

# Stevens Institute of Technology Defined Contribution Retirement Plan

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Effective  
January 1, 2009  
As amended October 15, 2010 and June 24, 2011

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## Article I. General

This amended and restated Plan Document is adopted by the Employer identified below. This Plan Document complies with and is to be interpreted under the provisions of Internal Revenue Code ("Code") §403(b) and it is funded with Annuity Contracts and/or Custodial Agreements that comply with that Section.

### Employer Information

- Name: Stevens Institute of Technology
- Address: Castle Point on Hudson, Hoboken, NJ 07030 :
- EIN: 221487354
- State of Organization: New Jersey
- Type of Organization: Code § 501(c)(3)
- Common control does not exist with other organizations.

### Plan Information

- Fiscal Year for Plan: Calendar year
- Plan Number: 001
- Plan Name: Stevens Institute of Technology Defined Contribution Retirement Plan
- Original Effective Date: January 1, 1919
- Effective Date of Restatement: January 1, 2009
- This Plan is intended to comply with the requirements of ERISA § 404(c).

Effective June 1, 2009, the Employer merged its plans for union and non-union Employees into this single plan.

## Article II. Definitions

**Account**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or Custodial Account.

**Alternate Payee**: A person who receives a distribution from the Plan under the terms of a Qualified Domestic Relations Order.

**Annual Additions**: The sum for any year of: (a) Employer and Matching Contributions; (b) Employee and/or Elective Deferral contributions; and (c) Forfeitures which are required to be included under Code §415.

**Annuity Contract:** A nontransferable contract as defined in Code §403(b)(1), established for each Participant by the Employer, or by each Participant individually, that is issued by a company licensed as an insurer in a state and qualified to issue annuities in a state where the Employer is located and that includes payment in the form of an annuity.

**Annuity Starting Date:** The first day of the first period for which an amount is payable as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

**Beneficiary:** The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Funding Vehicles.

**Break in Service:** A Computation Period during which a Participant does not complete more than 500 Hours of Service. However, time taken off for maternity or paternity leave shall count towards the 500 hours to the extent required to prevent a Break in Service.

**Code:** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended, renumbered, or recodified. References herein to specific Code Sections shall include the applicable Treasury Regulations and Internal Revenue Service guidance issued there under which is currently in effect or as amended or recodified in corresponding provisions of any future Treasury Regulations or Internal Revenue Service guidance.

**Computation Period:** The 12-consecutive month period beginning on an Employee's date of employment and each anniversary thereof.

**Controlled Group:** This includes all Employers if at least 80 percent of the directors or trustees of one organization either are representatives of, or directly or indirectly controlled by, the other organization. A trustee or director is treated as a representative of another exempt organization if he or she also is a trustee, director, agent, or employee of the other exempt organization. A trustee or director is controlled by another organization if the other organization has the general power to remove such trustee or director and designate the new trustee or director.

**Custodial Account:** The group or individual custodial account or accounts, as described in Code §403(b)(7), established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

**Designated Beneficiary:** An individual who is designated as a Beneficiary under the Plan in accordance with the rules under Code §401(a)(9).

**Disability:** A Participant shall be considered disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of a long-continued and indefinite duration. A determination of disability will only be made after the submission of proof satisfactory to the Plan Administrator.

**Elective Deferral:** The contributions made to the Plan at the election of the Participant in lieu of receiving W-2 Compensation. Elective Deferrals are limited to pre-tax salary reduction contributions. Elective Deferral includes both Matched Elective Deferrals and Unmatched Elective Deferrals.

**Employee:** Each individual who is a common-law employee of the Employer performing services for an Employer.

**Employer Identification Number:** The number which was assigned by the Internal Revenue Service for tax identification purposes.

**Entry Date:** The Entry Date is the first administratively practicable day of the month following the date the Employee satisfies the eligibility requirements to become a Participant in the Plan.

**ERISA:** The Employee Retirement Income Security Act of 1974. References herein to specific ERISA Sections shall include the applicable Department of Labor Regulations and Department of Labor guidance issued there under which is currently in effect or as amended or recodified in corresponding provisions of any future Department of Labor Regulations and Department of Labor guidance.

**Excess Elective Deferrals:** The amount of Elective Deferrals of any Participant contributed for any taxable year that exceeds the amount permitted to be contributed under Code §402(g).

**Forfeiture:** Amounts which are forfeited when a Participant terminates his employment prior to vesting.

**Funding Vehicles:** The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved for use under the Plan.

**Highly Compensated Employees:** Any Employee who received 415 Compensation in excess of the compensation limit of Code Section 414(q)(1) for the look-back year (calendar year), as adjusted by the Secretary of the Treasury at the same time and in the same manner as under Code Section 415(d) except that the base period is the calendar quarter ending September 30, 1996. The determination of who is a "Highly Compensated Former Employee" shall be made in accordance with temporary Treasury Regulation § 1.414(q)-1T, A-4, Notice 97-45 and any subsequent guidance issued thereunder.

**Hour of Service:** One hour of actual service for the Employer for which the Employee is compensated or entitled to be compensated. For purposes of this Section, Hours of the Service shall be calculated and credited pursuant to Labor Regulation § 2530.200b-2 which is incorporated herein by this reference. Notwithstanding the foregoing, in the case of non-exempt Employee, Hours of Service shall be calculated using actual hours for which an Employee is paid or entitled to payment for each bi-weekly payroll period, or portion thereof. In the case of an exempt Employee, Hours of Service shall be calculated using an equivalency of 190 Hours of Service for each month, or portion thereof, during which the Employee completes at least one Hour of Service. In the case of an Employee whose compensation is determined on the basis of a fixed rate for a specified period time (other than an hour), Hours of Service shall determined under subsections (a), (b), and (c) above under the equivalency described in Labor Regulation § 2530.200b-3(f)(2), the terms of which are incorporated by this reference.

