

LINCOLN INVESTMENT PLANNING, INC.

Retirement SOLUTIONS PREMIER

Governmental 457 Deferred Compensation Plan Custodial Account Agreement

UMB Bank, n.a., Custodian

*Registered Investment Advisor
Broker/Dealer, Member NASD/SIPC*

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Governmental 457 * 01/07



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INTRODUCTION

Subject to the provisions of Article XI, the Employer hereby adopts this Governmental 457 Deferred Compensation Plan & Custodial Account and offers the Plan to all individuals who are now or who become eligible to participate in the Plan and who sign Deferral Agreements in accordance with the terms of the Plan. All references to this plan shall also include the Custodial Account.

ARTICLE I - PURPOSE

- 1.01** **Purpose:** This Plan is an "eligible deferred compensation plan" as defined in Section 457(b) of the Code. The purpose of the Plan is to allow Participants hereunder to defer receipt and taxation of portions of their compensation until future taxable years under the conditions provided herein, in accordance with Section 457 of the Code and regulations thereunder.
- 1.02** **Exclusive Benefit:** The Plan and Custodial Account are established for the exclusive benefit of Participants and their Beneficiaries. Except as otherwise permitted by Section 457(g) and Section 401(f) of the code, all assets and income of the Plan shall be held for the exclusive benefit of the Plan's Participants and their Beneficiaries.
- 1.03** **Plan and Custodial Account Tax Status:** The Plan is intended to be an eligible deferred compensation plan within the meaning of Section 457(b) of the code, and the Custodial Account is intended to be tax-exempt under Section 501(a) of the code pursuant to Sections 457(g) and 401(f) of the code.

ARTICLE II - DEFINITIONS

- 2.01** **Account:** "Account" means an account set up by the Employer with respect to amounts deferred from the compensation of a Participant. An account may include one or more approved investments of the Sponsor. The balance in an Account will include amounts invested and earnings credited thereto, less distributions made pursuant to the Plan.
- 2.02** **Agreement:** This instrument setting forth the terms and conditions of the Retirement Solutions Eligible Deferred Compensation Plan and Custodial Account for Governmental Entities.
- 2.03** **Annual Deferral:** "Annual Deferral" means with respect to a taxable year, the amount of compensation deferred under this Plan.
- 2.04** **Applicable Life Expectancy:** "Applicable Life Expectancy" means the life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If the life expectancy is being redetermined, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first Distribution

Calendar Year, and if life expectancy is being redetermined, each succeeding calendar year.

- 2.05** **Application:** The written application, which incorporates this Agreement and is signed by the Employee and accepted by the Custodian and serves to establish the *Retirement SOLUTIONS* Eligible Deferred Compensation Plan and Custodial Account for the Employee.
- 2.06** **Beneficiary:** "Beneficiary" means a beneficiary of the Participant, his estate, or any other person whose interest in the Plan is derived from the Participant. A Participant may designate his Beneficiary in accordance with Section 6.12 hereunder.
- 2.07** **Code:** "Code" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder, and shall include the corresponding section of any future federal tax law.
- 2.08** **Compensation:** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Article IV).
- 2.09** **Custodian:** UMB Bank, n.a., or any successor or successors appointed.
- 2.10** **Deferral Agreement:** "Deferral Agreement" means a written agreement between an Employee and the Employer in which the Employee agrees to the terms of the Plan and designates compensation to be deferred under the Plan.
- 2.11** **Designated Beneficiary:** "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan in accordance with section 401(a)(9) of the Code.
- 2.12** **Distribution Calendar Year:** "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year, which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 6.04 of the Plan.
- 2.13** **Employee:** "Employee" means an individual who performs services for the Employer as an employee, and, if specified in the Adoption Agreement, as independent contractor who performs services for the Employer.

