



## **AGENDA**

### **KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS**

**Kern Medical Center  
1700 Mount Vernon Avenue  
Conference Room 1058  
Bakersfield, California 93306**

Regular Meeting  
Wednesday, November 14, 2018

11:30 A.M.

#### **BOARD TO RECONVENE**

Board Members: Berjis, Bigler, Brar, Lawson, McLaughlin, Pelz, Sistrunk  
Roll Call:

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY KERN COUNTY HOSPITAL AUTHORITY STAFF. THE "CA" REPRESENTS THE CONSENT AGENDA. CONSENT ITEMS WILL BE CONSIDERED FIRST AND MAY BE APPROVED BY ONE MOTION IF NO MEMBER OF THE BOARD OR AUDIENCE WISHES TO COMMENT OR ASK QUESTIONS. IF COMMENT OR DISCUSSION IS DESIRED BY ANYONE, THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED IN LISTED SEQUENCE WITH AN OPPORTUNITY FOR ANY MEMBER OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING THE ITEM BEFORE ACTION IS TAKEN.

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2))

PUBLIC REQUEST

- 3) Request to accept restricted monetary donation from Kern Health Systems for use by the Kern Medical Valley Fever Institute –  
**MAKE PRESENTATION; APPROVE**

RECOGNITION

- 4) Presentation by the Chief Executive Officer recognizing Kalina Downs, RN, Clinical Nurse Leader, Inpatient Psychiatry Unit as recipient of a Gold and Silver Medal at the 2018 International Adult Figure Skating Competition in Burnaby, British Columbia –  
**MAKE PRESENTATION**

ITEMS FOR CONSIDERATION

CA

- 5) Minutes for Kern County Hospital Authority Board of Governors regular meeting on October 17, 2018 –  
**APPROVE**

CA

- 6) Proposed Amendment No. 2 to Agreement 582-2015 with Michael G. Meyers, M.D. and Eric Trefelner, M.D., Inc. doing business as NightShift Radiology, an independent contractor, for after-hours teleradiology services for the period September 1, 2015 through November 30, 2018, extending the term for two years from December 1, 2018 through November 30, 2020, and increasing the maximum payable by \$60,000, from \$900,000 to \$960,000, to cover the extended term –  
**APPROVE; AUTHORIZE CHAIRMAN TO SIGN**

CA

- 7) Proposed purchase of real property located at 3551 Q Street, Bakersfield, California, Kern County Assessor Parcel Number 120-181-54, from Mushtaq Ahmed and Rehmat Ahmed, for a purchase price of \$2.9 million and closing costs not to exceed \$30,000 – MAKE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302, 15303, 15304, 15305, 15306, AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVE; ADOPT RESOLUTION; AUTHORIZE CHIEF EXECUTIVE OFFICER TO ACCEPT GRANT DEED ON BEHALF OF KERN COUNTY HOSPITAL AUTHORITY AND SIGN ALL ESCROW DOCUMENTS; DIRECT STAFF TO ISSUE WARRANT PAYABLE TO CHICAGO TITLE COMPANY

CA

- 8) Proposed Incumbency Certificate with Presidio Technology Capital, LLC, an independent contractor, designating the Chief Executive Officer to sign documents in connection with the financing of data storage equipment – APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN DOCUMENTS IN CONNECTION WITH FINANCING OF EQUIPMENT FROM PRESIDIO TECHNOLOGY CAPITAL, LLC

CA

- 9) Proposed Agreement with Ray A Morgan Company, an independent contractor, containing nonstandard terms and conditions, for lease and maintenance of printers and facsimile machines from November 20, 2018 through November 19, 2023, in an amount not to exceed \$1,862,334 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Eugene H. Roos, D.O., an independent contractor, for professional medical services in the Department of Radiology from December 17, 2018 through December 16, 2020, in an amount not to exceed \$730,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Agreement with Voya Institutional Trust Company, an independent contractor, for services as custodian of assets held in trust for the benefit of participants in the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Application for Group Annuity Contract with Voya Retirement Insurance and Annuity Company, and Agreement with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC, for administrative services related to the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed adoption of the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees and approval of Adoption Agreement and Summary of Plan Provisions – APPROVE; ADOPT RESOLUTION

CA

- 14) Proposed Resolution providing for changes in the terms and conditions of employment for unrepresented employees classified as management, mid-management and confidential – APPROVE; ADOPT RESOLUTION; DIRECT CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND HUMAN RESOURCES TO IMPLEMENT CHANGES

- 15) Proposed regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2019 – DISCUSS; PROVIDE DIRECTION

- 16) Kern County Hospital Authority Chief Financial Officer report – RECEIVE AND FILE

- 17) Kern County Hospital Authority Chief Executive Officer report – RECEIVE AND FILE

CA

- 18) Claims and Lawsuits Filed as of October 31, 2018 – RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 19) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 20) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Fatima Leon Tinoco, et al. v. County of Kern, et al., Kern County Superior Court Case No. BCV-17-100657 TSC –
- 21) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –
- 22) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

- 23) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6)

–

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, DECEMBER 12, 2018, AT 11:30 A.M.

### **SUPPORTING DOCUMENTATION FOR AGENDA ITEMS**

All agenda item supporting documentation is available for public review at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, 93306 during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday, following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

### **AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)**

The Kern Medical Center Conference Room is accessible to persons with disabilities. Disabled individuals who need special assistance to attend or participate in a meeting of the Kern County Hospital Authority Board of Governors may request assistance at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, California, or by calling (661) 326-2102. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

18) CLAIMS AND LAWSUITS FILED AS OF October 31, 2018 –  
RECEIVE AND FILE

- A) Complaint for Damages in the matter of Patricia Smith v. Kern Medical Center, et al., Kern County Superior Court Case No. BCV-18-101315 SDS
- B) Claim in the matter of Cassaundra Rodriguez
- C) Application for Leave to Present a Late Claim in the matter of Alizae Bagsby v. Kern County Hospital Authority





## **SUMMARY OF PROCEEDINGS**

### **KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS**

**Kern Medical Center  
1700 Mount Vernon Avenue  
Conference Room 1058  
Bakersfield, California 93306**

**Regular Meeting  
Wednesday, October 17, 2018**

11:30 A.M.

#### **BOARD RECONVENED**

Directors Present: Berjis, Bigler, Brar, Lawson, McLaughlin, Pelz

Directors Absent: Sistrunk

NOTE: The vote is displayed in bold below each item. For example, Lawson-McLaughlin denotes Director Lawson made the motion and Vice Chair McLaughlin seconded the motion.

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" WERE CONSIDERED TO BE ROUTINE AND APPROVED BY ONE MOTION.

#### **BOARD ACTION SHOWN IN CAPS**

#### **PUBLIC PRESENTATIONS**

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

**NO ONE HEARD**



BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2))

**CHAIRMAN BIGLER REPORTED ON HIS ATTENDANCE AT THE KERN COUNTY FAIR ON SEPTEMBER 29, 2018, AND COMPLEMENTED STAFF ON THEIR HARD WORK**

**CHAIRMAN BIGLER REPORTED ON KERN HIGH SCHOOL DAY AND THE VALUE OF THE HEALTHCARE CAREERS ACADEMY AT EAST BAKERSFIELD HIGH SCHOOL AND ITS RELATIONSHIP WITH KERN MEDICAL CENTER**

RECOGNITION

- 3) Presentation by the Chief Information Officer recognizing the Kern Medical Center Subject Matter Experts for implementation of the Cerner electronic health record –  
MADE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on September 19, 2018 –  
APPROVED  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 5) Proposed retroactive Agreement with Moss-Adams LLP, an independent contractor, for financial auditing services from August 17, 2018 through August 16, 2021, in an amount not to exceed \$465,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 069-2018  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 6) Proposed retroactive Amendment No. 16 to Agreement 925-2002 with nThrive Solutions, Inc., an independent contractor, for oncology data management and abstracting services, for the period October 8, 2002 through June 30, 2018, extending the term for three years from July 1, 2018 through June 30, 2021, and increasing the maximum payable by \$803,835, from \$10,243,276 to \$11,047,111, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 070-2018  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 7) Proposed retroactive Amendment No. 8 to Agreement 947-2008 with Toyon Associates, Inc., an independent contractor, for third-party reimbursement services for the period October 14, 2008 through October 13, 2018, extending the term for two years from October 14, 2018 through October 13, 2020, incorporating changes to the scope of work and hourly rates, and increasing the maximum payable by \$850,000, from \$2,490,000 to \$3,340,000, to cover payment of past invoices and the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 071-2018

**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 8) Proposed Amendment No. 3 to Agreement 051-2012 with Owens & Minor Distribution, Inc., an independent contractor, for clinical supply technology and centralized inventory management services for the period October 28, 2011 through October 27, 2018, extending the term for two years from October 28, 2018 through October 27, 2020, and increasing the maximum payable by \$290,000, from \$1,017,000 to \$1,307,000, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 072-2018

**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 9) Proposed acceptance of donation from CNA for travel and related expenses to cover all costs for one Kern Medical Center employee to attend the Health Care Compliance Association “Healthcare Enforcement Compliance Institute” in Washington, D.C., from November 4, 2018 through November 7, 2018 –

APPROVED; ADOPTED RESOLUTION 2018-011

**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 10) Proposed retroactive acceptance of donation from Cerner Corporation for travel and related expenses for one Kern Medical Center employee to attend the “Cerner Health Conference 2018” in Kansas City Missouri, from October 6, 2018 through October 11, 2018 –

APPROVED; ADOPTED RESOLUTION 2018-012

**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

CA

- 11) Proposed Agreement with Naheedy and Zarandy Medical Group, Inc., an independent contractor, for professional medical services in Department of Radiology from November 1, 2018 through October 31, 2020, in an amount not to exceed \$730,000 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 073-2018

**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

- 12) Proposed Resolution establishing regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2019 –  
APPROVED; ADOPTED RESOLUTION 2018-013  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**
- 13) Report on graduate medical education at Kern Medical Center –  
RECEIVED AND FILED  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**
- 14) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVED AND FILED  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

NOTE: DIRECTOR LAWSON TOOK THE DAIS AT 12:10 P.M. AFTER THE VOTE ON THE CONSENT AGENDA AND BEFORE THE VOTE ON ITEM 15

- 15) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVED AND FILED  
**Berjis-Brar: 6 Ayes; 1 Absent - Sistrunk**

CA

- 16) Claims and Lawsuits Filed as of September 30, 2018 –  
RECEIVED AND FILED  
**Berjis-Pelz: 5 Ayes; 2 Absent - Lawson, Sistrunk**

NOTE: CHAIRMAN BIGLER ANNOUNCED THAT, DUE TO HIS FAMILIAL RELATIONSHIP WITH AN EMPLOYEE OF MERIDIAN HEALTHCARE PARTNERS, INC., HE WOULD RECUSE HIMSELF FROM THE DISCUSSION AND VOTE ON ITEM 17, AND, AFTER PASSING THE GAVEL TO VICE CHAIRMAN MCLAUGHLIN, LEFT THE DAIS AT 12:13 P.M. AND DID NOT RETURN UNTIL AFTER THE BOARD ADJOURNED TO CLOSED SESSION

NOTE: CHIEF EXECUTIVE OFFICER RUSSELL V. JUDD AND EMPLOYEES OF MERIDIAN HEALTHCARE PARTNERS, INC. LEFT THE ROOM AT 12:13 P.M., BEFORE THE DISCUSSION AND VOTE ON AGENDA ITEM 17 AND DID NOT RETURN UNTIL AFTER THE BOARD ADJOURNED TO CLOSED SESSION

- 17) Proposed Amendment No. 9 to Agreement 911-2013 with Meridian Healthcare Partners, Inc., an independent contractor, for Chief Executive Officer and healthcare management services for the period December 16, 2013 through December 15, 2020, revising the management fee, and increasing the maximum payable by \$372,320, to cover the term –  
APPROVED; AUTHORIZED VICE CHAIRMAN TO SIGN AGREEMENT 074-2018  
**Berjis-Brar: 5 Ayes; 1 Absent - Sistrunk; 1 Abstention - Bigler**

ADJOURNED TO CLOSED SESSION  
**Pelz-Lawson**

CLOSED SESSION

- 18) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 19) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

**Lawson-McLaughlin**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 18 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR PELZ, SECOND BY DIRECTOR LAWSON; 1 ABSENT - DIRECTOR SISTRUNK), THE BOARD APPROVED ALL PROVIDERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, CHANGE IN STAFF STATUS, AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 19 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, NOVEMBER 14, 2018, AT 11:30 A.M.

**Pelz**

/s/ Mona A. Allen  
Authority Board Coordinator

/s/ Russell E. Bigler  
Chairman, Board of Governors  
Kern County Hospital Authority



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Amendment No. 2 for Professional Services with Michael G. Meyers, M.D., and Eric Trefelner, M.D., Inc., a California professional medical corporation.

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve Amendment No. 2 to the Agreement for Professional Services with Michael G. Meyers, M.D., and Eric Trefelner, M.D., Inc., a California professional medical corporation, doing business as NightShift Radiology. NightShift Radiology provides after-hours preliminary radiologic reads for urgent and emergent cases. This Amendment No. 2 will extend the agreement by an additional 2 years, with a cost of \$480,000 per year or \$960,000 for the 2-year extension. The increased cost for this amendment term is \$180,000 per year, which is due to higher estimated rates, totaling \$20,000 year, and estimated increased utilization of after-hour reads totaling \$160,000 per year.

| <b>Payment for Services</b> | <b>Previous Year Agreement</b> | <b>Proposed Agreement</b> | <b>Variance</b> |
|-----------------------------|--------------------------------|---------------------------|-----------------|
| Per year cost               | \$300,000/year x3              | \$480,000/year x2         | \$180,000       |
| Total cost                  | \$900,000 total                | \$960,000                 | \$60,000        |

Therefore, it is recommended that your Board approve Amendment No. 2 for the Professional Services with Michael G. Meyers, M.D., and Eric Trefelner, M.D., Inc., a California professional medical corporation for professional services in the Department of Radiology from December 1, 2018 to November 30, 2020, in an amount not to exceed \$960,000 and authorize the Chairman to sign.

**AMENDMENT NO. 2 TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – NightShift Radiology)**

This Amendment No. to the Agreement for Professional Services (“Amendment No. 1”) is entered into this 14<sup>th</sup> day of November, 2018, by and between the Kern County Hospital Authority, a local unit of government (“KCHA”), which owns and operates Kern Medical Center (“KMC”) and Michael G. Myers, M.D. and Eric Trefelner, M.D., Inc., a California professional medical corporation, doing business as NightShift Radiology (“Contractor”), with its principal place of business located at P.O. Box 371477, Montara, California 94031.

**RECITALS**

A. KCHA and Contractor have heretofore entered into an Agreement for Professional Services (Kern County Agt. #582-2015, dated August 11, 2015), an Assignment of Agreement (Kern County Agt. #302-2016, effective July 1, 2016), and Amendment No. 1 (KCHA Agt. #24915, dated September 1, 2018) for the period of September 1, 2015 through November 30, 2018, to provide after-hours teleradiology services, (“Agreement”).

B. The Agreement will expire on November 30, 2018; and

C. KCHA continues to require the services of Contractor and Contractor has agreed to continue to provide such services; and

D. The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth; and

F. The Agreement is amended effective December 1, 2018.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follow:

1. Section 1, Term shall be deleted in its entirety and superseded by the following:

“1. Term. The term of this Agreement shall commence September 1, 2015 (the “Effective Date”) and shall end November 30, 2020, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 4.1, Fees and Charges, shall be deleted in its entirety and superseded by the following:

“4.1 Fees and Charges. As consideration for the services provided by Contractor hereunder, KCHA will pay Contractor in accordance with the fee schedule set forth in Exhibit “B-1,” attached hereto and incorporated herein by this reference. All services are payable in arrears.”

3. Section 4.3, Maximum Payable, shall be deleted in its entirety and superseded by the following:

“4.3 Maximum Payable. The maximum compensation payable under this Agreement will not exceed \$300,000 per year for the period of September 1, 2015 through August 31, 2018, will not exceed \$140,000 for the period of September 1, 2018 through November 30, 2018, and will not exceed \$480,000 per year for the period of December 1, 2018 through November 30, 2020, with a total compensation not to exceed of \$2,100,000 over the sixty-three (63) month term of this Agreement.”

4. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 2 have the meaning set forth in the Agreement.

5. This Amendment No. 2 shall be governed by and construed in accordance with the laws of the state of California.

6. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

**[Signatures follow on next page]**

IN WITNESS TO THE FOREGOING, the Parties have executed this Amendment No. 2 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

MICHAEL G. MYERS, M.D. AND  
ERIC TREFELNER, M.D.


By \_\_\_\_\_  
Russell Bigler  
Chairman, Board of Governors

By \_\_\_\_\_  
Michael G. Myers, M.D.  
Its President

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By \_\_\_\_\_  
Jared Leavitt  
Chief Operating Officer

APPROVED AS TO FORM:  
Legal Services Department

By  \_\_\_\_\_  
Hospital Counsel  
Kern County Hospital Authority



**Exhibit B-1 - NightShift Radiology Individual Procedure Fees  
Preliminary Interpretations  
KERN MEDICAL CENTER**

Procedure fees are based on the modality used and the body part and are directly related to items read by NightShift Radiology. Each charge is independent of CPT coding, slice or view count, or the institution's ability to collect for the procedure.

**CT FEES - \$35.00 per CT exam/body part**

Chest  
Each Extremity Body Part  
Abdomen (performed separately)  
Pelvic (performed separately)  
IAC's  
Head  
Sinus  
Maxofacial  
Orbits  
Bone Density  
Lumbar  
Thoracic  
Cervical  
Or any body part not listed above

**Combined CT Abdomen & Pelvis (same patient, same date) - \$58.00 per combined exam.**

**ULTRASOUND FEES - \$25.00 per US exam/body part**

Abdomen  
Arterial Flow  
DVT  
OB study  
Gall Bladder  
Carotid  
Thyroid  
Renal  
Scrotal  
Transabdominal Pelvic  
Transvaginal Pelvic  
Or any body part not listed above

**NUCLEAR MEDICINE FEES- \$30.00 per NM exam/body part**

Bone study  
Ventilation  
Perfusion  
GI Bleed  
Biliary  
Or any body part not listed above

**MRI FEES - \$53.00 per MRI exam/body part**

Brain  
IAC's  
Orbits  
Soft Tissue Neck  
Each Extremity Body Part  
Lumbar  
Thoracic  
Cervical  
Abdomen  
Pelvis  
Or any body part not listed above

**GENERAL RADIOGRAPHY FEES- \$15.00 per X-ray exam/body part**

Skull  
Facial Bones  
Mandible  
Sinus  
Soft Tissue Neck  
Cervical Spine  
Thoracic Spine  
Thoraco-Lumbar Spine  
Lumbar Spine  
Each Extremity Body Part  
Chest  
Abdomen  
Pelvis  
Or any body part not listed above

**SUBSPECIALTIES - \$50.00 per exam**

Emergency IVP's  
CT Angiography- Upper Extremity  
CT Angiography- Lower Extremity  
CT Angiogram Chest  
CT Angiogram Abdomen  
CT Angiogram Pelvis  
CT Pulmonary Embolism  
CT Soft Tissue Neck  
CT Angiogram Runoff  
CT Angiogram- Other  
Skeletal Survey (Child)  
Survey (Child)



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Purchase of Real Property

**Recommended Action:** Make finding project is exempt from further CEQA Review per sections 15301, 15302, 15303, 15304, 15305, 15306, AND 15061(b)(3) of State CEQA Guidelines; Approve; Adopt Resolution; Authorize Chief Executive Officer to accept Grant Deed on behalf of Kern County Hospital Authority and sign all escrow documents; direct staff to issue warrant payable to Chicago Title Company

**Summary:**

Proposed purchase of real property comprised of an approximately 28,500 square foot building located at 3551 Q Street, Bakersfield, California, from Mushtaq Ahmed, a physician, and Rehmat Ahmed, spouse, in the amount of \$2.9 million with an additional estimate of \$30,000 for closing costs.

Kern Medical also anticipates additional costs associated with this proposed purchase of \$20,000 for building inspections and an estimated \$500,000 initial tenant improvements, furnishing and equipment.

**Sources and Uses:**

|                   |                                                                                                                   |
|-------------------|-------------------------------------------------------------------------------------------------------------------|
| Uses of Funds:    | \$3.45 million for building purchase, furnishing, and equipment                                                   |
| Sources of Funds: | \$3.45 million from Whole Person Care grant funding (\$563,000) and Hospital Authority Cash Balance (\$2,887,000) |

**Financial Analysis Summary:**

|                          |          |
|--------------------------|----------|
| Net Present Value:       | \$29,452 |
| Internal Rate of Return: | 7.29%    |
| Discount Rate:           | 6.98%    |

**Background:**

Kern Medical requests your approval to purchase an existing medical office building located at 3551 Q Street, to establish a new outpatient clinic site. The purchase of the building will allow Kern Medical to access grant funding from the new Medicaid 1115 waiver program titled "Whole Person Care" (WPC), as well as, relocate existing clinic services currently located in the hospital.

The WPC program serves recently incarcerated and homeless patients. The services offered at the site will support the program's focus on primary care, healthcare-related social services, nutritional counseling, and health education. The initial amount of grant funding for WPC is \$383,000, with subsequent funding available each year thereafter. The WPC grant funding requirements stipulate that the new outpatient clinical services be

Owned and Operated by the Kern County Hospital Authority  
A Designated Public Hospital

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | KernMedical.com

provided at a new location, one that is not physically located at an existing clinic, but resides within a geographic area where most of the eligible WPC patient population resides.

Kern Medical also operates outpatient clinics in three locations in the main hospital: (a) specialty medicine and surgery clinics on the first floor A-wing, (b) orthopedic clinics on first floor, main, and (c) specialty surgery clinics on the second floor G-wing. These clinics are functioning alongside our inpatient care staff and are competing for ancillary services such as radiology and laboratory. The proposed building provides improved access to care for our community, in a setting that is more conducive to a healing environment. Outpatient clinic visitors prefer receiving care in a more conveniently located site with easier access and better amenities, rather than a large institutional hospital campus that is not as “out-patient friendly.”

### **Strategic Rationale:**

Kern Medical seeks to (a) improve access to patient care, (b) serve as a safety net provider, (c) enhance the quality of care provided, and (d) sustain its financial security. The proposed purchase supports these strategic priorities by allowing Kern Medical to provide outpatient clinical services at a more convenient location for our patients, within a more contemporary clinical space. The proposed purchase also provides Kern Medical with the ability to provide expanded services for other outpatient clinic services located on the main campus, increasing Kern Medical’s ability to pursue additional volume growth and reimbursement. The building contains more exam rooms than the current hospital campus clinic space (37 exam rooms compared to 27 at the hospital) plus additional space for diagnostic testing, imaging, and patient education, which not readily available at the hospital for outpatient clinic visits. The proposed building has existing entrances and waiting rooms with dedicated, convenient reception areas to provide separate work spaces for busy services. The financial feasibility analysis indicates a positive financial return.

### **Financial Analysis:**

The project allows for incremental volume growth from safety net patients plus commercial growth opportunities. Additional incremental reimbursement is also available by changing the billing methodology from “split” billing of the professional and technical components as a licensed hospital clinic to “global” billing as an exempt outpatient clinic under California HSC 1206(b) regulations for designated public hospitals. The five-year financial analysis entails:

- Patient volume is projected to increase 6.7% year over year
- Reimbursement per patient visit to improve 15% per patient visit through billing methodology changes, which allows for appropriate billing of additional services
- Incremental expense increases are limited by moving services from the main hospital as the services and staff will relocate to the new location. Clinical supplies are the largest component of the incremental expenses.
- A discounted cash flow analysis was prepared for the \$3.45 million investment, consisting of the \$2.9 million building purchase plus \$550,000 for tenant improvements, furnishings and equipment, inspection, and closing costs. A discount rate of 6.98% was used based on the Authority’s weighted cost of capital. The rate used is slightly higher than the industry average after adjusting for project specific risk factors such as utilization of current clinical capacity, added clinical efficiencies, and payor mix.
- Additional service opportunities are not included in the financial analysis. For example, the building includes an imaging center, approximately 4,000 square feet of space, which can be remodeled and equipped to allow for additional outpatient services. The possible imaging center will be a separate, future project that will be addressed at a later time, but will provide additional access to care and commercial growth opportunities.

Therefore, it is recommended that your Board approve the purchase of real property in an amount of \$2,930,000 for the expansion of outpatient services for the patients of Kern Medical.

## Kern Medical Q Street Clinic Analysis

| FY18                                 | Ortho        | Podiatry  | Urology    | Cardiology | Surgery    | Radiology* | Total        |
|--------------------------------------|--------------|-----------|------------|------------|------------|------------|--------------|
| <b>Total Clinic Visits</b>           | 12,351       | 1,829     | 2,694      | 1,850      | 8,076      | 10,635     |              |
| <b>Expected Clinic Rev per Visit</b> | \$ 103.78    | \$ 42.69  | \$ 68.56   | \$ 144.98  | \$ 37.64   | \$ 24.92   |              |
| <b>Expected Revenue</b>              | \$ 1,281,750 | \$ 78,074 | \$ 184,711 | \$ 268,204 | \$ 303,975 | \$ 264,985 | \$ 2,381,700 |

**Projected:**

|                                          |              |            |            |            |            |            |              |
|------------------------------------------|--------------|------------|------------|------------|------------|------------|--------------|
| <b>Patient Visit Increase</b>            | 3.5%         | 15.0%      | 5.0%       | 40.0%      | 5.0%       | 5.0%       |              |
| <b>New Total Clinic Visits</b>           | 12,783       | 2,103      | 2,829      | 2,590      | 8,480      | 11,165     |              |
| <b>Patient Charge Capture Increase</b>   | 15.0%        | 15.0%      | 15.0%      | 15.0%      | 15.0%      | 15.0%      |              |
| <b>New Expected Clinic Rev per Visit</b> | \$ 119.34    | \$ 49.09   | \$ 78.85   | \$ 166.72  | \$ 43.29   | \$ 28.65   |              |
| <b>Expected Revenue</b>                  | \$ 1,525,603 | \$ 103,253 | \$ 223,039 | \$ 431,809 | \$ 367,050 | \$ 319,919 | \$ 2,547,502 |
| <b>Total Expected Revenue Increase</b>   |              |            |            |            |            |            | 165,801.09   |
| <b>Less Increase in Variable Costs</b>   |              |            |            |            |            |            | (11,468.91)  |
| <b>Total Net Revenue Increase</b>        |              |            |            |            |            |            | 154,332.19   |
| <b>Whole Person Care</b>                 |              |            |            |            |            |            | 383,000      |
| <b>Total Additional Dollars Year 1</b>   |              |            |            |            |            |            | 548,801.09   |
| <b>Net Dollar % Increase</b>             |              |            |            |            |            |            | 23%          |

\* Radiology estimated at 75% of ortho & pod visits

| Five year Value Stream Projection | Year 1         | Year 2       | Year 3      | Year 4      | Year 5       |
|-----------------------------------|----------------|--------------|-------------|-------------|--------------|
| Incremental Revenue               | \$ 165,801     | \$ 169,117   | \$ 172,499  | \$ 175,949  | \$ 179,468   |
| Incremental Costs                 | \$ (11,469)    | \$ (11,928)  | \$ (12,405) | \$ (12,901) | \$ (13,417)  |
| Whole Person Care                 | \$ 383,000     | \$ 180,000   | \$ -        | \$ -        | \$ -         |
| Building Purchase                 | \$ (2,900,000) | \$ -         | \$ -        | \$ -        | \$ -         |
| Building Improvements             | \$ (300,000)   | \$ (200,000) |             |             |              |
| Building Inspections              | \$ (20,000)    |              |             |             |              |
| Closing Costs                     | \$ (30,000)    |              |             |             |              |
| Residual Building Value           |                |              |             |             | \$ 2,900,000 |
|                                   | (2,712,668)    | 137,189      | 160,095     | 163,048     | 3,066,051    |
| Present Value                     | (2,712,668)    | 128,238      | 139,885     | 133,171     | 2,340,826    |
| Net Present Value                 | 29,452         |              |             |             |              |
| Internal Rate of Return           | 7.29%          |              |             |             |              |

\* Revenue growing at 2%

\*Costs growing at 4%

| Discount Rate        |       |
|----------------------|-------|
| Industry Average CoC | 5.48% |
| Specific Entity Risk | 1.50% |
| Discount Used        | 6.98% |



STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS
FOR PURCHASE OF REAL ESTATE
(Non-Residential)

Dated: September 13, 2018

1. Buyer.

1.1 Kern County Hospital Authority, a local unit of government ("KCHA") which owns and operates Kern Medical Center, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow ("Escrow") to close 30 or days after the waiver or expiration of the Buyer's Contingencies, ("Expected Closing Date") to be held by Chicago Title Company - Attn: Linda Overdevest ("Escrow Holder") whose address is 4015 Coffee Road, Suite 100, Bakersfield, CA 93308, Phone No. 661 535 6449, Facsimile No. 661 410 4675 upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. Property.

2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) Approximately 28,500 SF of improved medical office building situated on approximately 2.22 acres is located in the County of Kern, is commonly known as (street address, city, state, zip) 3551 Q Street and is legally described as: to be determined by Title Company (APN: 120-181-54).

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Chicago Title Company ("Title Company"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("HVAC"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and all items and equipment attached to walls and/or flooring including but not limited to lights, cabinets, etc. (collectively, the "Improvements").

2.4 The fire sprinkler monitor: [X] is owned by Seller and included in the Purchase Price, [ ] is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, [ ] ownership will be determined during Escrow, or [ ] there is no fire sprinkler monitor.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and all of which shall be removed by Seller prior to Closing.

3. Purchase Price.

3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be \$2,900,000, payable as follows: (Strike any not applicable)

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price):

\$2,900,000

(b) Amount of "New Loan" as defined in paragraph 5.1, if any:

(c) Buyer shall take title to the Property subject to and/or assume the following existing deed of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)"): (i) An Existing Note ("First Note") with an unpaid principal balance as of the Closing of approximately:

Said First Note is payable at per month, including interest at the rate of % per annum until paid (and/or the entire unpaid balance is due on

(ii) An Existing Note ("Second Note") with an unpaid principal balance as of the Closing of approximately:

Said Second Note is payable at per month, including interest at the rate of % per annum until paid (and/or the entire unpaid balance is due on

(d) Buyer shall give Seller a deed of trust ("Purchase Money Deed of Trust") on the property, to secure the promissory note of Buyer to Seller described in paragraph 6 ("Purchase Money Note") in the amount of:

Total Purchase Price:

\$2,900,000

3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment

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of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.

#### 4. Deposits.

4.1  Buyer has delivered to Broker a check in the sum of \_\_\_\_\_, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or \_\_\_\_\_ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or  within 2 or five (5) business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder Buyer shall deliver to Escrow Holder a check in the sum of \$25,000. If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

##### 4.2 Additional deposits:

(a) ~~Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of \_\_\_\_\_ to be applied to the Purchase Price at the Closing.~~  
(b) ~~Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (m) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of \_\_\_\_\_ to be applied to the Purchase Price at the Closing.~~  
(c) ~~If an Additional Deposit is not received by Escrow Holder within the time period provided then Seller may notify Buyer, Escrow Holder, and Brokers, in writing that, unless the Additional Deposit is received by Escrow Holder within 2 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.~~

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is to be provided in Escrow. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

4.4 Notwithstanding the foregoing, within 5 days after Escrow Holder receives the monies described in paragraph 4.1 above, Escrow Holder shall release \$100 of said monies to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the contingency period to Buyer as herein provided. Such independent consideration is non-refundable to Buyer but shall be credited to the Purchase Price in the event that the purchase of the Property is completed.