**Includible Compensation:** This is the amount of compensation used to determine the contribution limits under the Code. Includible Compensation means the amount of compensation from the Employer that is includable in the Participant's gross income for Federal income tax purposes (computed without regard to the exclusion allowed by Code § 911) for the most recent period that constitutes a "year of service" as defined in Code § 403(b) and Treasury Regulations thereunder. Includible Compensation shall include (1) elective deferrals within the meaning of Code § 402(g)(3) and any amount which is contributed or deferred by the University or an Affiliated Employer at the election of the Participant and which is not includable in the gross income of the Participant by reason of Code §§ 125, 132(f), 402(e)(2), 402(h)(1)(B), 402(k), or 457(b) and (2) any salary continuation payments, including any differential wage payments (as defined in Code § 3401(h)(2)), paid to a Participant during qualified

military service (as defined in Code § 414(u)) but only to the extent such payments do not exceed the amount the Participant would have received if he had continued to perform services for the Employer rather than entering qualified military service but shall exclude (1) any compensation received during a period when the Employer is not an eligible employer within the meaning of Code § 403(b) and (2) any compensation in excess of the compensation limit of Code § 401(a)(17) (\$245,000 for 2011) as adjusted annually by the Secretary of the Treasury for cost of living increases under Code § 401(a)(17)(B). The amount of Includible Compensation is determined without regard to any community property laws.

**Independent Contractor:** A person who is not treated as a common-law Employee by the Employer.

**Leased Employee:** Any person who is not an Employee and who provides services to the Employer if: (a) such services are provided pursuant to an agreement between the Employer and a leasing organization (as defined in Code §414(n)); (b) the person has performed services for the Employer on a substantially full-time basis for a period of at least one year; and (c) such services are performed under the primary direction or control of the Employer.

**Matched Elective Deferral:** Elective Deferrals that are required to receive a Matching Contribution.

**Matching Contribution:** Contributions made as a match to a Participant's Matched Elective Deferrals, in accordance with Section 3.02.

**Named Fiduciary:** The person, entity, or committee designated by the Employer who is responsible for the fiduciary obligations under the Plan.

**Normal Retirement Age:** The Normal Retirement Age shall be 65.

**Participant:** Any Employee who is eligible to participate in the Plan and any former Employee on whose behalf an Account is maintained under the Plan.

**Plan or Plan Document:** This document and any amendment thereto constitute the Plan and the Plan Document.

**Plan Administrator:** The person, entity, or committee designated by the Employer.

**Plan Year:** The calendar year.

**Qualified Election:** An election to waive the Qualified Joint and Survivor Annuity or the Qualified Preretirement Survivor Annuity which is presented along with the consent of the spouse.

**Qualified Domestic Relations Order:** A domestic relations order that meets the requirements of Code §414(p).

**Qualified Pre-Retirement Survivor Annuity:** A survivor annuity for the life of a Participant's surviving spouse the actuarial equivalent of which is not less than 50% of the Participant's Vested Account balance.

**Qualified Joint and Survivor Annuity:** An annuity for the life of a Participant with a survivor annuity for the life of the spouse which is not less than 50% of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and is the actuarial equivalent of a single annuity for the life of the Participant.

**Qualified Optional Survivor Annuity:** An annuity for the life of the Participant with a survivor annuity for the life of the spouse that is 75% of the amount which is payable during the joint lives of the Participant and the spouse, and is the actuarial equivalent of a single annuity for the life of the Participant.



**Qualified Reservist Distribution:** Distributions of Elective Deferrals to a Participant who was ordered or called to active duty for a period in excess of 179 days or for an indefinite period pursuant to the rules of Code §72(t)(2)(G)(iii).

**Required Beginning Date:** April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant retires and has a Severance from Employment with the Employer maintaining the Plan.

**Rollover Contribution:** Contributions which are rolled over from another retirement plan and accounted for separately under this Plan.

**Severance from Employment:** For purpose of the Plan, Severance from Employment means severance for any reason from the Employer and any related entity whether initiated by the Employer or Participant. However, a Severance from Employment also occurs on any date on which a Participant ceases to be an Employee of an employer which is eligible to maintain a §403(b) plan.

**Unmatched Elective Deferrals:** Voluntary Elective Deferrals that are not eligible to receive a Matching Contribution.

**Vested Account:** The portion of a Participant's Account that is nonforfeitable.

**W-2 Compensation:** Compensation is defined as information required to be reported under Code §§6041, 6051, and 6052 (i.e., wages, tips and other Compensation as reported on Form W-2). Compensation is defined as wages within the meaning of Code §3401(a) and all other payments of Compensation to a Participant by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Participant a written statement under Code §§6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under Code §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 §3401(a)(2)).

**Year of Service:** A Participant who completes 1000 or more Hours of Service in a Computation Period will be credited with a Year of Service for that Computation Period. All Years of Service with the Employer shall be counted including years before Participant was 18 years old, years before the Plan was in existence, and years in which the Participant declined to make contributions to the Plan.

