(ii)(II)[A] and the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Section. For this purpose, the adjusted immediately commencing straight life annuity

under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this Paragraph (F)(9)(b), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a Participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Participant's death.

(c) Minimum Benefit Permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the maximum permissible benefit if:

(i) the retirement benefits payable for a limitation year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed $10,000 multiplied by a fraction, (I) the numerator of which is the Participant's number of years (or part thereof, but not less than one year) of Service (not to exceed 10) with the Employer, and (II) the denominator of which is 10; and

(ii) the Employer (or a predecessor Employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for postre-

tirement medical benefits established under Code Section 41 9A(d)(1) are not considered a separate defined contribution plan).

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

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

(12) Year of Participation: The Participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the Participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a Participant to receive a year of participation (or part thereof) for an accrual computation period, the Plan must be established no later that the last day of such accrual computation period. In no event shall more than one year of participation be credited for any 12-month period.

(13) Year of Service: For purposes of Paragraph (F)(7), the Participant shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the Participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, taking into account only service with the Employer or a predecessor Employer.

(G) Other Rules.

(1) Benefits Under Terminated Plans. If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all Plan Participants and a Participant in the Plan has not yet commenced benefits under the Plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated Plan at each possible annuity starting date shall be taken into account in applying the limitations of this Section. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated Plan.

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

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

(4) Plans of a Predecessor Employer. If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a predecessor Employer, the Participant's benefits under a plan maintained by the predecessor Employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor Employer relationship with sufficient assets to pay Participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the predecessor Employer shall be treated as if

they were a single Employer immediately prior to such event and as unrelated Employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the predecessor Employer.

(5) Special Rules. The limitations of this Section shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the Treasury Regulations.

(6) Aggregation with Multiemployer Plans.

(a) If the Employer maintains a multiemployer plan, as defined in Code Section 414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the Employer shall be treated as benefits provided under a plan maintained by the Employer for purposes of this Section.

(b) Effective for limitation years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Paragraphs (F) and (F)(9)(a) to a plan which is not a multiemployer plan.

5.02 Early Plan Termination

Benefits distributed to any of the 25 most Highly Compensated active and former Highly Compensated Employees are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Employee under a single life annuity that is the actuarial equivalent of the sum of the Employee's Accrued Benefit and the Employee's other benefits under the Plan.

The preceding paragraph shall not apply if (i) after payment of the benefit to an Employee described in the preceding paragraph, the value of Plan assets equals or exceeds 110% of the value of current liabilities, as defined in Code Section 412(l)(7) or (ii) the value of the benefits for an Employee described above is less than 1% of the value of current liabilities.

For purposes of this Section, benefits include loans in excess of the amount set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Employee, and any death benefits not provided for by insurance on the Employee's life.

5.03 Pre-Termination Restrictions. In the event of Plan termination, the benefit of any Highly Compensated Employee (whether active or former) is limited to a benefit that is nondiscriminatory under Code Section 401(a)(4). As of the date this Plan is terminated, if the value of Plan assets is not less than the present value of all Accrued Benefits (whether nor not nonforfeitable), distribution of assets to each Participant equal to the present value of that Partici-

pant's Accrued Benefit will not be discriminatory if the formula for computing benefits as of the date of Plan termination is not discriminatory. All present values and the value of Plan assets will be computed using assumptions satisfying Section 4044 of the Employee Retirement Income Security Act.

## SECTION 6: TOP HEAVY PROVISIONS

6.01 Application of Section. The provisions in this Section shall take precedence over any other provisions in the Plan with which they conflict.

6.02 Definitions.

(A) "Key Employee." Any Employee or former Employee (including any deceased Employee) who, at any time during the Plan Year that includes the determination date, is an officer of an Employer having an annual compensation greater than $130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having an annual compensation of more than $150,000. For purposes of this paragraph, annual compensation means compensation within the meaning of Section 1.05 of the Plan. The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the Treasury Regulations thereunder.