- 2.14 Employer:** "Employer" means the State, the political subdivision of the State, or the agency or instrumentality of the State, or a political subdivision of the State, named in the Adoption Agreement, which has adopted the Plan.
- 2.15 Includible Compensation:** An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Article IV).
- 2.16 Investment Company:** Any "Regulated Investment Company" within the meaning of IRC Section 851(a) which has been approved for this Agreement by the Sponsor.
- 2.17 Life Expectancy:** "Life Expectancy" means life expectancy or joint and last survivor expectancy as computed by use of the expected return multiples under Section 1.401(a)(9)-9 of the Income Tax Regulations.
- 2.18 Non-elective Employer Contributions:** A Nonelective Employer contribution is a contribution made by an eligible Employer for a Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property. Nonelective Employer Contributions includes Employer contributions that would be described in section 401(m) of the Code if they were contributions to a qualified plan under Section 401(a) of the code.
- 2.19 Normal Retirement Age:** The age specified in the Adoption Agreement. If a Participant continues to work beyond the age(s) specified in the Adoption Agreement, Normal Retirement Age shall be the date or age designated by the Participant not later than the Employer's mandatory retirement age or the age at which the Participant actually incurs a severance from employment with the Employer.
- 2.20 Participant:** "Participant" means an Employee who has signed a Deferral Agreement, which has been accepted by the Employer. The term Participant shall also include an individual who has previously deferred Compensation under the Plan by salary reduction or by Nonelective Employer Contribution and who has not received a distribution of his or her entire benefit under this eligible Plan.
- 2.21 Participant's Benefit:** "Participant's Benefit" means the account balance as of the last day in the calendar year immediately preceding the Distribution Calendar Year.
- 2.22 Plan:** "Plan" means this Eligible Deferred Compensation Plan which has been established by the Employer pursuant to the requirements of section 457 of the Code and the regulations thereunder.
- 2.23 Plan Administrator:** "Plan Administrator" means the person or persons named in the Adoption Agreement to administer the Plan. If no person is named, the Employer shall be the Plan Administrator.
- 2.24 Plan Ceiling:** "Plan Ceiling" means the maximum amount of Compensation, which may be deferred by a Participant under the Plan. In determining the amount of Compensation deferred, Compensation shall be taken into account at its value in the Plan Year in which deferred.
- 2.25 Plan Year:** "Plan Year" means a calendar year.
- 2.26 Required Beginning Date:** "Required Beginning Date" of a Participant means April 1 of the calendar year following the calendar year in which the later of retirement or attainment of age 70-1/2 occurs.
- 2.27 Severance from Employment:** The term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code).
- 2.28 Sponsor:** Lincoln Investment Planning, Inc.
- 2.29 Unforeseeable Emergency:** "Unforeseeable Emergency" means severe financial hardship to a Participant or Beneficiary resulting from sudden illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or of a Participant's or Beneficiary's dependent (as defined in Section 152(a) of the Code), loss of the Participant's or Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary as the term is defined under Section 1.457-6(c)(2) of the Income Tax Regulations. The need to send a Participant's child to college or the desire to purchase a home are examples of what are not considered to be Unforeseeable Emergencies. Whether or not a Participant has experienced an Unforeseeable Emergency will be determined by the Employer.

ARTICLE III – ELIGIBILITY AND PARTICIPATION

- 3.01 Eligibility:** Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer.
- 3.02 Election Required for Participation:** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the Deferral Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a

minimum deferral amount, and may change such minimums from time to time. The participation election shall also include designation of investment funds and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed.

3.03 **Commencement of Participation:** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 3.02. Such election shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

3.04 **Information Provided by the Participant:** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).

3.05 **Contributions Made Promptly:** Annual Deferrals by the Participant under the Plan shall be transferred to the custodial account within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the custodial account within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

3.06 **Amendment of Annual Deferrals Election:** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Trustee or Custodian.

3.07 **Leave of Absence:** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

3.08 **Disability:** A disabled Participant may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE IV – DEFERRAL OF COMPENSATION

4.01 **Designation of Amount of Compensation to be Deferred:** An individual shall designate the dollar amount or percentage of his monthly or semimonthly compensation to be deferred under this Plan on a Deferral Agreement. The amount designated in the Deferral Agreement will be deferred from the Participant's Compensation for the first month of participation and for each subsequent month until and unless an amended Deferral Agreement is filed with the Employer or until the Participant terminates his participation by giving written notice to the Employer. An amended Deferral Agreement or termination will become effective on the first day of the first calendar month beginning thirty (30) days after the amended Deferral Agreement or notice of termination is filed with the Employer, or at such earlier time as is convenient for the Employer.