## Article III. Eligibility and Contributions

Participation in the Plan is elective. This Plan covers all Employees unless it is limited to specific job classifications as set forth in Section 3.01 and 3.02. Leased Employees are not covered by this Plan.

### Section 3.01 Elective Deferrals

- (a) General Eligibility: Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his behalf hereunder upon the first day of employment.
- (b) Exclusions: The following Employees are excluded from the Plan:
  - (1) Employees whose Elective Deferral is less than \$200 per year;

- (2) Employees who are eligible under another Code §§403(b) plan, 401(k) plan, or 457(b) eligible governmental plan of the Employer which permits an amount to be contributed or deferred at the election of the Employee;
- (3) Employees who are non-resident aliens not receiving US sourced income and are described in Code §410(b)(3)(C);
- (4) Employees who are students performing services described in Code §3121(b)(10);
- (5) Employees who normally work fewer than 20 hours per week unless they work 1,000 hours per year; and
- (6) Leased employees.

### Section 3.02 Contributions Other Than Elective Deferrals

(a)

General Eligibility for Matching Contributions: Every Employee who satisfies the age and service requirements listed below is eligible to participate in the Plan, unless they are in a class of Employees which is excluded.

(1) Employees who are age 20 shall be eligible to participate.

(2) There is no minimum service requirement to participate.

(b) Exclusions: The following Employees are excluded from receiving Matching Contributions unless the Employer elects differently:

(1) Employees who are students performing services described in Code §3121(b)(10);

(2) Non-resident aliens not receiving U.S. sourced income and are described in Code §410(b)(3)(C);

(3) Members of a collective bargaining unit, unless the agreement with that unit allows participation in this Plan;and

(4) Employees who are Seasonal Athletic Staff, Adjunct Professors, Post-Doctoral Researchers, and Transient Workers, as those classifications are defined by the Employer.

An Employee's job classification, collective bargaining status, and student status shall be determined by the payroll or personnel records maintained by the Employer and shall be binding and conclusive for all purposes of the Plan. For purposes of this Section 3.02, the term "Employee" shall not include any individual whose services for the Employer are performed while such individual is classified or paid as an independent contractor as determined by the payroll or personnel records maintained by the Employer. No judicial or administrative reclassification, or reclassification by the Employer of an individual as a common law employee shall be applied to grant retroactive eligibility to any individual under the Plan.

(c) Compensation: For purposes of the Section 3.02, Compensation means "Base Salary" as determined by the payroll records maintained by the Employer and shall be binding and conclusive for all purposes of the Plan. Base Salary shall not include severance payments or accrued vacation pay. For the purpose of determining contributions to this Plan, Compensation shall mean

(1) Limitation on Compensation: The annual Compensation of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). Annual Compensation means

Compensation paid during the Plan Year or other such consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year.

- (2) Excluded Compensation: Compensation shall not include any amounts received by the Participant prior to the date on which he or she became a Participant in the Plan.

**(d) Matching Contributions:** Employer shall make Employer Contributions to the Plan in accordance with the following schedules:

Faculty, Exempt and Campus Police Employees

Employer shall make Employer Contributions equal to a percentage of the Participant's Compensation for eligible employees considered by Employer to be Faculty and Exempt and Campus Police Employees as follows, provided that the Participant's elective deferrals to the Plan equal or exceed 5% of their Compensation:

Age as of July 1	Matching Contribution Percentage
Less than or equal to 29 years	6% of Compensation
Greater than 29 years, less than or equal to 39 years	7% of Compensation
Greater than 39 years, less than or equal to 49 years	8% of Compensation
Greater than 49 years, less than or equal to 59 years	9% of Compensation
Greater than 59 years	10% of Compensation

Union Employees

Employer shall make Employer Contributions equal to a percentage of the Participant's Compensation for eligible employees covered by a collective bargaining agreement as follows:

Elective Deferral Percentage	Matching Contribution
0%	2% of Compensation
1%, 2%, or 3%	3% of Compensation
4% up to a maximum of 10%	Percentage of Compensation equal to elective deferral percentage

Non-exempt staff

Employer shall make Employer Contributions equal to a percentage of the Participant's Compensation for eligible employees considered by Employer to be non-exempt staff employees as follows:

Elective Deferral Percentage	Matching Contribution
0%	2% of Compensation
1% up to the maximum deferral permitted	3% of Compensation

under the Internal Revenue Code

Actual Contribution Percentage ("ACP") Testing Alternatives for Matching Plans: The Prior Year testing method will apply for contributions.

### Section 3.03 Entry Dates

Each Participant can begin participation in the Plan on the first administratively practicable day of the month following the date an Employee meets the eligibility requirements .

**Section 3.04 Permitted Contributions.** **Elective Deferrals** are permitted under the Plan. The Plan will not allow Roth 403(b) Contributions. **Age 50 Catch-up Contributions** are permitted under the Plan, as per Section 3.05(b)(2). **Catch-up Contributions for Employees with 15 Years of Service** are not permitted under the Plan. **Deferrals on Accrued Salary (including vacation) Payments** are not permitted under the Plan.

### Section 3.05 Limitations on Contributions

(a) General Limitations:

- (1) Code §415: The maximum Annual Addition for each limitation year that may be contributed to a Participant's Account under the Plan shall not exceed the lesser of:
  - (A) \$40,000, adjusted for cost-of-living increases under Code §415(c); or
  - (B) 100% of the Participant's Includible Compensation.
- (2) Coordination of limits: The amount in subsection (A) shall be reduced by any amounts contributed by the Participant to any other Code §403(b) arrangement provided by this Employer and any amounts contributed to any plan that is deemed to be under the control of the Participant. To the extent that any excess contributions are created by contributions to a plan deemed to be under the control of the Participant, the excess contributions shall be allocated and withdrawn from that plan rather than this Plan to the extent permitted by law.