4.5 Upon waiver of all of Buyer's contingencies the Deposit shall become non-refundable but applicable to the Purchase Price except in the event of a Seller breach, or in the event that the Escrow is terminated pursuant to the provisions of Paragraph 9.1(n) (Destruction, Damage or Loss) or 9.1(o) (Material Change).

#### 5. ~~Financing Contingency. (Strike if not applicable)~~

~~5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least \_\_\_\_\_% of the Purchase Price, on terms reasonably acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.~~

~~5.2 Buyer hereby agrees to diligently pursue obtaining the New Loan. If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within \_\_\_\_\_ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.~~

~~5.3 If, after due diligence, Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.~~

#### 6. ~~Seller Financing. (Purchase Money Note). (Strike if not applicable)~~

~~6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of \_\_\_\_\_% per annum, with principal and interest paid as follows: \_\_\_\_\_. The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.~~

~~6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):~~

~~(a) Prepayment. Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.~~

~~(b) Late Charge. A late charge of 5% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.~~

~~(c) Due On Sale. In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.~~

~~6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.~~

~~6.4 WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.~~

~~6.5 Seller's obligation to provide a financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 3 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available, and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate, Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.~~

  
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**7. Real Estate Brokers.**

7.1 The following real estate broker(s) ("Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check the applicable boxes):

- \_\_\_\_\_ represents Seller exclusively ("Seller's Broker");
- \_\_\_\_\_ represents Buyer exclusively ("Buyer's Broker"); or
- Colliers Tingey International, Inc. represents both Seller and Buyer ("Dual Agency").

The Parties acknowledge that other than the Brokers listed above, there are no other brokers representing the Parties or due any fees and/or commissions under this Agreement. See paragraph 24 regarding the nature of a real estate agency relationship. Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers named in paragraph 7.1, and no broker or other person, firm or entity, other than said Brokers is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Brokers by reason of any dealings or act of the indemnifying Party.

**8. Escrow and Closing.**

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by the Parties or a Broker herein. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "Closing") by recording a general warranty deed (a grant deed in California) and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement.

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance. (See also paragraph 11.)

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in paragraph 9.2, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, be promptly refunded all funds deposited by Buyer with Escrow Holder, less only the \$100 provided for in paragraph 4.4 and the Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this sale of the Property is not consummated for any reason other than Seller's breach or default, then at Seller's request, and as a condition to any obligation to return Buyer's deposit (see paragraph 21), Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property. Provided, however, that Buyer shall not be required to deliver any such report if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

**9. Contingencies to Closing.**

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies. **IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT.** Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer.

Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. **Buyer has forty-five (45) days following the Date of Agreement to satisfy itself with** ~~With~~ regard to subparagraphs (a) through (m) ~~the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.~~

(a) **Disclosure.** Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR CRE ("AIR") standard form entitled "Seller's Mandatory Disclosure Statement") and provide Buyer with a completed Property Information Sheet ("**Property Information Sheet**") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within ~~10 or~~ \_\_\_\_\_ days following the Date of Agreement. ~~Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.~~

(b) **Physical Inspection.** Buyer ~~has 10 or~~ \_\_\_\_\_ ~~days following the receipt of the Property Information Sheet or the Date of Agreement, whichever is later,~~ to satisfy itself with regard to the physical aspects and size of the Property.

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(c) **Hazardous Substance Conditions Report.** Buyer ~~has 30 or \_\_\_\_\_ days following the receipt of the Property Information Sheet or the Date of Agreement, whichever is later,~~ to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) **Soil Inspection.** Buyer ~~has 30 or \_\_\_\_\_ days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later,~~ to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within 10 days following the Date of Agreement.

(e) **Governmental Approvals.** Buyer ~~has 30 or \_\_\_\_\_ days following the Date of Agreement~~ to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

(f) **Conditions of Title.** Escrow Holder shall cause a current commitment for title insurance ("**Title Commitment**") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("**Underlying Documents**"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 ~~or \_\_\_\_\_ days following the Date of Agreement.~~ Buyer ~~has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan~~ to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) **Survey.** Buyer ~~has 30 or \_\_\_\_\_ days following the receipt of the Title Commitment and Underlying Documents~~ to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("**ALTA**") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) **Existing Leases and Tenancy Statements.** Seller shall within 10 ~~or \_\_\_\_\_ days following the Date of Agreement~~ provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "**Existing Leases**") affecting the Property, and with a tenancy statement ("**Estoppel Certificate**") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer ~~has 10 days from the receipt of said Existing Leases and Estoppel Certificates~~ to satisfy itself with regard to the Existing Leases and any other tenancy issues.

(i) **Owner's Association.** Seller shall within 10 ~~or \_\_\_\_\_ days following the Date of Agreement~~ provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has 10 days from the receipt of such documents to satisfy itself with regard to the association.

(j) **Other Agreements.** Seller shall within 10 ~~or \_\_\_\_\_ days following the Date of Agreement~~ provide Buyer with legible copies of all other agreements ("**Other Agreements**") known to Seller that will affect the Property after Closing. Buyer ~~has 10 days from the receipt of said Other Agreements~~ to satisfy itself with regard to such Agreements.

~~(k) **Financing.** If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.~~

~~(l) **Existing Notes.** If paragraph 3.1(c) has not been stricken, Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "**Loan Documents**") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("**Beneficiary Statement**") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or \_\_\_\_\_ days following the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or \_\_\_\_\_ days from the receipt of such documents to satisfy itself with regard to the form and content thereof.~~

(m) **Personal Property.** In the event that any personal property is included in the Purchase Price, Buyer ~~has 10 or \_\_\_\_\_ days following the Date of Agreement~~ to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or \_\_\_\_\_ days following the Date of Agreement.

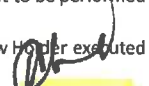
(n) **Destruction, Damage or Loss.** Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(o) **Material Change.** Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change. "**Material Change**" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(p) **Seller Performance.** The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(q) **Brokerage Fee.** Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed

  
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by Seller and Brokers ("**Brokerage Fee**"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers.

9.2 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "**Buyer's Contingencies**."

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("**Disapproved Item**"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("**Seller's Election**"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. The above time periods only apply once for each Disapproved Item. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions or to the Financing Contingency. Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.

#### 10. Documents Required at or Before Closing.

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing:

(a) Grant or general warranty deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.

~~(b) If applicable, the Beneficiary Statements concerning Existing Note(s).~~

(c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.

(d) If applicable, Estoppel Certificates executed by Seller and/or the tenant(s) of the Property.

(e) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

(f) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.

(g) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.

(h) If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.

10.3 Buyer shall deliver to Seller through Escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date provided, however, that Buyer shall not be required to deposit such monies into Escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed Buyer need only provide Escrow with evidence establishing that the required monies were available.

~~(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.~~

(c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

~~(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.~~

(f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.

**IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.**

#### 11. Prorations and Adjustments.

11.1 **Taxes.** Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 **Insurance.** **WARNING:** Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to

  
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cover the Property.

11.3 *Rentals, Interest and Expenses.* Scheduled rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 *Security Deposit.* Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

~~11.6 *Variations in Existing Note Balances.* In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(c), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof ("Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.~~

~~11.7 *Variations in New Loan Balance.* In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.~~

~~11.8 *Owner's Association Fees.* Escrow Holder shall: (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up-front fees required by the association from Buyer's funds.~~

## 12. Representations and Warranties of Seller and Disclaimers.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of ~~1 year~~ **2 years**, and any lawsuit or action based upon them must be commenced within such time period. Seller's warranties and representations are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers:

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in paragraph 9.1(n) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) *Hazardous Substances/Storage Tanks.* Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) *Compliance.* Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) *Notice of Changes.* Seller will promptly notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(o)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy, insolvency or probate proceeding.

(l) *Personal Property.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

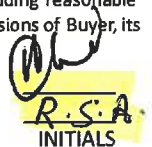
## 13. Possession.

Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

## 14. Buyer's Entry.

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the re-compaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

  
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**15. Further Documents and Assurances.**

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

**16. Attorneys' Fees.**

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, ~~may shall~~ be entitled to reasonable attorneys' fees and costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

**17. Prior Agreements/Amendments.**

- 17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.
- 17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

**18. Broker's Rights.**

~~18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.~~

~~18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.~~

**19. Notices.**

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger, or by mail, postage prepaid, to the address set forth in this agreement or by facsimile transmission, electronic signature, digital signature, or email.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

**20. Duration of Offer.**

20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of \_\_\_\_\_ on the date of \_\_\_\_\_, it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

**21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties).**

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$25,000. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

  
Buyer's Initials

  
Seller's Initials

**22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)**

22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. THE NUMBER OF ARBITRATORS SHALL BE AS PROVIDED IN THE COMMERCIAL RULES AND EACH SUCH ARBITRATOR SHALL BE AN IMPARTIAL REAL ESTATE BROKER WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THE ARBITRATOR OR ARBITRATORS SHALL BE APPOINTED UNDER THE COMMERCIAL RULES. AND SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

22.3 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION,

  
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AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Buyer will not initial

Buyer's Initials

Seller's Initials

**23. Miscellaneous.**

**23.1 Binding Effect.** This Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed.

**23.2 Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

**23.3 Time of Essence.** Time is of the essence of this Agreement.

**23.4 Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

~~**23.5 Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**~~

**23.6 Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions. **Seller and Buyer must initial any and all handwritten provisions.**

**23.7 1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 exchange.

**23.8 Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

**24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

**24.1** The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.

**24.2** When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) *Seller's Agent.* A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) *Buyer's Agent.* A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) *Agent Representing Both Seller and Buyer.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not without the express permission of the respective Party, disclose to the other Party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

**24.3 Confidential Information.** Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

**25. Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part

  
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of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

**26. Additional Provisions.**

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum or addenda consisting of paragraphs 28 through 28. (If there are no additional provisions write "NONE".)

Sale Lease Back: Seller shall have the option to lease back the portion of the Premises Seller currently occupies for a period up to one hundred eight (180) days commencing the day after the close of escrow. The rental rate and terms shall be mutually agreed upon prior to the close of escrow.

**ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

- SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.**
- RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.**

**WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.**

**NOTE:**

- THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.**
- IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.**

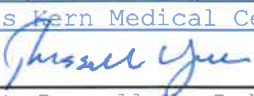

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

**BROKER**

Colliers Tingey International, Inc.  
Attn: David A. Williams  
Title: Senior Vice President & Principal Central California  
Address: 10000 Stockdale Highway, Suite 102  
Phone: 661 631 3816  
Fax: 661 631 3829  
Email: david.a.williams@colliers.com  
Federal ID No.: 94-2198904  
Broker/Agent BRE License #: Broker License# 00452468  
Agent License #00855489

Date: \_\_\_\_\_

**BUYER**

Kern County Hospital Authority, a local unit of government ("KCHA") which owns and operates Kern Medical Center  
By:   
Name Printed: Russell V. Judd  
Title: Chief Executive Officer  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
By:   
Name Printed: Shannon Hochstein  
Title: Hospital Counsel  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
Federal ID No.: to be provided in Escrow

**27. Acceptance.**

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to

6 % of the Purchase Price, ~~pursuant to the Broker's Listing Agreement to be divided between the Brokers as follows: Seller's Broker-~~  
~~\_\_\_\_\_ % and Buyer's Broker - \_\_\_\_\_ %.~~ This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers

out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

**NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.**

  
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**BROKER**

Colliers Tingey International, Inc.

Attn: Cameron Mahoney

Title: Associate - Central California

Address: 10000 Stockdale Highway, Suite 102  
Bakersfield, CA 93311

Phone: 661 631 3814

Fax: 661 631 3829

Email: cameron.mahoney@colliers.com

Federal ID No.: 94-2198904

Broker/Agent BRE License #: Broker License #00452468

Agent License # 01937802

Date: 9-18-18

**SELLER**

Mushtaq Ahmed & Rehmat Ahmed, husband and  
wife as joint tenants

By: Ahmed Mushtaq

Name Printed: Ahmed Mushtaq

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

By: Rehmat Mushtaq

Name Printed: Rehman Mushtaq

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

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## SELLER'S MANDATORY DISCLOSURE STATEMENT

(Required by law on transactions involving non-residential properties in California)  
DO NOT USE THIS FORM WITH REGARD TO THE SALE OF RESIDENTIAL PROPERTIES

This disclosure statement is intended to be a part of the  STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE (See paragraph 9.1(a) of said document) or  \_\_\_\_\_ (the "Purchase Agreement") dated September 13, 2018, regarding that certain real property commonly known as (street address, city, state, zip): 3551 G Street (the "Property") wherein Mushtaq Ahmed & Rehamat Ahmed, husband and wife as joint tenants is the Seller and Kern County Hospital Authority, a local unit of government ("KCHA") which owns and operates Kern Medical Center is the Buyer. Note: This disclosure statement is not designed nor intended to be used in place of the standard Property Information Sheet published BY AIR CRE ("AIR"). Both documents should be used in every transaction involving a sale.

In order to comply with State law concerning disclosures to a potential purchaser, Seller elects to:

- A. Utilize a report prepared by a professional consultant which has been approved by the AIR, i.e., First American Natural Hazard Disclosures, (800) 527-0027, or JCP Property Disclosure Reports, (800) 748-5233. A copy of their report is attached hereto. (Complete paragraph 8, 9, 10, 12 and 13 and sign this statement in the place provided.)
- B. Utilize a report prepared by to be provided in Escrow, with phone number: \_\_\_\_\_ A copy of their report is attached hereto. (Complete paragraphs 8, 9, 10, 12, and 13, sign this Statement in the place provided, and attach a copy of The Commercial Property Owner's Guide to Earthquake Safety.)
- C. Complete this Disclosure Statement without the assistance of a professional consultant. (Complete paragraphs 1 through 13 and sign this Statement in the place provided. Remember to attach a copy of The Commercial Property Owner's Guide to Earthquake Safety.)

1. **EARTHQUAKE FAULT ZONES.** If the Property is located within a delineated Earthquake Fault Zone (a zone that encompasses a potentially or recently active trace of an earthquake fault that is deemed by the State Geologist to constitute a potential hazard to structures from surface faulting or fault creep), California Public Resources Code §2621 et seq. mandates that prospective purchasers be advised that the Property is located within such a Zone, and that its development may require a geologic report from a state registered geologist. In accordance with such law, Buyer is hereby informed that the Property  is or  is not within a delineated Earthquake Fault Zone.
2. **SEISMIC HAZARD ZONES.** If the Property is located within a Seismic Hazard Zone as delineated on a map prepared by the California Division of Mines and Geology, California Public Resources Code §2690 et seq. mandates that prospective purchasers be advised that the Property is located within such a Zone. In accordance with such law, Buyer is hereby informed that the Property  is or  is not within a Seismic Hazard Zone.
3. **EARTHQUAKE SAFETY.** If (1) the improvements on the Property were constructed prior to 1975, and (2) said improvements include structures with (i) pre-cast (e.g., tilt-up) concrete or reinforced masonry walls together with wood frame floors or roofs or (ii) unreinforced masonry walls, Buyer must be provided with a copy of The Commercial Property Owner's Guide to Earthquake Safety (the "Booklet") published by the California Seismic Safety Commission. Buyer is hereby informed that the Property:
- (a) meets the foregoing requirements, and a copy of the Booklet and a completed "Commercial Property Earthquake Weakness Disclosure Report" is attached hereto. Within five business days of Buyer's receipt of said Disclosure Report, Buyer shall deliver a duly countersigned copy of the same to Escrow Holder, with a copy to Seller and Seller's Broker. Escrow Holder is hereby instructed that the Escrow shall not close unless and until Escrow Holder has received the Disclosure Report duly signed by both Seller and Buyer.
- (b) does not meet the foregoing requirements requiring the delivery of the Booklet.
4. **FIRE PROTECTION.** If the Property is located within a designated State Responsibility Area as delineated on a map prepared by the California Department of Forestry, California Public Resources Code §4136 mandates that prospective purchasers be advised that the Property is located within a wildland area which may contain substantial forest fire risks and hazards, that the State may not be responsible to provide fire protection services, and that the Property may be subject to the requirements of Public Resources Code §4291 which requires the periodic removal of brush, the maintenance of firebreaks, and other similar activities. In accordance with such law, Buyer is hereby informed that the Property  is or  is not within a designated State Responsibility Area.
5. **FIRE HAZARD.** If the Property is located within an area designated as a Very High Fire Hazard Severity Zone pursuant to Government Code §51178 et seq, §51183.5 mandates that prospective purchasers be advised that the Property is located within such a zone and that the Property may be subject to various maintenance, design and/or construction requirements and/or restrictions. In accordance with such law, Buyer is hereby informed that the Property  is or  is not within a designated Very High Fire Hazard Severity Zone.
6. **AREA OF POTENTIAL FLOODING.** If the Property is located within an area of potential flooding in the event of the failure of a dam as shown on an Inundation map designated pursuant to Government Code §8589.5, §8589.4 mandates that prospective purchasers be advised that the Property is located within such an area. In accordance with such law, Buyer is hereby informed that the Property  is or  is not within a designated area of potential flooding.

  
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7. FLOOD HAZARD AREAS. If the Property is located within a designated Federal Flood Hazard Area as delineated on a map prepared by the Federal Emergency Management Agency, Federal law, i.e. 42 U.S.C. §4104a, mandates that prospective purchasers be advised that the Property is located within an area having special flood hazards and that flood insurance may be required as a condition to obtaining financing. In accordance with such law, Buyer is hereby informed that the Property  is or  is not within a designated Federal Flood Hazard Area.

8. FLOOD DISASTER INSURANCE. If the Seller or Seller's predecessor-in-interest has previously received Federal flood disaster assistance and said assistance was conditioned upon obtaining and maintaining flood insurance on the Property, Federal law, i.e. 42 U.S.C. §5154a, mandates that prospective purchasers be advised that they will be required to maintain such insurance on the Property and that if said insurance is not maintained and the Property is thereafter damaged by a flood disaster, the purchaser may be required to reimburse the Federal Government for the disaster relief provided. Buyer is hereby informed that to the best of the Seller's knowledge Federal flood disaster assistance  has or  has not been previously received with regard to the Property. Note: If such disaster assistance has been received, the law specifies that the required notice be "contained in documents evidencing the transfer of ownership".

9. WATER HEATER BRACING. If the Property contains one or more water heaters, Seller is required by California Health and Safety Code §19211 to certify to the Buyer that all such water heaters have been braced, strapped and/or anchored in accordance with law. Buyer is hereby advised that the required bracing, strapping and/or anchors:  have been installed  have not been installed, or  Seller does not know whether they have been installed.

10. PRESENCE OF MOLD. If the seller or transferor of property knows of the presence of mold that affects the property and the mold either exceeds permissible exposure limits or poses a health threat then Health and Safety Code §26140, et seq. mandates that prospective purchasers be advised in writing of such mold. In accordance with such law, Buyer is hereby informed that the undersigned  does or  does not know of the presence of such mold effecting the Property.

11. TITLE INSURANCE. In the event that the Purchase Agreement does not at present provide that title insurance will be obtained, Buyer is strongly urged to consider purchasing such insurance, and, in accordance with California Civil Code §1057.6, is advised as follows:

IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.

12. HAZARDOUS SUBSTANCES. Seller is required by California Health and Safety Code §25959.7 to notify potential buyers of the presence of any hazardous substance that Seller knows, or has reasonable cause to believe, is located on or beneath the Property. In accordance with such law, Buyer is hereby notified that:  Seller neither knows nor has reasonable cause to believe that any hazardous substance is on or beneath the Property, or  Seller knows or has reasonable cause to believe that the following hazardous substances are on or beneath the Property: \_\_\_\_\_.

13. OTHER. \_\_\_\_\_

PLEASE NOTE:

While the information contained in or attached to this Disclosure Statement is believed to be accurate as of the date that it was prepared, the applicable laws and the areas covered by the various natural hazard zones, etc. can change from time to time. Prior to the close of escrow, Buyer may wish to again check the status of the Property. Also, the city and/or county in which the Property is located may have established natural hazard zones in addition to those listed above. Buyer is advised to check with the appropriate local agency or agencies.

The descriptions contained within the above disclosure paragraphs are not intended to be full and complete dissertations of all of the possible ramifications to the Buyer and/or the Property. In the event that this document indicates that the Property is effected by one or more of the disclosures, Buyer is advised to:

- 1. Review the applicable laws in their entirety.
2. Seek advice of counsel as to the legal consequences of the items disclosed.
3. Retain appropriate consultants to review and investigate the impact of said disclosures.

Likewise no representation or recommendation is made BY AIR CRE or by any broker as to the legal sufficiency, legal effect, or consequences of this document or the Purchase Agreement to which it relates.

Date: 9-18-18
SELLER
Mushtaq Ahmed & Rehmat Ahmed, husband and wife as joint tenants
By: [Signature]
Name Printed: Ahmed Mushtaq
Title:
By: R. S. Ahmed
Name Printed: Rehmat Ahmed

Receipt of the above Seller's Mandatory Disclosure Statement is hereby acknowledged:

Date:
BUYER
Kern County Hospital Authority, a local

[Handwritten initials]
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[Handwritten initials]
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unit of government "KCHA", which owns and  
operates Kern Medical Center

By: \_\_\_\_\_

Name Printed: Russell V. Judd

Title: Chief Executive Officer

By: \_\_\_\_\_

Name Printed: Shannon Hochstein

Title: Hospital Counsel

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Last Edited: 9/14/2018 3:56 PM

  
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SMD-6.00, Revised 01-03-2017

# AIRCRE

## PROPERTY INFORMATION SHEET (For the sale or leasing of non-residential properties)

### PREFACE:

Purpose: This Statement is NOT a warranty as to the actual condition of the Property/Premises. The purpose is, instead, to provide the brokers and the potential buyer/lessee with important information about the Property/Premises which is currently in the actual knowledge of the Owner and which the Owner is required by law to disclose.

Actual Knowledge: For purposes of this Statement the phrase 'actual knowledge' means: the awareness of a fact, or the awareness of sufficient information and circumstances so as to cause one to believe that a certain situation or condition probably exists.

### TO WHOM IT MAY CONCERN:

Muhtasir Ahmed and Rehamat Ahmed, husband and wife as joint tenants ("Owner"), owns the Property/Premises commonly known as (street address, city, state, zip) 3951 G Street located in the County of Kern, and generally described as (describe briefly the nature of the Premises or Property) Approximatel, 28,500 SF of improved medical office building situated on approximatel, 2.22 acres (hereinafter "Property"), and certifies that:

- 1. Material Physical Defects.** Owner has no actual knowledge of any material physical defects in the Property or any improvements and structures thereon, including, but not limited to the roof, except (if there are no exceptions write "NONE"): None.
- 2. Equipment.**
  - A. Owner has no actual knowledge that the heating, ventilating, air conditioning, plumbing, loading doors, electrical and lighting systems, life safety systems, security systems and mechanical equipment existing on the Property as of the date hereof, if any, are not in good operating order and condition, except (if there are no exceptions write "NONE"): Working condition.
  - B. Owner has no actual knowledge of any leases, financing agreements, liens or other agreements affecting any equipment which is being included with the Property, except (if there are no exceptions write "NONE"): None.
- 3. Soil Conditions.** Owner has no actual knowledge that the Property has any slipping, sliding, settling, flooding, ponding or any other grading, drainage or soil problems, except (if there are no exceptions write "NONE"): None.
- 4. Utilities.** Owner represents and warrants that the Property is served by the following utilities (check the appropriate boxes)  public sewer system and the cost of installation thereof has been fully paid,  private septic system,  electricity,  natural gas,  domestic water,  telephone, and  other: \_\_\_\_\_.
- 5. Insurance.** Owner has no actual knowledge of any insurance claims filed regarding the Property during the preceding 3 years, except (if there are no exceptions write "NONE"): None.
- 6. Compliance With Laws.** Owner has no actual knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes, or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable government agency or of any casualty insurance company that any work of investigation, remediation, repair, maintenance or improvement is to be performed on the Property, except (if there are no exceptions write "NONE"): None.
- 7. Hazardous Substances and Mold.**
  - A. Owner has no actual knowledge of the Property ever having been used as a waste dump, of the past or present existence of any above or below ground storage tanks on the Property, or of the current existence on the Property of asbestos, transformers containing PCB's or any hazardous, toxic or infectious substance whose nature and/or quantity of existence, use, manufacture or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare, except (if there are no exceptions write "NONE"): None.
  - B. Owner represents and warrants that it is not currently, and never has been engaged in the business of hauling waste, and never stored hazardous substances on the Property, except (if there are no exceptions write "NONE"): None.
  - C. Owner has no actual knowledge of the existence on the Property of hazardous levels of any mold or fungi defined as toxic under applicable state or Federal law, except (if there are no exceptions write "NONE"): None.
- 8. Fire Damage.** Owner has no actual knowledge of any structure on the Property having suffered material fire damage, except (if there are no exceptions write "NONE"): None.
- 9. Actions, Suits or Proceedings.** Owner has no actual knowledge that any actions, suits or proceedings are pending or threatened before any court, arbitration tribunal, governmental department, commission, board, bureau, agency or instrumentality that would affect the Property or the right or ability of an owner or tenant to convey, occupy or utilize the Property, except (if there are no exceptions write "NONE"): None.  
Owner has not served any Notices of Default on any of the tenants of the Property which have not been resolved except (if there are no exceptions write "NONE"): None.
- 10. Governmental Proceedings.** Owner has no actual knowledge of any existing or contemplated condemnation, environmental, zoning, redevelopment agency plan or other land use regulation proceedings which could detrimentally affect the value, use and operation of the Property, except (if there are no exceptions write "NONE"): None.

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Last Edited: 9/17/2018 8:26 AM

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PI-8.01, Revised 11-01-2017

11. **Unrecorded Title Matters.** Owner has no actual knowledge of any encumbrances, covenants, conditions, restrictions, easements, licenses, liens, charges or other matters which affect the title of the Property that are not recorded in the official records of the county recorder where the Property is located, except (if there are no exceptions write "NONE"): None.

12. **Leases.** Owner has no actual knowledge of any leases, subleases or other tenancy agreements affecting the Property, except (if there are no exceptions write "NONE"): one lease with Dr. Zora Gali.

13. **Options.** Owner has no actual knowledge of any options to purchase, rights of first refusal, rights of first offer or other similar agreements affecting the Property, except (if there are no exceptions write "NONE"): None.

14. **Short Sale/Foreclosure.** The ability of the Owner to complete a sale of the Property is contingent  is not contingent upon obtaining the consent of one or more lenders to conduct a 'short sale', i.e. a sale for less than the amount owing on the Property. (This paragraph only needs to be completed if this Property Information Sheet is being completed in connection with the proposed sale of the Property) One or more of any loans secured by the Property is  is not in foreclosure.

15. **Energy Efficiency.** The Property has has not been granted an energy efficiency rating or certification such as one from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) or Seller/Lessor does not know if the Property has been granted such a rating or certificate. If such a rating or certification has been obtained please describe the rating or certification and provide the name of the organization that granted it: N.A.

16. **Other.** (It will be presumed that there are no additional items which warrant disclosure unless they are set forth herein): N/A.

The statements herein will be relied upon by brokers, buyers, lessees, lenders and others. Therefore, Owner and/or the Owner's Property Manager has reviewed and modified this printed statement as necessary to accurately and completely state all the known material facts concerning the Property. To the extent such modifications are not made, this statement may be relied upon as printed. This statement, however, shall not relieve a buyer or lessee of responsibility for independent investigation of the Property. Owner agrees to promptly notify, in writing, all appropriate parties of any material changes which may occur in the statements contained herein from the date this statement is signed until title to the Property is transferred, or the lease is executed.

Date: 9-18-18  
(fill in date of execution)

OWNER  
Mushtaq Ahmed and Rehmata Ahmed, husband and wife as joint tenants

By: [Signature]  
Name Printed: Mushtaq Ahmed

Title: \_\_\_\_\_  
By: R.S. Ahmed  
Name Printed: Rehmata Ahmed

Buyer/lessee hereby acknowledges receipt of a copy of this Property Information Sheet on \_\_\_\_\_ . (Fill in date received)

BUYER/LESSEE  
Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center

By: [Signature]  
Name Printed: Russel V. Judd

Title: Chief Executive Officer  
By: [Signature]  
Name Printed: Shannon Hochstein  
Title: Hospital Counsel

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**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed additional signing authority with Presidio Technology Capital, LLC

**Recommended Action:** Approve; Authorize Chairman to sign documentation allowing Kern Medical's Chief Executive Officer to sign "Incumbency Certificate" document in support of the Presidio lease agreement

**Summary:**

Kern Medical is requesting the Board of Governors authorize the Kern Medical Chief Executive Officer to sign Incumbency Certificate documentation with Presidio Technology Capital, LLC on behalf of the Board of Governors.

At your August 15, 2018 Board meeting, you approved the Lease Agreement and Supplements with Presidio Technology Capital, LLC, for the financing of enterprise storage and back up hardware and support for the Cerner Millennium Project. The term of the Lease Agreement and Supplements is effective September 1, 2018 through November 30, 2021, in an amount not to exceed \$1,862,334 which includes all hardware technology and services.

# PRESIDIO<sup>®</sup>

## TECHNOLOGY CAPITAL

PRESIDIO TECHNOLOGY CAPITAL, LLC ■ TWO SUN COURT ■ NORCROSS, GEORGIA 30092

### Incumbency Certificate

**Name of Governmental Entity:**  
Kern County Hospital Authority

**Governmental Entity Address:**  
1700 Mt. Vernon Ave.  
Bakersfield, CA 93305

| <u>NAME</u>           | <u>TITLE</u>            | <u>SPECIMEN SIGNATURE</u> |
|-----------------------|-------------------------|---------------------------|
| Russell V. Judd _____ | Chief Executive Officer | _____                     |
| _____                 | _____                   | _____                     |
| _____                 | _____                   | _____                     |
| _____                 | _____                   | _____                     |

---

I certify that I am an Officer of the Governmental Entity, that I have access to the original records of the Governmental Entity, and that the persons designated to serve in the capacities identified above hold the offices specified above, and in their capacities the persons designated above are authorized to execute, on behalf of the Governmental Entity, rentals, leases, installment sales contracts, guarantees, promissory notes, installment payment agreements, annual payment agreements, service agreements and security agreements, together with any and all related documents, in connection with the financing of equipment from Presidio Technology Capital, LLC. These documents will be in such form and contain such terms as any of the persons designated to serve in the above-entitled capacities shall approve, such approval to be conclusively evidenced by the designated person's signature.

**THIS CERTIFICATE NEEDS TO BE SIGNED BY AN OFFICER OTHER THAN THE PERSONS DESIGNATED ABOVE.**

#### Kern County Hospital Authority

By: \_\_\_\_\_ <Sign here  
*Authorized Signature*

Russell Bigler, Chairman Board of Governors  
*Name (Type or Print)* *Title*

\_\_\_\_\_  
Date



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Lease Agreement with Ray A Morgan Company

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical is requesting your Board approve the proposed Lease Agreement with Ray A Morgan Company to reduce our day-to-day print management spend and reduce the Cerner Millennium Project's print management build requirements.

We are proposing an agreement with Ray A Morgan Company for the lease of our output print management and support service in support of the long-term technology strategy for Kern Medical. We will leverage "follow me print" security services that will also allow Kern Medical to secure and manage print output.

**Current monthly print spend is \$45,525** with three separate vendors performing print output services.

**New monthly spend will be \$32,196** which includes supplies and print images.

**Projected savings of \$799,800.00** over the 60 month contract term.

The proposed Lease Agreement will be effective November 20, 2018 through November 19, 2023, in an amount not to exceed \$1,862,334, which includes all hardware technology and services. The Agreement contains non-standard terms and cannot be approved as to form by Counsel due to no indemnification or warranty by the Ray A Morgan Company for equipment and services and waiver of a jury trial.



Ray Morgan Company

State & Local Government Value Rental Lease Agreement

APPLICATION NO.

AGREEMENT NO.