(B) "Top-heavy plan." For any Plan Year beginning after December 31, 1983, this Plan is top-heavy if any of the following conditions exists:

(1) If the top-heavy ratio for this Plan exceeds 60% and this Plan is not part of any required aggregation group or permissive aggregation group of plans.

(2) If this Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60%.

(3) If this Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60%.

(C) "Top-heavy ratio."

(1) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan (including any Simplified Employee Pension Plan) which during the one-year period ending on the determination date(s) has or has had account balances, the top-heavy ratio for this Plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued

benefits of all key Employees as of the determination date(s) (including any part of any accrued benefit distributed in the one-year period ending on the determination date(s) in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of the present value of accrued benefits (including any part of any accrued benefits distributed in the one-year period ending on the determination date(s) in the case of a distribution made for a reason other than severance from employment, death or disability), both computed in accordance with Code Section 416 and the Treasury Regulations thereunder.

(2) If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans (including any Simplified Employee Pension Plan) which during the five-year period ending on the determination date(s) has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under aggregated defined benefit plan or plans for all key Employees, determined in accordance with Paragraph (1) above, and the sum of the account balances under the aggregated defined contribution plan or plans for all key Employees as of the determination date(s), and the denominator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans for all Participants, determined in accordance with Paragraph (1) above, and the account balances under the aggregated defined contribution plan or plans for all Participants as of the determination date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the five-year period ending on the determination date (five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability).

(3) For purposes of Paragraphs (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12–month period ending on the determination date, except as provided in Code Section 416 and the regulations thereunder for the first and second Plan Years of a defined benefit plan. The account balances and accrued benefits of a Participant (a) who is not a key Employee but who was a key Employee in a prior year, or (b) who has not been credited with at least one Hour of Service with any employer maintaining the Plan at any time during the five-year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing

the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

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

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

(E) "Required aggregation group." (1) Each qualified plan of the Employer in which at least one key Employee participated at any time during the Plan Year containing the determination date or any of the four preceding Plan Years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Code Sections 401(a)(4) or 410.

(F) "Determination date." For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first year of the Plan, the last day of that year.

(G) "Non-key Employee." Any Employee who is not a key Employee.

(H) "Valuation date." For each defined benefit plan sponsored by the Employer, the valuation date is the most recent date within the 12–month period ending on the determination date used for computing plan costs for minimum funding for such plan. For each defined contribution plan sponsored by the Employer, the valuation date is the most recent date within the 12–month period ending on the determination date used for annual valuation of account balances for such plan.

(I) "Present value." For purposes of establishing present value to compute the top-heavy ratio, any benefit shall be discounted using the interest and mortality rates described in Section 1.02.

6.03 Accelerated Vesting Unless the Plan provides for full and immediate vesting of the Participant's Accrued Benefit upon participation, then for any Plan Year in which this Plan is deemed to be a top-heavy plan, the vesting schedule contained in Section 1.29 shall be modified as follows:

(A) Total Service for Vesting (excluding Years of Service prior to Effective Date of this Plan)

| Vested | Percentage |
|---|---|
| less than 3 years | 0% |
| 3 years or more | 100% |

Should this Plan not be deemed to be a top-heavy plan after previously being so categorized, the vesting schedule contained in Section 1.29 shall again be effective except that the Vested percentage attained by Participants shall not be reduced thereby and Participants with 3 or more Years of Service for Vesting shall have the right to select the vesting schedule under which their Vested Accrued Benefit will be determined.