(b) Elective Deferrals:

- (1) Code §402(g): Elective Deferral contributions shall not exceed the dollar limitation of Code §402(g) in effect at the beginning of the taxable year. For purposes of this section, if the Participant is or has been a participant in one or more other plans under Code §403(b) , or any other plan that permits Elective Deferrals under Code §402(g), then this Plan and all such other plans shall be considered as one plan for purposes of applying Code §402(g). For this purpose, the Plan Administrator shall take into account any other such plan maintained by any Employer in the Controlled Group and shall also take into account any other such plan for which the Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (2) Age 50 catch-up: A Participant who will attain age 50 or older by the end of the calendar year is permitted to elect to defer an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.
- (3) Coordination of limits: In no event can the amount of the Elective Deferrals for a year be more than the Participant's Includible Compensation for the year.

### Section 3.06 Corrections

- (a) 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 Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any allocable thereto) shall be returned directly to either the Participant or the Employer, whichever made the contribution in error.
- (b) Excess Deferrals: If the Elective Deferral on behalf of a Participant for a calendar year exceeds the limitations applicable to those contributions under the Code (excluding any catch-up amounts), or the Elective 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 plan of the Employer under Code §403(b) (and any other plan that permits elective deferrals under Code §402(g) for which the Participant provides information that is accepted by the Plan Administrator), then the Plan Administrator has the right to cease taking Elective Deferrals from the Participant and the excess Elective Deferrals (adjusted for any allocable income or loss in value) shall be distributed to the Participant by April 15<sup>th</sup> of the following calendar year in which the excess was contributed to the Plan or as otherwise required by the Code or other IRS guidance.

### Section 3.07 Qualified Military Service

- (a) A Participant whose employment is interrupted by qualified military service under Code §414(u) may elect to make additional contributions upon resumption of employment with the Employer equal to the maximum that the Participant could have contributed during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the contributions, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code §414(u), 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). Employer and/or Matching Contributions shall be made in accordance with Code §414(u).

(b) In the case of a Participant who dies while performing Qualified Military Service under Code §414(u), the Beneficiaries of the Participant shall, to the extent required by Code §401(a)(37), be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) that would be provided under the Plan had the Participant resumed and then terminated employment on account of death.

## **Article IV. Automatic Enrollment.**

This plan does not use Automatic Enrollment.

## **Article V. Funding Vehicles and Investment of Contributions**

### **Section 5.01 Funding Vehicles**

The Named Fiduciary will select and approve all Funding Vehicles that are available for the investment of contributions under this Plan. The Employer will enter into all agreements necessary to establish Annuity Contracts or Custodial Accounts for the investment of contributions and that comply with the requirements of Code §403(b). Subject to the terms of the Annuity Contract or Custodial Account, the Employer may terminate the availability of a Funding Vehicle at any time.

### **Section 5.02 List of Investments**

The Plan Administrator shall maintain a list of all Funding Vehicles under the Plan. Such list which may be updated from time to time is hereby incorporated as part of the Plan Document.

### **Section 5.03 Manner of Investment**

All amounts contributed to the Plan, and all income attributable to such amounts, will be held and invested in one or more Accounts under the Funding Vehicles. Each Funding Vehicle shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income held by such Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

### **Section 5.04 Investment of Contributions**

The Participant shall designate the Funding Vehicles to receive the contribution(s) made on his behalf to the Plan for his individual Account. Each Participant and Beneficiary will provide instructions directing the investment among the accounts available under the Plan in accordance with the terms of the Funding Vehicles. Transfers among the Accounts may be made in accordance with the terms of the Funding Vehicle, with rules established by the Plan Administrator, and as permitted under applicable law. This Plan is designed and intended to comply with ERISA §404(c).

## Section 5.05 Default Allocation

The Plan Administrator may designate a default investment option to receive amounts deferred to the Plan in the event that a Participant or Beneficiary fails to provide sufficient instructions to direct the investment of amounts contributed to his Account, such as, but not limited to, one of the following situations:

- (a) The Participant fails to provide valid investment instructions in his initial or any subsequently executed salary reduction agreement or enrollment form(s);
- (b) The Participant fails to provide investment instructions on amounts contributed to the Plan in a Rollover Contribution or plan-to-plan transfer, if permitted; or
- (c) The Participant or Beneficiary fails to provide instructions to allow the Plan Administrator to map the Participant's or Beneficiary's investments from one Funding Vehicle to another Funding Vehicle under the Plan.

## Article VI. Rollovers, Transfers, and Contract Exchanges

### Section 6.01 Eligible Rollovers

- (a) Rollovers into the Plan: A Participant may rollover an amount distributed from another eligible retirement plan into this Plan. Unless a Beneficiary is also a Participant in this Plan, a Beneficiary cannot rollover amounts into this Plan.
- (b) Rollovers from the Plan: The Plan will allow direct rollovers of eligible rollover distributions to another eligible retirement plan. A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an Alternate Payee under a Qualified Domestic Relations Order, as defined in Code §414(p)) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Code §402(c)(4)) from the Plan paid directly to an eligible retirement plan (as defined in Code §402(c)(8)(B)) specified by the Participant, spousal Beneficiary, or spousal Alternate Payee in which he is a participant.
- (c) Rollovers by Non-Spousal Beneficiaries: In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the Participant who is an Alternate Payee under a Qualified Domestic Relations Order, a direct rollover of the eligible rollover amount is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code §408(d)(3)(C)).
- (d) Eligible Rollover Distribution: An eligible rollover distribution means any distribution of all or any portion of a Participant's or Beneficiary's benefit under an 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 a hardship of the Employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code §401(a)(9).