3131 Esplanade • Chico, CA 95973 • Phone: 530.343.6065 • Fax: 530.343.9470

The words User, Lessee, you and your refer to Customer. The words Owner, Lessor, we, us and our refer to Ray A. Morgan Company.

CUSTOMER INFORMATION

Form with fields for FULL LEGAL NAME, STREET ADDRESS, CITY, STATE, ZIP, PHONE, FAX, BILLING NAME, BILLING STREET ADDRESS, CITY, STATE, ZIP, E-MAIL, and EQUIPMENT LOCATION.

EQUIPMENT DESCRIPTION

Form with fields for MAKE/MODEL/ACCESSORIES, SERIAL NO., STARTING METER, and checkboxes for See the attached Schedule A and See the attached Billing Schedule.

TERM AND PAYMENT SCHEDULE

Table with columns for number of payments, amount, and description of payments. Includes a section for Meter Readings verified with checkboxes for Monthly, Quarterly, and Other.

OWNER ACCEPTANCE

Signature line for Ray A. Morgan Company with fields for SIGNATURE, TITLE, and DATED.

CUSTOMER ACCEPTANCE

Signature line for Kern County Hospital Authority with fields for SIGNATURE, TITLE, and DATED. Includes a section for FEDERAL TAX I.D. # and PRINT NAME.

ACCEPTANCE OF DELIVERY

Signature line for Kern County Hospital Authority with fields for SIGNATURE, TITLE, and DATE OF DELIVERY.

TERMS AND CONDITIONS (THIS AGREEMENT CONTAINS PROVISIONS SET FORTH BELOW, ALL OF WHICH ARE MADE A PART OF THIS AGREEMENT.)

1. AGREEMENT: You agree to rent from us for essential governmental purposes only... 2. REPRESENTATIONS AND WARRANTIES: CUSTOMER: You hereby represent and warrant that... 3. RENT, TAXES AND FEES: Subject to paragraph 4, you will pay the monthly Payment (as adjusted) when due...

**4. NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

**5. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment: in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; free and clear of all liens and claims; and only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return (and all expenses associated with its removal), including but not limited to hard drives, disk drives or any other form of memory. We own the Equipment, excluding any Financial Items. We do not own the Financial Items and cannot transfer any interest in it to you. If this Agreement is deemed to be a secured transaction, to the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a UCC financing statement.

**6. COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree (a) to keep the Equipment fully insured through a carrier acceptable to us against loss in an amount not less than the original cost of the Equipment, with us named as lender's loss payee; (b) to maintain comprehensive public liability insurance acceptable to us and to include us as additional insured on the policy; (c) to provide proof of insurance satisfactory to us no later than thirty (30) days following the start of this Agreement and thereafter upon our written request and to provide us with 10 days advance written notice of any modification or cancellation of your insurance policy(s); (d) if you fail to obtain and maintain property loss insurance satisfactory to us and/or you fail to provide proof of such insurance to us within thirty (30) days of the start of this Agreement, we have the option, but not the obligation, to do as provided in either (A) or (B) as follows, of the following paragraphs as determined in our discretion: (A) We may secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we place insurance on the Equipment, we will not name you as an insured and your interests may not be fully protected. If we secure insurance on the Equipment, you will pay us an amount for the premium which may be higher than the premium that you would pay if you placed the insurance independently and an insurance fee which may result in a profit to us through an investment in reinsurance; or (B) We may charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated residual value of the Equipment (both discounted at 2%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment.

**7. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent.** Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new owner will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

**8. DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (b) you make or have made any false statement or misrepresentation to us, (c) you file bankruptcy, or (d) there has been a material adverse change in your financial, business or operating condition. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late, or if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment (both discounted at 2%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financial Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any enforcement of our rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE.** Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties. In the event that legal proceedings relating to this Agreement (other than our enforcement of this Agreement after a default by you) are commenced in any court or before any other tribunal of competent jurisdiction, the legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the non-prevailing party on demand of the prevailing party.

**9. INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. You agree to provide updated annual and/or quarterly financial statements to us upon request.

**10. FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. The original of this Agreement shall be that copy which bears your facsimile or original signature, and which bears our original signature. You waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time.

**11. WARRANTY DISCLAIMERS: YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.**

**12. LAW, JURY WAIVER: Agreements, promises and commitments made by us, concerning loans and other credit extensions must be in writing, express consideration and be signed by us to be enforceable.** This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with the law of the state in which you are located. You consent to jurisdiction and venue of any state or federal court in such state. For any action arising out of or relating to this Agreement or the Equipment, **YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.**

**13. MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the designated Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as black toner, color toner and developer as defined by the Manufacturer's Published Yield per Container. Additional toner will be billed separately. Paper, media, staples and clear toner, if any is required by your particular equipment model, must be separately purchased by the customer. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you. Customer has been informed that a surge protector is recommended to protect their electronic investment from harmful high voltage power disturbances. Said surge protectors should have network protection when connected in a network environment. Units that provide network protection are available through Ray A. Morgan Company. Customer responsible for providing manufacturer recommended adequate power supply. Check one of the following:  purchased  Has existing  Declined and will be responsible for damage caused by not having a surge protector.

**14. OVERAGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the maintenance and supplies portion of the Payment and the per image charge over the base minimum by a minimum of 5% over the charges of the previous year. In addition, we may assess an additional fuel and/or freight surcharge to offset higher than normal service costs as a result of adverse economic conditions. If the supplier is providing maintenance and supplies to you for equipment that is not leased from us, but the charges for such maintenance and supplies are included in this Agreement, you agree that if you retire, replace and/or add new non-leased equipment to the Agreement, you grant us the ability to reflect these additions or deletions of said non-leased equipment to the Agreement and your payments under this Agreement may be adjusted accordingly.

**15. UPGRADE AND DOWNGRADE PROVISION: AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR IMAGE/SCAN VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.**

**16. TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.

**17. CALIFORNIA JUDICIAL REFERENCE AGREEMENT:** The parties agree that any and all disputes, claims and controversies arising out of this Agreement (including, but not limited to, actions arising in contract or tort and any claims by a party against us related in any way to the financing) (individually, a "Dispute") that are brought before a forum in which pre-dispute waivers of the right to trial by jury are invalid under applicable law shall be subject to the terms of this Section in lieu of the jury trial waiver(s) otherwise provided in this Agreement.

Any and all Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure Sections 638 et seq. The referee shall be a retired California state court judge or an attorney licensed to practice law in the State of California with at least ten (10) years' experience practicing commercial law. The parties shall not seek to appoint a referee that may be disqualified pursuant to California Code of Civil Procedure Section 641 or 641.2 without the prior written consent of all parties. If the parties are unable to agree upon a referee within ten (10) calendar days after one party serves a written notice of intent for judicial reference upon the other party or parties, then the referee will be selected by the court in accordance with California Code of Civil Procedure Section 640(b). The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the California Code of Civil Procedure, the Rules of Court and California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of California Code of Civil Procedure Sections 644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.

Nothing in this Section shall be deemed to apply to or limit our rights (a) to exercise self help remedies such as (but not limited to) setoff, (b) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (c) to obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver), or (d) to pursue rights against a party in a third-party proceeding in any action brought against us (including actions in bankruptcy court). We may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during or after the pendency of any judicial reference proceeding. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies or the opposition to any such provisional remedies shall constitute a waiver of the right of any party, including, but not limited to, the claimant in any such action, to require submission to judicial reference the merits of the Dispute occasioning resort to such remedies. No provision in this Agreement regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in this Agreement for judicial reference of any Dispute.

If a Dispute includes multiple claims, some of which are found not subject to this Section, the parties shall stay the proceedings of the Disputes or part or parts thereof not subject to this Section until all other Disputes or parts thereof are resolved in accordance with this Section. If there are Disputes by or against multiple parties, some of which are not subject to this Section, the parties shall sever the Disputes subject to this Section and resolve them in accordance with this Section. During the pendency of any Dispute which is submitted to judicial reference in accordance with this Section, each of the parties to such Dispute shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Section. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing party shall be entitled to reasonable court costs and legal fees, including customary attorneys' fees, expert witness fees, paralegal fees, the fees of the referee and other reasonable costs and disbursements charged to the Party by its counsel, in such amount as is determined by the referee. In the event of any challenge to the legality or enforceability of this Section, the prevailing party shall be entitled to recover the costs and expenses from the non-prevailing party, including reasonable attorneys' fees, incurred by it in connection therewith. **THIS SECTION CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN OR AMONG THE PARTIES WITHIN THE MEANING OF AND FOR PURPOSES OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.**





Ray Morgan Company

Schedule "A"

APPLICATION NO.

AGREEMENT NO.

This Schedule "A" is to be attached to and becomes part of the Agreement dated November 14, 2018 by and between the undersigned and Ray A. Morgan Company.

EQUIPMENT DESCRIPTION

| MAKE/MODEL/ACCESSORIES                                                                                                                                                           | SERIAL NO. | STARTING METER |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------|
| 1 Ricoh MP C6503<br>With Nuance Healthcare bundle                                                                                                                                |            |                |
| 1 Ricoh MP C6004ex<br>With Nuance Healthcare bundle                                                                                                                              |            |                |
| 14 Ricoh MP C4504ex<br>With Nuance Healthcare bundle                                                                                                                             |            |                |
| 5 Ricoh MP 6055<br>With Nuance Healthcare bundle                                                                                                                                 |            |                |
| 20 Ricoh MP 5055<br>With Nuance Healthcare bundle                                                                                                                                |            |                |
| 15 Ricoh MP 2555<br>With Nuance Healthcare bundle                                                                                                                                |            |                |
| 31 Ricoh MP 402<br>With Nuance Healthcare bundle<br>Included a pool of 610,000 B&W Images with overages at \$0.0066<br>And a pool of 78,000 color images with overages at \$0.06 |            |                |
| 178 HP E60055Dn B&W Printers                                                                                                                                                     |            |                |
| 19 HP E55045dw Color Printers<br>Included in a pool of 500,000 B&W images with overages at \$0.010<br>And a pool of 35,000 color images with overages at \$0.060                 |            |                |
| 8 Channel Right-Fax Server with full back-up system                                                                                                                              |            |                |

CUSTOMER ACCEPTANCE

This Schedule "A" is hereby verified as correct by the undersigned Customer, who acknowledges receipt of a copy.

Kern County Hospital Authority

X  
SIGNATURE

Chairman, Board of Governors

CUSTOMER

TITLE

DATED

**TERMS AND CONDITIONS  
ADDENDUM**

**AGREEMENT #  
2445625**

Addendum to Agreement # 2445625, between **KERN COUNTY HOSPITAL AUTHORITY**, as Customer and Ray A. Morgan Company, as Owner. The words you and your refer to Customer. The words we, us and our refer to Owner.

The parties wish to amend the above-referenced Agreement as follows:

**Paragraph 7. ASSIGNMENT:**

Sentence 1 has been modified to read as follows:

"YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent, which will not be unreasonably withheld."

Sentence 2 has been removed in its entirety:

"Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets."

**Paragraph 14. OVERAGES AND COST ADJUSTMENTS:**

Sentence 2 has been removed in its entirety:

"At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the maintenance and supplies portion of the Payment and the per image charge over the base minimum by a minimum of 5% over the charges of the previous year."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Owner to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

**Ray A. Morgan Company**

Owner



Signature

**LEASING MANAGER**

**11-8-18**

Title

Date

**KERN COUNTY HOSPITAL AUTHORITY**

Customer

**X**

Signature

Chairman, Board of Governors

Title

Date

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By   
Legal Services Department

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

**SELF-INSURED ADDENDUM (PROPERTY & LIABILITY)**

**AGREEMENT #  
2445625**

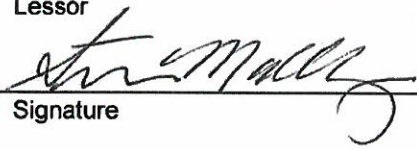
Addendum to Agreement # 2445625, between Kern County Hospital Authority, as Customer and Ray A Morgan Company, as Lessor. The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Lessor.

The parties wish to amend the above-referenced Agreement by adding the following language:


This Agreement imposes certain obligations on you with respect to maintaining property and liability insurance on the Equipment to cover risk of loss or damage to such Equipment and any liability caused by or in any way related to the Equipment. You have indicated to us that you will not carry property insurance or liability insurance from an insurance carrier. Rather, you will self-insure for property loss and liability by maintaining sufficient liquid assets and overall financial strength to fully cover such risks of loss, damage and/or liability caused by or in any way related to the Equipment.

You acknowledge and confirm that, notwithstanding the foregoing, you shall remain solely responsible for any and all risk of loss or damage to the Equipment and all liability caused by or in any way related to the Equipment, in accordance with the terms of this Agreement. Furthermore, upon any event of default or if we determine, at our sole discretion, that you do not have sufficient liquid assets or overall financial strength to adequately self-insure for property loss and/or liability, we reserve the right to require you to obtain: (1) a property insurance policy from an insurance carrier in an amount not less than the full replacement value of the Equipment with us named as lender's loss payee; and (2) a commercial general liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as additional insured on the policy.

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

Ray A Morgan Company  
Lessor  
  
Signature  
LEASURER                      11-8-18  
Title                                      Date

Kern County Hospital Authority  
Customer  
  
X  
Signature  
Chairman, Board of Governors  
Title                                      Date

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**  
By   
Legal Services Department

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

**LESSEE'S GENERAL AND  
INCUMBENCY CERTIFICATE**

**AGREEMENT #**  
2445625

**GENERAL CERTIFICATE**

Re: Lease Agreement # 2445625, between Kern County Hospital Authority, as Lessee ("Lessee") and Ray A Morgan Company, as Lessor.

The undersigned, being the duly elected, qualified and acting official of Lessee holding the title stated in the signature line below, does hereby certify as of the date of this Certificate and the date of the Agreement (as defined below), as follows:

1. Lessee did, at a meeting of the governing body of the Lessee, by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Lease Agreement (the "Agreement") by the undersigned.
2. The meeting(s) of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Agreement and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Lessee relating to the authorization and delivery of the Agreement have been: (a) held within the geographic boundaries of the Lessee; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Lessee, if any, and the laws of the state where Lessee is located.
3. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an event of default or a nonappropriation event exists at the date hereof with respect to this Agreement.
4. The acquisition of all of the Equipment under the Agreement has been duly authorized by the governing body of Lessee.
5. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Payments scheduled to come due during the current budget year under the Agreement and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.
6. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Agreement or of other agreements similar to the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement.

IN WITNESS WHEREOF, the undersigned has signed this Certificate on the date stated below.

|                                        |                                                      |                                                                         |
|----------------------------------------|------------------------------------------------------|-------------------------------------------------------------------------|
| Kern County Hospital Authority         | <b>X</b>                                             |                                                                         |
| Lessee                                 | Signature of Person to Sign Agreement                | Chairman, Board of Governors<br>Print Title of Person to Sign Agreement |
| Russell Bigler                         | November 14, 2018                                    |                                                                         |
| Print Name of Person to Sign Agreement | Print Date that Above Person Signed this Certificate |                                                                         |

**INCUMBENCY CERTIFICATE**

Re: Lease Agreement # 2445625, between Kern County Hospital Authority, as Lessee ("Lessee") and Ray A Morgan Company, as Lessor.

The undersigned, being the duly elected, qualified and acting Secretary, Clerk, or other duly authorized official or signatory of the Lessee does hereby certify, as of the date of this Certificate and the date of the Agreement (as defined in the General Certificate above)as follows:

As of the date of the meeting(s) of the governing body of the Lessee at which the above-referenced Agreement was approved and authorized to be executed, and as of the date hereof, the below-named representative of the Lessee held and holds the office set forth below, and the signature set forth below is his/her true and correct signature.

| NAME<br>OF -PERSON SIGNING<br>AGREEMENT | TITLE<br>OF PERSON SIGNING AGREEMENT | SIGNATURE<br>OF PERSON SIGNING AGREEMENT |
|-----------------------------------------|--------------------------------------|------------------------------------------|
| Russell Bigler                          | Chairman, Board of Governors         |                                          |

IN WITNESS WHEREOF, the undersigned has signed this Certificate on the date stated below.

|                                                                                                                                     |                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <b>X</b>                                                                                                                            |                                                                              |
| Signature of Secretary, Clerk or other duly authorized official or signatory of Lessee (Cannot be same as Person Signing Agreement) | Chief Executive Officer<br>Print Title of Person who signed this Certificate |
| Russell V. Judd                                                                                                                     | 11/14/2018                                                                   |
| Print Name of Person Signing this Certificate                                                                                       | Print Date that Above Person Signed this Certificate                         |



Ray A. Morgan Company  
3131 Esplanade  
Chico CA 95926

Kern County Hospital Authority  
1700 Mt, Vernon Avenue  
Bakersfield CA 93306

RE: Agreement # 2445625 between Kern County Hospital Authority and Ray A Morgan Company.

Ladies and Gentlemen:


We have acted as in-house counsel to Kern County Hospital Authority ("Lessee"), in connection with Agreement #2445625, dated as of November 14, 2018, between Kern County Hospital Authority, as Lessee, and Ray A Morgan Company, as Lessor, and any amendment or addendum thereto, if any (together, the "Agreement"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

Based upon the foregoing, we are of the opinion that, under existing law:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State.
2. Lessee has all requisite power and authority to enter into the Agreement and to perform its obligations thereunder.
3. All proceedings of Lessee and its governing body relating to the authorization and approval of the Agreement, the execution thereof and the transactions contemplated thereby have been conducted in accordance with all applicable open meeting laws and all other applicable state and federal laws.
4. The Agreement has been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principles of general application, or of application to municipalities or political subdivisions such as the Lessee, affecting remedies or creditors' rights generally, and to the exercise of judicial discretion in appropriate cases.
5. As of the date hereof, based on such inquiry and investigation as we have deemed sufficient, no litigation is pending, (or, to our knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement.

This opinion may be relied upon by Lessor, its successors and assigns, and any other legal counsel who provides an opinion with respect to the Agreement.

Very truly yours,

By: 

Name: Shannon Hochstein

Title: Hospital Counsel

Dated: 11/9/18



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Agreement for Professional Services with Eugene H. Roos, D.O.

**Recommended Action:** Approve, Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve an Agreement with Eugene H. Roos, D.O., for professional medical services in the Department of Radiology.

Dr. Roos has provided radiology services at Kern Medical as an independent contractor since December of 2008. The current Agreement is set to expire on December 16, 2018. Kern Medical continues to require the services of Dr. Roos to provide scheduled and as-needed coverage in the Department and both parties have agreed to the terms of the two-year agreement.

The agreement with Dr. Roos has not provided for an increase in shift coverage since 2013. The proposed monthly rate of \$24,975 is a 5.2 percent increase over the previous \$23,750 per month.

| <b>Payment for Services</b>    | <b>Previous Year Agreement</b>                                                                                               | <b>Proposed Agreement</b>                                                                                 | <b>Variance</b>    |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|--------------------|
| Shift Coverage                 | Annual fixed fee in the amount of \$285,000 per year at the monthly rate of \$23,750                                         | Annual fixed fee in the amount of \$299,700 per year at the monthly rate of \$24,975                      | +\$14,700 Per year |
| Excess Shift Coverage          | Fixed fee in the amount of \$1,600 per shift or any part thereof for coverage that exceeds an average of 15 shifts per month | Per diem rate of \$1,665 per day for excess shift coverage that exceeds an average of 15 shifts per month | +\$65 Per shift    |
| Emergency Night Shift Coverage | N/A                                                                                                                          | Per diem rate of \$2,000 per day for emergency night shift coverage (i.e., not a scheduled shift)         | \$2,000 Per shift  |
| Total Not to Exceed            | \$730,000/two years (\$365,000 per year)                                                                                     | \$730,000/two years (\$365,000 per year)                                                                  |                    |

Therefore, it is recommended that your Board approve the Agreement for Professional Services with Eugene H. Roos, D.O., for professional medical services in the Department of Radiology, from December 17, 2018 through December 16, 2020, in an amount not to exceed \$730,000, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Eugene H. Roos, D.O.)**

This Agreement for Professional Services (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Eugene H. Roos, D.O., a sole proprietor (“Contractor”), whose principal place of business is located at 31562 Wildwood Road, Laguna Beach, California 92651.

**I.  
RECITALS**

(a) Authority is authorized, pursuant to section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) Authority owns and operates KMC, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California (the “Premises”), in which is located the Department of Radiology (the “Department”); and

(c) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC and teaching services to resident physicians employed by Authority, as such services are unavailable from Authority resources, and Contractor agrees to provide such services on the terms and conditions set forth in this Agreement; and

(d) Contractor has special knowledge, training and experience, and is qualified to render such services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree as follows:

**II.  
TERMS AND CONDITIONS**

1. **Term.** This Agreement shall be effective and the term shall commence as of December 17, 2018 (the “Effective Date”), and shall end December 16, 2020, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor shall render those services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

2.2 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of his work will be performed and that his operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 36; or (c) pursue any and all other remedies at law or in equity.

2.5 Qualifications.

2.2.1 Licensure/Board Certification. Contractor shall at all times during the term of this Agreement be duly licensed as a physician and surgeon in the state of California, practicing in the medical specialty of diagnostic radiology, and certified or eligible for certification by the American Board of Radiology in diagnostic radiology-general.

2.2.2 Medical Staff Status. Contractor shall at all times during the term of this Agreement be a member in good standing of the KMC medical staff with "active" or "courtesy" staff status and hold all clinical privileges on the active or courtesy medical staff appropriate to the discharge of his obligations under this Agreement.

2.2.3 TJC and ACGME Compliance. Contractor shall observe and comply with all applicable standards and recommendations of The Joint Commission and Accreditation Council for Graduate Medical Education.

2.2.4 Training/Experience. Contractor shall have (i) recent diagnostic radiology experience, (ii) a background to include experience working with other clinical departments, teaching residents and medical students, participating in hospital



committees, and working on pathways and evidence-based guidelines, and (iii) ongoing acute care hospital experience.

2.3 Loss or Limitation. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of his license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

2.4 Standards of Medical Practice. The standards of medical practice and professional duties of Contractor shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for practice established by the state Department of Public Health and all other state and federal laws and regulations relating to the licensure and practice of physicians, and The Joint Commission.

2.5 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by Contractor. This record shall be prepared in compliance with all state and federal regulations, standards of The Joint Commission, and the KMC medical staff bylaws, rules, regulations, and policies. Documentation by Contractor will conform to the requirements for evaluation and management (E/M) services billed by teaching physicians set forth in the Medicare Carriers Manual, Part 3, sections 15016–15018, inclusive.

2.6 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

### 3. Obligations of Authority.

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the

services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the Premises, and insofar as Contractor may use a portion of said Premises, Contractor does so as a licensee only, and Authority and KMC shall, at all times, have full and free access to the same.

3.4 Equipment. KMC shall furnish for the use of the Department such equipment as is deemed necessary by KMC for the proper operation and conduct of the Department consistent with community standards. KMC shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints.

3.5 Services and Supplies. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.

3.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by KMC for follow-up action and evaluation of performance.

#### 4. Payment for Services.

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority shall pay Contractor according to the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Shift Coverage. Authority shall pay Contractor an annual fixed fee in the amount of \$299,700 per year at the monthly rate of \$24,975 per month for shift coverage.

4.1.2 Excess Shift Coverage. Authority shall pay Contractor a per diem rate of \$1,665 per day for excess shift coverage that exceeds an average of 15 shifts per month.

4.1.3 Emergency Night Shift Coverage. Authority shall pay Contractor a per diem rate of \$2,000 per day for emergency night shift coverage (i.e., not a scheduled shift).

4.1.4 Fair Market Value Compensation. The compensation provided under section 4.1 represents the parties' good faith determination of the reasonable fair market

value compensation for the services to be provided by Contractor and Group Physicians under this Agreement.

4.1.5 Payment All-inclusive. The compensation paid to Contractor is inclusive of accommodations, mileage reimbursement, car rental, meals, and incidental expenses.

4.1.6 Limitations on Compensation. Except as expressly stated herein, neither Contractor nor Group Physicians shall receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement.

4.2 Maximum Payable. The maximum payable under this Agreement shall not exceed \$730,000 over the two-year term of this Agreement.

4.3 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.4 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "B," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients during the term of this Agreement. All professional fees generated by Contractor for services rendered to KMC patients at KMC or a KMC location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor and whether received during the term of this Agreement or anytime thereafter. Contractor hereby assigns all rights to said fees and accounts to KMC and shall execute all documents required from time to time by KMC and otherwise fully cooperate with KMC to enable KMC to collect fees and accounts from patients and third-party payers.

4.6 Managed Care Organizations. For and on behalf of Contractor Authority shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations (collectively "Managed Care Organizations"). Contractor shall provide the same quality of care to patients from Managed Care Organizations as is provided to other KMC patients. Upon request from Authority or KMC, Contractor shall execute Managed Care Organization documents as "provider" if deemed necessary or advisable by Authority. Contractor shall not contract with any Managed Care Organization without Authority's prior written consent in each instance.

5. **Access to Books and Records.** Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

6. **Anti-referral Laws.** Contractor acknowledges that he is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

7. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all his activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that Contractor, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendment(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within 30 days of such negotiation period, this Agreement shall automatically terminate at the end of such 30-day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

13. **Compliance with Law.** Contractor shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of his duties described herein that he shall act, and cause his employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and his employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

15.2 **Trade Secrets.** The parties acknowledges that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party

that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

15.3 Medical Records. The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Contractor, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

15.5 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind (“Documents”), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

15.6 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party’s business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

16. Conflict of Interest. Contractor covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of his services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.

17. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

18. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

19. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

20. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the “Federal health care programs”) and/or present on the exclusion database of the Office of the Inspector General (“OIG”) or the Government Services Administration (“GSA”); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor’s failure to comply with this section 22.

23. **Indemnification and Hold Harmless.** Authority shall assume liability for and indemnify and hold Contractor harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Contractor or for which Contractor becomes liable, arising out of or related to professional services rendered or which a third party alleges should have been rendered by Contractor pursuant to this Agreement. Authority's obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Contractor rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than KMC without approval by the Kern County Hospital Authority Board of Governors and, provided further, that Authority shall have no duty or obligation to defend, indemnify or hold Contractor harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

24. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of Authority. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Authority under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

26. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "C," attached hereto and incorporated herein by this reference.

27. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.



29. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Contractor will be given 30 days' prior written notice in the event that Authority requires such an action.

30. **Non-collusion Covenant.** Contractor represents and agrees that he has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

31. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

32. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

33. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Contractor:

Eugene H. Roos, D.O.  
31562 Wildwood Road  
Laguna Beach, California 92651

Notice to Authority:

Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn.: Chief Executive Officer

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

35. **Sole Agreement.** This Agreement, including all attachments hereto, contains the entire agreement between the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or

promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

36. **Termination.**

36.1 **Termination with Cause.** Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement will not become effective unless and until the party not in default, has given the other party written notice of breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of 30 days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within 30 days, then the party allegedly in default will have an additional 30 days in which to remedy the breach as long as such party is acting in good faith and using diligent efforts to remedy such breach throughout the cure period.

36.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

36.3 **Immediate Termination.** Notwithstanding the foregoing, Authority shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor, for any of the following reasons: (i) Authority determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; (vi) the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor; or (vii) the failure of Contractor to cure a default within the time allowed in paragraph 36.1.

37. **Effect of Termination.**

37.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, Authority shall have no further obligation to pay for any services rendered or expenses incurred by Contractor after the effective date of the termination, and Contractor shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

37.2 **Vacate Premises.** Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

37.3 No Interference. Following the expiration or earlier termination of this Agreement, Contractor shall not do anything or cause any person to do anything that might interfere with any efforts by Authority to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between Authority and any provider that may replace Contractor.

37.4 No Hearing Rights. Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

38. Time of Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

39. Liability of Authority. The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

CONTRACTOR

By \_\_\_\_\_  
Eugene H. Roos, D.O.

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
VP & General Counsel  
Kern County Hospital Authority

Agreement.Roos.101418

**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES**  
**Eugene H. Roos, D.O.**

Contractor will provide services, as assigned by the Department chair, as follows:

1. Contractor shall provide radiology services on-site at KMC and in accordance with generally accepted professional standards. Contractor will provide professional services for all patients who present to KMC for treatment.
2. Contractor shall perform such administrative and teaching duties and responsibilities, as mutually agreed upon between Contractor and the Department chair.
3. Contractor shall provide shift coverage Monday through Friday from either 8:00 a.m. to 5:00 p.m. or 9:00 a.m. to 6:00 p.m., as assigned by the Department chair.
4. Contractor shall provide shift coverage on Saturday and Sunday from 8:00 a.m. until at least 5:00 p.m. or the work is completed, as assigned by the Department chair.
5. Contractor shall provide call coverage weekday nights from 6:00 p.m. to 8:00 a.m., and Saturday and Sunday, as assigned by the Department chair. Contractor agrees to carry a pager when on call and respond to KMC within 30 minutes of being called. Contractor will cover one weekend in three. Contractor will cover one in three holidays and no fewer than four per year.
6. Contractor shall provide coverage an average of 15 shifts per months.
7. Contractor shall actively participate in assigned hospital and Department committees.
8. Contractor shall be accountable for timely completion of medical records and work to improve the quality, accuracy, and completeness of his documentation.

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**EXHIBIT "B"**  
**IRS FORM W-9**

## **EXHIBIT “C” INSURANCE**

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by Authority. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

Authority reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

### 1. Workers’ Compensation and Employers Liability Insurance:

- (a) Required if Contractor has employees. If Contractor currently has no employees, Contractor’s written confirmation of such will be required before execution of this Agreement. If Contractor engages any employees during the term of this Agreement or any extensions thereof, Contractor agrees to obtain the specified Workers’ Compensation and Employers Liability insurance.
- (b) Workers’ Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of Authority for all work performed by Contractor, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

### 2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.

- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:



- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work.*
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: “**Agreement for Professional Services.**”
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Agreement with Voya Institutional Trust Company for services as custodian of the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Newly hired management, mid-management and confidential (MMC) employees will be eligible to enroll in a new deferred compensation retirement plan effective November 24, 2018. Existing MMC employees will continue to participate in the Kern County Employees' Retirement Association.

The plan will utilize the county's existing 457(b) deferred compensation plan for employee contributions, with a new 401(a) defined contribution plan used as the vehicle to invest employer-matching contributions. Using a dual-plan system allows for the significantly higher IRS maximum annual contribution of \$55,000 as opposed to \$18,500 if all contributions were invested in the 457(b) plan alone. Employees are eligible to participate beginning with the start of the pay period following date of hire. There is a five-year vesting schedule for employer contributions in the 401(a). Investment options in the 401(a) will closely mirror those currently available through the 457(b) plan. Kern Medical will match 100% of employee contributions for the first 6% deferred, then 50% of the employee contributions for the next 6%, for a total potential employer contribution of 9% for employees who defer 12%.

The Authority has selected Voya Institutional Trust Company (Voya) to act as custodian of assets held in trust for the benefit of participants in the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential for the 401(a) plan.

Therefore, it is recommended that your Board approve the Agreement with Voya to act as custodian of assets held in trust for the benefit of participants in the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential and authorize the Chairman to sign.

## **IRC SECTION 401(a) CUSTODY AGREEMENT - NON-ERISA PLAN**

**THIS CUSTODY AGREEMENT** (the “Agreement”), effective as of the **14th** day of **November, 2018** between the Kern County Hospital Authority, a local unit of government (the “Employer”), in its capacity as employer and as the party authorized and responsible under state or local law for maintaining the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees (the “Plan”), and Voya Institutional Trust Company (the “Custodian”).