4.02 **Maximum Deferral Amount/ Plan Ceiling:** Except as provided in Section 4.04, 4.05 and 4.06, the Plan Ceiling for a Taxable Year shall be the lesser of:

- the applicable annual dollar amount specified in Section 457(e)(15) of the Code; or
- 100% of the Participant's Includible Compensation for the Taxable Year.

For purposes of determining the Plan Ceiling under this section 4.02, the annual deferral amount shall not include rollover amounts received by this plan.

4.03 **Basic Annual Limitation:** The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code applicable as set forth below:

Year	Applicable Dollar Amount
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000*

* Adjusted for cost-of-living after 2006 to the extent provided under section 415(d) of the Code.

4.04 **Age 50 Catch-up Annual Deferral Contributions:** If elected by the Employer in the Adoption Agreement, a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum

dollar amount of the age 50 catch-up Annual Deferrals for a year is as follows:

Year	Age 50 catch-up dollar amount is:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000*

* Adjusted for cost-of-living after 2006 to the extent provided under the Code.

4.05 Special 3-year 457 Plan Catch-Up Limitation: If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 4.06 exceeds the amount computed under Sections 4.03 and 4.05, then the Annual Deferral limit under this Article IV shall be the lesser of:

- (a) An amount equal to 2 times the Section 4.03 Applicable Dollar Amount for such year; or
- (b) The sum of:
 - (1) An amount equal to (A) the aggregate Section 4.03 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to (A) the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.05 and 4.06), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

4.06 Restriction on Special 3-year Catch-Up: A Participant who has used the special 3-year catch-up provision in Section 4.05 or a comparable provision in another eligible deferred compensation plan, has retired, and is subsequently employed or reemployed by the Employer may not again utilize the special 3-year catch-up provision, even if the provision was used in less than all of the three taxable Years ending before the Participant attained Normal Retirement Age.

4.07 Special Rules: For purposes of this Article III, the following rules shall apply:

- (a) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of

applying the foregoing limitations of this Article IV. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

- (b) **Pre-Participation Years.** In applying Section 4.05, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 4.03 or any other plan ceiling required by section 457(b) of the Code.
- (c) **Pre-2002 Coordination Years.** For purposes of Section 4.05(b)(2)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.05(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.
- (d) **Disregard Excess Deferral.** For purposes of Sections 4.03, 4.04 and 4.05, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 4.10. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

4.08 Qualified Governmental Excess Benefit Arrangement: Benefits provided under a qualified governmental excess benefit arrangement as defined in §415(m)(3), shall not be taken into account in determining whether this Plan is an eligible deferred compensation plan.

4.09 Correction of Excess Deferrals: If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another

eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

- 4.10 Protection of Persons Who Serve in a Uniformed Service:** An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE V – INVESTMENT OF DEFERRED AMOUNTS

- 5.01 Establishment of Custodial Account:** The Custodian shall open and maintain a Custodial Account for each eligible Participant who completes an Application; and the Custodian shall hold and administer, in accordance with the terms hereof, contributions to the Custodial Account and any gain, loss or income from the investment thereof. The Participant shall notify the Custodian in writing of any change in name, address, or Social Security Number.
- 5.02 Investment of Deferred Amounts:** The amounts deferred on behalf of a Participant under the Plan shall be promptly remitted to the Sponsor and invested in the approved investments designated by the Participant on his Deferral Agreement, or other form acceptable to the Sponsor.
- 5.03 Investment of Gains and Dividends:** All dividends and capital gains distributions on shares held in the Participant's Account shall be reinvested in such shares in accordance with the Investment Company's current prospectus.
- 5.04 Identification of Accounts:** All shares of the Investment Companies acquired by the Custodian shall be held in the name of the Custodian or its nominee for the benefit of the Participant (or the Beneficiary after the Participant's death).