6.04 Minimum Benefits. Notwithstanding any other provision in this Plan except Paragraphs (C), (D), (E) and (F) below, for any Plan Year in which this Plan is top-heavy, each Participant who is not a key Employee and has completed 1,000 hours of service will accrue a benefit (to be provided solely by Employer contributions and expressed as a life annuity commencing at normal retirement age) of not less than two percent of his or her highest average Compensation for the five consecutive years for which the Participant had the highest Compensation. The aggregate Compensation for the years during such five-year period in which the Participant was credited with a year of service will be divided by the number of such years in order to determine average annual Compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other Plan provisions the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the non-key Employee fails to make mandatory contributions to the Plan, (ii) the non-key Employee's Compensation is less than a stated amount, (iii) the non-key Employee is not employed on the last day of the accrual computation period, or (iv) the Plan is integrated with Social Security.

(A) For purposes of computing the minimum accrued benefit, Compensation shall mean Compensation as defined in Section 5.01(D)(2) of the Plan, as limited by Section 401 (a)(1 7) of the Code.

(B) No accrual shall be provided pursuant to Paragraph (A) above for a year in which the Plan does not benefit any key Employee of former key Employee.

(C) No additional benefit accruals shall be provided pursuant to Paragraph (A) above to the extent that the total accruals on behalf of the Participant attributable to Employer contributions will provide a benefit expressed as a life annuity commencing at normal retirement age that equals or exceeds 20 percent of the Participant's highest average Compensation for the five consecutive years for which the Participant had the highest Compensation.

(D) The provision in Paragraph (A) above shall not apply to any Participant to the extent the Participant is covered under any other Plan or plans of the Employer and the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other Plan or plans.

(E) All accruals of Employer-derived benefits, whether or not attributable to years for which the Plan is top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (3) above are satisfied.

6.05 Limitation on Compensation Taken into Account Under Plan. For any Plan Year prior to Plan Years beginning before January 1, 1989, in which this Plan is deemed to be a top-heavy plan the definition of annual Compensation contained in Paragraph 6.02(A) shall exclude amounts in excess of $200,000. For any Plan Year beginning on or after January 1, 1989 annual Compensation shall exclude amounts in excess the limitation under Code Section 401(a)(17) (i.e., $150,000 adjusted for the cost of living).

6.06 Modification of Defined Benefit and Defined Contribution Plan Fraction. For any Plan Years beginning after December 31, 1999, this Section shall not apply. For any Plan Year in which the Plan is deemed to be a top-heavy plan, the denominators of the defined benefit fraction and the defined contribution fraction contained in Paragraph 5.01(D) shall be deemed to be modified by substituting 100% for 125%. Notwithstanding the above, if this Plan would not be deemed to be a top-heavy plan if 90% were substituted for 60% in Paragraph 6.02(B) and if the Employer provides benefits and/or makes contributions to the accounts of non-key Employees who participate in defined benefit and/or defined contribution plans maintained by the Employer, in amounts at least equal to that which would be required by Section 6.04 after substituting 3% for 2% in the minimum non-integrated benefit, and by substituting 7.5% for 5% as the minimum non-elective contribution percentage made by the Employer for eligible non-key Employees for the Plan Year to a defined contribution plan sponsored by the Employer, then the reduction in the defined benefit fraction and the defined contribution fraction as set forth in the preceding sentence, shall not be made.

For Plan Years beginning after December 31, 1999, minimum benefits shall be determined under Section 6.04.

## SECTION 7: APPLICATION FOR BENEFITS AND ADJUDICATION OF CLAIMS FOR BENEFITS

7.01 Advance Written Application Required. An application for a Pension shall be made in writing on a form and in the manner prescribed by the Fund in advance of its effective date of benefits.

7.02 Information Required and Recovery of Overpayments.

(A) Every claimant for benefits shall furnish to the Fund all information and proof relevant to his or her eligibility for benefits under the Fund. Each Participant, Pensioner, and Beneficiary shall furnish the Fund with all information and proof requested by it for the administration of the Fund. If a Participant, Pensioner, Beneficiary, or other claimant for benefits makes a willfully false statement relevant to his or her claim for

benefits, or furnishes fraudulent information or proof relative to his or her claim for benefits, then benefits not vested under the Fund may be suspended or discontinued.