WITNESSETH:

**WHEREAS**, the Employer has adopted and maintains the Plan in accordance with the requirements of state law and Section 401(a) of the Internal Revenue Code of 1986, as amended (“Code”), for the benefit of the employees therein described; and

**WHEREAS**, the Employer has established or desires to establish a trust (“Trust”) constituting a part of the Plan, pursuant to which assets are held to provide for the funding of and payment of benefits under the Plan; and

**WHEREAS**, the Employer has the power and authority to manage and control the assets of the Plan; and

**WHEREAS**, the Employer has engaged an affiliate of the Custodian to provide recordkeeping services to the Plan (“Recordkeeping Affiliate”); and

**WHEREAS**, the Employer wishes to appoint the Custodian as custodian of the Plan in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, the Employer and the Custodian, each intending to be legally bound, agree as follows:

### **SECTION 1 - ESTABLISHMENT AND OPERATION OF TRUST**

1.1 Appointment and Acceptance of Custodian/Affiliates. The Employer has established a Trust consisting of such sums of money and such other property acceptable to the Plan Custodian, as shall from time to time be paid or delivered to the Custodian, and hereby appoints the Custodian as a custodian with respect to the assets held pursuant to this Agreement, as such assets shall exist from time to time (the “Fund”). The Fund shall not include any property or asset other than the assets delivered to and accepted by the Custodian from time to time. The Custodian shall have no responsibility for any property until it is received and accepted by the Custodian, or for any property of the Plan not delivered to the Custodian and accepted by the Custodian to be a part of the Fund. The Custodian hereby accepts its appointment, acknowledges that it assumes the duties established by this Agreement, and agrees to be bound by the terms contained herein. The Employer hereby acknowledges that an affiliate of the Custodian, the Recordkeeping Affiliate, acts on behalf of the Custodian as the Custodian’s agent for purposes of carrying out the Custodian’s responsibilities under this Agreement.

1.2 Custodian Responsibilities. The Custodian shall receive and hold the assets of the Fund on behalf of Plan participants and beneficiaries in accordance with the terms of this Agreement. The duties of the Custodian hereunder as Custodian shall be to act solely in accordance with the instructions of the Employer or Authorized Parties in accordance with Sections 2.2 and 2.3 of this Agreement (“Authorized Instructions”). Nothing in this Agreement is intended to give the Custodian any discretionary responsibility, authority or control with respect to the management or administration of the Plan or the management of the assets of the Plan. Further, the Custodian is not a party to the Plan and has no duties or responsibilities other than those that may be expressly contained in this Agreement. In any case in which a provision of this Agreement conflicts with any provision in the Plan, this Agreement shall control.

1.3 Exclusive Benefit. Except as may be permitted by law, by the terms of the Plan, or by this Agreement, at no time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries under the Plan shall any part of the Fund be used for or diverted to any purpose other than for the exclusive benefit

of the participants and their beneficiaries. The assets of the Fund shall be held for the exclusive purposes of providing benefits to participants of the Plan and their beneficiaries and defraying the reasonable expenses of administering the Plan and the Fund.

1.4 Limitation of Liability. Neither the Custodian nor its agents shall be liable for any acts or omissions of another person other than the negligent acts or omissions of its own employees and agents. The Custodian shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement and shall be held harmless in acting upon any notice, request, direction, instruction, consent, certification or other instrument believed by it to be genuine and delivered by the proper party or parties.

1.5 Contributions. The Custodian shall receive contributions or other amounts for deposit to the Plan that are delivered to the Custodian or its designated agent for deposit to or for the benefit of the Plan. The Employer shall have sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan and for the transmittal of contributions or other amounts to the Plan. The Custodian shall have no duty or responsibility (a) to determine the amounts to be contributed to or transferred to the Plan, (b) to determine the amounts to be contributed to or transferred on behalf of the participants of the Plan, (c) to collect any contributions or transfers to the Plan or to enforce the collection of any such contributions or transfers, or (d) for the adequacy of amounts deposited to the Fund to meet and discharge any of the Plan's liabilities.

1.6 Return of Contributions. Notwithstanding any other provision of this Agreement (a) contributions made by the Employer based upon mistake of fact may be returned to the Employer within one (1) year of such contribution, and (b) as all contributions to the Plan are conditioned upon their deductibility under the Code, if a deduction for such a contribution is disallowed, such contribution may be returned to the Employer within one (1) year of the disallowance of such deduction; provided that the return of contributions under this Section 1.6 may not violate any provision of the Plan. The Custodian shall return contributions under this Section 1.6 only in accordance with Authorized Instructions and the Custodian shall have no duty to determine whether the return of such contributions is permitted under this Section 1.6 and the Plan.

1.7 Distributions. The Custodian shall make distributions and disbursements from the Fund solely in accordance with Authorized Instructions. The Employer agrees that the Custodian shall not have any responsibility or duty under this Agreement to see to the proper application of any payment, to determine the tax effect of any payment, or to determine whether a distribution or disbursement to any person paid in accordance with Authorized Instructions is appropriate under the terms of the Plan and applicable law.

1.8 Compliance with Law. The Trust is intended to be tax-exempt under Section 501(a) of the Code. If the Plan is not an approved prototype plan, the Employer represents that it has received a determination letter from the Internal Revenue Service indicating that the Plan meets the requirements of Section 401(a) of the Code. The Employer agrees to immediately notify the Custodian if the Plan ceases to be so qualified.

## **SECTION 2 - AUTHORITIES**

2.1 Authority to Execute Agreement. The Employer hereby certifies that it has the power and authority to enter into this Agreement on behalf of the Plan. The person(s) signing below as representatives of the Employer each warrant, as individuals, that each is an authorized representative of the Employer, all signatures are genuine, and the persons indicated are authorized to sign.

2.2 Authorized Parties. The Employer shall, concurrently with the execution of this Agreement, furnish the Custodian or Recordkeeping Affiliate with a written list of the names, signatures, and extent of authority of all persons authorized to direct the Custodian and otherwise act on behalf of the Plan under the terms of this Agreement. Such persons designated by the Employer to act on its behalf hereunder are "Authorized Parties". The Custodian shall be entitled to rely on and shall be fully protected in acting upon directions, instructions, and any information provided by an Authorized Party until notified in writing by the Employer of a change of the identity or extent of authority of an Authorized Party.

2.3 Authorized Instructions. All directions and instructions to the Custodian from an Authorized Party (“Authorized Instructions”) shall be in writing, transmitted by mail (including electronic mail) or by facsimile. The Custodian shall be entitled to rely on and shall be fully protected in acting in accordance with all such directions and instructions that it reasonably believes to have been given by an Authorized Party and in failing to act in the absence thereof.

### **SECTION 3 - POWERS AND DUTIES**

3.1 General Powers and Duties of Custodian. In administering the Fund, the Custodian shall be specifically authorized to:

(a) In accordance with Authorized Instructions, receive, hold and maintain custody of, and disburse assets of the Fund;

(b) Hold securities or other assets in book entry form or through another agent or nominee, including without limitation, in an omnibus account arrangement, provided that the Custodian’s records indicate that such securities or other property are held for the exclusive benefit of the Plan and its participants and beneficiaries;

(c) Make distributions and disbursements from the Fund and carry out related tax withholding remittance and reporting obligations under Federal, state and local law;

(d) Appoint domestic agents, sub-custodians or depositories (including affiliates of the Custodian) as to part or all of the Fund, except that the indicia of ownership of any asset of the Fund shall not be held outside the jurisdiction of the District Courts of the United States;

(e) Collect income payable to and dividends or other distributions due to the Fund and sign on behalf of the Plan any declarations, affidavits, and certificates of ownership required to collect income and principal payments;

(f) Collect proceeds from assets of the Fund that may mature or be called;

(g) Until Authorized Instructions are received, hold the assets of the Fund uninvested, or invest the assets of the Fund in bank accounts of any bank, and the Custodian may retain any earnings on such deposits as part of its compensation for services hereunder as described in the agreement with Voya Retirement Insurance and Annuity Company;

(h) Submit or cause to be submitted to the Employer all information received by the Custodian regarding ownership rights pertaining to property held in the Fund;

(i) To the extent not delegated by the Employer to an investment manager pursuant to the provisions of Section 403(a)(2) of ERISA, exercise all voting rights relating to securities held in the Account as directed by the Employer; provided that, with respect to securities allocated to the accounts of Participants, if directed by the Employer in writing, the Custodian or its Recordkeeping Affiliate shall provide to the designated proxy tabulator the data necessary to cause to be provided to each Participant who has shares of such securities credited to his or her account a copy of the notice and all proxy solicitation materials together with a voting instruction form for return to the proxy tabulator, and the Custodian shall vote the shares as directed by each Participant and shall not vote shares for which it has not received instructions from a Participant. Unless the Employer instructs the Custodian to vote shares not voted by Participants, the Custodian shall not be liable and shall be held harmless for not voting such shares;

(j) Commence or defend suits or legal proceedings and represent the Fund in all suits or legal proceedings in any court or before any other body or tribunal as the Custodian shall deem necessary to protect the Fund; provided, however, that the Custodian shall not be obligated to do so unless it has been indemnified by the Employer and the Plan against all expenses and liabilities sustained in connection with such action;

(k) Employ suitable agents and legal counsel and, as part of its reimbursable expenses under this Agreement, pay their reasonable compensation and expenses. The Custodian shall be entitled to rely on and may act upon advice of counsel on all matters, and, if the use of such counsel is authorized by the Employer, the Custodian shall be without liability for any action reasonably taken or omitted pursuant to such advice;

(l) Make, execute and deliver any and all documents, agreements or other instruments in writing as is necessary or desirable for the accomplishment of any of the powers and duties in this Agreement;

(m) Retain and engage one or more affiliates of the Custodian to perform, at no additional cost to the Plan, the duties and responsibilities of the Custodian; and

(n) Generally take any action, whether or not expressly authorized, which the Custodian may deem necessary or desirable for the fulfillment of its duties hereunder.

#### **SECTION 4 - INVESTMENT OF THE FUND**

4.1 Investment of the Fund. The assets of the Fund shall be invested and reinvested among the investments selected by the Employer. The Employer or its authorized representative shall have sole responsibility for the investment and reinvestment of the assets of the Fund, except to the extent that the Plan permits participants to instruct the Employer or its authorized representative with respect to the investment of their individual accounts among investment options selected by the Employer. The Custodian shall have no duty or responsibility for (i) selecting or providing advice with respect to the selection of any investment options offered under the Plan, (ii) determining or reviewing any securities or other property purchased for or held by the Plan, or (iii) providing advice with respect to the purchase, retention, redemption, or sale of any securities or other property for the Plan.

#### **SECTION 5 - REPORTING AND RECORDKEEPING**

5.1 Records and Reports. The Custodian shall keep accurate records of all amounts received to and disbursed from the Fund and the investments and other transactions of the Fund for a period of six years following the date of such transaction. The Custodian shall provide a report of the assets of the Fund to the Employer from time to time, but at least annually. The Custodian may rely on the fair market value of the property of the Fund as reported to by authorized parties and the Custodian shall be fully protected in relying on such values.

5.2 Review of Reports. If, within ninety (90) days after the Custodian mails to the Employer a statement with respect to the Fund, the Employer has not given the Custodian written notice of any exception or objection thereto, the statement shall be deemed to have been approved by the Employer and the Custodian shall not be liable for any matters in such statements. The Employer or its agent, upon giving prior written notice to Custodian, shall have the right at its own expense to inspect the Custodian's books and records directly relating to the Fund during normal business hours. The Custodian shall be reimbursed its actual costs for making such books and records available for inspection.

5.3 Non-Fund Assets. The duties of the Custodian shall be limited to the assets held in the Fund, and the Custodian shall have no duties with respect to assets held by any other person including, without limitation, any other custodian for the Plan. The Employer hereby agrees that the Custodian shall not serve as, and shall not be deemed to be, a co-trustee under the circumstances, and shall have no co-fiduciary liability for any other person or trustee.

#### **SECTION 6 - COMPENSATION, EXPENSES, TAXES, INDEMNIFICATION**

##### **6.1 Compensation and Expenses.**

(a) Compensation. The Custodian shall be entitled to compensation for services under this Agreement as described in the plan services agreement between the Recordkeeping Affiliate and the Employer and as otherwise provided for in this Agreement. The Employer acknowledges that the Custodian may increase the amount of compensation on an annual basis with sixty (60) days' prior written notice to the Custodian.

(b) Interest on Uninvested Cash. The Custodian shall also be entitled to receive as part of its compensation any amounts earned under Section 3.1(f) related to earnings on deposits. Such earnings shall include earnings on uninvested cash related to Plan contributions and earnings on uninvested cash pending distribution, or earnings on cash otherwise held uninvested as directed by the Employer.

(c) Authorization. The Custodian shall also be authorized to charge and collect expenses incurred by it in the discharge of its duties under this Agreement in accordance with Section 3.1 The Custodian is authorized to charge and collect from the Fund any and all such fees and expenses, unless the Employer objects within thirty (30) days of receiving notice of the Custodian's intent to collect its fees and expenses from the Fund.

6.2 Tax Obligations. To the extent an Authorized Party has provided necessary information to the Custodian, the Custodian may use reasonable efforts to assist such Authorized Party to notify the Employer or the Plan (as appropriate) of any responsibility for payment of taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties and other related expenses of the Fund ("Tax Obligations"). Notwithstanding the foregoing, the Custodian shall have no responsibility or liability for any Tax Obligations now or hereafter imposed on the Employer or the Fund by any taxing authorities, domestic or foreign, except as provided by applicable law. To the extent the Custodian is responsible under any applicable law for payment of any Tax Obligation on behalf of the Fund or the Trust, the Employer shall cause the appropriate Authorized Party to inform the Custodian of all Tax Obligations, shall direct the Custodian with respect to the performance of such Tax Obligations, and shall provide the Custodian with all information required by the Custodian to meet such Tax Obligations.

6.3 Indemnification. The Employer and the Plan, shall indemnify and hold harmless the Custodian from all claims, liabilities, losses, damages and expenses, including reasonable attorney's fees and expenses (including Tax Obligations) incurred by the Custodian in connection with this Agreement, except as a result of the Custodian's own negligence or willful misconduct.

6.4 Force Majeure. The Custodian shall not be responsible or liable for any losses to the Fund resulting from nationalization, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's property; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event beyond the control of the Custodian or its agents.

6.5 Survival. This Section 6 shall survive the termination of this Agreement.

## **SECTION 7 - AMENDMENT, TERMINATION, RESIGNATION, REMOVAL**

7.1 Amendment. The Custodian may amend this Agreement as necessary to comply with the provisions of applicable law and regulations. The Custodian shall deliver written notice of any such amendment and a copy of such amendment to the Employer. Other amendments may be made by written agreement signed by the parties hereto.

7.2 Removal or Resignation of Custodian. The Custodian may be removed with respect to all or part of the Fund upon receipt of sixty (60) days' written notice from the Employer. The Custodian may resign as Custodian hereunder upon sixty (60) days' written notice delivered to the Employer. In the event of such removal or resignation, the successor custodian will be appointed by the Employer, and the retiring Custodian shall transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation and direct expenses including but not limited to, a pro-rata share of the fees described in Section 6.1. In the event the Employer fails to appoint a successor custodian within sixty (60) days of receipt of written notice of resignation, the Custodian reserves the right to seek the appointment of a successor custodian from a court of competent jurisdiction. The Employer shall indemnify the Custodian from any costs incurred by the Custodian in seeking such appointment. The Custodian shall have no duties, responsibilities or liability with respect to the acts or omissions of any successor custodian.

7.3 Merger or Consolidation of Custodian. Any entity into which the Custodian may be merged or with which it may be consolidated, or any entity resulting from any merger or consolidation to which the Custodian is a party, or any entity succeeding to the trust business of the Custodian, shall become the successor of the Custodian hereunder, without the execution or filing of any instrument or the performance of any further act on the part of the parties hereto.

7.4 Plan Termination. Upon termination of the Plan, the Custodian shall distribute all assets then constituting the Fund, less any fees and expenses payable from the Fund, pursuant to the instructions of the Employer. The Custodian shall be entitled to assume that such distributions are in full compliance with and not in violation of the terms of the Plan or any applicable law.

7.5 Property Not Transferred. The Custodian reserves the right to retain such property as is not suitable for distribution or transfer at the time of the termination of the Plan or this Agreement and shall hold such property for the benefit of those persons or other entities entitled to such property until such time as the Custodian is able to make distribution. The Employer shall indemnify the Custodian from any costs incurred by the Custodian for retaining the property until it can be distributed. Upon the appointment and acceptance of a successor custodian, the Custodian's sole duties shall be those of a custodian with respect to the property not transferred.

## **SECTION 8 - ADDITIONAL PROVISIONS**

8.1 Assignment or Alienation. Except as may be provided by law, the Fund shall not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of the Employer, participants or beneficiaries under the Plan. The Custodian shall not recognize any assignment or alienation of benefits unless an Authorized Instruction is received.

8.2 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

8.3 Necessary Parties. Each party reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny the Custodian or the Employer the right to have the Custodian's account judicially determined. To the extent permitted by law, only the Custodian and the Employer shall be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by the Custodian, and no participant under the Plan or other person having an interest in the Fund shall be entitled to any notice or service of process. Any final judgment entered in such an action or proceeding shall, to the extent permitted by law, be conclusive upon all persons.

8.4 Notices. All notices and other communications hereunder shall be in writing and shall be sufficient if delivered by hand or if sent by telefax or mail (including electronic mail), postage prepaid, addressed:

(a) If to the Custodian:

Melissa McAuliffe  
Vice President  
Voya Retirement Operations  
One Orange Way, C3N  
Windsor, Connecticut 06095-4774

J. Denise Jackson  
President  
Voya Institutional Trust Company  
One Orange Way, C4R  
Windsor, Connecticut 06095-4774



(b) If to the Employer:

Kern County Hospital Authority  
c/o Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn: Lori Ambrose

Kern County Hospital Authority  
c/o Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, California 93306  
Attn: Lisa Hockersmith

The parties may by like notice, designate any future or different address to which subsequent notices shall be sent. Any notice shall be deemed given when received.

8.5 No Third Party Beneficiaries. The provisions of this Agreement are intended to benefit only the parties hereto, their respective successors and assigns, and participants and their beneficiaries under the Plan. There are no other third party beneficiaries.

8.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by one counterpart.

8.7 Shareholder Communication. Until such time as the Custodian receives a written notice to the contrary with respect to a particular security, the Custodian may release the identity and the address of the Trust to the security issuer which requests such information pursuant to the Shareholder Communications Act of 1985 for the specific purpose of the direct communication between such security issuer and shareholder.

8.8 Liability of Authority. The liabilities or obligations of the Employer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of the Employer and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the effective date set forth above.

**Kern County Hospital Authority**

By: \_\_\_\_\_

Name: Russell E. Bigler

Title: Chairman, Board of Governors

Voya Institutional Trust Company

By: Andrew F. Levesque

Name: Andrew Levesque

Title: Vice President



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Application for Group Annuity Contract with Voya Retirement Insurance and Annuity Company, and Agreement with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC, for administrative services related to the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

The Authority requests that your Board approve the application for a group annuity contract with Voya Retirement Insurance Annuity Company and an agreement for administrative services with Voya Retirement Insurance Annuity Company and Voya Financial Partners, LLC as the vendors to provide administrative services related to Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential.

Newly hired management, mid-management and confidential employees will be eligible to enroll in a deferred compensation retirement plan (as opposed to participation in the Kern County Employees' Retirement Association). The Authority will utilize the County's existing 457(b) deferred compensation plan for employee contributions, with a new 401(a) deferred compensation plan through Voya, as the investment vehicle for employer-matching contributions.

The application allows the Authority to apply for and select annuity products to fund the tax-deferred arrangement under Internal Revenue Code Section 401(a). The Administrative Services Agreement will facilitate the administration of the plan by providing services that shall include without limitation, accounting for deferrals or contributions, disbursement of funds, withholding of taxes, investment education, retirement counseling, investment of assets in the appropriate plan investment options, and proper recordkeeping of participant accounts.

Therefore, it is recommended that your Board approve the application for a group annuity contract with Voya Retirement Insurance Annuity Company, the agreement for administrative services with Voya Retirement Insurance Annuity Company and Voya Financial Partners, LLC as the vendors to provide administrative services related to Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential, and authorize the Chairman to sign.

**PLAN SPONSOR SUBMISSION INFORMATION**  
**RetireFlex-MF for Governmental 457(b) and Non-ERISA 401 Plans**  
 A Mutual Fund and Group Fixed Annuity retirement plan product



**Please mail or Fax to:**

Voya Financial®, Attn: Carol Keen, One Orange Way, A3-S, Windsor, CT 06095-4774

Fax: (515) 698-3036

In this form, Voya Retirement Insurance and Annuity Company (VRIAC), Voya Financial Partners, LLC and Voya Financial Advisors, Inc. may be referred to as Voya®. The term contract refers to a group annuity contract, a custodial or trust agreement and an administrative services agreement. A Master Application, custodial or trust agreement must be submitted along with this completed Plan Sponsor Submission Information Form.

**Good order** is receipt at the designated location of this form accurately and **entirely** completed, and includes all necessary signatures. If this form and any additional required documentation are not received in good order, as we determine, it may be returned to you for correction which may result in delays in the installation of your Plan.

| PLAN SPONSOR INFORMATION      |             |                            |                        |
|-------------------------------|-------------|----------------------------|------------------------|
| Employer Name                 |             |                            |                        |
| Address                       |             |                            | PO Box (if applicable) |
| City/Town                     | State (JOI) |                            | ZIP                    |
| Primary Employer Contact Name | Phone       | E-mail                     |                        |
| Payroll Contact Name          | Phone       | E-mail                     |                        |
| Tax I.D. Number               |             | Fiscal Year End (ex. 6/30) |                        |

**PLAN INFORMATION – Check all applicable plan types and complete requested information**

| 457(b) Governmental Plan Specific Information                                                                           |  |                              |  | <input type="checkbox"/> Available                                                                                | <input type="checkbox"/> Not Available |
|-------------------------------------------------------------------------------------------------------------------------|--|------------------------------|--|-------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Full Legal Plan Name                                                                                                    |  |                              |  |                                                                                                                   |                                        |
| Abbreviated Plan Name <i>(Statements allow for 25 Characters. Please provide your preferred abbreviated plan name.)</i> |  |                              |  | Is plan subject to Title I of ERISA?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No       |                                        |
| Original Plan Effective Date<br>(ex: mm/dd/yyyy)                                                                        |  | Plan Year End<br>(ex: 12/31) |  |                                                                                                                   |                                        |
| Please list current plan providers with plan assets                                                                     |  |                              |  | Will all current plan assets be transferring to Voya?<br><input type="checkbox"/> Yes <input type="checkbox"/> No |                                        |

| 401(a) Plan Specific Information                                                                                        |  |                              |  | <input type="checkbox"/> Available                                                                                | <input type="checkbox"/> Not Available |
|-------------------------------------------------------------------------------------------------------------------------|--|------------------------------|--|-------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Full Legal Plan Name                                                                                                    |  |                              |  |                                                                                                                   |                                        |
| Abbreviated Plan Name <i>(Statements allow for 25 Characters. Please provide your preferred abbreviated plan name.)</i> |  |                              |  | Is plan subject to Title I of ERISA?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No       |                                        |
| Original Plan Effective Date<br>(ex: mm/dd/yyyy)                                                                        |  | Plan Year End<br>(ex: 12/31) |  |                                                                                                                   |                                        |
| Please list current plan providers with plan assets                                                                     |  |                              |  | Will all current plan assets be transferring to Voya?<br><input type="checkbox"/> Yes <input type="checkbox"/> No |                                        |

| 401(k) Plan* Specific Information                                                                                       |  |                              |  | <input type="checkbox"/> Available                                                                                | <input type="checkbox"/> Not Available |
|-------------------------------------------------------------------------------------------------------------------------|--|------------------------------|--|-------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Full Legal Plan Name                                                                                                    |  |                              |  |                                                                                                                   |                                        |
| Abbreviated Plan Name <i>(Statements allow for 25 Characters. Please provide your preferred abbreviated plan name.)</i> |  |                              |  | Is plan subject to Title I of ERISA?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No       |                                        |
| Original Plan Effective Date<br>(ex: mm/dd/yyyy)                                                                        |  | Plan Year End<br>(ex: 12/31) |  |                                                                                                                   |                                        |
| Please list current plan providers with plan assets                                                                     |  |                              |  | Will all current plan assets be transferring to Voya?<br><input type="checkbox"/> Yes <input type="checkbox"/> No |                                        |

\* If the Plan Sponsor is a governmental or municipal employer, the employer understands and acknowledges that the 401(k) plan must have been in existence on May 6, 1986.

| Money Sources                                           | 457(b)                                                                                                 | 401(a)                          | 401(k)                          | Check box if Source Closed to   |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Employee Pre-Tax                                        | <input type="checkbox"/> 457(b)                                                                        | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| 414(h) Pickup Contribution                              | <input type="checkbox"/> 457(b)                                                                        | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| ER Matching <sup>1</sup> - <i>see notation</i>          | <input type="checkbox"/> 457(b)                                                                        | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| ER Discretionary <sup>1</sup> - <i>see notation</i>     | <input type="checkbox"/> 457(b)                                                                        | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| ER Non-Discretionary <sup>1</sup> - <i>see notation</i> | <input type="checkbox"/> 457(b)                                                                        | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| Transfer Account                                        | <input type="checkbox"/> 457(b)                                                                        | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| Rollover                                                | <input type="checkbox"/> 457(b) RO<br><input type="checkbox"/> Non-457(b) RO                           | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | N/A                             |
| Roth                                                    | <input type="checkbox"/> 457(b)                                                                        | N/A                             | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| Roth Rollover                                           | <input type="checkbox"/> 457(b) Roth RO<br><input type="checkbox"/> Non-457 Roth RO                    | N/A                             | <input type="checkbox"/> 401(k) | N/A                             |
| Employee Post-Tax (not Roth)                            | N/A                                                                                                    | <input type="checkbox"/> 401(a) | <input type="checkbox"/> 401(k) | <input type="checkbox"/> Closed |
| In Plan Roth Rollover ( <i>distributable</i> )          | <input type="checkbox"/> 457(b) In Plan Roth RO<br><input type="checkbox"/> Non-457(b) In Plan Roth RO | N/A                             | <input type="checkbox"/> 401(k) | N/A                             |

**MISCELLANEOUS CONTRIBUTION PROVISIONS and SERVICES**

| Catch-up Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 457(b)                                                   | 401(a)                                                   | 401(k)                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|
| Are Age 50 Plus Catch-up Contributions Permitted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/> Yes <input type="checkbox"/> No | N/A                                                      | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Are Special 457 Catch Up Contributions Permitted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/> Yes <input type="checkbox"/> No | N/A                                                      | N/A                                                      |
| Will ER Match Catch-up Contributions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <input type="checkbox"/> Yes <input type="checkbox"/> No | N/A                                                      | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Non Routine Contributions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 457(b)                                                   | 401(a)                                                   | 401(k)                                                   |
| Are Plan-to-Plan Transfers into the Plan Permitted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>Contribution Rate Changes</b><br>Voya <i>will</i> maintain participant contribution rate elections under the Plan (if employee pre-tax and/or Roth contributions are allowed) unless the Employer opts out.<br><input type="checkbox"/> Employer elects not to use Voya's contribution rate change service<br><br>If the Voya contribution rate change service is elected identify the type of election permitted (check all that applies):<br><input type="checkbox"/> <b>Percentage-based elections.</b> The minimum will be 0%. The maximum will be as permitted by law.<br><input type="checkbox"/> <b>Dollar-based elections.</b> The minimum will be \$0. The maximum will be as permitted by law.<br><br>If the Voya contribution rate change service is elected and hardship or unforeseeable emergency withdrawals are permitted under the Plan, complete the following: |                                                          |                                                          |                                                          |
| Are contributions to be suspended following such a withdrawal?<br>If applicable, the contribution suspension period will be 6 months.<br>Contribution rate will not be reinstated at end of suspension period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <input type="checkbox"/> Yes <input type="checkbox"/> No | N/A                                                      | <input type="checkbox"/> Yes <input type="checkbox"/> No |

**ENROLLMENT PROVISIONS AND SERVICES**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                              |                             |                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------|------------------------------|
| It will be assumed that the Plan requires the participant to voluntarily enroll into the Plan unless the Employer indicates otherwise:<br><b>Default Enrollment process is allowed in</b> <input type="checkbox"/> 457(b) plan <input type="checkbox"/> 401(a) plan <input type="checkbox"/> 401(k) plan<br>If a default enrollment process is allowed, a default investment option must be identified by the Plan Sponsor within the Investment Selection Section included with this form. |                              |                             |                              |
| Will Independent Contractors be allowed to participate in the Plan (applicable to 457(b) plans only)                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> N/A |

<sup>1</sup> Do **not** check if Employer Contributions are co-mingled and remitted as Employee Pre-Tax contributions

**VESTING**

**457(b) Governmental Vesting Information**

ER Match (pick one) ER Discretionary (pick one)

ER Non-Discretionary (pick one)

- |                                                                                                                                |                                   |                                           |                                               |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> N/A – No Employer Contributions                                                                       | N/A                               | N/A                                       | N/A                                           |
| <input type="checkbox"/> Full and Immediate                                                                                    | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> Cliff <input type="checkbox"/> 3-year <input type="checkbox"/> 2-year <input type="checkbox"/> 1-year | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 4-year graded: 25% per year                                                                           | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 5-year graded: After 1 year of service 20% per year                                                   | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 6-year graded: 20% after 2 years of service; plus 20% per year after                                  | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |

**Vesting Computation Period (pick one)**

- Elapsed Time Method  General Method (1000 hours equals one year of service)

**Accelerated Vesting:** Participant will become 100% vested (check all that apply)

- At Normal Retirement Age – age \_\_\_\_\_  Upon Participant Disability  Upon Participant Death  At Early Retirement Age – age \_\_\_\_\_  
(insert age) (insert age)

**Forfeiture Release Provision**

- Immediate Release (upon distribution)  5 year break-in-service with full termination distribution

**401(a) Vesting Information**

ER Match (pick one) ER Discretionary (pick one)

ER Non-Discretionary (pick one)

- |                                                                                                                                |                                   |                                           |                                               |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> N/A – No Employer Contributions                                                                       | N/A                               | N/A                                       | N/A                                           |
| <input type="checkbox"/> Full and Immediate                                                                                    | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> Cliff <input type="checkbox"/> 3-year <input type="checkbox"/> 2-year <input type="checkbox"/> 1-year | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 4-year graded: 25% per year                                                                           | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 5-year graded: After 1 year of service 20% per year                                                   | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 6-year graded: 20% after 2 years of service; plus 20% per year after                                  | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |

**Vesting Computation Period (pick one)**

- Elapsed Time Method  General Method (1000 hours equals one year of service)

**Accelerated Vesting:** Participant will become 100% vested (check all that apply)

- At Normal Retirement Age – age \_\_\_\_\_  Upon Participant Disability  Upon Participant Death  At Early Retirement Age – age \_\_\_\_\_  
(insert age) (insert age)

**Forfeiture Release Provision**

- Immediate Release (upon distribution)  5 year break-in-service with full termination distribution

**401(k) Vesting Information**

ER Match (pick one) ER Discretionary (pick one)

ER Non-Discretionary (pick one)

- |                                                                                                                                |                                   |                                           |                                               |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> N/A – No Employer Contributions                                                                       | N/A                               | N/A                                       | N/A                                           |
| <input type="checkbox"/> Full and Immediate                                                                                    | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> Cliff <input type="checkbox"/> 3-year <input type="checkbox"/> 2-year <input type="checkbox"/> 1-year | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 4-year graded: 25% per year                                                                           | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 5-year graded: After 1 year of service 20% per year                                                   | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |
| <input type="checkbox"/> 6-year graded: 20% after 2 years of service; plus 20% per year after                                  | <input type="checkbox"/> ER Match | <input type="checkbox"/> ER Discretionary | <input type="checkbox"/> ER Non-Discretionary |

**Vesting Computation Period (pick one)**

- Elapsed Time Method  General Method (1000 hours equals one year of service)

**Accelerated Vesting:** Participant will become 100% vested (check all that apply)

- At Normal Retirement Age – age \_\_\_\_\_  Upon Participant Disability  Upon Participant Death  At Early Retirement Age – age \_\_\_\_\_  
(insert age) (insert age)

**Forfeiture Release Provision**

- Immediate Release (upon distribution)  5 year break-in-service with full termination distribution

**DISTRIBUTIONS/WITHDRAWALS - Governmental 457(b) Plans**

**In-Service Withdrawal Options** - The following in-service withdrawal options *will* be established under the Plan unless the Employer opts out by checking the applicable box. The Plan Sponsor will be required to approve all allowed in-service distribution options available under the Plan; such approval will be evidenced by the signature of an authorized Plan Sponsor representative on the applicable withdrawal request form provided by VRIAC. There shall be no restrictions on the frequency in which a distribution/withdrawal may be requested.