ARTICLE VI - DISTRIBUTIONS

- 6.01 Benefit Distributions At Retirement or Other Severance from Employment:** Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account Balance under any form of

distribution permitted under Section 6.03 commencing at the date elected under Section 6.02. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in installments of the minimum annual payments described in paragraph (b) of Section 6.03 pursuant to the individual's election on a distribution form acceptable to the Trustee or Custodian.

- 6.02 Election of Benefit Commencement Date:** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice or distribution form filed with the Trustee or Custodian before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Section 6.08.
- 6.03 Forms of Distribution:** In an election to commence benefits under Section 6.02, a Participant entitled to a distribution of benefits under this Article VI may elect to receive payment in any of the following forms of distribution:
- (a) a lump sum payment of the total Account Balance or
 - (b) annual installment payments through the year of the Participant's death, the amount payable each year equal to a fraction of the Account Balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the Participant's age on the Participant's birthday for that year. If the Participant's age is less than age 70, the distribution period shall be designated on a distribution form acceptable by the Custodian.
 - (c) a combination of Section 6.03(a) and 6.03(b).
- 6.04 Death Benefit Distributions:** Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account Balance shall be paid to the Beneficiary in a lump sum.

Alternatively, if the Beneficiary with respect to the Participant's Account Balance is a natural person, at the Beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year and shall be redetermined each subsequent year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount

(not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

- 6.05** **Revocation of Prior Election:** Any election made under this Article VI may be revoked at any time.
- 6.06** **Latest Distribution Date:** In no event shall any distribution under this Article VI begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70 1/2 or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Section 6.03 and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph (b) of Section 6.03 must also be paid before the end of the calendar year of commencement.
- 6.07** **In-Service Distributions From Rollover Account:** If a Participant has a separate account attributable to rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.
- 6.08** **Unforeseeable Emergency Distribution:**
- (a) **Distribution.** If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.08.
- (b) **Unforeseeable emergency defined.** An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except

as otherwise specifically provided in this Section 6.08, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

- (c) **Unforeseeable emergency distribution standard.** A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.
- (d) **Distribution necessary to satisfy emergency need.** Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
- 6.09** **Voluntary Distributions for Certain Account Balances of \$5,000 or Less:** At the direction of the Participant, a Participant's total Account Balance may be paid in a lump sum as soon as practical following the direction if (a) the total Account Balance does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater), (b) the Participant has not previously received a distribution of the total amount payable to the Participant under this Section 6.09 and (c) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.
- 6.10** **Rollover Distributions:**
- (a) A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.
- (b) For purposes of this Section 6.10, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (a) any installment payment under Section 6.03 for a period of 10 years or more (b) any distribution made under Section 6.08 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.
- 6.11** **Election of Distribution:** An election to receive distribution of amounts deferred under the Plan in

accordance with this Article VI shall be made in writing on a form signed by the Participant or his Beneficiary and approved by the Employer. The election may be made after the Participant separates from service with the Employer, is eligible for an in-service distribution pursuant to sections 6.08 or 6.09, or dies. If no election is made by the Required Beginning Date the distribution shall be determined based upon the distribution period in the uniform lifetime distribution period table in Regulation section 1.401(a)(9)-9. However no payment will be made until the Participant (with the consent of the Employer) provides the Custodian with a proper distribution request acceptable to the Custodian.

6.12 Beneficiary Designation:

- (a) A Participant may designate any person, trust, organization or estate to receive the balance in his Account at his death by filing a written Beneficiary Designation with the Employer prior to his death. If the Participant dies without designating a Beneficiary, the balance in the Participant's Account will be paid to the Participant's spouse, but if the Participant has no surviving spouse, to the Participant's children in equal shares, but if the Participant has no surviving children, to the Participant's estate.
- (b) Participants may designate primary and secondary Beneficiaries. A secondary Beneficiary and/or Beneficiaries will become entitled to a distribution of any remaining balance of the Participant's Deferred Compensation Account only after the death of any and all primary Beneficiaries.
- (c) If more than one beneficiary is named in either category, benefits will be paid according to the following rules:
 - (1) Beneficiaries can be designated to share equally in or to receive specific percentages of, the remaining balance, if any, of the Participant's Deferred Compensation Account.
 - (2) If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of the death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.