(B) The Fund shall have the right to recover by all legal and equitable means any amounts paid to anyone in error, plus interest on same, and the right to recover by all legal and equitable means any amounts paid to which the recipient was not rightfully entitled under the terms of the Fund, plus interest on same. This right to recovery shall include, but shall not be limited to, the right to adjust future payments actuarially, or otherwise, to recoup such amounts from any future benefits to be paid to or on behalf of the Participant, Pensioner, or Beneficiary, and the right to recoup such amounts from any benefits to be paid to or on behalf of any survivors of the Participant, Pensioner, or Beneficiary. Where benefit payments received by a Pensioner in the form of a Joint and Survivor Annuity are actuarially adjusted to recoup an overpayment, such adjustment shall not extend, and recoupment shall not apply, to benefits paid to the Pensioner's surviving Eligible Spouse.

7.03 Action of Trustees. The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties. The Trustees shall have the exclusive right and discretionary authority to construe the terms of the Plan, to resolve any ambiguities, and to determine any questions which may arise with the Plan's application or administration, including but not limited to determination of eligibility for benefits. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner. The Trustees shall process a claim for benefits as speedily as is feasible, consistent with the need for adequate information and proof necessary to establish the claimant's benefit rights and to commence the payment of benefits.

7.04 Notice of Claim Determinations. A Participant or Beneficiary who applies for benefits under the Plan shall have his/her eligibility for benefits determined by the Contract Administrator. The Participant or Beneficiary may designate an Authorized Representative to act on behalf of the Participant or Beneficiary in pursuing a benefit claim or an appeal of a determination. In order for a designation of an Authorized Representative to be effective, the Participant or Beneficiary must submit to the Contract Administrator a Designation of Authorized Representative form.

The Contract Administrator will make an initial determination within 90 days (45 days in the case of Disability claims) of receipt of the benefits claim form. The Contract Administrator may extend the period for the initial determination for a period not to exceed 90 days (or 30 days, in the case of Disability claims), provided: (1) the Participant or Beneficiary is notified of the extension within the initial 90- or 45-day period; (2) the extension is required for reasons beyond the Contract Administrator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. The Contract Administrator may further extend the period for the initial determination of Disability claims for an additional 30 days, provided: (1) the Participant or Beneficiary is notified of the extension within the first 30-day extension period; (2) the extension is required for reasons beyond the Contract Adminis-

trator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. If any extension is necessary because the Participant or Beneficiary submits an incomplete claim to the Contract Administrator, the period for making an initial determination will be suspended from the date that the request for additional information is sent to the Participant or Beneficiary until the earlier of: (a) the date that the Participant or Beneficiary responds to the Contract Administrator, or (b) 90 days (45 days for Disability claims) from the date of the request. The Participant or Beneficiary must submit the additional information requested by the Contract Administrator within 90 days (45 days for Disability claims). If a claim is denied, in whole or in part, the Participant or Beneficiary shall be sent written notice of the denial containing the following information: (1) the specific reason or reasons for the denial of the claim; (2) a specific reference to pertinent plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the Participant or Beneficiary to perfect the claim and an explanation of why the additional material or information is necessary; and (4) an explanation of the Plan's claim review procedure.