- **Unforeseeable Emergency**  Not Allowed
- **Withdrawal of Rollover Contribution Source(s)**  Not Allowed
- **457(b) Deminimus**  Not Allowed
- **Withdrawal and Transfer of Governmental Defined Benefit Service Credit**  Not Allowed

The following in-service withdrawal options *will not* be established under the Plan unless the Employer opts in by checking applicable box.

- **Age-based Withdrawal**  Allowed – indicate age \_\_\_\_\_
- **Normal Retirement Age Withdrawal**  Allowed – indicate age \_\_\_\_\_
- **Withdrawal and Transfer for Health Insurance and Long Term Care**  Allowed

**Separation from Service Distribution Options** – In addition to direct rollovers, the following distribution options after a participant has separated from service *will* be established under the Plan unless the Employer opts out by checking the applicable box.

- **Full Cash Withdrawal**  Not Allowed
- **Partial Cash Withdrawal**  Not Allowed
- **Installment payments**  Not Allowed
- **Annuity payments**  Not Allowed
- **Plan to Plan Transfers to another plan of the same plan type**  Not Allowed
- **Combination or split payment elections**  Not Allowed

VRIAC will provide ongoing review and processing of participant-initiated benefit payment requests (including annuity payments, if permitted, and death benefits) due to participant's separation from service or death, on behalf of the Plan Sponsor. In the case of death benefits, in those individual circumstances where VRIAC does not have a beneficiary designation from the participant on file, VRIAC will seek written direction from the Plan Sponsor as to who to make payment to pursuant to the Plan. The Plan Sponsor is responsible for providing VRIAC with any and all participant termination data in the mutually agreed upon electronic format, within a reasonable time period following the participant's separation from service or death. VRIAC will not make the applicable benefit payment request transaction and/or paperwork available to the participant until the termination data is received from the Plan Sponsor.

**Spousal Consent Requirements** - Does the Plan require a participant's spouse to provide spousal consent of participant's withdrawal or distribution election?  Yes  No

**DISTRIBUTIONS/WITHDRAWALS – 401(a) Plans**

**In-Service Withdrawal Options** - The following in-service withdrawal options *will* be established under the Plan unless the Employer opts out by checking the applicable box. The Plan Sponsor will be required to approve all allowed in-service distribution options available under the Plan; such approval will be evidenced by the signature of an authorized Plan Sponsor representative on the applicable withdrawal request form provided by VRIAC. There shall be no restrictions on the frequency in which a distribution/withdrawal may be requested.

- **Withdrawal of Rollover Contribution Source(s)**  Not Allowed
- **Withdrawal and Transfer of Governmental Defined Benefit Service Credit**  Not Allowed

The following in-service withdrawal options *will not* be established under the Plan unless the Employer opts in by checking applicable box.

- **Age-based Withdrawal**  Allowed – indicate age \_\_\_\_\_
- **Normal Retirement Age Withdrawal**  Allowed – indicate age \_\_\_\_\_
- **Withdrawal and Transfer for Health Insurance and Long Term Care**  Allowed

**Separation from Service Distribution Options** – In addition to direct rollovers, the following distribution options after a participant has separated from service *will* be established under the Plan unless the Employer opts out by checking the applicable box.

- **Full Cash Withdrawal**  Not Allowed
- **Partial Cash Withdrawal**  Not Allowed
- **Installment payments**  Not Allowed
- **Annuity payments**  Not Allowed
- **Plan to Plan Transfers to another plan of the same plan type**  Not Allowed
- **Combination or split payment elections**  Not Allowed

VRIAC will provide ongoing review and processing of participant-initiated benefit payment requests (including annuity payments, if permitted, and death benefits) due to participant's separation from service or death, on behalf of the Plan Sponsor. In the case of death benefits, in those individual circumstances where VRIAC does not have a beneficiary designation from the participant on file, VRIAC will seek written direction from the Plan Sponsor as to who to make payment to pursuant to the Plan. The Plan Sponsor is responsible for providing VRIAC with any and all participant termination data in the mutually agreed upon electronic format, within a reasonable time period following the participant's separation from service or death. VRIAC will not make the applicable benefit payment request transaction and/or paperwork available to the participant until the termination data is received from the Plan Sponsor.

**Spousal Consent Requirements** - Does the Plan require participants to waive right to a joint and survivor annuity and participant's spouse to consent to participant's waiver (commonly referred to as "QJSA waiver with spousal consent")?  Yes  No

**DISTRIBUTIONS/WITHDRAWALS - 401(k) Plans**

**In-Service Withdrawal Options** - The following in-service withdrawal options *will* be established under the Plan unless the Employer opts out by checking the applicable box. The Plan Sponsor will be required to approve all allowed in-service distribution options available under the Plan; such approval will be evidenced by the signature of an authorized Plan Sponsor representative on the applicable withdrawal request form provided by VRIAC. There shall be no restrictions on the frequency in which a distribution/withdrawal may be requested.

- **Hardship Withdrawal**  Not Allowed
- **Age 59½ Withdrawal**  Not Allowed
- **Withdrawal of Rollover Contribution Source(s)**  Not Allowed

The following in-service withdrawal options *will not* be established under the Plan unless the Employer opts in by checking applicable box.

- **Age-based Withdrawal**  Allowed – indicate age \_\_\_\_\_
- **Normal Retirement Age Withdrawal**  Allowed – indicate age \_\_\_\_\_
- **Withdrawal and Transfer for Health Insurance and Long Term Care**  Allowed
- **Withdrawal and Transfer of Governmental Defined Benefit Service Credit**  Allowed

**Separation from Service Distribution Options** – In addition to direct rollovers, the following distribution options after a participant has separated from service *will* be established under the Plan unless the Employer opts out by checking the applicable box.

- **Full Cash Withdrawal**  Not Allowed
- **Partial Cash Withdrawal**  Not Allowed
- **Installment payments**  Not Allowed
- **Annuity payments**  Not Allowed
- **Plan to Plan Transfers to another plan of the same plan type**  Not Allowed
- **Combination or split payment elections**  Not Allowed

VRIAC will provide ongoing review and processing of participant-initiated benefit payment requests (including annuity payments, if permitted, and death benefits) due to participant's separation from service or death, on behalf of the Plan Sponsor. In the case of death benefits, in those individual circumstances where VRIAC does not have a beneficiary designation from the participant on file, VRIAC will seek written direction from the Plan Sponsor as to who to make payment to pursuant to the Plan. The Plan Sponsor is responsible for providing VRIAC with any and all participant termination data in the mutually agreed upon electronic format, within a reasonable time period following the participant's separation from service or death. VRIAC will not make the applicable benefit payment request transaction and/or paperwork available to the participant until the termination data is received from the Plan Sponsor.

**Spousal Consent Requirements** - Does the Plan require participants to waive right to a joint and survivor annuity and participant's spouse to consent to participant's waiver (commonly referred to as "QJSA waiver with spousal consent")?  Yes  No

**MANDATORY DISTRIBUTIONS FOR TERMINATED PARTICIPANTS**

|                                                                                                                                                                  | 457(b)                                                                            | 401(a)                                                                            | 401(k)                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Are mandatory distributions under the Plan required ( <i>Note: mandatory distributions over \$1,000 are not permitted under non-governmental 457(b) plans.</i> ) | <input type="checkbox"/> Yes<br><input type="checkbox"/> No                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No                       |
| If mandatory distributions are required, indicate the applicable limit                                                                                           | <input type="checkbox"/> \$1,000 limit<br><input type="checkbox"/> \$5,000 limit* | <input type="checkbox"/> \$1,000 limit<br><input type="checkbox"/> \$5,000 limit* | <input type="checkbox"/> \$1,000 limit<br><input type="checkbox"/> \$5,000 limit* |

\* Accounts that have balances less than or equal to \$1,000 will be cashed out. Participants with account balances greater than \$1,000 and at or below \$5,000 will be rolled into an IRA to be established by the Employer. The timing and frequency of mandatory distributions will be directed by the Plan Sponsor or their authorized representative. Additional paperwork may be required if the Voya Rollover IRA is used. If a non-Voya Rollover IRA is to be used, provide the following information:

Name of IRA Provider \_\_\_\_\_ Contact Name \_\_\_\_\_  
 Street Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_

If mandatory distributions are required, rollover balances (if any) will be excluded when determining if account balance meets the limit unless otherwise elected  Include rollover balances. Note any exception by plan, e.g., 401(a)

**LOAN PROVISIONS**Loans **will not** be established under the Plan unless the Employer opts in by checking applicable box*(Note: loans are not permitted under non-governmental 457(b) plans.)*

|                         | 457(b)                           | 401(a)                           | 401(k)                           |
|-------------------------|----------------------------------|----------------------------------|----------------------------------|
| • General Purpose Loans | <input type="checkbox"/> Allowed | <input type="checkbox"/> Allowed | <input type="checkbox"/> Allowed |
| • Residential Loans     | <input type="checkbox"/> Allowed | <input type="checkbox"/> Allowed | <input type="checkbox"/> Allowed |

**Loan Repayment Method**If loans are permitted, indicate the method loans will be repaid (**only one method may be selected**)

- Payroll deduction. Loan payments will not be permitted after Participant has separated from service.
- ACH debit to the Participant's bank account. Loan payments will continue after the Participant has separated from service until a full termination distribution has been processed from the Participant's account.

If loans are permitted under the Plan, the following rules will apply.

- The maximum number of outstanding loans at any time will be  one  two, regardless of loan type. There shall be no restrictions on the frequency in which a loan may be requested.
- General Purpose loans will have a maximum duration of 57 months and Residential loans will have a maximum duration of 120 months.
- The minimum loan amount will be \$1,000 regardless of loan type.
- The loan interest rate will be determined by Voya based on the Prime Interest Rate published in the WSJ on the last business day of each month plus an adjustment factor of 1%.
- Loan requests will be authorized by the Plan Sponsor. If all existing plan assets will be transferred as indicated on page 1, loan requests will be authorized by Voya.
- Spousal consent requirements will mirror those requirements indicated within the Distribution/Withdrawals section above.

**NOTE: Distributions, Withdrawals and Loans will be withdrawn using Voya's standard sequence of employee pre-tax contribution sources followed by employer contribution sources, then rollover and transfer sources, if permitted. If Roth is available under the Plan, the Roth contribution source followed by Roth-related rollover sources will go after the employee and employer contribution sources noted above. Roth and Roth-related rollover sources may not be used to fund a loan disbursement but may be included when determining the maximum loan amount available. Non-Roth after tax money source, if available will be at the end of the source sequence. Employer contribution sources are not available for Hardship Withdrawals.**

**MISCELLANEOUS PLAN PROVISIONS****Beneficiary Designations**

Voya will maintain beneficiary designations under the Plan(s) unless the Employer opts out.

- Employer elects not to use Voya's service

If the Voya beneficiary maintenance service is elected, Voya will allow participants and the account holders shown below to name a beneficiary unless the Employer opts out by checking the applicable box.

|                                  | 457(b)                               | 401(a)                               | 401(k)                               |
|----------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| • Beneficiary account holder     | <input type="checkbox"/> Not Allowed | <input type="checkbox"/> Not Allowed | <input type="checkbox"/> Not Allowed |
| • Alternate payee account holder | <input type="checkbox"/> Not Allowed | <input type="checkbox"/> Not Allowed | <input type="checkbox"/> Not Allowed |

Please indicate spousal consent requirements of a beneficiary designation under the Plan below.

|                                       | 457(b)                       |                             | 401(a)                       |                             | 401(k)                       |                             |
|---------------------------------------|------------------------------|-----------------------------|------------------------------|-----------------------------|------------------------------|-----------------------------|
| • Spousal Consent required            | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Community Property edit (see below) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**For those plans where spousal consent requirement does not apply**, the Employer elects to require consent if the participant / Account holder resides in a community property state

Please note: If Voya's beneficiary maintenance service is not elected, the employer will be responsible for signing off on all death claims, and ensuring that their plan provisions, including spousal consent are met.

**Domestic Relations Orders ("DROs")**

Voya will presume the Plan recognizes and permits DROs unless the Employer opts out.

|                          | 457(b)                               | 401(a)                               | 401(k)                               |
|--------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| Voya will approve QDROs. | <input type="checkbox"/> Not Allowed | <input type="checkbox"/> Not Allowed | <input type="checkbox"/> Not Allowed |



**OPTIONAL SERVICES**

The following optional services *will not* be established for the Plan unless the Employer opts in by checking applicable box

|                                                 | 457(b)                             | 401(a)                             | 401(k)                             |
|-------------------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| • Self-Directed Brokerage Account               | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted |
| • Investment Advisory Services                  | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted |
| • Asset Allocation Made Easier Services         | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted |
| • Expense reimbursement arrangement             | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted |
| • Non-ERISA plans only: Sponsor Fee Disclosure* | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted | <input type="checkbox"/> Permitted |

If optional plan services are elected, the following rules will apply.

- Self-directed brokerage account is available for plans with \$1 million or more in total plan assets.
- Additional agreements will be required. Additional charges may apply as reflected in Schedule D of the Administrative Services Agreement.
- Availability of Asset Allocation Made Easier Services is subject to Company approval.

*\* Post monthly plan-level fee and expense disclosure reports (as outlined in DOL regulation §2550.408b-2) to Sponsor Web (and Third Party Administrator Website, if applicable) if elected above.*

**Online Statement Delivery Service**

Voya will deliver participant statements through an internet site from which participants can securely access their account, as opposed to receiving paper statements by mail, unless you elect out of this service. Participants will receive an annual notice by mail explaining how to access statements online. A participant can elect out of online statement delivery by making an election to receive statements by mail. Such elections may be made through Voya's participant internet site or by speaking with a customer service representative.

Employer elects not to use Voya's service

**Personal Identification Numbers**

Voya provides a Personal Identification Number (PIN) for secure Participant online account registration as well as for customer service support by phone. A unique, temporary PIN is delivered by the USPS to Participants shortly after an account is established. To facilitate account access, temporary PINs can be delivered by email to Participants upon request. This process requires at least one Employer email domain to be provided to the Contractor.

The Plan Sponsor authorizes the Contractor to provide temporary PINs by request of Participants to designated Employer e-mail addresses.

The following domains are registered to the Employer and provided for this purpose. *Example: @employer.com.*

\_\_\_\_\_

\_\_\_\_\_

| LICENSED REPRESENTATIVE                                                                                                                                                                                                     |       |                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------|
| Voya designates the following individual(s) to serve as its licensed representatives with respect to this Agreement. Licensed representatives are designated as one of the following:                                       |       |                   |
| <b>Agent, including Career Agent</b> – Appointed with Voya Retirement Insurance and Annuity Company, registered representative of Voya Financial Advisors, Inc. and receives commission based compensation.                 |       |                   |
| <b>Broker – (Non Voya FA Only)</b> – Appointed with Voya Retirement Insurance and Annuity Company, but affiliated with a broker-dealer other than Voya Financial Advisors, Inc. and receives commission based compensation. |       |                   |
| <b>Salaried Enroller</b> – Voya Retirement Insurance and Annuity Company employees who will not receive commission based salary and are registered representatives of Voya Financial Advisors, Inc.                         |       |                   |
| <b>Representative 1</b> <input type="checkbox"/> Agent <input type="checkbox"/> Broker <input type="checkbox"/> Salaried Enroller                                                                                           |       |                   |
| Representative Name                                                                                                                                                                                                         |       | Last 4 Digits SSN |
| Broker Dealer Affiliation                                                                                                                                                                                                   |       |                   |
| Office Code                                                                                                                                                                                                                 | Rep # | % Participation   |
| <b>Representative 2</b> <input type="checkbox"/> Agent <input type="checkbox"/> Broker <input type="checkbox"/> Salaried Enroller                                                                                           |       |                   |
| Representative Name                                                                                                                                                                                                         |       | Last 4 Digits SSN |
| Broker Dealer Affiliation                                                                                                                                                                                                   |       |                   |
| Office Code                                                                                                                                                                                                                 | Rep # | % Participation   |
| <b>Representative 3</b> <input type="checkbox"/> Agent <input type="checkbox"/> Broker <input type="checkbox"/> Salaried Enroller                                                                                           |       |                   |
| Representative Name                                                                                                                                                                                                         |       | Last 4 Digits SSN |
| Broker Dealer Affiliation                                                                                                                                                                                                   |       |                   |
| Office Code                                                                                                                                                                                                                 | Rep # | % Participation   |

*Licensed representatives identified above will be able to access Voya customer service representatives upon providing recognized access code. Licensed representative may obtain account information, make profile changes and/or request paperwork on behalf of a participant.*

*Registered Representatives of distributors who solicit sales of the contract typically receive a portion of the compensation paid to the distributor in the form of commissions or other compensation, depending upon the agreement between the distributor and the registered Representative. This compensation as well as other incentives or payments, is not paid directly by contract holders or account holders, but instead is paid by us through Voya Financial Partners, LLC. We intend to recoup this compensation and other sales expenses paid to distributors through fees and charges imposed under the contract. Some personnel may receive various types of non-cash compensation as special sales incentives, including trips, and we may also pay for some personnel to attend educational and/or business seminars. Any such compensation will be paid in accordance with SEC and FINRA Rules.*

**COMMISSION AND FEE SCHEDULE****Assumptions for Your Plan**

Number of Participating Employees \_\_\_\_\_ First Year Contribution Amount \$ \_\_\_\_\_

Transferred Asset Amount in the First Year \$ \_\_\_\_\_

**Revenue Requirement (mutual funds)** \_\_\_\_\_ %

Revenue requirement is the minimum mutual fund revenue required by Voya to support this pricing proposal, including compensation paid to your Financial Professional as disclosed in this proposal. The basis points stated above are assessed against plan assets, excluding assets in the Voya Fixed Account – 457/401 II, loans, company stock or self-directed brokerage account.

This revenue requirement is based on the plan characteristics provided to Voya.

**Annual Asset Based Fee** 0.135 %

An annual asset based fee is deducted quarterly, proportionally from all investment options within the Plan \_\_\_\_\_ the Voya Fixed Account – 457/401 II and will appear on participant's statements as a dollar amount deduction.

**Fund Management Fees**

Fund management fees and other fund operating expenses will apply. Fees depend on the investment option chosen. Please refer to the individual Fund prospectuses for fund fee information.

**Compensation Structure** Flat Salary  \$ \_\_\_\_\_ Commission Schedule  Case Level  Participant Level

\_\_\_\_\_ % of Contributions in the first Case Year

\_\_\_\_\_ % of Contributions in the Renewal Case Year

\_\_\_\_\_ % of Increase Contributions in the Renewal Case Years

\_\_\_\_\_ % of Transferred Assets in  the First Case Year  All Years\_\_\_\_\_ % of Assets Beginning  Month 1  Month 13**Compensation Structure** (*Registered Investment Advisor or Investment Advisory Representative*)

Asset-Based Compensation \_\_\_\_\_ % Paid  Monthly  Quarterly  
(annual rate)

Flat Dollar Compensation \$ \_\_\_\_\_ Paid  Monthly  Quarterly  
(annual amount)

For purposes of this Compensation Structure, the following descriptions apply.

Asset-Based Compensation: The compensation amount paid is calculated by taking the applicable annual rate divided by twelve (12) for monthly or four (4) for quarterly and multiplied by the Plan asset value at the close of business on the last day of the month or quarter, as applicable. For purposes of defining the Plan asset value, Plan assets invested in self-directed brokerage account, if available, and outstanding loan balances, if any, are excluded from this calculation.

Flat Dollar Compensation: The compensation amount paid is calculated by taking the applicable annual dollar amount and dividing by twelve (12) for monthly or four (4) for quarterly.

Supplemental Bonus Compensation: No

**Additional Services/Recordkeeping Fees**

Please refer to Schedule D or the Administrative Services Agreement.

**Fee Quote**

Our fee quote for standard and optional services, the assumptions on which the quote is based, disclosure of the compensation to be paid in connection with our proposal and the name(s) of your local service representatives are reflected herein. The fee quote will remain in effect for 90 days from the date indicated on this document. Our fee quote is based upon the assumptions that follow. Please review these assumptions carefully for accuracy and advise us of any discrepancy. If the actual Transferred Asset Amount and/or Number of Participating Employees varies significantly from those assumed below, we reserve the right to modify Program charges within 180 calendar days following the date of the initial transferred asset contribution.

Please check one if either applies:

**Expense Account for Service Expenditures ("EASE Account")**

The EASE Account is a funding source that can be directed towards the payment of allowable plan administrative expenses or allocated to participant accounts. The amount allocated to the EASE Account is directly attributable to excess fund revenue sharing amounts and administrative service fees in the amount of \_\_\_\_\_% of the assets of the Plan, but excluding any outstanding loan balances and assets in the Self Directed Brokerage Account. Please refer to your Expense Account for Service Expenditures Agreement for complete details regarding the administration of this optional account.

Changes to the amount allocated to the EASE Account may be made by (i) the Plan Sponsor by submission of such change to VRIAC on such form as VRIAC may prescribe from time to time, or (ii) VRIAC by written notice to the Plan Sponsor.

**Recordkeeping Expense Account ("REA")**

The REA is a funding source that can be directed towards the payment of allowable plan administrative expenses or allocated to participant accounts. The amount allocated to the REA is equal to fund revenue sharing and asset-based fees, including the administrative service fee, received by VRIAC or its affiliates that are in excess of VRIAC's revenue requirement set forth in the Revenue Requirement (mutual funds) section above. Please refer to your Recordkeeping Expense Account Agreement for complete details regarding the administration of this optional account.

### INVESTMENT SELECTION SECTION

Please select/confirm the investment options that will be available in your Plan(s).

These investment options are not insured by the Federal Deposit Insurance Corporation, are not deposits or obligations for Voya Institutional Trust Company or any of its affiliates, and are not guaranteed by the U.S. Government or its agencies or instrumentalities.

These investment options include investment risks including possible loss of principal amount invested and companies that are affiliated with Voya Institutional Trust Company will earn fees, which are disclosed in the prospectuses, for providing services to the Plan(s).

Plan Sponsor acknowledges receipt of the fund prospectuses for each of the available investment options.

### INVESTMENT OPTION SELECTION

*Once the Investment Selection has been submitted to Voya®, the addition or deletion of investments choices prior to the installation must be in writing. Any change in the investment lineup during installation can affect transition timelines.*

| Fund Number | Fund Name | Morningstar Category | Fund Legal Structure* |
|-------------|-----------|----------------------|-----------------------|
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\* Fund Legal Structure options are "Fixed", "Stable Value Option", "Stable Value Fund" or "Mutual Fund"

Employer Name \_\_\_\_\_

Product Name

RetireFlex-MF

INVESTMENT OPTION SELECTION (Continued)

| Fund Number | Fund Name | Morningstar Category | Fund Legal Structure* |
|-------------|-----------|----------------------|-----------------------|
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**Fixed Interest Investment Option**

The **Voya Fixed Account – 457/401 II** is a fixed interest investment option available through a group fixed annuity contract. The Voya Fixed Account – 457/401 II guarantees\* a minimum rate of interest, which, once credited, becomes a part of the principal and the investment grows through compound interest. All assets invested in this account, which are invested in Voya Retirement Insurance and Annuity Company's general account, are credited with a portfolio rate.

Special guidelines apply to the amount of assets that can be withdrawn from the Voya Fixed Account – 457/401 II Account or transferred from the Voya Fixed Account – 457/401 II to other investment options in this program. For complete details please refer to the RetireFlex Information Booklet.

Based on the previously stated assumptions for your plan, the credited interest rate for your contract is currently \_\_\_\_%. The credited interest rate is subject to change at any time, but is guaranteed not to fall below \_\_\_\_% through December 31, 20\_\_\_\_. In addition, a minimum contract guaranteed rate applies to this product.

\*Guarantee is based on the claims paying ability of the Voya Retirement Insurance and Annuity Company.

Group annuities are long-term investments designed for retirement purposes. Early withdrawals from 401(a)/(k) plans prior to age 59½ will be subject to a 10% premature distribution penalty tax, unless an exception applies. Money taken from the annuity will be taxed as ordinary income in the year the money is distributed. Account values fluctuate with market conditions, and when surrendered the principal may be worth more or less than its original amount invested. An annuity does not provide any additional tax deferral benefit, as tax deferral is provided by the plan. Annuities may be subject to additional fees and expenses to which other tax-qualified funding vehicles may not be subject. However, an annuity does provide other features and benefits, such as lifetime income payments and death benefits, which may be valuable to you.

**You should consider the investment objectives, risks, and charges and expenses of the investment options offered through a retirement plan, carefully before investing. The fund prospectuses and RetireFlex Information Booklet containing this and other information can be obtained by contacting your local representative. Please read the information carefully before investing.**

**PLAN SPECIFIC ELECTION SECTION**

**Forfeiture Account** (check if applicable)

As the Plan offers one or more forms of contribution subject to vesting, an investment option is to be designated for the Forfeiture Account under the Plan. The Forfeiture Account will be used to hold forfeiture Plan assets until written instructions are received from the Plan Sponsor. Amounts transferred into the Plan's Forfeiture Account will be invested in \_\_\_\_\_ (insert fund number and name).

**Default Investment Option** (check if applicable)

As the Plan includes a default enrollment provision or Plan Sponsor has selected Plan Asset Transfer option 1 (Non-Mapped) a default investment option must be designated. I understand that I have the fiduciary responsibility to choose the appropriate "default" investment option, and therefore may choose from any of the investment options available under the Plan. I designate the following to be the default investment option for the Plan.

Selected Target Date Family\*

Voya Fixed Account – 457/401 II

Other (list selected fund) \_\_\_\_\_

\*I have selected a target date family as the "default" investment option and understand that all contributions into these funds will be based on each Participant's age, not their anticipated retirement age as the investment is designed. Plan Participants will be allocated to the target date funds assuming the standard retirement age of 65.

I understand that all contributions will be invested in this investment option until such time that a participant makes allocation changes and/or fund transfers.







**AUTHORIZED PLAN SPONSOR REPRESENTATIVE**

Voya is hereby authorized to act upon the directions, instructions, and any information provided by any of the Authorized Plan Sponsor Representatives listed below. These signatures will be accepted until Voya is notified of a change in writing. The following person(s) have the authority under the Plan to provide direction to Voya with respect to administration of the Plan including any benefit sensitive financial transactions permitted under the Plan and requests for contribution refunds. In the event that a Plan Sponsor Representative is removed or replaced, Voya must be notified immediately in writing - please contact Voya's designated Plan Manager to request the applicable administrative form to complete.

|                                                            |                                    |       |
|------------------------------------------------------------|------------------------------------|-------|
| <b>1.</b>                                                  | Name <i>(please type or print)</i> | Title |
| Agency, Division or Location Name and Code (if applicable) |                                    |       |
| Authorized Plan Sponsor Representatives Signature          |                                    |       |
| <b>2.</b>                                                  | Name <i>(please type or print)</i> | Title |
| Agency, Division or Location Name and Code (if applicable) |                                    |       |
| Authorized Plan Sponsor Representatives Signature          |                                    |       |
| <b>3</b>                                                   | Name <i>(please type or print)</i> | Title |
| Agency, Division or Location Name and Code (if applicable) |                                    |       |
| Authorized Plan Sponsor Representatives Signature          |                                    |       |

**ACKNOWLEDGMENTS, SIGNATURES AND AUTHORIZED REPRESENTATIVES ACKNOWLEDGMENT**

I have read and understand this form and I am authorized to sign this form and any applicable Addendum on behalf of the Plan. The Effective Date is the Employer's date of signature below.

A copy of the Employer's 501(c)(3) letter is attached. Requirement is waived for any public education institution.

Employer Signature \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_

Signor's Name *(Please type or print)* \_\_\_\_\_ Signor's Title \_\_\_\_\_ **S**

*This Section to be filled out by Voya Product Management (prior to provision of form)*

|                              |                                                                |                    |
|------------------------------|----------------------------------------------------------------|--------------------|
| Master Group (if applicable) | Link to Existing C- Client, If applicable list C-Client Number |                    |
| Market Indicator <b>05</b>   | Product Code                                                   |                    |
| Product Manager              | Fixed Margin Code                                              |                    |
| Field Office Contact Name    | Field Office City                                              | Field Office State |

*This Section to be filled out by Voya Implementation Manager (after receipt of form)*

|                                                                                                                                                                              |                        |             |             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------|-------------|
| Plan Number(s)                                                                                                                                                               | Same as Source         |             |             |
| Plan Manager                                                                                                                                                                 | Implementation Manager |             |             |
| Trust Services<br><input type="checkbox"/> Voya Institutional Trust Company Custodial Agreement<br><input type="checkbox"/> Voya Institutional Trust Company Trust Agreement | Rep Access Code        | Rep 1 _____ | Rep 2 _____ |
| Rep 3 _____                                                                                                                                                                  |                        |             |             |

## ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement") is by and among the Employer (the "Plan Sponsor") and Voya Retirement Insurance and Annuity Company ("VRIAC"), a corporation organized and existing under the laws of the State of Connecticut and Voya Financial Partners, LLC a limited liability company organized and existing under the laws of the State of Delaware and registered as a broker-dealer under the federal securities laws (the "Broker-Dealer"). This Agreement consists of the provisions set forth herein and the Plan Sponsor Submission Information form ("PSSF") which includes a Commission and Fee Schedule and an Investment Selection Section. VRIAC and the Broker-Dealer are hereinafter collectively called the "Contractor". This Agreement governs the services the Contractor will provide to the Plans identified in the PSSF and unless specified otherwise, will collectively be referred to herein as the "Plan". This Agreement is separate and apart from any other contract issued to the Plan / Plan Sponsor by VRIAC, including any group annuity contract, funding agreement, or custodial / trust agreement.

### RECITALS

WHEREAS, the Plan will be construed, administered and enforced according to the Internal Revenue Code (the "Code") and the laws of the state in which the Plan Sponsor has its principal place of business, as identified in the PSSF; and

WHEREAS, the Plan may be subject to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") as identified within the PSSF; and

WHEREAS, the Plan Sponsor has selected certain investment products offered or otherwise made available by or through VRIAC or the Broker-Dealer, respectively, for the investment of the Plan's assets (the "Program"); and

WHEREAS, the Plan Sponsor further wishes to engage the Contractor as an administrative service provider to facilitate the administration of the Plan by providing services that shall include without limitation, accounting for deferrals or contributions, disbursement of funds, withholding of taxes, investment education, retirement counseling, investment of assets in the appropriate Plan investment options and proper recordkeeping of participant accounts; and

WHEREAS, the Contractor wishes to provide such administrative services to the Plan.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties do hereby agree as follows:

### Section 1. Services

- 1.01 Good Order: The Contractor and the Plan Sponsor acknowledge that for purposes of this Agreement "Good Order" is defined as the receipt at the Contractor's designated location of a transaction request, instructions or data that is complete, accurate and in an acceptable format, and which do not require the Contractor to apply any research or discretionary judgment. To qualify as current business day instructions, a transaction request, instructions or data sent electronically, by telephone, facsimile or mail must be received by the Contractor no later than the close of the New York Stock Exchange ("NYSE") (typically 4:00 p.m. ET). If the Contractor receives a transaction request, instructions or data in Good Order after the close of the NYSE, the Contractor will process the data or request on the next business day that the NYSE is open. The parties understand and acknowledge a transaction request, instructions or data deemed by the Contractor as being received not in Good Order may be returned for correction and processed upon resubmission in Good Order.
- 1.02 Allocation of Contractor Responsibilities: The Broker-Dealer or other broker-dealers with which Voya Financial Partners, LLC has a selling agreement shall service or perform all marketing communications, enrollment and securities transactions settlement and processing functions assigned to the Contractor. VRIAC shall perform all other responsibilities assigned to the Contractor, including Plan and participant recordkeeping. For plans that have multiple providers of investment products and administrative services, VRIAC will provide recordkeeping services solely for that portion of the Plan utilizing assets record kept by the Contractor.