- (e) **Eligible Retirement Plan:** An eligible retirement plan means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), a qualified trust described in Code §401(a), an annuity plan described in Code §§403(a) or 403(b), or an eligible governmental plan described in Code §457(b), that accepts the eligible rollover distribution.

## **Section 6.02 Plan-to-Plan Transfers**

The Plan will accept plan-to-plan transfers, but only for current employees, and only to the extent such transfer meets the requirements of Treasury Regulation § 1.403(b)-10(b)(3). A plan-to-plan transfer shall not be permitted unless (i) the Participant whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of the Participant immediately before the transfer and (ii) the Plan Administrator or its designee agrees, to the extent necessary, to separately account for any amount transferred so that this Plan can impose the same restrictions on distributions to the Participant or his or her Beneficiary that are no less stringent than those imposed under the transferor plan. The Plan will not allow plan-to-plan transfers from the Plan.

## **Section 6.03 Contract Exchanges and Changes of Investment**

- (a) A Participant or Beneficiary is permitted to change the investment of his or her Account balance among the Funding Vehicles under the Plan, subject to the terms of the Funding Vehicles. However, an investment change that includes an investment with a Funding Vehicle that is not eligible to receive contributions is not permitted unless specified elsewhere in the Plan Document and then only if the conditions in paragraphs (b) through (d) below are satisfied.
- (b) The Participant or Beneficiary must have an Account balance immediately after the exchange that is at least equal to the Account balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account balance of that Participant or Beneficiary in the Funding Vehicle immediately before the exchange).
- (c) The agreement with the receiving Funding Vehicle has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.
- (d) The Employer enters into an agreement with the receiving Funding Vehicle for the other contract or Custodial Account under which the Employer and the Funding Vehicle will from time to time in the future provide each other with the information necessary to meet the requirements of Code §403(b) and the Treasury Regulations issued there under.

# **Article VII. Vesting**

## **Section 7.01 Vesting Schedules**

All Elective Deferrals, Rollover Contributions, and plan-to-plan transfers, if permitted, are fully vested when contributed to the Plan. All Matching Contributions made to the Plan will be vested after three Years of Service.

## **Section 7.02 Full Vesting**



Notwithstanding the vesting schedule listed above, a Participant will be fully vested upon:

- (a) Attaining Normal Retirement Age if he or she is still an Employee at that time;
- (b) Termination or partial termination of the Plan for affected Participants;
- (c) Complete discontinuance of contributions under the Plan;
- (d) Death of the Participant; or
- (e) Disability of the Participant.

### Section 7.03 Forfeitures

Forfeitures may be used to reduce Matching Contributions or to pay Plan expenses.

### Section 7.04 Break in Service

If the Employee has no vested interest in the Plan and the number of consecutive years of Breaks in Service equals or exceeds the greater of five years, or the aggregate number of Years of Service before the break, then the Years of Service before the break will not be counted for vesting.

## Article VIII. Distributions of Benefits

### Section 8.01 Commencement of Benefits

Unless otherwise specifically permitted, distributions from a Participant's Vested Account attributable to Matching Contributions may only be made after the earliest date on which the Participant has a Severance from Employment. **Cashability:** Full cashability is permitted under this Plan subject to the limitations of the Funding Vehicles.

- (a) Except as otherwise provided with respect to hardship distributions, distributions from a Participant's Vested Account attributable to Elective Deferrals or other contribution types to the extent permitted by law may begin after the earliest date of the following events:
  - (1) Severance of Employment;
  - (2) Death;
  - (3) Disability;
  - (4) Attainment of age 59 ½;
  - (5) Eligibility for a Qualified Reservist Distribution; or
  - (6) Termination of the Plan subject to Treasury Regulation §1.403(b)-10(a).

Notwithstanding the above or as otherwise prohibited by the Code, Elective Deferrals and earnings attributed to amounts contributed to Annuity Contracts as of December 31, 1988, will be distributable at any time. Distributions from a Participant's Vested Account attributable to Participant contributions that have received Matching Contributions will not be available until the Participant has a Severance from Employment.

- (b) The Plan will not cash out small balances of \$5,000 or less.
- (c) The Employer may elect to apply different distribution rules/restrictions on the different types of contributions made to the Plan.
- (d) Benefits in any form will commence only when the request is submitted in good order in accordance with the provisions of the Plan Document and the rules of the issuer of the Funding Vehicle that is holding the Account accumulation.

- (e) In the event that a Participant shall take any distribution from the Plan in violation of the restrictions stated above, no further Employer or Matching Contributions shall be made under this Plan on behalf of that Participant.