7.05 Appeal to the Board of Trustees. If the Participant or Beneficiary disagrees with the Contract Administrator's determination, the Participant or Beneficiary must file a written appeal with the Board of Trustees. To file an appeal to the Board of Trustees, the Participant or Beneficiary must send to the Contract Administrator a written statement stating that the Participant wishes to appeal the Contract Administrator's determination. The statement must be filed (postmarked or hand-delivered) within 180 days (60 days for Disability claims) after receipt of the determination. The Participant may submit with the appeal any written comments, documents, records, or other information related to the benefit claim which is the subject of the appeal. An appeal of an determination by the Contract Administrator shall be decided by the Board of Trustees at their next regularly scheduled quarterly meeting that immediately follows the Board's receipt of the Participant or Beneficiary's appeal, unless the appeal is filed within 30 days preceding the date of such regular quarterly meeting. If an appeal is filed within 30 days of a regularly scheduled meeting, the Board's determination shall be made no later than the date of the second regularly scheduled quarterly meeting following the Board's receipt of the appeal. If special circumstances require a further extension of time for processing the appeal, a determination by the Board shall be rendered no later than the third meeting of the Board following the Board's receipt of the appeal. If such an extension of time for review is required because of special circumstances, the Contract Administrator shall notify the Participant or Beneficiary in writing of the required extension prior to the commencement of the extension, describing the special circumstances and the date as of which the appeal determination will be made by the Board. The Contract Administrator shall notify the Participant or Beneficiary of the Board's appeal determination as soon as possible, but no later than five days after the appeal determination is made by the Board.

7.06 Extension of Time. The Participant or Beneficiary, Authorized Representative, Contract Administrator, or Board of Trustees may agree, in writing, to extend the times set forth in this Section. Any written agreement to extend the times must be reduced to writing prior to the expiration of the times set forth herein, and must specifically provide for the amount of the agreed-to extension.

7.07 Rights on Appeal to the Board of Trustees. The Participant or Beneficiary may request a hearing in person before the Board of Trustees. This request must be set forth in the written

appeal filed with the Contract Administrator. At the hearing the Participant or Beneficiary may present any evidence, through documents or witnesses, to support the claim for benefits, and may be represented by a lawyer. The Participant or Beneficiary has the right to submit to the Board of Trustees along with the appeal documents, records and other information relating to the claim for benefits. The Participant or Beneficiary has the right, upon request and without charge, to reasonable access to and copies of all documents, records and other information relevant to the claim for benefits. The Participant or Beneficiary will be provided with the names of any medical or vocational experts whose advice was obtained on behalf of the Plan by the Contract Administrator in connection with the initial claim determination, without regard to whether the advice was relied upon in making the initial claim determination. The decision of the Board of Trustees will be based on its own review of the claim, taking into account all comments, documents, records, an other information submitted by the Participant or Beneficiary, without regard to whether such information was submitted or considered in the initial benefit determination and, where appropriate, in consultation with a health care professional who has appropriate training and experience in the field of medicine involved in the claim, and who was not consulted in connection with the initial benefit determination, and without any deference to the initial claim determination made by the Contract Administrator.

7.08 Consequences of Failure to File an Appeal. If the Participant or Beneficiary fails to seek a review through the Contract Administrator's appeal procedure of any claim denial, in whole or in part, by the Contract Administrator, the decision of the Contract Administrator shall be final and binding. No legal action may be commenced or maintained against the Plan if the Participant or Beneficiary fails to appeal the denial of the claim. If the Participant or Beneficiary fails to seek a review by the Board of a claim denial, in whole or in part, by the Contract Administrator, the decision of the Contract Administrator shall be final and binding. No legal action may be commenced or maintained against the Plan if the Participant or Beneficiary fails to appeal the denial of the claim to the Board of Trustees. If the Participant or Beneficiary does not exercise their rights under ERISA to seek review of a decision by the Board denying the claim, in whole or in part, the decision of the Board shall be final and binding. No legal action may be commenced or maintained against the Plan more than 6 months after the decision of the Board of Trustees.

## SECTION 8: DESIGNATION OF BENEFICIARY

8.01 Designation of Beneficiary. A Participant or Pensioner may designate a person or persons as a Beneficiary or Beneficiaries to receive the Death Benefits, if any, provided in accordance with the Plan, or any benefits due but not yet received by the Pensioner at the time of his or her death, by forwarding such designation to the Contract Administrator in a form acceptable to the Board of Trustees. Designated Beneficiaries other than individual(s) are not acceptable; however, a trust or an estate may be a designated Beneficiary. See also Plan Section 4.08(B) (spousal consent requirement at retirement) and 4.08(D) (preretirement surviving spouse pension) for limitations on beneficiary designations. A Participant or Pensioner shall have the right to change his or her designation of Beneficiary without the consent of the Beneficiary, but no change shall be effective or binding on the Fund unless it is received by the Contract Administrator prior to the time any payments are made to the Beneficiary whose designation is on file with the Contract Administrator. Any benefits due but not yet received by the Pensioner at the