- 1.03 Plan Specifications: The relevant characteristics of the Plan that will govern the administration of the Plan are documented within the PSSF.
- 1.04 Scope of Services: The Contractor agrees to provide the Plan with the services listed on Schedule A for the term of this Agreement. Services offered pursuant to the Plan's loan program, if available, will be subject to the terms specified in Schedule B.
- 1.05 Administrative Requirements: The Contractor agrees to comply with the requirements set forth on Schedule C and the information sharing requirements under Code section 403(b), if applicable, as documented in Appendix I to Schedule C in the performance of this Agreement. The Contractor and the Plan Sponsor will review these administrative requirements periodically and make adjustments as necessary and mutually agreed.
- 1.06 Selection of Investment Options: The Plan Sponsor acknowledges that it is responsible for choosing the investment options to be made available to participants under the Plan. The Contractor agrees to provide Plan participants with a selection of investment options as elected by the Plan Sponsor in the Investment Selection Section of the PSSF. All contributions are to be invested as the participant directs.
- 1.07 Investment Provider Minimum Standards: Subject to the minimum standards set forth in Schedule F, the Contractor will provide its administrative services in connection with the Plan Sponsor's selection of investment products to fund the Plan.
- 1.08 Modification to Investment Options: In order to confirm the fund selected by the Plan Sponsor can be recordkept by the Contractor, the addition or removal of any investment option to the Plan must be mutually agreed to by the Contractor and the Plan Sponsor and will be made in accordance with a mutually agreed upon schedule for implementing the change.
- (1) Subject to mutual agreement between the parties to add an investment option;
    - (i) The Plan Sponsor may direct the Contractor to add or remove an investment option from the range of investment products the Contractor currently offers, and that are currently available in the Program, upon forty-five (45) days written notice of the proposed change.
    - (ii) The Plan Sponsor may direct the Contractor to add an investment option that the Contractor does not currently offer or an investment option that the Contractor currently offers but is not currently available in the Program, upon at least ninety (90) days written notice of the proposed change. Any investment option additions made pursuant to this Subsection 1.08(1)(ii) will be made in accordance with the Contractor's scheduled quarterly fund updates.
  - (2) The Contractor reserves the right to reject any new investment option that imposes short-term trading (redemption) fees on participant accounts.
  - (3) To the extent an existing investment option imposes short-term trading (redemption) fees on participant accounts, the Contractor reserves the right to discontinue offering the investment option or to deduct any such short-term trading (redemption) fees from participant accounts.
- 1.09 Limits Imposed by Underlying Funds: The Plan Sponsor understands and acknowledges that orders for the purchase of fund shares may be subject to acceptance by the fund. The Contractor reserves the right to reject, without prior notice, any allocation of payments to the variable investment products if the Contractor's purchase order for the corresponding fund is not acceptable by the fund for any reason.
- 1.10 Limits Imposed by Contractor on Frequent Transfers: The Plan Sponsor understands and acknowledges that the investment products offered or otherwise made available by or through the Contractor are not designed to serve as vehicles for frequent trading in response to short-term fluctuations in the market. Such frequent trading can disrupt management of a fund and raise its expenses. This in turn can have an adverse effect on fund performance. Accordingly, the Plan Sponsor agrees to adhere to the Contractor's current Excessive Trading Policy, as set forth in Schedule G (the "Excessive Trading Policy"). The Contractor reserves the right to modify the Excessive Trading Policy in whole or in part at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements.

## Section 2. Participant Information

- 2.01 Provision of Certain Participant Information: The Plan Sponsor or its authorized representative shall facilitate the transmission to the Contractor of all current Plan participant level records including, but not limited to: name; address; social security

number; active or terminated employment status; loan information; and deferral amount information. The Contractor shall be able to rely on the information provided by the Plan Sponsor. We are not responsible for any errors, omissions or other inaccuracies in the data you or an unaffiliated third party, including without limitation, prior service providers furnish us. Over the term of this Agreement, the Contractor and the Plan Sponsor will develop procedures for the Plan Sponsor to notify the Contractor of changes in employment status and, to the extent the Plan Sponsor has knowledge of the death of any participant, the Plan Sponsor will notify the Contractor of such death. The Plan Sponsor shall provide such information on a timely basis and use its best efforts to assure the accuracy and completeness of all information provided to the Contractor.

2.02 Changes in Deferral or Contribution Information; New Participant Deferral or Contribution Information: The Contractor and the Plan Sponsor will develop procedures to coordinate the processing of (i) changes in deferral or contribution amount information and (ii) initial deferral or contribution information pertaining to participants joining the Plan on or after the date the Contractor commences the provision of services under this Agreement.

2.03 Participants' Ability to Direct Investments: Participants shall have the ability to choose their investment allocations and to make participant-directed transfers between investment options, subject to any limitations of the Plan and of the Contractor's investment product. If the Plan is or becomes subject to ERISA, or is otherwise employer-controlled, the Plan Sponsor hereby provides written direction to the Contractor allowing participants to make such investment choices, subject to the Plan Sponsor's right to revoke this authorization if allowed by the Plan. If this agreement covers a 403(b) Plan, the Plan Sponsor authorizes the Contractor to accept participant initiated exchanges between the 403(b)(1) annuity contract and the 403(b)(7) custodial account, or vice versa.

2.04 Restricting Participant Accounts (Administrative Holds): The Plan Sponsor directs the Contractor to place an administrative hold on a participant's account upon receipt of a signed or draft domestic relations order (DROs) or joinder, federal tax levy, or upon the receipt of other types of court orders that assert a claim to plan benefits. Placing an administrative hold on the participant's account(s) will prevent the participant from taking distributions, including loans. The participant will continue to have the ability to make allocation changes and fund transfers to his/her account. With the exception of DROs, the restriction will remain on the account until such time that the Contractor is advised to remove the administrative hold either by the Plan Sponsor or upon receipt of a court order indicating that the matter has been resolved and the hold is no longer needed.

Administrative holds placed on a participant's account due to DROs shall remain on the account for a period up to 18 months, or if earlier, until the date the Contractor is advised to remove the administrative hold either by the Plan Sponsor or a court order indicating that the matter has been resolved and the hold is no longer needed. If a subsequent order is received a new 18-month period will be activated.

Notwithstanding the foregoing, with respect to joinders issued pursuant to California Family Code 9 (if applicable), Section 2060, the restriction will not be removed until the Contractor receives either: (1) a QDRO; (2) a court order vacating/dismissing the joinder; or (3) a final judgment that awards the participant all of the plan benefits.

2.05 Power of Attorney, Guardianship or Conservatorships: The Contractor will determine the validity of the documentation received relative to a power of attorney, guardianship or conservatorship. Once the documentation is determined to be in Good Order, the Contractor will set up or modify the existing account as directed in the documentation received.

### Section 3. Compensation

3.01 Contractor's Compensation: The Contractor's services under the Agreement are rendered in connection with the Plan Sponsor's selection of certain investment products offered by or through the Contractor, including a stability of principal investment option available to the Plan. The revenues paid to the Contractor from such investment products shall constitute one source of compensation for the services rendered under this Agreement.

Additional sources of compensation to the Contractor are described in the Commission and Fee Schedules section of the PSSF. The charge(s) identified in the PSSF are determined based on the number of participants, Plan assets held by the Contractor and compensation paid to sales professionals in connection with this agreement (reference section 3.03).

Additional transactional fees and charges may apply for optional services such as loans, investment advisory services and Self Directed Brokerage Account. Refer to Schedule D ("Additional Plan Services and Fees") for additional fees and charges.

3.02 Assumptions Regarding Pricing: Any fees, products and services rendered in connection with this Agreement are contingent on the Contractor being the exclusive provider of investment products and administrative services to the Plan during the Term of this Agreement, as defined in 4.01. The addition of any other provider or providers to the Plan during the Term of this

Agreement and any subsequent renewal periods or changes in the Plan document may impact any fees, products and services under this Agreement. The Plan Sponsor will notify the Contractor of any such changes in a timely manner.

This Agreement and fees are contingent on the Plan provisions in effect on the date of this Agreement. Any amendment to the Plan may impact this Agreement and fees.

The Plan Sponsor understands and acknowledges that the compensation to the Contractor is subject to the certain general provisions, as set forth in Schedule H (the "General Compensation Provisions"). The Contractor reserves the right to modify the General Compensation Provisions in whole or in part at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements.

3.03 Compensation Paid to Sales Professionals: The Contractor shall pay sales professionals compensation in the amount identified in the Commission and Fee Schedules section of the PSSF. The compensation paid to sales professionals will be derived exclusively from the Contractor's compensation.

(a) Payments to Agent or Broker: The compensation paid to sales professionals will be derived exclusively from the Contractor's compensation. Sales professionals may also be eligible for additional expense reimbursement. Compensation may also be paid at the time of participant election of an annuitization distribution option and will be disclosed to the participant at the time the distribution option is elected.

(b) Payments Made to a Consultant, a Registered Investment Advisor (RIA) or an Investment Advisory Representative (IAR): One or more third parties, engaged by the Plan Sponsor, may provide ongoing services to the Plan. The Contractor is not a party to the consultant and/or investment advisory relationship, nor is it responsible for ensuring compliance with any applicable insurance and securities laws and regulations.

Plan Sponsor may direct the Contractor to make payment to one or more consultants, RIAs or IARS, engaged by the Plan Sponsor, as compensation for services rendered and to be treated as qualified plan related expenses, as set forth in Schedule J.

3.04 Float: VRIAC and its affiliated companies (collectively referred to as "Voya™" for purposes of this Section 3.04) earn income in the form of bank service credits on contributions awaiting investment and on payments awaiting distribution from the bank accounts that Voya maintains (or "float"). The bank service credits are applied against the bank service fees that apply to the bank accounts that Voya maintains and may not be redeemed for cash. Specifically, the bank accounts have been established to receive and hold for a reasonable time:

- contributions or other amounts to be invested in your retirement Plan, or
- amounts redeemed to pay a distribution or disbursement from your Plan.

Voya will receive income in the form of bank service credits (as described below) and offset such credits against bank service fees that are charged to Voya for the use of such bank accounts and for services provided by the banks for processing receipts or disbursements.

Float Generated by Contributions:

Voya uses a bank account to receive and hold contributions or other Plan deposit amounts to be invested. Contributions or other deposit amounts are held until authorized instructions are received in Good Order. Income in the form of bank service credits are earned on the bank account during any waiting period for authorized instructions. For authorized instructions received in Good Order, contributions or other deposit amounts will be invested on that business day. For authorized instructions received in Good Order after the close of the New York Stock Exchange, contributions or other deposit amounts will be processed on the next business day.

Float Generated by Distributions:

Voya receives income in the form of bank service credits in connection with distributions or disbursements that Voya pays on the Plan's behalf. The bank service credits accrue during the period beginning when an amount is redeemed from the Plan's investment to fund a distribution or disbursement check and ending when the check is presented for payment.

Additionally, from time to time, Voya may receive money market like rates of return on other deposit or short term investment products in which distributions may be held until such time as the check is presented for payment.

3.05 Transaction Processing: VRIAC seeks to avoid transaction processing errors to the greatest extent possible, but inadvertent errors do occur from time to time. When a transaction processing error for which VRIAC is directly responsible occurs, VRIAC will attempt to correct the error as soon as reasonably practicable after identification of the error. Once all necessary

information has been gathered, VRIAC will promptly take corrective action to put the Plan and its participants in a position financially equivalent to the position they would have been in if the VRIAC processing error had not occurred.

VRIAC processes your Plan's investment instructions on an "omnibus" or aggregated basis. If VRIAC's correction of a VRIAC processing error results in a loss to your Plan or its participants, VRIAC will absorb the loss. If any gain results in connection with the correction of an VRIAC processing error, VRIAC will net any such gain against other losses absorbed by VRIAC and retain any resulting net gain as a component of its compensation for transaction processing services, including its agreement to make Plan and participant accounts whole for losses resulting from VRIAC processing errors. For more information on our error correction policy, please refer to Voya Retirement Insurance and Annuity Company's Policy for Correction of Processing Errors ("VRIAC Policy"), which is included in Schedule I. The VRIAC Policy and any updates to the VRIAC Policy are posted in the Sponsor Disclosure section of Sponsor Web.

- 3.06 Fund Management Fees: Fund management fees and other fund operating expenses will also apply to the variable investment options under the Plan. Fees depend on the investment options chosen.

#### Section 4. Term

4.01 Term: This Agreement shall commence on the Effective Date identified in the PSSF and continue until either Plan Sponsor or Contractor provides at least ninety (90) days prior written notice of intent to terminate this Agreement. The Plan Sponsor and Contractor may mutually agree in writing to an earlier termination. This Agreement may be amended in writing if agreed to by both parties.

4.02 Termination: Notwithstanding Section 4.01, either party may terminate this Agreement at any time upon written notice "for cause". For this purpose, "for cause" shall mean: (1) failure of the other party to comply substantially with this Agreement and attached schedules hereto which, when called to the attention of the other party in writing has not been corrected within thirty (30) days; (2) the fraud or embezzlement on the part of the other party or provider of investment advice; (3) if the other party ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors; (4) failure of the other party to pay any fees under this Agreement; or (5) if pursuant to Section 1.08 the Plan Sponsor requests the addition or removal of an investment option under the Plans, that is reasonably anticipated by the Contractor to result in a reduction in revenues under the Plans and no mutual agreement is reached between the parties on the recoupment of such lost revenues, the Contractor shall have the right to terminate this Agreement.

#### Section 5. General

5.01 Circumstances Excusing Performance: Neither the Plan Sponsor nor the Contractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of restrictions imposed by any government or government agency, acts of God, strikes, labor disputes, action of the elements, or causes beyond the control of the parties affected thereby.

5.02 Business Recovery Plan: The Contractor acknowledges that it has a Business Recovery Plan in place for its computer environment, specifying steps to be taken in the event of a disaster. The plan is built around a worst-case scenario involving loss of the facility or loss of access to the facility. It is also adaptable to less severe disasters. Generally, there are three phases to the Contractor's Business Recovery Plan:

- ◆ Immediate response, damage assessment and critical notifications
- ◆ Environmental and operation restoration
- ◆ Operational readiness, testing and business resumption.

A critical part of this plan is the Contractor's System Recovery Plan, which itself has three components:

Hardware: the Contractor maintains a primary data center to support its mainframe applications and a portion of its mid-range and Intel based distributed environment. The Contractor has contracted with an outside vendor to provide hot site recovery capabilities for the primary data center in case of a site level disaster. The vendor maintains equipment that the Contractor will use to restore its applications in case of emergency. In addition, the Contractor has several data centers located throughout the U.S. with mid-range and distributed equipment to lessen the risk from any one site. On-site generators and UPS systems provide continuous power to the Contractor's facilities. A fully redundant wide area network connects all of the data centers in the U.S. as well as to the hot site vendor facility.

Application software: the Contractor secures program libraries, to tape cartridges weekly, storing them in both on-site and off-site vaults.

Production data: the Contractor's system and database files are backed up periodically, many on a daily basis, to tape cartridges stored in both on-site and off-site vaults.

The Contractor's internal auditors have reviewed its disaster recovery procedures. Portions of the plan are tested on an annual basis.

5.03 Ownership of Records: The Contractor agrees that all computer tapes, discs, programs and any records generated by the Contractor under this Agreement shall be the property of the Plan. In the event of the termination of this Agreement, the Contractor shall provide all electronic and/or written data records to the Plan's designated representative or to a new contractor in an agreed upon format at no cost and within 180 days of written notice of intent to terminate this Agreement.

5.04 Ownership and Use of the Content Copyright: Each party owns all right, title and interest in its pre-existing intellectual property. You acknowledge and agree that, except for your pre-existing intellectual property, all information and content distributed through or displayed on a Contractor Web site, printed or electronic literature, including but not limited to all text, graphics, images, software applications and code, video, audio, and user interface design ("Content") is the property of the Contractor and its affiliates or its third party licensors. You have a limited, non-exclusive license to use the Content during the term of this Agreement. Original Content developed by the Contractor for the benefit of the Plan Sponsor is the property of the Contractor and its affiliates unless both parties agree to transfer ownership to the Plan Sponsor in writing.

If you or any appointee thereof, provides the Contractor with Content for distribution or display on a Contractor Web site, or in printed or electronic literature, you are responsible for obtaining permission from the owner or licensor for use of the Content.

5.05 Parties Bound: This Agreement and the provisions thereof shall be binding upon the respective parties and shall inure to the benefit of the same.

5.06 Applicable Law: This Agreement shall be construed in accordance with the laws of the state where the Plan Sponsor is located, as identified within the PSSF, referred to as the jurisdiction of issue. The Contractor and the Plan Sponsor shall comply with all state and federal laws and regulations applicable to the services to be performed.

5.07 Mediation: Disputes between the parties may be submitted to mediation or arbitration provided both parties agree to do so in writing.

5.08 Severability: If any provision of this Agreement shall be found to be illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Agreement and the remainder of this Agreement shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. Neither party shall be required to perform any services under this Agreement which would violate any law, regulation or ruling.

5.09 Acknowledgment: The Plan Sponsor acknowledges the following.

- (a) The Contractor is performing non-discretionary, ministerial administrative services at the direction of the Plan and its authorized representatives.
- (b) The Contractor is not the Plan administrator or a fiduciary under state law or, as applicable ERISA, and the Contractor is not responsible for the selection or supervision of fiduciaries to the Plan or of service providers not associated with the Contractor.
- (c) The Plan Sponsor is solely responsible for maintaining the qualified state of the Plan, if applicable. If this Agreement covers a non-governmental 457(b) plan, the Plan Sponsor acknowledges the Plan is established and maintained primarily for the benefit of a select group of management and/or highly compensated employees and the Plan Sponsor is responsible for filing necessary "Top Hat Statement" with the Pension and Welfare Benefits Administration within 120 days of adopting the plan.
- (d) The Plan Sponsor acknowledges that the Contractor will set up the Plan on its recordkeeping system based on the Sponsor's representations that the elections made in the PSSF are consistent with the terms of the Plan document; and that the Plan Sponsor, not the Contractor, is responsible for ensuring that the Plan document and state laws allow for the services outlined in the PSSF and this Agreement, including the attached schedules.



- (e) The Plan Sponsor has consulted with a tax or legal advisor regarding the tax and if applicable, ERISA consequences of the Plan.
- (f) The Plan Sponsor is responsible for selecting the Plan design and investment options that best meet its objectives. The Plan Sponsor understands that it has selected a program that will include a stability of principal option and variable investments through a group annuity contract or mutual fund investments through a custodial or trust agreement to fund a tax-qualified arrangement; that the tax laws provide for deferral of taxation on earnings on participant account balances (excluding Roth or after-tax contribution sources); and that, although the annuity provides features and benefits that may be of value to participants, it does not provide additional deferral of taxation beyond that provided by the tax qualified arrangement itself.
- (g) If this agreement covers a non-governmental 457(b) plan, the Plan Sponsor understands and acknowledges it is responsible for communicating to all participants that all assets contributed to such plan must be owned and controlled by the Employer and subject to the Employer's creditors.
- (h) The Plan Sponsor and its authorized representatives have sole responsibility for the overall administration of the Plan, including periodically providing participants with any notices required under the Code and related Regulations to which the Plan is subject and for making all benefit determinations. The Contractor has no discretionary authority or control over eligibility or other benefit determinations, the administration, or the operation of the Plan. The Plan Sponsor acknowledges that the Contractor does not record keep participants' 12/31/88 balances under a 403(b) Plan, if available, and therefore the Contractor will not include this balance when determining amounts available for hardship or non-emergency withdrawals. Plan Sponsor confirms that Contractor's practices are consistent with the terms and administrative practices of the Plan, where applicable. The Plan Sponsor may delegate the day-to-day administration of certain Plan Sponsor responsibilities to the Contractor as indicated in Schedule A.
- (i) The Plan Sponsor and its authorized representative have the sole authority for the review and final disposition of a Plan participant's appeal of any benefit determination made by the Contractor under the Plan.
- (j) The Contractor does not directly provide any investment advice to the Plan Sponsor with respect to the Plan's assets.
- (k) In performing services under this Agreement, the Contractor is entitled to rely on any information the Plan Sponsor, or its authorized representatives identified in the PSSF, or the Plan participants provide. The Contractor has a reasonable duty to inquire as to the authenticity or the accuracy of such information or the actual authority of such person to provide it.
- (l) The Plan Sponsor agrees to comply with the information sharing requirements under Code section 403(b) and the regulations thereunder, if applicable, as documented in Appendix I to Schedule C.
- (m) By completing a PSSF, the Plan Sponsor will notify the Contractor of the provisions of the Plan document(s) governing the terms and operation of the Plan. The Plan Sponsor will promptly provide notice to the Contractor of any proposed amendments to the Plan at least 90 days prior to the proposed amendment effective date.
- (n) Generally, only fees relating to the ongoing administration of the Plan may be passed through to participants. You will direct us to deduct from participant accounts those fees outlined in Schedule D. The Plan Sponsor is responsible for determining if an expense is deductible from Plan assets.
- (o) **VRIAC Error.** VRIAC's responsibility with respect to providing the services is limited to correcting errors, within a reasonable time, which result from its computer system malfunctions, its staff errors or are otherwise caused by VRIAC's negligent acts. VRIAC shall make a good faith effort to correct any such error as soon as reasonably practicable after identification of the error when such correction is reasonably necessary and practical under the circumstances. For more information on our error correction policy, please refer to Voya Retirement Insurance and Annuity Company's policy for Correction of Processing Errors ("VRIAC Policy"), which is included in Schedule I. The VRIAC Policy and any updates to the VRIAC Policy are also posted in the Sponsor Disclosure section of Sponsor Web.
- (p) **Plan Sponsor Error.** VRIAC will attempt to correct, at Plan Sponsor's expense, processing errors resulting from Plan Sponsor, or Plan Sponsor's representative, or otherwise caused by the negligent acts of Plan Sponsor; provided that Plan Sponsor promptly notifies VRIAC of such error and furnishes all data to VRIAC reasonably necessary to make such corrections. Plan Sponsor shall pay VRIAC its reasonable expenses incurred in making such corrections.

5.10 Notices: Each party will promptly provide the other with notice and copy of any attempts to levy or attach amounts held under the Plan and/or any litigation affecting the Plan of which it becomes aware and/or any notices or demands to be given under

this Agreement. All such notices, demands or other communications hereunder shall be in writing and duly provided if sent certified mail, return receipt requested, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party shall from time to time designate in writing. The date of service of a notice or demand shall be the receipt date on any certified mail receipt.

Notices to the Contractor shall be sent to:

Voya Retirement Insurance and Annuity Company  
Attn: Deputy General Counsel  
Legal Department, C2N  
One Orange Way  
Windsor, CT 06095

Notices to the Plan Sponsor shall be sent to the individual identified as the Employer contact within the PSSF.

- 5.11 Copies of Agreement: This Agreement may be executed in any number of counterpart copies, each of which when fully executed shall be considered as an original.
- 5.12 Headings: Headings are for convenience of reference only. Headings do not limit or expand the scope of the text and are not intended to emphasize any portion thereof.
- 5.13 Independent Contractor: The Contractor is associated with the Plan Sponsor only for the purposes and to the extent specified in this Agreement. With respect to the performance of the contracted services pursuant to this Agreement, the Contractor shall have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement.
- 5.14 Licensed Representative: The Contractor agrees to provide licensed representatives to perform enrollment and education services, and to assist participants with account balance inquiries, investment selection changes, interfund transfers or exchanges, and transaction initiation. These individuals are identified in the PSSF.
- 5.15 Subcontracting: The Contractor may enter into subcontracting agreements for work contemplated under the Agreement. Any subcontractor shall be subject to the same terms and conditions as the Contractor. The Contractor shall be fully responsible for the performance of any subcontractor.
- 5.16 Contract Assignability: Without the prior written consent of the Plan Sponsor, the Agreement is not assignable by the Contractor either in whole or in part.
- 5.17 Licenses and Permits: The Contractor shall ensure that it has all necessary licenses and permits required by federal, state, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses and permits in effect for the duration of this Agreement. The Contractor will notify the Plan Sponsor immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this Agreement.
- 5.18 Conflict of Interest: The Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, agents or subcontractors and the Plan Sponsor. The Contractor shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties.
- 5.19 Improper Consideration: The Contractor shall not offer or be forced to provide (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee, group of employees, or agent of the Plan Sponsor in an attempt to secure favorable treatment or consideration.
- 5.20 Indemnification: The Contractor agrees to indemnify and hold the Plan Sponsor, its officers, employees and agents harmless from any loss, liability, claim, suit, fees (including reasonable attorneys' fees) or judgment resulting from work or acts done or omitted by the Contractor's officers, employees or agents in carrying out the Contractor's responsibilities as set forth in this Agreement to the proportionate extent that it results from the negligence or wrongdoing of the Contractor or any of its officers, employees or agents. The Contractor agrees to indemnify shall not extend to any injury or damage which results from the Contractor's reliance on information transmitted by the Plan Sponsor.

The Plan Sponsor agrees to indemnify and hold the Contractor, its officers, employees and agents harmless from any loss, liability, claim, suit or judgment resulting from work or acts done or omitted by the Plan Sponsor's officers, employees or agents in carrying out the Plan Sponsor's responsibilities as set forth in this Agreement to the proportionate extent that it results from the negligence or wrongdoing of the Plan Sponsor or any of its officers, employees or agents.

- 5.21 Right to Monitor: The Plan Sponsor or any appointee thereof, shall have the right to review and audit all records, books, documents, and other pertinent items as requested, and shall have the right to monitor the performance of the Contractor in the delivery of services provided under this Agreement. Full cooperation shall be given by the Contractor in the implementation, and in any auditing or monitoring conducted.
- 5.22 Confidentiality: The Contractor acknowledges that all information made available by the Plan Sponsor about its employees shall be considered confidential. The Contractor agrees that it will not distribute, disclose or release to any third party any such confidential information except as may be necessary to the performance of services hereunder either during or at any time after the term of the Agreement, upon the prior written approval of the Plan Sponsor or as otherwise required by law.
- 5.23 Voya is authorized to share participant information with the firm administering and/or servicing the below referenced plans. I acknowledge and understand that it is my responsibility to contact Voya to revoke access should this change.  
 I do not authorize Voya to share participant information.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement (including all referenced and attached Schedules and Appendices) to be executed by their respective officers thereunto duly authorized as of the Effective Date identified in the PSSF.

[EMPLOYER'S NAME ]

VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY

By: \_\_\_\_\_

By: Melissa M. McAuliffe

Printed Name: \_\_\_\_\_

Printed Name: Melissa M. McAuliffe

Title: \_\_\_\_\_

Title: Vice President

VOYA FINANCIAL PARTNERS, LLC

By: Carol B. Keen

Printed Name: Carol B. Keen

Title: Vice President

## Schedule A: Scope of Contractor Services

The Contractor agrees to provide the Plan with the services listed within this Schedule for the term of this Agreement. For purposes of this Schedule, all references to "participant" are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

1. The one-time preparation and implementation of a Plan-specific product and service conversion or transition schedule which shall include notice to all Plan participants.
2. The initial installation of overall Plan records and individual Plan participant records.
3. To assist the Plan Sponsor and its legal counsel, the Contractor will provide a specimen plan document upon your request. As a specimen plan, you and your legal counsel may modify the document(s) to reflect your Plan design needs.
4. The development of Plan enrollment materials, including basic investment education material. The distribution of such materials shall be as mutually agreed upon by the parties.
5. Conducting introductory on-site education and enrollment meetings for employees. Ongoing provision of employee enrollment and education services, including the provision of enrollment materials which include the necessary information for employees to enroll and make investment choices. Enrollment materials may be made available via the Contractor's enrollment website.
6. Ongoing allocation of Plan contributions received in Good Order to individual participant accounts, and reconciliation of Plan and participant activity on a daily basis. For purposes of this provision, Plan contributions are deemed to include loan repayments (if applicable) and non-routine contributions, such as rollovers or plan to plan transfers, if permitted under the Plan.
7. Contractor will perform one test per month beginning in October through December on each participant account per Plan covered by this Agreement for the limit on elective deferrals pursuant to Code section 402(g) and/or 457(e)(15) and on the annual additions limit in accordance with Code section 415(c), if applicable. If the Plan Sponsor sponsors more than one plan, the Contractor will not aggregate the plans for testing purposes, unless specifically agreed to within this Agreement.

The Plan Sponsor will be responsible for completion of the Plan's Form 5500 if the Plan is subject to ERISA and regulatory reporting. The Contractor will provide to the Plan Sponsor or the third party administrator you designate reports reflecting Plan data required for completion of Form 5500.

8. Ongoing maintenance of participant beneficiary designations under the Plan, unless the Plan Sponsor has elected out of this service within the PSSF, based upon mutually agreed upon procedures which shall be reflected in the Plan document. Participants may designate a beneficiary via the Contractor's participant internet site or by speaking with a customer service representative via a toll free telephone line.

### Community Property Edit

This optional feature of the online beneficiary maintenance service will take into account community property laws applicable in the Participant's resident state at the time that he or she is making a beneficiary designation. When this service has been elected by the Plan Sponsor within the PSSF, the Contractor's online beneficiary maintenance service will require any participant who has identified themselves as being married or in a registered domestic partnership or a civil union and who does not designate a person identified as his or her spouse or domestic partner as a primary beneficiary for at least the percentage prescribed under the community property laws to complete and submit a paper beneficiary designation form.

9. Ongoing maintenance, recordkeeping of individual participant account records including vesting information, if applicable, and processing in a timely manner of all transactions permitted under the Plan as authorized or approved by the Plan Sponsor. Any delegation of the Plan Sponsor's role of authorizing or approving transactions under the Plan to the Contractor will be as directed later within this Schedule or other written instrument between the parties. Such direction shall not be construed as delegating Contractor discretion with respect to such decision.

10. Ongoing generation of periodic Plan activity reports for Plan Sponsor use, as mutually agreed upon, to be made available through a secure website.
11. Ongoing processing of participant-initiated benefit payment requests received in Good Order, calculation and withholding of federal and state taxes, and the provision of necessary tax forms on a timely basis to participants who received taxable distributions during the previous year.
12. Unless the Plan Sponsor has elected out of the Contribution Rate Change service within the PSSF, the Contractor will establish and maintain an electronic interface with the Plan Sponsor for participant enrollment information (including default enrollments) and changes to the participant's contribution amount or rate, as provided in Appendix II and III to Schedule A. Default enrollment service described in Appendix I to Schedule A will apply if the Plan Sponsor has so indicated within the PSSF.
13. Access to customer service representatives via a toll free telephone line to respond to Plan participant inquiries, provide information about participants' accounts and investment options, help facilitate the enrollment of an employee into the Plan and to distribute administrative forms.
14. Access to an automated voice response system via toll free telephone lines, through which participants may obtain updated account and investment information and initiate transactions permitted under the Plan.