### **Section 8.02 Normal Form of Benefit**

- (a) When this Plan is funded in whole or in part with Annuity Contracts, the normal form of benefit for a married Participant is a Qualified Joint and Survivor Annuity, and the normal form of benefit for a single Participant is a single life annuity with a ten-year guaranteed period. The normal form of benefit and all optional forms of benefit distributions will be made in accordance with the terms of the Funding Vehicle from which the Account balance is being distributed, in accordance with the elections made in the Plan Document and subject to the Joint and Survivor Annuity and Pre-retirement Survivor Annuity and the applicable sections of ERISA.
- (b) When this Plan is funded in whole by mutual funds, the normal form of benefit for all Participants is a cash distribution. An optional form of benefit is any other distribution option made available under the terms of the Funding Vehicle.

### **Section 8.03 Hardship Distributions**

Certain amounts may be withdrawn on account of hardship and in accordance with the terms of the Funding Vehicles. Hardship Distributions are available for Elective Deferrals in accordance with the terms of the Funding Vehicles and the “safe harbor” provisions of the Code as defined below. For accumulations that are held in Annuity Contracts, a hardship distribution may only be made from the Elective Deferrals less any prior distributions. For accumulations that are held in Custodial Accounts (or were formerly held in Custodial Accounts but were transferred to an Annuity Contract), only the Elective Deferrals are available. The amount available for hardship generally does not include the earnings on the contributions.

- (a) A hardship distribution may be made if it is on account of a Participant’s immediate and heavy financial need and the distribution is necessary to meet that need, in accordance with the provisions set out in the Plan Document and Treasury Regulations §§1.403(b)-6(d)(2) and 1.401(k)-1(d)(3). The hardship request will be approved using a facts and circumstances test as described in Treasury Regulation §1.401(k)-1(d)(3).
- (b) Distributions made on account of the following reasons will be deemed an immediate and heavy financial need which is eligible for a safe harbor hardship distribution:
  - (1) Expenses for medical care as defined under Code §213(d);
  - (2) Costs directly related to the purchase of the Participant’s principal residence;
  - (3) Payment of tuition and related educational fees/expenses for the Participant, spouse, children, or dependents as defined by Treasury Regulation §1.401(k)-1(d)(3)(iii)(B)(3);
  - (4) Payments necessary to prevent the eviction or foreclosure of the Participant’s primary residence;
  - (5) Payments for burial or funeral expenses for the Participant’s parent, spouse, child, or dependent as defined by Treasury Regulation §1.401(k)-1(d)(3)(iii)(B)(5); and
  - (6) Expenses for the repair of damage to the Participant’s principal residence due to casualty as defined in Code §165.

- (c) A Participant's request will be deemed to be necessary to satisfy the Participant's financial need under the "safe harbor" method if the following conditions are met:
- (1) The Participant has obtained all other currently available distributions and loans under the Plan and all other plans maintained by the Employer;
  - (2) The Participant is prohibited from making Elective Deferrals and other Participant contributions to the Plan for at least six months following the receipt of the hardship distribution; and
  - (3) The amount requested is not greater than the need (including any amounts necessary to satisfy any taxes or penalties which may apply to the distribution).

#### **Section 8.04 In-Service Distributions from Rollover Accounts**

Subject to the terms of the Funding Vehicle, a Participant who has a separate Account attributable to Rollover Contributions may at any time elect to receive a distribution of all or any portion of the amount held in the rollover Account.

#### **Section 8.05 Rollover Distributions**

A Participant or the Beneficiary of a deceased Participant (or an Alternate Payee under a Qualified Domestic Relations Order) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover as described in Section 6.01.

#### **Section 8.06 Minimum Distributions**

- (a) Participant's Vested Account balance must be distributed in accordance with the minimum distribution requirements of Code §401(a)(9) and the Treasury Regulations there under, including the incidental benefit requirements set forth therein, and the rules set forth in Treasury Regulation §1.403(b)-6.
- (b) In general, a Participant's Account balance must be distributed, beginning no later than the Required Beginning Date, over a period not exceeding the life (or life expectancy) of the Participant or the lives (or joint life expectancies) of the Participant and a Designated Beneficiary.
- (c) The Participant's Required Beginning Date is April 1<sup>st</sup> of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or retires and has a Severance from Employment with the Employer sponsoring the Plan. However the distribution rules of Code §401(a)(9) do not apply to the Participant's undistributed Account balance valued as of December 31, 1986, exclusive of subsequent earnings. The Account balance as of December 31, 1986, must be distributed in accordance with the incidental benefit rules of Treasury Regulation §1.401-1(b)(1)(i), which generally provide that distributions must begin on the later of age 75 or Severance from Employment.
- (d) If the Participant dies prior to his Required Beginning Date, the entire balance will generally be distributed to the Designated Beneficiary no later than December 31<sup>st</sup> of the calendar year containing the fifth anniversary of the Participant's death (the five-year rule). However, if a distribution to the Designated Beneficiary begins by December 31<sup>st</sup> of the calendar year immediately following the year in which the Participant died, the Designated Beneficiary may receive payments over his life or life expectancy (the life-expectancy rule).

- (e) Notwithstanding the above, if the Designated Beneficiary is the Participant's surviving spouse and he does not use the five-year rule, then the surviving spouse may delay receiving payments under the life-expectancy rule until the later of the end of the calendar year in which the Participant died or the end of the calendar year in which the Participant would have attained age 70 ½. If a Participant dies after his Required Beginning Date, distributions to the Designated Beneficiary must commence prior to December 31<sup>st</sup> of the calendar year immediately following the year in which the Participant died. To the extent the Participant has not already received his full required minimum distribution in the year of death, the Designated Beneficiary must take the amount the Participant should have received in the year of death.
- (f) If a Participant or Designated Beneficiary fails to request a distribution in accordance with this Section, the Plan Administrator may direct the Funding Vehicle holding the Participant's Vested Account and direct distributions to begin in accordance with the terms of this Plan. In determining whether to require that distributions begin from this Plan, the Plan Administrator may consider the application of the aggregation rule in Treasury Regulation §1.403(b)-6(e)(7).