6.13 Distribution for Benefit of Participant or Beneficiary: If the Employer receives satisfactory evidence that any person entitled to receive a distribution is, at the time such distribution is payable, physically, mentally, or legally incompetent to receive the distribution and to give a valid receipt therefore, and that an individual or institution is then maintaining or has custody of such person, and that no guardian, committee or other representative of the estate of such

person has been appointed, the Employer may direct the Institution to make the distribution to such individual or institution maintaining or having custody of such person, and the receipt of such individual or institution shall be valid and complete discharge for the payment of the distribution.

6.14 Eligible Rollover Contributions to the Plan:

- (a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.
- (b) For purposes of Section 6.14(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.
- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under section 457(b) of the Code.

6.15 Plan-to-Plan Transfers to the Plan: At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under section 457(b) of the Code to transfer assets to the Plan as provided in this Section 6.15. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to

effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article IV.

6.16 Plan-to-Plan Transfers from the Plan:

- (a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of section 457(b) of the Code and section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 6.16(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 6.16(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Section 6.16, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.16 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 6.16, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

6.17 Permissive Service Credit Transfers:

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.17(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 6.17(a) only if the transfer is either for the purchase of

permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

ARTICLE VII - MISCELLANEOUS PROVISIONS

7.01 Administration of the Plan: The Employer shall be responsible for the general administration of the Plan and shall administer the Plan in accordance with its terms. The Employer shall determine all questions arising in the administration, interpretation and operation of the Plan, and in so doing may consult with and rely upon such legal and other opinions, as it deems necessary and proper. The Employer shall maintain such records, render such reports and take such actions as may be necessary for administration of the Plan or required by law or regulation. The duties and responsibilities of the Employer in such matters may be delegated to an agent or representative. The Sponsor will provide reasonable assistance in preparation of records and reports.

7.02 Loss of Plan Eligibility: If this Plan is administered by the Employer in a manner which is inconsistent with the requirements of the Plan or of Section 457(b) of the Code and any regulations thereunder, the Plan shall be treated as not meeting such requirements as of the first Plan Year beginning more than 180 days after the date of notification by the Internal Revenue Service of the inconsistency, unless the Employer corrects the inconsistency before the first day of such Plan Year.

7.03 Liability of Sponsor: The Sponsor shall not be liable for administration of the Plan or for effecting compliance with the eligibility requirements of the Plan and Section 457(b) of the Code. The Sponsor shall have no liability in connection with investment of the amounts it receives other than that arising from its own negligence.

7.04 Amendment of the Plan: The Employer shall have the right at any time to amend the Plan in any manner it deems necessary or advisable in order to maintain the Plan and the Accounts established hereunder as an eligible deferred compensation plan as provided in Section 457 of the Code and any regulation thereunder. No amendment to the Plan shall cause or permit any portion of the funds invested pursuant to the Plan to revert to or become the property of a Participant except as permitted by Section 457 of the Code or any other applicable law or regulation. Each amendment shall be made in writing and shall state therein the date on which it is effective.

7.05 Termination of Plan: The Employer shall have the right at any time to terminate or suspend the Plan after sixty (60) days prior written notice to the Sponsor and the Participants. In the event of termination or suspension, the balances of Accounts maintained under the Plan may be retained by the Sponsor to be distributed in accordance with the Plan, may be transferred to another custodian, or may be distributed and/or transferred as directed in writing by the Employer. In no event shall a termination or suspension of the Plan result in the distribution to a Participant prior to the

time at which such distribution would otherwise be made under Article VI of the Plan.

7.06 Termination of Sponsor's Participation: The Sponsor shall have the right to terminate its participation in the Plan upon sixty (60) days prior written notice to the Employer and Participants.

7.07 Investment Advisor: The Participant may appoint an Investment Advisor to direct the investment of all or a portion of his custodial account. The Participant shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment. The Custodian shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Participant that the Investment Advisor's appointment has been terminated. The Custodian shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Custodian shall not be liable for any investment losses sustained by the Participant.