Access to an internet site and mobile app, through which participants may obtain updated account and investment information, and initiate transactions permitted under the Plan and requesting forms for initiating certain transactions as permitted under the Plan.

The Contractor provides a Personal Identification Number (PIN) for secure Participant online account registration as well as for customer service support by phone. A unique, temporary PIN is delivered by the USPS to Participants shortly after an account is established. To facilitate account access, temporary PINs can be delivered by email to Participants upon request. This process requires at least one Employer email domain to be provided to the Contractor.

15. The Contractor has an ongoing commitment to advancing the retirement readiness of your participants which includes our continued addition of self-service planning tools to the participant internet site along with the availability of phone and local Voya Financial Advisors representatives to assist individuals with their broader financial needs. Unless the Plan Sponsor has elected not to have these tools be made available to participants in the PSSF, these services are offered outside of the recordkeeping services described in this Agreement and are not subject to ERISA. If individuals elect fee based services, fees are charged directly to the employee and will not be withheld from any plan participant account. In order to facilitate the delivery of the services, the Contractor may use participant data to the extent and for purposes authorized by the participant whose data is being used. Securities and investment advisory services offered through Voya Financial Advisors, Inc., member SIPC.
16. Access to a Sponsor Web site, through which a Sponsor may obtain reports and sponsor fee disclosure in accordance with the Department of Labor regulations §2550.408(b)(2). The Sponsor must select a primary contact for the use of the Sponsor Web site by completing an administrative form to be provided by the Contractor.
17. Ongoing review and processing of participant-initiated benefit payment requests (including annuity payments, if permitted, and death benefits) due to participant's separation from service or death, on behalf of the Plan Sponsor, based on mutually acceptable procedures for the review, qualification and processing of these requests. The Plan Sponsor is responsible for providing the Contractor with any and all participant termination data in the mutually agreed upon electronic format, within a reasonable time period following the participant's separation from service or death. In those individual circumstances where the Contractor does not have a beneficiary designation on file for the participant, the Contractor will seek written direction from the Plan Sponsor as to who to make payment to pursuant to the Plan. Voya's death claim processing procedures include provisions for divorce revocation for non-ERISA plans, in those states that have such provisions. The Contractor may not make the applicable benefit payment request transaction and/or paperwork available to the participant until the termination data is received from the Plan Sponsor in Good Order.

Benefit payment requests are processed as of the date received in Good Order; with payment being mailed or made available electronically through ACH.

At the Plan Sponsor's direction, participants who have had a request denied shall be given the opportunity to appeal to the Plan Sponsor for a review and final disposition of the determination.

18. Access to counseling by licensed agents or representatives for Plan participants, who are retiring or otherwise requesting a benefit payment from the Plan, based on mutually acceptable standards.
19. Ongoing processing of Required Minimum Distributions ("RMD") in accordance with the rules of Code Section 401(a)(9) for eligible Plan participants and their beneficiaries as follows:
  - a. Participants: In the absence of an affirmative election or instructions received in Good Order from the participant on an annual basis for receiving the RMD, the Contractor is directed by the Plan Sponsor with respect to the 401(a)(k) or 457(b) Plan, to calculate and distribute the RMD amount. With respect to the 403(b) Plan to calculate the RMD amount but not distribute the RMD amount unless the participant requests such payment. The Contractor shall calculate the RMD in the following manner.
    - i. For participants with either (1) no beneficiary, (2) a non-spouse beneficiary, (3) a spouse beneficiary without a date of birth, or (4) a non-individual beneficiary (e.g., charitable organization), calculate the current year RMD by dividing the account balance on 12/31 of the prior year by the distribution period under the Uniform Lifetime Table using the participant's age on 12/31 of the current year.
    - ii. For participants with a spouse beneficiary more than 10 years younger than the participant, calculate the current year RMD by dividing the account balance on 12/31 of the prior year by the combined life expectancy factor under the Joint and Last Survivor Table using the ages of the participant and the spouse beneficiary on 12/31 of the current year.
    - iii. For participants who are at least 70-1/2 years of age in a calendar year and have separated from service with their employer, any distribution requested will first be reduced by the applicable RMD for the distribution calendar year.
  - b. Beneficiary(ies): In the absence of an affirmative election or instructions received in Good Order from the beneficiary (ies), the Plan Sponsor directs the Contractor to calculate the RMD amount in accordance with Code Section 401(a)(9) provided the Contractor has received in Good Order proper notification of the participant's death and complete beneficiary(ies) information (including the complete name and address of the beneficiary(ies)). In situations where the life expectancy rules are not available for the calculation of the RMD either because the Contractor has not received the requisite information by the date for issuing RMD payments or the beneficiary is not entitled to receive RMD under the life expectancy rules, the Plan Sponsor directs the Contractor to apply the five-year payout rule and force out a lump sum by December 31<sup>st</sup> of the fifth year following the year of the participant's death.

The Plan Sponsor acknowledges that the Contractor shall not be responsible for any tax penalties or excise taxes the Plan Sponsor, Plan participants, or beneficiaries may incur as a result of the Contractor's failure to calculate and distribute the RMD amount where the failure is due to the Plan Sponsor's, the Plan participant's or the beneficiaries' failure to provide the required information in a timely manner.

20. Ongoing facilitation of communications between the Contractor, the Plan Sponsor and the Plan participants based on mutually acceptable guidelines.

## **Appendix I to Schedule A:**

### **Default Enrollment Services**

If elected by the Plan Sponsor within the PSSF, this service allows the Plan Sponsor to adopt a default enrollment feature and to establish an electronic interface with the Contractor for acceptance of enrollment and contributions in the absence of a participant-initiated enrollment into the Plan.

Plan Sponsor acknowledges its responsibility for ensuring that a default enrollment complies with their state laws in regards to wage withholding. The payroll withholding laws of the Plan Sponsor's state should be reviewed prior to election of this service to determine if deductions without an employee's written consent is permitted.

#### **Plan Sponsor Responsibilities**

The Plan Sponsor will be responsible for providing the Contractor with timely and accurate census information at least 2 business days prior to the submission of each payroll contribution to the Contractor. The Plan Sponsor will provide the Contractor with the following census information for any participant not previously enrolled in the Plan:

- Social Security Number
- Name
- Address
- Date of Birth
- Date of Hire

This information will be provided to the Contractor in a mutually agreeable electronic format.

#### **Default Investment Arrangement -**

The Plan Sponsor understands that it has the fiduciary responsibility to choose the appropriate "default" investment option, and therefore, may choose from any of the investment options available under the Plan. The default investment option selected by the Plan Sponsor is reflected within the Investment Selection Section of the PSSF.

#### **Enrollment Material Requirements**

The Licensed Representative identified in the PSSF will provide enrollment materials to each participant following default enrollment into the Plan. The materials must include, but are not limited to the following: fact sheets for each of the available investment options, fund performance, participant disclosure booklet and information on how a participant can access their account to make account changes.

The Plan Sponsor will notify the Licensed Representative of those employees who must receive enrollment materials. It is understood and acknowledged by the Plan Sponsor and Contractor that the Licensed Representative is responsible for the distribution of enrollment materials to the employees identified as default enrolled into the Plan.

## Appendix II to Schedule A:

### Contribution Rate Services

#### **Contribution Rate Change Service:**

This service allows participants to make contribution rate changes via the Contractor's participant internet site or by speaking with a customer service representative of the Contractor. Please note it is your responsibility to notify the Contractor of terminated employees. Contribution rate changes in fractional percentages are supported after enrollment. This service supports the older worker catch-up contribution elections (if available under the Plan). No other types of catch-up or make-up contribution options available under the Plan are supported by the service.

Plan Sponsor acknowledges that it is responsible for ensuring that the Contribution Rate Change Service complies with their state laws in regards to wage withholding. The payroll withholding laws of the Plan Sponsor's state should be reviewed prior to implementation of this program to determine if deductions, and/or contribution rate changes, without an employee's written consent are permitted. The service includes increases, decreases, stops and restarts, either based on participant direction, or as directed by the Plan as a result of loans or unforeseeable emergency withdrawals.

#### **Participant Directed Contribution Rate Escalator Service**

This service allows participants to elect automatic increases in deferral rates via the Contractor's participant internet site or by speaking with a customer service representative of the Contractor. Participant will indicate the frequency and amount of the contribution rate increase. The Contractor will send a reminder to the participant 30 days prior to the automatic increase.

#### **Restrictions and Limitations:**

- This service is only available if the Plan Sponsor elects to utilize the Contractor's Contribution Rate Change Service.
- This service does not apply to catch-up contribution elections.
- If there is a conflict between a participant's Contribution Rate Escalator service and the contribution limits applicable to the Plan, the participant's contribution rate escalator election will be cancelled.
- The Participant's contribution rate escalator election will be cancelled if participant submits a contribution rate change election pursuant to the Contribution Rate Change Service above.



## Appendix III to Schedule A:

### Payroll Feedback File

#### **Payroll Feedback File**

The Contractor will provide a periodic payroll feedback file through an automated process. It is the responsibility of the Plan Sponsor to obtain the file through the Contractor's plan sponsor internet site and to update its payroll system based upon the data contained in the payroll feedback file in accordance with applicable Code requirements and regulations governing the effective date of deferral elections to the Plan.

The payroll feedback file is a .csv format file which can be uploaded to most payroll systems. As an alternative, a payroll feedback report in a .pdf format can be printed and used for manual entry into a payroll system.

#### **Reporting Frequency:**

The Contractor will provide the automated contribution rate reporting data on the frequency that best meets the needs of the Plan Sponsor.

#### **Notification of Report Availability:**

The Plan Sponsor's Payroll Contact identified in the PSSF will receive notification of when the payroll feedback file is available. It is understood and acknowledged by the Plan Sponsor and Contractor that the Payroll Contact designated by the Plan Sponsor is responsible for accessing the file when notified of its availability.

*In the event that the designated Payroll Contact is removed or replaced, the Plan Sponsor is responsible for notifying the Contractor immediately in writing.*

## Schedule B: Loan Program

Terms of Contractor's Loan Program ("Loan Program") to apply to any loan issued under the Plan will be pursuant to this Schedule B as supplemented by the Loan Provision elections made by the Plan Sponsor within the PSSF

- **Maximum Loan Amount** - the maximum amount of a loan made pursuant to this Loan Program shall be an amount which, when added to the outstanding balance of any other loans to the participant from the Plan and any other qualified plan of the Employer, does not exceed the lesser of:
  - (i) \$50,000 reduced by the excess (if any) of
    - a) the highest outstanding balance of loans from the Plan to the participant during the one year period ending on the day before the date on which such loan is made, less
    - b) the outstanding balance of loans from the Plan to the participant on the date on which such loan was made, or
  - (ii) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the participant under the Plan.
- For purposes of this limit, all plans of the Employer shall be considered one plan, to the extent required by Section 72 of the Internal Revenue Code, and the balance of all loans under any plan of the Employer under which the individual participates must be aggregated in determining the maximum loan available from the Plan. The Employer will be responsible for confirming the accuracy of the loan amount available for participant and has an outstanding loan balance with an Employer sponsored plan that is not administered by the Contractor.
- All assets under the participant's Account with the Contractor will be considered in determining the maximum loan amount available.
- Loan fee shall be deducted from the participant's total account balance before determining the maximum loan amount available.
- **Prepayment** - Prepayment of the full loan amount will be allowed at any time, without penalty. Partial loan prepayments are not permitted.
- **Investment of Loan Repayments** - Loan repayments will be allocated in accordance with the participant's current contribution investment allocation instructions on the date a loan repayment is received in good order.
- **Loan Default Restrictions** - If the participant defaults on any loan under the Plan, the participant shall not be allowed to initiate another loan of that type under the Plan until the defaulted amount is repaid.
- **Loan Fee** - The Contractor shall charge a one-time fee to the Participant at the time of loan for services rendered under this Loan Program, in the amount of \$100 per loan.
- **Fund Withdrawal Sequence** – money will be withdrawn from participant investment options on a pro-rata basis.
- **Loan Authorization** – The Contractor will be responsible for authorizing loan disbursements.
- **Loan Default Monitoring** – Where the Contractor is recordkeeping loans under the Plan, the Contractor will perform loan default monitoring as described herein. The loan default process will occur on the next to last business day of each month. This schedule allows us to effectively monitor and take action on loans that risk default. The Plan Sponsor agrees that the Plan document shall identify the Grace Period as the last business day of the calendar quarter following the calendar quarter in which the loan repayment was due. You also agree to have the Contractor actively monitor and alert participants of potential loan defaults and defaulted loans.

### Plan Sponsor Responsibilities:

- Ensure the Plan document and any applicable state/local law allows for loans to be administered in accordance with the terms of this Loan Program.
- The Plan Sponsor will inform the Contractor of the any change to the provisions of the Loan Program (and thus the criteria for approving loans under the Plan) as identified in this Schedule and the PSSF.
- Establish payroll deduction of loan repayment amount for each participant with an approved loan, unless the loan repayment method elected is ACH debit.

- If the loan repayment method elected is payroll deduction, the Plan Sponsor will remit loan repayment amounts via the payroll submission tool being utilized by the Plan Sponsor on behalf of each active participant with an approved loan. The data provided is to include the loan identifier and repayment amount.
- Notify the Contractor of any participant with an outstanding loan who begins a leave of absence, either bona fide (for a period of not more than one year) or due to uniformed service (military duty) and for whom suspension of loan repayments will apply. The data provided is to include the type of leave, the start date and the end date.

### **Contractor Responsibilities:**

- The Contractor will set the interest rate to apply to loans issued under the Plan. Such rate will be determined monthly for new loans. A loan will be processed using the rate in effect when the loan request package is sent to the participant. The loan request package and interest rate will be valid for a maximum of 30 days. The Contractor will reset the loan interest rate as indicated in the Loan Interest Rate section above. The rate will apply for the duration of the loan.
- Process loans from a participant's account in accordance with the terms of the Loan Program and the loan request package. The Contractor will rely on information provided by the Plan Sponsor or its designee to monitor regulatory limitations when issuing loans. The Contractor will not be responsible for any errors resulting from the failure of the Plan Sponsor or its designee to provide complete and accurate information.
- Deduct the loan amount from the participant's account based on the Money Source Withdrawal Sequence selected above, on a pro-rata basis across all current investment options within the participants account or such other method as agreed upon between Contractor and the participant.
- Generate reports, including a Loan Amortization Report, to be made available to the Plan Sponsor through a secure website.
- Furnish participants with quarterly account statements, reflecting loan activity since the prior statement date.
- Provide the Plan Sponsor with the loan repayment amount for each participant loan as determined by the level amortization calculation applicable to the amount of the loan, the repayment frequency, and selected repayment period. Loan repayment amounts will be provided through an automated periodic payroll feedback file as described in Appendix III to Schedule A.

Loans can be re-amortized only upon written direction from the Plan Sponsor and only if there has been a change in the borrower's payroll frequency or status. Outstanding loans cannot be refinanced.

- Upon notice from Plan Sponsor that a participant with an outstanding loan is on a qualifying leave of absence, loan repayments may be suspended for the maximum period permitted under IRS rules. Currently, IRS rules permit loan repayments to be suspended in the following circumstances:
  - A participant on a bona fide leave may suspend payments for up to one year if the pay received by the participant during this period is less than the amount of the installment payments required under the terms of the loan. However, the loan must still be repaid by the end of the loan term (i.e., the period of suspension will be less than one year if the loan was within one year of the final payment due date when the leave began).
  - A participant on a leave of absence due to performance of the uniformed services (as described under Internal Revenue Code Section 414(u)), may elect to suspend loan repayments for the period of uniformed service. In this situation, upon the participant's return from uniformed service, the loan repayment period will be extended by a period equal to the length of the uniformed service.
- The Contractor will monitor loan repayments and perform default processing if there is an outstanding balance after the scheduled loan maturity date or there is more than one scheduled loan repayment not received by the end of the Grace Period. Should this occur, the entire loan will be in default. Each month, we will generate a warning notification to any participant who has missed more than one loan repayment during the previous quarter or has an outstanding balance after the scheduled loan maturity date. The notification will describe the implications of missing a loan repayment and the date on which the loan will be defaulted unless a repayment is promptly received. At the same time, we will generate a series of loan reports as noted below to be made available to the Plan Sponsor through a secure website.
  1. Missed First Loan Payment Report – reflects loans with a first payment due during the current or previous month and have not had any loan payments applied.
  2. Delinquent Loans Report – reflects loans that had any missing payments during the current month.

3. Loans Past Maturity Report – reflects loans that had a loan payoff/maturity date during the current month but have an outstanding loan balance.
4. Deemed/Offset Loans Report – reflects loans that were deemed or offset due to not being paid by the grace period applicable to the Plan.

On the last business day of the calendar quarter we will default any loan in which the grace period expires that day. A confirmation statement will be sent to participants for whom a loan default is processed.

- Compute and withhold federal and state income taxes, as required by law, for loan defaults or withdrawals from the Plan in order to repay outstanding loan amounts in full, in accordance with the Internal Revenue Code and applicable guidance. The Contractor will forward, within the applicable time limit, the appropriate information return reflecting the amount of the defaulted loan disbursement and taxes withheld to the appropriate taxing authority and to the participant.

## Schedule C: Administrative Requirements

For purposes of this Schedule, all references to "participant" are intended to apply equally to all account holders under the Plan. This includes participants, beneficiaries and alternate payees.

1. Participant account statements and Plan Sponsor reports shall reflect accurate information with regard to contributions, allocations, earnings and withdrawals. Plan Sponsor agrees to review statements, IRS filings and other report or documents produced by the Contractor and to promptly identify in writing any errors or discrepancies. The Contractor agrees to correct any errors it is promptly notified of without charge. The Contractor will not have any additional liability for errors, unless due solely to its gross negligence.
2. Participant account statements include detail regarding all transactions since the prior statement date.
3. Under normal circumstances and unless otherwise authorized by the Plan Sponsor; participant quarterly statements shall be mailed within 15 days of the end of a calendar quarter. Where a participant has more than one Plan account subject to this Agreement, the account statement will reflect all Plan account balances, unless you direct the Contractor otherwise.
4. Information on payout options, including a notice which satisfies the requirements of Internal Revenue Code Section 402(f), will be made available to participants through the internet or a toll free telephone number. Additionally, upon a terminated participant's request, a licensed representative will provide to the participant education and assistance on the available payout options.
5. Contributions including loan repayments (if applicable) determined to be in Good Order on any day that the New York Stock Exchange is open (a "Business Day"), and prior to the close of the exchange, shall be applied to the appropriate account on that day's close of business of the New York Stock Exchange. Contributions received at any other time will be applied to the appropriate account on the next succeeding Business Day. Written confirmation of receipt and deposit will be provided to the Plan Sponsor or its designee by mail. The Contractor shall notify the Plan Sponsor or its designee by telephone within two business days of discovery of transactions received not in Good Order. If after 5 business days, transactions remain not in Good Order, the Contractor will require the Plan Sponsor to provide written consent for the Contractor to continue holding the amount of the contributions related to the not in Good Order transactions in a non-interest bearing suspense account. If after 14 business days, the transactions remain not in Good Order, the amount of the contributions received not in Good Order will be refunded to the Plan Sponsor.
6. The Plan Sponsor will be responsible for completion of the Plan's Form 5500 if the Plan is subject to ERISA and regulatory reporting. The Company will provide to the Plan Sponsor or the third party administrator you designate reports reflecting Plan data required for completion of Form 5500.
7. The Contractor will maintain appropriate records and documents for not less than six years from document creation. Upon reasonable prior notice, each party will make available to the other such records and documents relating to this Agreement as may be required for a Plan audit.

## Appendix I to Schedule C:

### Information Sharing Agreement applicable to 403(b) Plans

If this Agreement covers a 403(b) Plan, the Plan Sponsor acknowledges that the 403(b) Plan under which is funded by 403(b) annuity contract(s) and/or 403(b)(7) custodial accounts issued or administered by VRIAC ("the Voya Contracts", for purposes of this appendix) permits contract exchanges and that the Voya Contracts are available to receive both ongoing contributions and contract exchanges under the 403(b) Plan. Information sharing as described in this appendix applies to the Voya Contracts issued on behalf of a participant or beneficiary (pursuant to sections 1.403(b)-(2)(b) (3) and (12) of the Final Treasury Regulations) pursuant to an exchange from a prior issuer's 403(b) contract as described in section 1.403(b)-10(b) of the Treasury Regulations under the Plan Sponsor's 403(b) Plan.

- Plan Sponsor and VRIAC agree to share with each other the following information from time to time:
- Information necessary for the Voya Contracts, or any other contract to which contributions have been made by the Plan Sponsor under the 403(b) Plan on behalf of the participant or beneficiary, to satisfy section 403(b), including information concerning the participant's employment, if applicable, and information that takes into account the participant or beneficiary's other section 403(b) contracts or qualified employer plans (such as whether a severance from employment has occurred for purposes of the distributions restrictions in §1.403(b)-6 of the Final Treasury Regulations and whether the hardship withdrawal rules of §1.403(b)-6(d)(2) are satisfied).
- Information necessary for the Voya Contracts, or any other contract to which contributions have been made by the Plan Sponsor under the 403(b) Plan on behalf of the same individual, to satisfy other tax requirements (such as whether a plan loan satisfies the conditions in Internal Revenue Code section 72(p)(2) so that the loan is not a deemed distribution under section 72(p)(2)).
- Any other information required to comply with the applicable laws and regulations.
- The Plan Sponsor agrees to comply with the Final IRS 403(b) regulations which were generally effective January 1, 2009.
- The Plan Sponsor agrees to provide the Contractor with a list of all issuers approved to issue 403(b) contracts to participants or beneficiaries under the 403(b) Plan and the Contractor agrees to cooperate with respect to sharing information as described in this section. The Plan Sponsor agrees to identify VRIAC and/or Voya Institutional Trust Company as an approved Investment Provider and the Voya Contracts as available under the Plan to receive both ongoing contributions and contract exchanges in a written plan as required by the January 1, 2009 403(b) regulations or any extension of such date..
- The Plan Sponsor agrees to partner with the Contractor and other approved Providers and, and if applicable, any third party administrators to develop both procedures and agreements to share participant information, as required by the 403(b) regulations, including the information mentioned above, and any other information necessary to comply with the new 403(b) regulations.
- The Plan Sponsor agrees to establish a written plan that covers both required elements and any optional features and to amend the plan as may be necessary from time to time.
- The Plan Sponsor agrees to review any applicable state laws and local laws and collective bargaining agreements regarding any provisions about exchanges of participant 403(b) accounts.
- The Contractor agrees to request information regarding a prior 403(b) contract from the prior issuer at the time of an exchange into any Voya Contracts and provide information to any successor issuer in any subsequent exchange transaction out of any Voya Contracts.

In the absence of available information regarding all or any portion of a 403(b) contract, the Contractor shall rely on the rules described in §1.403(b)-6(d)(3) of the Final Treasury Regulations.

## Schedule D: Additional Plan Services & Fees

### Miscellaneous Plan Service Charges

- a. Express mailing of termination, withdrawal and loan checks & related paperwork to participant (on exception basis only).  
\$50.00 per occurrence, to be assessed against the participant's account. EFT and ACH Credit are free of charge.
- b. Wiring of termination, withdrawal and loan proceeds to participant.  
\$50.00 per occurrence, to be assessed against the participant's account. EFT and ACH Credit are free of charge.
- c. Stop payment.  
\$50.00 per occurrence, to be assessed against the participant's account.
- d. A loan initiation fee will apply to each Plan subject to this Agreement that permits loans. The Contractor shall charge a one-time fee to the participant at the time of loan for services rendered.  
\$100 per loan, to be assessed against the participant's account
- e. A self-directed brokerage account fee applicable to each Plan subject to this Agreement that has elected to use this optional service.  
\$50.00 annual fee per participant, to be assessed against the participant's account.
- f. If investment advisory services are selected, Morningstar Retirement Manager offers two unique services. Manage My Plan Manually, an online advice service, has no charge. Have Morningstar Manage My Plan, a managed account service, has variable charges based on Plan assets. Please refer to the Morningstar Retirement Manager agreement for charges specific to your Plan.
- g. If the Portfolio Blueprint® 3(21) or 3(38) program is selected, the pricing of the Voya product offered to your Plan is affected by several factors including the use of this program. As compensation, Morningstar Associates, the provider of the Portfolio Blueprint® program, may receive from the Contractor a fixed annual fee plus a variable fee based on Plan assets. Please refer to the Portfolio Blueprint Program Service Agreement for fees specific to your Plan and other important information.
- h. Other Charges. In addition to any other charges described herein, an additional charge will be incurred if we agree to provide other special services at your request. The charge will be based on our standard charge for such service or will be based on a formula for time spent to provide the service. You will be notified at the time of your request if an additional charge is applicable.

## Schedule E: Plan Investment Options

The Contractor agrees to provide Plan participants with a selection of investment options elected by the Plan Sponsor within the Investment Selection Section of the PSSF. The Plan Sponsor acknowledges that it has chosen these investment options to be made available to participants under the Plan. The Plan Sponsor acknowledges receipt and has reviewed the prospectuses for each identified investment option.

### **Stability of Principal Disclosure**

For the RetireFlex product, the Stability of Principal option, the Voya Fixed Account – 457/401 II, is not a variable investment option, but is a fixed interest option offered through a group annuity contract issued by VRIAC. Guarantees are based on the claims paying ability of VRIAC. VRIAC will notify the Plan Sponsor of the calendar year minimum rate(s) through the December 31st Fund Performance report (the rates will be shown in the Additional Notes section following the performance tables). This report will be available in the first few days of January through the Sponsor Website in the Investment Information section. The actual credited interest rate will be the greater of the declared interest rate, the calendar year floor rate in effect and the minimum guaranteed interest rate set forth in the group annuity contract.

### **Stability of Principal Restrictions**

For the Retirement Choice II product, upon your election to terminate this Agreement, the Plan assets invested in the Fixed Plus III investment option on the effective date of the termination will be subject to “extended payout provision” rules.

### **Additional Information**

For additional information on the Stability of Principal investment option available to the Plan, including all withdrawal rules and restrictions, please refer to the product disclosure booklet included within the Welcome Package provided by VRIAC, or to the group annuity contract.

*Plan Sponsor should consider the investment objectives, risks, and charges and expenses of the investment options carefully before choosing to make these options available to participants under the Plan. Fund prospectuses containing this and other information can be obtained by contacting your local representative. Please read the information carefully before signing this Agreement. You may also visit our website at [www.voyaretirementplans.com/sponsor](http://www.voyaretirementplans.com/sponsor) to view your Plan information on-line.*



## Schedule F: Investment Provider Minimum Standards Disclosure Statement

The following items summarize the minimum administrative requirements required in order for the Contractor to transact with an investment provider on the Plan's behalf:

1. Pricing Deadlines: The investment provider must furnish the Contractor with confirmed net asset value information as of the close of trading (generally 4:00 p.m., Eastern Time) on the New York Stock Exchange ("Close of Trading") on each business day that the New York Stock Exchange is open for business ("Business Day") or at such other time as the net asset value of the fund is calculated as disclosed in the relevant then current prospectus(es) in a format that includes (i) the fund's name and the change from the last calculated net asset value, (ii) dividend and capital gains information as it arises, and (iii) in the case of a fixed income fund, the daily accrual or the distribution rate factor. Such information shall be provided to the Contractor by 6:30 p.m. Eastern Time. "Net" means after all management, service and administrative expenses are deducted.
2. Pricing Error Reimbursements: The investment provider shall agree to hold the Plan harmless for any amounts erroneously credited to participant accounts due to (i) an incorrect calculation of the fund's daily net asset value ("NAV"), dividend rate, or capital gains distribution rate or (ii) incorrect or late reporting of the daily net asset value, dividend rate, or capital gains distribution rate of a fund, by reimbursing the Contractor, on the Plan's behalf. In addition, the fund shall be liable to the Contractor for systems and out of pocket costs incurred by the Contractor in making the Plan's or the participant's account whole, if such costs or expenses are a result of the fund's failure to provide timely or correct net asset values, dividend and capital gains or financial information and if such information is not corrected by 4:00 p.m. Eastern Time of the next Business Day after releasing such incorrect information provided the incorrect NAV as well as the correct NAV for each day that the error occurred is provided. If a mistake is caused in supplying such information, which results in a reconciliation with incorrect information, the amount required to make a Plan's or a Participant's account whole shall be borne by the investment provider providing the incorrect information, regardless of when the error is corrected.
3. Sales Literature: The investment provider will provide to the Contractor at least one complete copy of all prospectuses, statements of additional information, annual and semiannual reports and proxy statements, other related documents, and all amendments or supplements to any of the above documents that relate to the fund promptly after the filing of such document with the SEC or other regulatory authorities. The investment provider agrees to provide to the Contractor, in electronic format, performance updates and portfolio updates for the fund within 10 business days after the end of each calendar quarter.
4. Advertising: Advertising and literature with respect to the fund prepared by the Contractor for use in marketing shares of the fund to the Plan shall be submitted to the investment provider for review and approval before such material is used with the Plan. The investment provider shall advise the Contractor in writing within three (3) Business Days of receipt of such materials of its approval or disapproval of such materials.
5. Expense Reimbursement: The investment provider shall make available for reimbursement certain out-of-pocket expenses the Contractor incurs in connection with providing shareholder services to the Plan. These expenses include actual postage paid by the Contractor in connection with mailing updated prospectuses, supplements and financial reports to participants, and all costs incurred by the Contractor associated with proxies for the fund, including proxy preparation, group authorization letters, programming for tabulation and necessary materials (including postage).
6. Excessive Trading: The investment provider shall use its best efforts and shall reasonably cooperate with the Contractor to generally prevent any market timing and frequent trading activity under the Plan. See the Contractor's "Excessive Trading" Policy, Schedule G.

## Schedule G: Voya Financial® “Excessive Trading” Policy

The Voya Financial® family of insurance companies (“Voya®”), as providers of multi-fund variable insurance and retirement products, has adopted this Excessive Trading Policy to respond to the demands of the various fund families which make their funds available through our variable insurance and retirement products to restrict excessive fund trading activity and to ensure compliance with Section 22c-2 of the Investment Company Act of 1940, as amended. Voya’s current definition of Excessive Trading and our policy with respect to such trading activity is as follows.

1. Voya actively monitors fund transfer and reallocation activity within its variable insurance and retirement products to identify Excessive Trading.

**Voya currently defines Excessive Trading as:**

- a. More than one purchase and sale of the same fund (including money market funds) within a 60 calendar day period (hereinafter, a purchase and sale of the same fund is referred to as a “round-trip”). This means two or more round-trips involving the same fund within a 60 calendar day period would meet Voya’s definition of Excessive Trading; or
- b. Six round-trips within a 12 month period.