#### **Section 8.07            Death Benefits**

- (a) Upon the death of the Participant prior to the Commencement of Benefits, the Vested Account balance will be paid to the Beneficiary.
- (b) In the case of a Participant who dies while performing Qualified Military Service under Code §414(u), the Beneficiaries of the Participant shall, to the extent required by Code §401(a)(37), be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) that would be provided under the Plan had the Participant resumed and then terminated employment on account of death.

#### **Section 8.08            Joint and Survivor Annuity and Pre-Retirement Survivor Annuity**

- (a) Unless an optional form of benefit is selected pursuant to a Qualified Election within the Election Period, the Vested Account balance of a married Participant will be paid in the form of a Qualified Joint and Survivor Annuity and the accumulation in the Vested Account of a single Participant will be paid in the form of a single life annuity with a ten-year guaranteed period.
- (b) Notwithstanding anything in this Plan to the contrary, a married Participant will also be permitted to choose a distribution in the form of a Qualified Optional Survivor Annuity.
- (c) If a married Participant dies prior to the Annuity Starting Date, the Vested Account balance will be paid to the Participant's spouse in the form of a Qualified Preretirement Survivor Annuity, unless the surviving spouse has waived his or her rights to a Qualified Preretirement Survivor annuity by consenting to a Qualified Election.

#### **Section 8.09            Beneficiary Designation**

- (a) The Participant will name a Beneficiary or Beneficiaries for the Vested Account balance in accordance with the procedure set forth by the Funding Vehicles..
- (b) If the Participant fails to name a Designated Beneficiary, the Beneficiary will be deemed to be the Beneficiary determined under the terms of the Funding Vehicle holding the accumulation.

- (c) If the Funding Vehicle does not provide for a Beneficiary, the Beneficiary for a married Participant will be deemed to be the Participant's spouse, and for an unmarried Participant will be deemed to be the Participant's estate.

### **Section 8.10 Notice and Election Requirement**

All notices and elections under this section will be sent to the company that has issued the Funding Vehicle to which the notice or election applies.

### **Section 8.11 Loans**

Loans shall be permitted under the Plan in accordance with the terms of the Funding Vehicle from which the loan is taken. The number of loans to any participant will be limited per year to the number permitted by applicable regulations.

- (a) No loan to a Participant under the Plan may exceed the lesser of:
- (1) \$50,000, reduced by the greater of:
    - (A) The outstanding balance on any loan from the Plan to the Participant on the date the loan is made; or
    - (B) The highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Plan Administrator (not taking into account any payments made during such one-year period); or
  - (2) One-half of the value of the Participant's Vested Account balance (as of the valuation date immediately preceding the date on which such loan is approved by the Plan Administrator).
- (b) For purposes of this Section any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan, provided that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

## **Article IX. Roth 403(b) Contributions**

The Plan will not allow Roth 403(b) contributions.

## **Article X. Administration**

### **Section 10.01 Plan Administrator**

The Plan Administrator has the unfettered discretionary authority and obligation to manage the operation of the Plan in accordance with the terms stated herein and in accordance with the requirements of ERISA and the Code. The Plan Administrator is the Employer.

- (a) The Plan Administrator may delegate any and all responsibilities of the Plan, including any compliance responsibilities, to other people or entities. This delegation must be in writing and the party to whom the responsibility was delegated must accept this delegation in writing in order for the delegation to be effective.
- (b) Factual determinations and interpretations of the Plan Document provisions by the Plan Administrator shall be final and binding on all Participants and their Beneficiaries.
- (c) The Plan Administrator may adopt rules and procedures deemed necessary to administer the Plan.

#### **Section 10.02 Plan Expenses and Fees**

All direct expenses of the Plan shall be paid by the Employer. If they are not so paid, they may be paid from Plan assets subject to the terms for the Funding Vehicles. Fees that are related to a particular Participant Account may be assessed against those Accounts in accordance with the terms of the Funding Vehicles.

#### **Section 10.03 Contributions Made Promptly**

Elective Deferrals and/or Mandatory Employee contributions, if applicable, shall be transmitted to the Funding Vehicles as soon as they can be reasonably segregated but in no event will any contributions be remitted later than the 15<sup>th</sup> day of the month following the month to which the contributions relate. Employer and/or Matching Contributions shall be remitted no later than eight and one-half months after the last day of the Plan Year.

#### **Section 10.04 Allocation of Fiduciary Responsibility**

The Named Fiduciary shall be the Employer or a committee appointed by the Employer. Plan fiduciaries shall have those responsibilities given to them under the Plan. They may delegate those responsibilities to the extent it does not violate the Plan rules or ERISA.

#### **Section 10.05 Indemnification**

The Employer shall indemnify and hold harmless any fiduciary under the Plan from all claims, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, incurred in connection with their fiduciary duties under the Plan to the extent these amounts are not covered by insurance. However, the Employer shall not indemnify or hold harmless any fiduciary for any gross negligence, willful misconduct, bad faith, or breach of fiduciary duty. Although it is possible for vendors, Funding Vehicles, third-party administrators, and other service providers to be a Plan fiduciary, this Section does not extend to those fiduciaries.