7.08 Disclosures and Voting: The Custodian shall deliver, or cause to be executed and delivered, to Participant all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to assets credited to the account. The Custodian shall not vote any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt by the Custodian of adequate written instructions from Participant.

7.09 Not Employment Contract: The establishment of or participation in this Plan shall not be construed as giving any Participant or other person any legal or equitable right against the Employer except as provided in the Plan. The terms of employment of a Participant shall not be modified or affected by the Plan.

7.10 No Representation: The Employer and the Sponsor do not represent or guarantee that any particular federal income tax consequence will result from participation in this Plan. Participants are advised to consult their tax advisors to determine the tax consequences of participation. The Employer makes no representation or guarantee with respect to the investments made pursuant to the Plan, and the Employer shall have no liability for any investment losses.

7.11 Word Usage: Words used in the Plan in the singular shall include the plural and the plural the singular where applicable, and the masculine shall include the feminine or common gender where appropriate.

7.12 Headings: The headings and subheadings in the Plan are inserted for convenience and reference and are not to be used in construing this instrument or any provision thereof.

7.13 Governing Law: The Plan and every provision thereof shall be construed and its validity determined according to the laws of the state where the Employer resides.

7.14 Non-Assignability: Except as provided in Section 7.15 and 7.16, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

7.15 Domestic Relation Orders: Notwithstanding Section 7.14, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

7.16 IRS Levy: Notwithstanding Section 7.14, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

7.17 Mistaken Contributions: If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

7.18 Payments to Minors and Incompetents: If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

7.19 Procedure When Distributee Cannot Be Located: The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

ARTICLE VIII - CUSTODIAL AGREEMENT

8.01 Custodial Account: Notwithstanding any contrary provision of the Plan, in accordance with Section 457(g) of the Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the Plan. For purposes of this paragraph, the custodian of any custodial account created pursuant to the Plan must be a bank, as described in Section 408(n) of the Internal Revenue Code, or a person who meets the nonbank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees.

8.02 Custodian's Duties:

- (a) The Custodian must maintain ownership of the investments.
- (b) The Custodian has no investment duties under the Plan.

The parties acknowledge that the Plan requires Participants and Beneficiaries to direct the investment of their plan accounts among the plan investments and any funds or options under those investments. The Employer is responsible for the selection of the plan investments and shall disclose the available investments on a form provided to Participants. The Custodian has no duty to consider the prudence of any investment of any kind. The Custodian has no duty to and shall not inquire into any Participant's or Beneficiary's investment direction.

8.03 Custodian's Powers: Subject to the limitations stated in Section 8.04 and otherwise by this Article VIII, the Custodian has all powers provided by any applicable statute and otherwise at law or in equity (including the common law), and has the following specified powers in addition to and not by limitation upon any such powers.

The Custodian delegates to the Sponsor authority to exercise any of the Custodian's rights or powers under the investments. The Custodian shall oversee the Sponsor's actions so as to have reasonable assurance

that the investments are used according to the Plan and not for any improper purpose.

The Custodian has power to adjust, settle, contest, compromise and arbitrate any claims, debts, or damages due or owing to or from the Custodial Account, and to sue, commence or defend any legal proceedings relating to the Custodial Account.

8.04 Custodian's Limitations: The Custodian shall not invest any money or property of the Custodial Account other than under a permitted Plan investment. Each Employer sends Contributions to the Custodian or its agent to be invested under the permitted Plan investments. To the extent required by Section 457(g) of the Code, the Custodian has no power to use or divert any part of the Custodial Account assets or income to purposes other than for the exclusive benefit of the Participants and their Beneficiaries under the Plan.

8.05 Notices: All notices, requests and other communications to the Custodian by the Employer or any Participant (or his spouse or Beneficiary) shall be in writing and in such form as the Custodian may from time to time prescribe. The Custodian shall be entitled to rely on any such instruments believed by it to be genuine.