time of his or her death, shall be paid to the most recently designated Beneficiary filed with the Contract Administrator. If such designated Beneficiary who has survived the Pensioner or Participant dies, and further payments are due for periods after the death, and if no successor Beneficiary named by the Participant is still then living, such payments shall be made to the designated Beneficiary's survivor(s), as applicable, according to the order listed in Plan Section 8.02.

8.02 No Designated Beneficiary. If a Participant has not designated a Beneficiary or if there is no designated Beneficiary alive at the death of a Participant, any benefits due but not yet received by the Pensioner at the time of his or her death shall be payable to the person listed below in the order listed:

(A) to the Participant's Spouse;

(B) if no surviving Spouse, to the Participant's surviving children, divided equally among them;

(C) if no surviving Spouse or surviving children, to the Participant's surviving parents, divided equally between them;

(D) if no surviving Spouse or surviving children or surviving parents, to the Participant's surviving siblings, divided equally among them.

If there are no survivors under (A) through (D) above, such benefits will not be paid to anyone, including an estate, and such amounts will be forfeited to the Fund.

This Plan Section 8.02 shall also apply to the survivors of a Beneficiary, if no successor Beneficiary named by the Participant is still living, or to the survivors of a surviving Spouse, and if there were benefits due but not yet received by the Beneficiary or surviving Spouse at the time of his or her death.

## SECTION 9: MISCELLANEOUS PROVISIONS

9.01 Military Service Credit. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

9.02 Non-Assignment of Benefits.

(A) Each Participant under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his or her Pension, prospective Pension or any other rights or interest under the Plan, and the Board of Trustees shall not recognize or be required to recognize such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such Pension, prospective Pension, right or interest shall not be subject in any manner to voluntary transfer or transfer by op-

eration of law or otherwise, and shall be exempt from the claims of creditors or other proceedings to the fullest extent permitted by law.

(B) Notwithstanding the foregoing, Subsection (A) above, shall not preclude:

(1) Benefits from being paid in accordance with the applicable requirements of any "Qualified Domestic Relations Order" as defined by ERISA Section 206(d)(3); and

(2) Any offset of a Participant's benefits as provided under Internal Revenue Code Section 401(a)(13)(C) with respect to:

(a) a judgment of conviction for a crime involving the Plan;

(b) a civil judgment, consent order or decree in an action for breach or alleged breach of fiduciary duty under ERISA involving the Plan; or

(c) a settlement agreement between the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under ERISA by a fiduciary or any other person, which court order, judgment, decree or agreement is issued or entered into on or after August 5, 1997 and specifically requires the Plan to offset against a Participant's benefits.

(3) However, an offset under Internal Revenue Code Section 401(a)(13)(C) against a married Participant's benefits shall be valid only if one of the following conditions is satisfied:

(a) written spousal consent is obtained;

(b) the Eligible Spouse is required by a judgment, order, decree or agreement to pay the Plan an amount; or

(c) a judgment, order, decree or agreement provides that the Eligible Spouse shall receive a survivor annuity, as required by Internal Revenue Code Section 401(a)(11), determined as if the Participant terminated employment on the offset date (with no offset to his or her benefits), to begin on or after Normal Retirement Age, and providing a 50% Qualified Joint and Survivor Annuity and a Qualified Pre-Retirement Survivor Annuity.

(C) A Participant or Beneficiary may authorize in writing the payment of his or her entire monthly Pension benefit to a trust fund. Such authorization must be strictly voluntary and may be revoked by the Participant or Beneficiary at any time. Such au-