#### **Section 10.06 Claims Procedure**

- (a) **Filing a Claim:** Requests for distributions are normally made directly to the Funding Vehicle under the Plan. If a request for a benefit is denied or a Funding Vehicle refuses to make a distribution, the Participant or Beneficiary can file a claim in writing with the Plan Administrator. The claim should explain the reasons that the Participant or Beneficiary is entitled to the benefit/distribution. The Plan Administrator has the unfettered discretionary authority to conduct an investigation and to determine the merits of the claim.
- (b) **Denial of a Claim:** If the claim is fully or partially denied, the Plan Administrator will provide the claimant with a written explanation within 90 days stating:

- (a) The reason for the denial;
  - (b) The Plan Document provisions upon which the denial is based;
  - (c) Any additional information that would be needed to grant the claim and why it is needed;  
and
  - (d) The procedure for appealing the denial.
- (c) Appeal of a Denial: If the claim is denied, the claimant can within 60 days request a review by the Plan Administrator. Within 60 days following the request for review, the Plan Administrator will render its final decision in writing stating specific reasons for the decision. If special circumstances require an extension of the review period, the Plan Administrator's decision will be rendered as soon as possible but in no event later than 120 days after receipt of the request for review. If the claim is denied after review, the claimant shall have a right, under ERISA, to bring an action, in law or in equity, in Federal court to protect his or her rights to obtain benefits under the Plan. If it should happen that Plan fiduciaries misuse the Plan's money, or the claimant is discriminated against for asserting his rights, the claimant may seek assistance from the U.S. Department of Labor, or the claimant may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If the claimant is successful, the court may order the person the claimant has sued to pay these costs and fees. If the claimant loses, the court may order the claimant to pay these costs and fees, for example, if it finds the claim is frivolous.
- (d) For claims involving duties delegated to a Funding Vehicle, (e.g., misallocation of deferrals, incorrect investment instruction, payment of benefits, etc.) the claim should be submitted to the Funding Vehicle and a similar claims process will be followed.
- (e) For claims involving a disability claim, claims and appeals shall be reviewed in accordance with ERISA.

## Article XI. Amendment, Merger and Termination

### Section 11.01 Right to Amend

The Employer reserves the right to amend this Plan at any time. Any such amendment will be attached hereto and incorporated into the Plan Document.

### Section 11.02 Termination

- (a) The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for such discontinuance. The Employer reserves the right to terminate this Plan at any time.
- (b) The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Funding Vehicles, all Accounts will be distributed, provided that the Employer after the date of termination does not make contributions to an alternative Code §403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Code.

### **Section 11.03 Plan Merger or Consolidation**

In the case of a merger or consolidation of the Plan, each Participant shall be entitled to benefits after the merger or consolidation that are at least equal to what they were entitled to receive immediately before the merger or consolidation.

## **Article XII. Miscellaneous**

### **Section 12.01 Payments to Minors and Incompetents**

If the 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, the procedures of the Funding Vehicle holding the accumulation will be followed. In the absence of any procedures, if the Participant or Beneficiary is a minor or adjudged to be legally incapable of giving valid receipt and discharge for such benefits or is deemed so by the Plan Administrator, benefits will be paid to such person as the Plan 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.

### **Section 12.02 Procedure When Payee Cannot Be Located**

- (a) If the Participant or Beneficiary entitled to receive any benefits hereunder is unable to be located, the procedures of the Funding Vehicle holding the accumulation will be followed.
- (b) In the absence of any procedures, the Plan Administrator shall make all reasonable attempts to determine the identity and address of the Participant or the Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means:
  - (1) The mailing by certified mail of a notice to the last-known address shown on Employer's or the Plan Administrator's Records;
  - (2) Notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans); and
  - (3) The payee has not responded within six months.
- (c) If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle shall continue to hold such amounts.

### **Section 12.03 Non-Alienation**

Except as permitted below, 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 or any interest under the Plan. All payments and interest are expressly declared to be non-assignable and non-transferable.

- (a) **Qualified Domestic Relation Orders:** 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, then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in



the domestic relations order to the extent the order is not inconsistent with the terms of the Funding Vehicle. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan, but shall be subject to the rules of the Funding Vehicles with respect to payouts. The Plan Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuation distribution pursuant to the Qualified Domestic Relations Order.

- (b) Tax Levy: The Plan Administrator may pay from a Participant's or Beneficiary's Account, the amount that the Plan 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.

#### **Section 12.04 No Right to Employment**

Neither the existence of this Plan nor any provision of the Plan Document, shall give any Participant any right to continued employment.

#### **Section 12.05 Governing Law**

The Plan will be construed, administered, and enforced according to the Code and the laws of the State in which the Employer is organized. The Plan Document is drafted to comply with Code §403(b) and it shall be interpreted in a manner consistent with the requirements of that Code Section and the other applicable provisions of the Code and ERISA.

#### **Section 12.06 Severability of Provisions**

If any provision is deemed unenforceable, then it shall be severed from this Plan Document. All other provisions shall be separated and enforced to the full extent of the law.

#### **Section 12.07 Headings and Captions**

Headings and captions of the Plan Document have been inserted for the convenience of reference only and are to be ignored in the construction of the provisions hereof.

#### **Section 12.08 Gender and Number**

Pronouns used in the Plan Document in the masculine or feminine gender include both genders. Any reference to singular or plural shall be deemed to include both.