8.06 Fees and Expenses of the Account:

- (a) The Custodian shall deduct an annual maintenance fee ("Custodial Fee") from the Participant's Account as follows: 1) \$20 on accounts with balances of \$2,000 or less; 2) \$35 on accounts with balances of \$2,001-\$250,000; 3) There is no fee on accounts with balances greater than \$250,000. The Custodian may collect this fee through liquidation of assets in the Custodial Account. The Custodian reserves the right to amend the Custodial Fee at any time by giving the Employer and the Participant sixty (60) days prior written notice.
- (b) Sales Charges, Brokerage Fees, Short-Term Trading Fees and/or Investment Fees are considered to be non-custodial fees and are dependent on the investments selected by the Participant. Such charges, fees and expenses are in addition to the Custodial Fee in subsection (a) above.
- (c) The Participant agrees to pay any expenses incurred by the Custodian in the performance of its duties in connection with the Account. Such expenses include, but are not limited to, administrative expenses, such as legal and accounting fees, and any taxes of any kind whatsoever that may be levied or assessed with respect to such Account.
- (d) All such fees, taxes, and other administrative expenses charged to the Account shall be collected from the assets in the Account.
- (e) Notwithstanding subsection (a) above, at the sole discretion of the Custodian, the Custodial Fee set forth therein may be reduced or eliminated.

8.07 Termination: The Custodian may resign at any time upon sixty (60) days notice in writing to the Sponsor, Employer and Participant (unless such notice is waived) and may be removed by the Sponsor at any time upon sixty (60) days notice in writing to the Custodian, or upon mutual consent. Upon such resignation or removal, the

Sponsor shall appoint a successor custodian, which successor shall be acceptable under Code Section 401(f)(2). If, within sixty (60) days after effective date of the Custodian's resignation, the Sponsor has not appointed a qualified successor custodian, who has accepted such appointment, the Custodian may appoint such successor itself. Upon receipt by the Custodian of written acceptance of appointment by the successor custodian, the Custodian shall transfer and pay over to such successor the assets of the Custodial Account and all records pertaining thereto, reserving such sum as it may deem advisable for payment of all its fees, compensation, costs and expenses and any other liabilities constituting a charge on or against the assets of the Custodial Account. The successor custodian shall thereafter be the Custodian under this Agreement. Notwithstanding the above rights of the Custodian and Sponsor, the Employer also has the authority to remove the Custodian and Sponsor with sixty (60) days notice in writing (unless such notice is waived) and has the authority to appoint a successor custodian and sponsor. The successor custodian shall be acceptable under Code Section 401(f)(2). The removed Custodian and Sponsor shall promptly transfer and pay over to such successor custodian appointed by the Employer the assets of the Custodial Account and all records pertaining thereto, reserving such sum as it may deem advisable for payment of all its fees, compensation, costs and expenses and any other liabilities constituting a charge on or against the assets of the Custodial Account.

8.08 **Responsibilities:** The Custodian and Sponsor shall not be responsible in any way, except as specifically provided herein, for the collection of contributions, the purpose or propriety of any distribution, or any other action taken at the direction of the Employer, the Participant, or a Beneficiary. Each Participant and Employer shall at all times fully indemnify and hold harmless the Custodian and Sponsor, its successors and assigns, from any liability arising from the receipt of contributions, payment of distributions, or actions taken at the direction of such Employer, Participant, or Beneficiary.

8.09 **Liability:** The Custodian and Sponsor's liability under this Agreement and matters which it contemplates shall be limited to matters arising from the Custodian's or Sponsor's negligence or willful misconduct. To the extent permitted by applicable law, the Custodian and Sponsor shall be protected in acting upon any written order from the Employer or Participant or any other notice, request, instruction or direction, consent certificate or other instrument or paper reasonably believed by it to be genuine and to have been properly executed, and, so long as it acts in good faith, in taking or omitting to take any other action. The Custodian and Sponsor may submit any question arising hereunder or in respect of the Account to counsel, including its own general counsel, and shall be protected to the extent permitted by applicable law, in acting on the advice of such counsel.

Subject to the provisions of applicable law, the Participant, his Beneficiary or the executor or administrator or either of these shall have the sole authority to enforce this Agreement on behalf of any and all persons having or claiming any interest in the Account by virtue of this Agreement. To protect the Account from expenses which might otherwise be incurred, it has been imposed as a condition to the acquisition of any interest in the Account, and it is hereby agreed, that subject to the provisions of applicable law, no person other than the Participant, his Beneficiary or personal representative, or the Employer, to the extent that the Custodian and/or Sponsor owes a duty to the Employer under this Agreement, may institute or maintain any action or proceeding against the Custodian and/or Sponsor in the absence of a determination of a court of competent jurisdiction to the contrary.

ARTICLE IX - REPORTS AND RETURNS

9.01 The Sponsor shall:

- (a) maintain separate records of the interest of each Participant (or his designated Beneficiary) in the Custodial Account indicating (i) the amounts and dates of all contributions, (ii) the investment of such contributions, (iii) the earnings on such investments, (iv) the amounts and dates of all distributions and (v) such other data as the Sponsor deems useful in carrying out its duties hereunder;
- (b) send each Participant, no less frequently than once per calendar quarter, a written statement containing information with respect to the investment of such contributions, and the current status of the account; and
- (c) mail at least once during each calendar year a statement showing the value of the assets held in the Custodial Account as of the end of such year.

9.02 The Sponsor shall file such returns or reports with respect to the Custodial Account as are required to be filed by it under the Code and the regulations thereunder, or by the Department of Labor, and the Employer and each Participant shall provide the Sponsor with such information available to them as the Sponsor may require to file such reports.

ARTICLE X - AMENDMENTS AND TERMINATION

10.01 This Custodial Agreement may be amended by the Sponsor by submitting a copy of the amendment to the Participant and Employer. The Participant hereby delegates to the Sponsor the power to amend this Custodial Agreement and shall be deemed to have consented to any such amendment. Notwithstanding the above, no amendment shall be made by the Sponsor, which shall cause or permit:

- (a) any part of the assets in the Account to be diverted to purposes other than for the exclusive benefit of the Participant or his Beneficiaries; or
- (b) except as may be permitted under Section 3.8 herein, any part of such assets to revert to or become the property of the Employer; or
- (c) any Participant, or his Beneficiary, to be deprived of any benefit to which he was entitled under the

Account by reason of contributions made by the Employer prior to such amendment, unless such amendment is necessary either to conform the Account to, or to satisfy the condition of, any law, governmental regulation or ruling, or to permit the Account to meet the requirements; or

- (d) any responsibilities of the Custodian under the Agreement to be increased without its written consent.

10.02 This Custodial Agreement shall terminate upon the complete distribution of the Custodial Account or in the event that a determination is made by the Internal Revenue Service that the Custodial Account does not satisfy the requirements of Section 401(f)(2) of the Code or Section 457. In event of termination as aforesaid, the balance in the Custodial Account shall be distributed to the Participants (or their respective surviving spouses or Beneficiaries, as the case may be) in accordance with their interests in the Custodial Account.

ARTICLE XI – DISCREPANCIES BETWEEN THIS CUSTODIAL AGREEMENT AND EMPLOYER’S PLAN DOCUMENT

11.01 In the event this Custodial Account Agreements becomes subject to an Employer Plan Document, the terms of this Custodial Account Agreement shall be modified by the Plan Document. Any such Employer Plan Document shall specifically be herein incorporated by reference. Where such Employer Plan Document may be inconsistent with this Custodial Account Agreement, the provisions of such Employer Plan Document shall govern unless such action would cause this Custodial Account Agreement to fail to continue to qualify under Code Sections 401(f) and 457(g).

ARTICLE XII – ARBITRATION

12.01 All controversies that may arise under this plan, shall be settled by binding arbitration in accordance with the rules of the National Association of Securities Dealers, Inc. (“NASD”). All parties agree as follows:

- (a) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- (b) Arbitration awards are generally final and binding; a party’s ability to have a court reverse or modify an arbitration award is very limited.
- (c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- (d) The arbitrators do not have to explain the reason(s) for their award.
- (e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- (f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

- (g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

12.02 **Arbitration Disclosures**: No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action, or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.