**The following transactions are excluded when determining whether trading activity is excessive:**

- a. Purchases or sales of shares related to non-fund transfers (for example, new purchase payments, withdrawals and loans);
  - b. Transfers associated with scheduled dollar cost averaging, scheduled rebalancing or scheduled asset allocation programs;
  - c. Purchases and sales of fund shares in the amount of \$5,000 or less;
  - d. Purchases and sales of funds that affirmatively permit short-term trading in their fund shares, and movement between such funds and a money market fund; and
  - e. Transactions initiated by a member of the Voya family of insurance companies.
2. If Voya determines that an individual has made a purchase of a fund within 60 days of a prior round-trip involving the same fund, Voya will send them a letter warning that another sale of that same fund within 60 days of the beginning of the prior round-trip will be deemed to be Excessive Trading and result in a six month suspension of their ability to initiate fund transfers or reallocations through the Internet, facsimile, Voice Response Unit (VRU), telephone calls to Customer Service, or other electronic trading medium that Voya may make available from time to time (“Electronic Trading Privileges”). Likewise, if Voya determines that an individual has made five round-trips within a 12 month period, Voya will send them a letter warning that another purchase and sale of that same fund within 12 months of the initial purchase in the first round-trip in the prior twelve month period will be deemed to be Excessive Trading and result in a six month suspension of their Electronic Trading Privileges. According to the needs of the various business units, a copy of the warning letters may also be sent, as applicable, to the person(s) or entity authorized to initiate fund transfers or reallocations, the agent/registered representative or investment adviser for that individual. A copy of the warning letters and details of the individual’s trading activity may also be sent to the fund whose shares were involved in the trading activity.
  3. If Voya determines that an individual has used one or more of its products to engage in Excessive Trading, Voya will send a second letter to the individual. This letter will state that the individual’s Electronic Trading Privileges have been suspended for a period of six months. Consequently, all fund transfers or reallocations, not just those which involve the fund whose shares were involved in the Excessive Trading activity, will then have to be initiated by providing written instructions to Voya via regular U.S. mail. During the six month suspension period, electronic “inquiry only” privileges will be permitted where and when possible. A copy of the letter restricting future transfer and reallocation activity to regular U.S. mail and details of the individual’s trading activity may also be sent to the fund whose shares were involved in the Excessive Trading activity.
  4. Following the six month suspension period during which no additional Excessive Trading is identified, Electronic Trading Privileges may again be restored. Voya will continue to monitor the fund transfer and reallocation activity, and any future Excessive Trading will result in an indefinite suspension of the Electronic Trading Privileges. Excessive Trading activity during the six month suspension period will also result in an indefinite suspension of the Electronic Trading Privileges.
  5. Voya reserves the right to limit fund trading or reallocation privileges with respect to any individual, with or without prior notice, if Voya determines that the individual’s trading activity is disruptive, regardless of whether the individual’s trading activity falls within the definition of Excessive Trading set forth above. Also, Voya’s failure to send or an individual’s failure to receive any warning letter or other notice contemplated under this Policy will not prevent Voya from suspending that individual’s Electronic Trading Privileges or taking any other action provided for in this Policy.
  6. Each fund available through Voya’s variable insurance and retirement products, either by prospectus or stated policy, has adopted or may adopt its own excessive/frequent trading policy. Voya reserves the right, without prior notice, to implement restrictions and/or block future purchases of a fund by an individual who the fund has identified as violating its excessive/frequent trading policy. All such restrictions and/or blocking of future fund purchases will be done in accordance with the directions Voya receives from the fund.

## Schedule H: General Compensation Provisions

1. Direct and Indirect Compensation:

This Schedule describes compensation received by the Contractor for services rendered to the Plan and Plan participants, including fees and revenue derived from both direct and indirect sources.

*Direct Compensation* includes compensation paid directly by Plan Sponsor or the Plan to the Contractor for plan recordkeeping and administrative services including certain transaction fees that are charged directly to participant accounts.

*Indirect Compensation* includes compensation from sources other than direct fees that the Contractor may collect from third parties, including revenue derived from service arrangements with mutual funds, revenue sharing and other indirect compensation that may be generated in servicing the Plan.

2. Assumptions:

As provided in Section 1 of the Agreement, the Contractor has agreed to perform certain services. Based on the assumptions outlined in the Agreement and PSSF, the Contractor agrees to supply the Services for the compensation specified in Section 3.01 of the Agreement, as supplemented by any additional compensation or transaction fees as specified within Schedule D and with respect to Investment Advisory Services and/or Self Directed Brokerage Account, if available and as specified in a separately executed agreement(s).

3. Fund Specific Revenue:

Indirect compensation received by the Contractor represents revenue from investment companies based on the investment of assets held in the Plan pursuant to agreements between the applicable investment companies and the Contractor. They represent fees payable from such investment companies for shareholder services, sub-transfer agency services, or pursuant to a 12b-1 plan adopted by such investment companies.

In the case of investment options of VRIAC affiliates or former affiliates, Contractor compensation represents revenue assumptions made by the Contractor's defined contribution business for purposes of product pricing. Gross revenues from such investment options generally include payments for investment management and for certain administrative services. Pricing assumptions are derived from gross fund revenues, less the internally transferred costs of fund management and administration. The pricing assumptions for certain investment options of VRIAC affiliates or former affiliates reflect the approximate weighted average of the net fund revenues of each portfolio within a given VRIAC fund complex.

In the case of the fixed income fund, the Contractor does not derive revenue at a fixed rate. As is the case with similar insurance company general account investment options, over the long-term we expect to earn a spread between the investment return on the underlying general account assets and amounts credited to contracts that utilize the Fixed Account. This spread is intended to cover our investment related expenses, a portion of product administration expenses that would otherwise be covered by explicit charges, and the risks associated with the minimum monthly, annual (if applicable), and lifetime interest rate guarantees, including those associated with asset defaults, as well as to provide a profit margin for the Contractor.

4. Changes in Investment Options:

To the extent the Contractor's compensation is derived in whole or in part from revenue from the Plan Sponsor's selection of certain investment products offered by or through the Contractor, the Contractor reserves the right to amend the Agreement, including this Schedule, in the event such revenue is reduced by a change in the investment products or options available under the Plan.

## Schedule I: VRIAC's Policy for Correction of Inadvertent Processing Errors

As your Plan's administrative service provider, Voya Retirement Insurance and Annuity Company ("VRIAC") has agreed to process transaction orders received in good order prior to market close from the plan and plan participants accurately and on a timely basis. We seek to avoid transaction processing errors to the greatest extent possible, but inadvertent errors do occur from time to time. Inadvertent processing errors are exclusively defined as incorrect or untimely processing by VRIAC employees of transactions that are received in good order. Inadvertent processing errors do not include errors made by plan sponsors or third parties.

VRIAC will correct any identified inadvertent processing error caused by VRIAC (a "VRIAC inadvertent processing error") as soon as practicable, typically no later than five (5) business days after VRIAC has identified sufficient information to correct the error. VRIAC represents that in no event will VRIAC exercise discretionary authority or control over the correction of inadvertent processing errors in order to maximize gain or correct such error for VRIAC's own benefit or interest.

Once a VRIAC inadvertent processing error has been identified, we promptly take corrective action to put the plan and its participants in a position financially equivalent to the position they would have been in if the processing error had not occurred. This means that VRIAC will make the plan whole for any loss to a plan resulting from correcting a VRIAC processing error. If any gain to a plan results in connection with a corrected transaction, VRIAC will keep that gain. The following examples illustrate the effect of the policy:

- When a plan participant directs that a certain dollar amount be contributed to his or her plan account, VRIAC credits the number of investment units that dollar amount will purchase to the participant's account on Day 1, the day the contribution is processed.

The number of units is based on the unit's dollar value on Day 1, as set by the investment fund and communicated to VRIAC after market close. If an inadvertent error occurs, and VRIAC does not process the contribution until Day 2, VRIAC will determine the number of units that should have been credited on Day 1, using Day 1's unit price. If, on Day 2, the unit price has gone up, the dollar amount of the contribution will not be enough to cover the number of units the participant should have received. VRIAC will make up the difference such that the participant receives the number of units he or she would have received on Day 1 and VRIAC will absorb the loss. The participant is not charged for any additional cost.

However, if, on Day 2, the unit price has gone down, the amount of the contribution would purchase more units on Day 2 than it would have purchased on Day 1. In that circumstance, the participant will receive the number of units he or she would have received on Day 1 had the transaction been processed and VRIAC will keep the excess as part of its overall fee for services under the contract.

Regardless of whether there is a gain or a loss, the participant receives the benefit of what he or she requested.

- When a plan participant makes a withdrawal request of a certain dollar amount from his or her account, VRIAC liquidates or sells the number of investment units needed in order to make the distribution. Thus, on Day 1, VRIAC typically would sell or liquidate investment units in the participant's investment fund at Day 1's price to make the distribution. If, due to a VRIAC inadvertent processing Error, VRIAC processes the instructions a day late, VRIAC will make sure that the participant receives the dollar amount he/she requested. VRIAC will sell or liquidate the same number of units that would have been sold on Day 1 had the transaction been accomplished on Day 1. If the unit price has declined, liquidated units will have a lower value on Day 2 than they had on Day 1, which means that VRIAC must make up the difference so that the participant receives the requested amount in full. In doing so, VRIAC will incur a loss, which it absorbs. On the other hand, if the market has gone up and the units have increased in value, VRIAC will sell the same number of units as it would have sold on Day 1, but the sales amount will be higher than the requested withdrawal. VRIAC will keep the excess as part of its overall fee. In either circumstance, the participant receives the benefit of what he or she requested and bears no additional cost.

VRIAC tracks the net financial experience of VRIAC's Correction Account and the effect of the corrections for each affected plan on an annual basis and will make that information available in accordance with ERISA Section 408(b)(2). Any gains kept by VRIAC constitutes additional compensation for the services provided by VRIAC under its contract and VRIAC will report it in accordance with ERISA Section 408(b)(2).

By executing an administrative services agreement with VRIAC, you are authorizing VRIAC's application of the error correction policy as described above to your Plan in connection with the plan administrative services that VRIAC will provide. You have the right to terminate VRIAC's services in accordance with the terms of the administrative services agreement.

## Schedule J: Advisor Compensation Payment Instructions

The Plan Sponsor may direct the Contractor to pay the Registered Investment Advisor or Investment Advisory Representative (collectively, the "Advisor") as instructed within the Commission and Fee Schedule section of the PSSF.

The Plan Sponsor is required to provide the Contractor with written direction as to the payee and method of payment of the Advisor Compensation on an administrative form provided by the Contractor. If the sum of payments during the calendar year is less than the annual Advisor Compensation specified in the Commission and Fee Schedule section of the PSSF, any Advisor compensation that remains unused at the end of the calendar year will be allocated to Plan participants who have a balance in the Plan as of the date of allocation, using a pro rata methodology, unless the Plan Sponsor provides the Contractor with alternative allocation instructions. Such allocation shall be completed no later than March 31<sup>st</sup> of the year following the generation of unpaid compensation.

The Plan Sponsor represents that (i) the compensation is necessary for the operation of the Plan, (ii) the compensation is prudent and for a reasonable amount; and (iii) the payment of such compensation is not prohibited under the terms of the Plan or ERISA, if applicable.

In the Plan Sponsor's capacity as a fiduciary under the Plan, Plan Sponsor understands that only certain types of expenses may be paid on behalf of the Plan. Plan Sponsor understands that the Contractor is not responsible nor does it have the authority to determine whether the compensation paid from the Contractor to the Advisor on behalf of the Plan is a direct, necessary and reasonable plan expense and is acting solely on the direction of the Plan Sponsor. Plan Sponsor further understands that the Contractor will continue to make payments according to the directions provided in the Commission and Fee Schedule section of the PSSF and this Schedule J until revised instructions are provided to the Contractor in writing by an authorized representative of the Plan.



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed Adoption of the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees and approval of Adoption Agreement and Summary of Plan Provisions

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

The Authority requests your Board adopt the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees and approve the Adoption Agreement and Summary of Plan Provisions. This 401(a) deferred compensation plan (also known as a money purchase plan) will be utilized as the investment vehicle for employer matching-contributions for all Directors, Managers, Mid-level Managers and Confidential employees hired on or after November 24, 2018.

Following is a brief overview of the plan:

Newly hired management, mid-management and confidential employees will be eligible to enroll in a deferred compensation retirement plan. The Authority will utilize the County's existing 457(b) deferred compensation plan for employee contributions, with a new 401(a) deferred compensation plan used as the investment vehicle for employer-matching contributions.

Using a dual-plan system allows for the significantly higher IRS maximum annual contribution of \$55,000 (\$56,000 effective 1/1/19), as opposed to \$18,500 (\$19,000 effective 1/1/19) if all contributions were invested in the 457(b) plan alone. An employee's initial hire date is the initial opportunity to enroll in the plans. Employees are eligible to participate the first day of the biweekly payroll period coincident with or next following the day, they complete one biweekly payroll period of continuous service. There is a five-year vesting schedule for employer contributions in the 401(a) plan. Investment options in the 401(a) plan will closely mirror those currently available through the 457(b) plan. The Authority will match 100% of employee contributions for the first 6% deferred, then 50% of employee contributions for the next 6%, for a total potential employer contribution of 9% for employees who defer 12%. Employer contribution includes a five (5) year vesting at 20% each year. The plan includes a provision for immediate full vesting upon permanent disability of a participant.

Therefore, it is recommended that your Board adopt the resolution for the Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees and approve of the Adoption Agreement and Summary of Plan Provisions.

**FIS Business Systems LLC  
Governmental Defined Contribution Volume Submitter Plan**

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**ARTICLE I  
DEFINITIONS**

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

- 1.1 "Account"** means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:
- (a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from Employer contributions. In addition, Forfeitures are part of the Combined Account to the extent they are reallocated.
  - (b) "Mandatory Contribution Account" means the account established hereunder to which mandatory Employee contributions made pursuant to Section 4.8 are allocated, to the extent such contributions are not picked-up by the Employer pursuant to Code §414(h). A Participant's Mandatory Contribution Account shall be fully Vested at all times.
  - (c) "Rollover Account" means the account established hereunder to which amounts transferred from a qualified plan or individual retirement account in accordance with Section 4.6 are allocated.
  - (d) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.
  - (e) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.9 are allocated.
- 1.2 "Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.
- 1.3 "Adoption Agreement"** means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan and Trust as specified by the Employer.
- 1.4 "Affiliated Employer"** means any entity required to be aggregated with the Employer pursuant to Code §414.
- 1.5 "Alternate Payee"** means an alternate payee pursuant to a qualified domestic relations order that meets the requirements of Code §414(p).
- 1.6 "Anniversary Date"** means the last day of the Plan Year.
- 1.7 "Annuity Starting Date"** means, with respect to any Participant, the first day of the first period for which an amount is paid 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 entitles the Participant to such benefit.
- 1.8 "Beneficiary"** means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is payable, subject to the restrictions of Sections 6.2 and 6.6.
- 1.9 "Code"** means the Internal Revenue Code of 1986, as it may be amended from time to time.
- 1.10 "Compensation"** means, with respect to any Participant, the amount determined in accordance with the following provisions, except as otherwise provided in the Adoption Agreement.
- (a) **Base definition.** One of the following, as elected in the Adoption Agreement:
    - (1) Information required to be reported under Code §§6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§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)).
    - (2) Code §3401(a) Wages. Compensation means an Employee's wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

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(3) 415 safe harbor compensation. Compensation means wages, salaries, for Plan Years beginning after December 31, 2008, Military Differential Pay, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c))), and excluding the following:

- (i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;
- (ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (iv) Other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary deferral agreement) towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

(b) **Paid during "determination period."** Compensation shall include only that Compensation which is actually paid to the Participant during the "determination period". Except as otherwise provided in this Plan, the "determination period" is the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the "determination period" shall be the Plan Year.

(c) **Inclusion of deferrals.** Notwithstanding the above, unless otherwise elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

- (1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) and 403(b). If specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.
- (2) Compensation deferred under an eligible deferred compensation plan within the meaning of Code §457(b).
- (3) Employee contributions described in Code §414(h)(2) that are picked-up by the employing unit and thus are treated as Employer contributions.

(d) **Post-severance compensation – Code §415 Regulations.** The Administrator shall adjust Compensation, for Plan Years beginning on or after July 1, 2007 (or such other date as the Employer specifies in the Compensation Section of the Adoption Agreement), for amounts that would otherwise be included in the definition of Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

- (1) **Regular pay.** Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of Compensation) if:
  - (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
  - (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

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(2) **Leave cash-outs.** Compensation shall include leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** Compensation shall include deferred compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled.

(e) **Dollar limitation.** Compensation in excess of \$200,000 shall be disregarded for all. Such amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any "determination period" beginning with or within such calendar year. If a "determination period" consists of fewer than twelve (12) months, the \$200,000 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the "determination period," and the denominator of which is twelve (12). In applying any Plan limitation on the amount of matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

In the case of an "eligible Participant," the dollar limitation under Code §401(a)(17) shall not apply to the extent the amount under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this provision, an "eligible Participant" is an individual who first became a Participant before the first Plan Year beginning after the earlier of (i) the Plan Year in which the Plan was amended to reflect Code §401(a)(17), or (ii) December 31, 1995.

(f) **Non-eligible Employee.** If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a "determination period" shall only include Compensation while the Employee is an Eligible Employee.

(g) **Amendment.** If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

**1.11 "Contract" or "Policy"** means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

**1.12 "Custodian"** means a person or entity that has custody of all or any portion of the Plan assets.

**1.13 "Directed Trustee"** means a Trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed Investment Manager, or Plan Participant. To the extent the Trustee is a Directed Trustee, the Trustee does not have any discretionary authority with respect to the investment of Plan assets. In addition, the Trustee is not responsible for the propriety of any directed investment made pursuant to this Section and shall not be required to consult or advise the Employer regarding the investment quality of any directed investment held under the Plan.

**1.14 "Discretionary Trustee"** means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets.

**1.15 "Early Retirement Date"** means the date specified in the Adoption Agreement on which a Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.

A Participant who severs from employment after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan

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(other than any accelerated vesting and allocations of Employer contributions) as though the requirements for Early Retirement Age had been satisfied.

**1.16 "Effective Date"** means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date. If any provision of this Plan is retroactively effective, the provisions of this Plan generally control. However, if the provision of this Plan is different from the provision of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, then the provision of such prior plan is incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the effective date of the plan merger(s).

**1.17 "Eligible Employee"** means any Eligible Employee as elected in the Adoption Agreement and as provided herein. An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out-sourced workers, are not Eligible Employees and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. Furthermore, Employees of an Affiliated Employer will not be treated as Eligible Employees prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement, unless the agreement provides for coverage in the Plan (see Section 4.1(d)). For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service in each respective category are treated separately.

If, in the Adoption Agreement, the Employer elects to exclude nonresident aliens, then Employees who are nonresident aliens (within the meaning of Code §7701(b)(1)(B)) who received no earned income (within the meaning of Code §911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code §861(a)(3)) shall not be eligible to participate in this Plan. In addition, this paragraph shall also apply to exclude from participation in the Plan an Employee who is a nonresident alien (within the meaning of Code §7701(b)(1)(B)) but who receives earned income (within the meaning of Code §911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code §861(a)(3)), if all of the Employee's earned income from the Employer from sources within the United States is exempt from United States income tax under an applicable income tax convention. The preceding sentence will apply only if all Employees described in the preceding sentence are excluded from the Plan.

If, in the Adoption Agreement, the Employer elects to exclude Part-Time/Temporary/Seasonal Employees, then notwithstanding any such exclusion, if any such excluded Employee actually completes or completed a Year of Service, then such Employee will cease to be within this particular excluded class.

**1.18 "Employee"** means any person who is employed by the Employer. The term "Employee" shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code §414(n) or (o).

**1.19 "Employer"** means the governmental entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan. This plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government, and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

**1.20 "Fiscal Year"** means the Employer's accounting year.

**1.21 "Forfeiture"** means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan.

A Forfeiture will occur on the earlier of:

- (a) The last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service, or
- (b) The distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to

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have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For this purpose, a Participant's Vested benefit shall not include: (i) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B), and (ii) the Participant's Rollover Account.

Regardless of the preceding, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Participant is not eligible to share in the allocation of Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

**1.22 "Former Employee"** means an individual who has severed employment with the Employer or an Affiliated Employer.

**1.23 "415 Compensation"** means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Code §3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation (and as defined in Subsections 1.18(a)(1)-3 respectively). 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code §§402(e)(3), 402(k) and 402(h)(1)(B)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457, and 132(f)(4). In addition, for years beginning after December 31, 2008 Military Differential Pay is treated as 415 Compensation.

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) **Post-severance compensation.** The Administrator shall adjust 415 Compensation, for Limitation Years beginning on or after July 1, 2007, or such earlier date as the Employer specifies in the Compensation Section of the Adoption Agreement, for amounts that would otherwise be included in the definition of 415 Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** 415 Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of 415 Compensation) if:

(i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** 415 Compensation shall include leave cash-outs if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** 415 Compensation shall include deferred compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** 415 Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** 415 Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable

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period, or the Participant was not a highly compensated employee (within the meaning of Code §414(q)) immediately before becoming disabled.

(c) **Inclusion of certain nonqualified deferred compensation amounts.** If this is a PPA restatement and prior to the restatement Compensation included all items includible in compensation under Regulation §1.415(c)-2(b) (Regulation §1.415-2(d)(2) under the Regulations in effect for Limitation Years beginning prior to July 1, 2007) then 415 Compensation for Limitation Years prior to the adoption of this restatement shall include amounts that are includible in the gross income of a Participant under the rules of Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. For Plan Years beginning on and after the Plan Year in which this restatement is adopted, the Plan does not provide for a definition of 415 Compensation including all items in Regulation §1.415(c)-2(b).

(d) **Back pay.** Back pay, within the meaning of Regulations §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(e) **Dollar limitation.** 415 Compensation will be limited to the same dollar limitations set forth in Section 1.10(e) adjusted in such manner as permitted under Code §415(d).

(f) **Amendment.** Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

**1.24 "Hour of Service"** means (a) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (b) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period; (c) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (a) or (b), as the case may be, and under (c).

Notwithstanding (b) above, (1) no more than 501 Hours of Service will be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (2) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (b) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code §414(n) or 414(o) and the Regulations thereunder.

Hours of Service will be determined using the actual hours method unless one of the methods below is elected in the Adoption Agreement. If the **actual hours** method is used to determine Hours of Service, an Employee is credited with the actual Hours of Service the Employee completes with the Employer or the number of Hours of Service for which the Employee is paid (or entitled to payment).

If the **days worked** method is elected, an Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

If the **weeks worked** method is elected, an Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

If the **semi-monthly payroll periods worked** method is elected, an Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.

If the **months worked** method is elected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.



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If the **bi-weekly payroll periods worked** method is elected, an Employee will be credited with ninety (90) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the bi-weekly payroll period.

**1.25 "Insurer"** means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

**1.26 "Investment Manager"** means a person or entity which renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or property of the Plan and which is appointed in accordance with Section 2.1(b).

**1.27 "Late Retirement Date"** means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant's actual retirement after having reached the Normal Retirement Date.

**1.28 "Leased Employee"** means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated workforce.

**1.29 "Limitation Year"** means the "determination period" used to determine Compensation. However, the Employer may elect a different Limitation Year in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption Agreement. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new "Limitation Year" must begin on a date within the "Limitation Year" in which the amendment is made. For Limitation Years beginning on and after July 1, 2007, the Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

**1.30 "Military Differential Pay"** means, for any Plan or Limitation Year beginning after June 30, 2007, any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of Compensation that was paid to the individual while working for the Employer. Notwithstanding the preceding sentence, for Compensation "determination periods" beginning after December 31, 2008, an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an Employee of the Employer making the payment.

**1.31 "Nonelective Contribution"** means the Employer's contributions to the Plan.

**1.32 "Normal Retirement Age"** means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if the Participant is employed by the Employer on or after that date). For money purchase pension plans, if the employer enforces a mandatory retirement age, then the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

**1.33 "Normal Retirement Date"** means the date elected in the Adoption Agreement.

**1.34 "1-Year Break in Service"** means, if the Hour of Service method is used, the applicable computation period that is used to determine a Year of Service during which an Employee or Former Employee has not completed more than 500 Hours of Service. However, if the Employer selected, in the Service Crediting Method Section of the Adoption Agreement, to define a Year of Service as less than 1,000 Hours of Service, then the 500 Hours of Service in this definition of 1-Year Break in Service shall be proportionately reduced. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

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"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the elapsed time method is elected in the Service Crediting Method Section of the Adoption Agreement, then a "1-Year Break in Service" means a twelve (12) consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or Former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

**1.35 "Participant"** means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the individual has an Account balance in the Plan).

**1.36 "Participant Directed Account"** means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

**1.37 "Participant Direction Procedures"** means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

**1.38 "Participating Employer"** means an Employer which, with the consent of the "lead Employer" adopts the Plan pursuant to Section 10.1 or Article XI. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

**1.39 "Period of Service"** means the aggregate of all periods of service commencing with an Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance, or for benefit accrual purposes, ending on the severance from service date. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit by treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For purposes of benefit accrual, a Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, expressed in the number of whole years represented by such sum. For this purpose, fractional periods of a year will be expressed in terms of days.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service method to the elapsed time method, an Employee will receive credit for a Period of Service consisting of:

- (a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and
- (b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

**1.40 "Period of Severance"** means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for "maternity or paternity" reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for "maternity or paternity" reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the

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adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

**1.41 "Plan"** means this instrument (hereinafter referred to as FIS Business Systems LLC Governmental Defined Contribution Plan Basic Plan Document #09) and the Adoption Agreement as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

**1.42 "Plan Year"** means the Plan's accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

**1.43 "Qualified Convertible Hours"** means the amount of sick and vacation pay plan hours eligible to be converted into Employer contributions.

**1.44 "Regulation"** means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

**1.45 "Retirement Date"** means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant's Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

**1.46 "Short Plan Year"** means, if specified in the Adoption Agreement or as the result of an amendment, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the elapsed time method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year.

**1.47 "Spouse"** means, a spouse as determined under federal tax law. In addition, with respect to benefits or rights not mandated by law, Spouse also includes a spouse as elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

**1.48 "Terminated Participant"** means a person who has been a Participant, but whose employment has been terminated with the Employer (including an Affiliated Employer) or applicable Participating Employer, other than by death, Total and Permanent Disability or retirement.

**1.49 "Total and Permanent Disability"** means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

**1.50 "Trustee"** means any person or entity that is named in the Adoption Agreement or has otherwise agreed to serve as Trustee, or any successors thereto. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured.

**1.51 "Trust Fund"** means, if the Plan is funded with a trust, the assets of the Plan and Trust as the same shall exist from time to time.

**1.52 "Valuation Date"** means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, for purposes of the determination and allocation of earnings and losses, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants' Accounts during the Plan Year, which may include any day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, or any stock exchange used by such agent, are open for business.

**1.53 "Vested"** means the nonforfeitable portion of any Account maintained on behalf of a Participant.

**1.54 "Year of Service"** means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a different number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). Unless otherwise elected in the Service Crediting Method Section of the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the

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anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) (or more) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) (or more) Years of Service for eligibility purposes upon completing two (2) or more consecutive Years of Service without an intervening 1-Year Break in Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Service Crediting Method Section of the Adoption Agreement. If no election is made in the Service Crediting Method Section of the Adoption Agreement, then the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other employer shall be recognized as elected in the Adoption Agreement.

In the event the method of crediting service is amended from the elapsed time method to the Hour of Service method, an Employee will receive credit for Years of Service equal to:

- (a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and
- (b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method, if any, elected in the Adoption Agreement) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

## ARTICLE II ADMINISTRATION

### 2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee (or Insurer) and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove one or more Trustees (or Insurers) and Administrators from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Appointment of Investment Manager.** The Employer may appoint, at its option, one or more Investment Managers, investment advisers, or other agents to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

### 2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

### 2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. If no such delegation is made by the Employer, then the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee (or Insurer) in writing of such action and specify the responsibilities of each Administrator. The Trustee (or Insurer) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee (or Insurer) a written revocation of such designation.

### 2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code §401(a). The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct agents of the Plan respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct the Trustee (or Insurer) with respect to all discretionary or otherwise directed disbursements from the Trust Fund;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;
- (g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;
- (h) to compute and certify to the Employer and to the Trustee (or Insurer) from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and agents of the Plan regarding the short and long-term liquidity needs of the Plan;
- (j) to assist Participants regarding their rights, benefits, or elections available under the Plan; and
- (k) to determine the validity of, and take appropriate action with respect to, any "qualified domestic relations order" received by it.

### 2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by applicable law.

### 2.6 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) and other persons as the Administrator deems necessary or desirable in connection

with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

**2.7 INFORMATION FROM EMPLOYER**

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise appropriate agents of the Plan of such of the foregoing facts as may be pertinent to the agent's duties to the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

**2.8 PAYMENT OF EXPENSES**

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) appointed for the purpose of assisting the Administrator or Trustee (or Insurer) in carrying out the instructions of Participants as to the directed investment of their Accounts (if permitted) and other specialists and their agents and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee. If liquid assets of the Plan are insufficient to cover the fees of the Trustee (or Insurer) or the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

**2.9 MAJORITY ACTIONS**

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

**2.10 CLAIMS PROCEDURES**

Any person who believes that he or she is entitled to a benefit under the Plan shall file with the Administrator a written notice of claim for such benefit within 45 days of such right accruing or shall forever waive entitlement to such benefit. Within 120 days after its receipt of such written notice of claim, the Administrator shall either grant or deny such claim provided, however, any delay on the part of the Administrator in arriving at a decision shall not adversely affect benefits payable under a granted claim. The Administrator may, however, implement alternative claims procedures in lieu of those provided in this Plan. The implementation of such procedures shall not be considered a Plan amendment that affects an Employer's reliance on this volume submitter plan.

The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

**ARTICLE III  
ELIGIBILITY**

**3.1 CONDITIONS OF ELIGIBILITY**

An Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility, if any, elected in the Adoption Agreement.

**3.2 EFFECTIVE DATE OF PARTICIPATION**

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement. Regardless of any election in the Adoption Agreement to the contrary, an Eligible Employee who has satisfied the maximum age (26) and service requirements (one (1) Year (or Period) of Service (or more than one (1) year if full and immediate vesting)) and who is otherwise entitled to participate, will become a Participant no later than the earlier of (1) six (6) months after such requirements are satisfied, or (2) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

(b) **Rehired Employee.** If an Eligible Employee is not employed on the date determined pursuant to (a) above, but is reemployed before a 1-Year Break in Service has occurred, then such Eligible Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated

employment. If such Employee incurs a 1-Year Break in Service, then eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(c) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

(d) **Noneligible to eligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to noneligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

### 3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

### 3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the elapsed time method is used) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

### 3.5 REHIRED EMPLOYEES AND 1-YEAR BREAKS IN SERVICE

(a) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee, the Employee does not satisfy the eligibility conditions taking into account prior service to the extent such prior service is not disregarded pursuant to Section 3.5(d) below. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

(b) **Rehired Eligible Employee who satisfied eligibility.** If any Eligible Employee had satisfied the Plan's eligibility requirements but, due to a severance of employment, did not become a Participant, then such Eligible Employee shall become a Participant as of the later of (1) the entry date on which he or she would have entered the Plan had there been no severance of employment, or (2) the date of his or her re-employment. Notwithstanding the preceding, if the rehired Eligible Employee's prior service is disregarded pursuant to Section 3.5(d) below, then the rehired Eligible Employee shall be treated as a new hire.

(c) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan. However, in applying any shift in an eligibility computation period, the Eligible Employee is not treated as a new hire unless prior service is disregarded in accordance with Section 3.5(d) below.

(d) **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions).** If the Employer elects in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to apply the "rule of parity" provisions, then if any Employee is reemployed after five (5) 1-Year Breaks in Service has occurred, Years of Service (or Periods of Service if the elapsed time method is being used) shall include Years of Service (or Periods of Service if the elapsed time method is being used) prior to the 5-Year Break in Service subject to the rules set forth below. The Employer may elect in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to make the provisions of this paragraph applicable for purposes of eligibility and/or vesting.

(1) In the case of a Former Employee who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (i) five (5) or (ii) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Employee who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded.

(e) **Vesting after five (5) 1-Year Breaks in Service.** If a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

- (1) one account for nonforfeitable benefits attributable to pre-break service; and
- (2) one account representing the Participant's Employer-derived Account balance in the Plan attributable to post-break service.

(f) **Waiver of allocation or contribution conditions.** If the Employer elects in the Adoption Agreement to waive allocations or contributions due to retirement (early or normal retirement), then a Participant shall only be entitled to one such waiver. Accordingly, if a Participant retires and allocation or contribution conditions are waived, then the Plan will not waive the allocation or contribution conditions if the Participant is rehired and then retires again.

### 3.6 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer may take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System (i.e., Rev. Proc. 2013-12 or any subsequent guidance).

## ARTICLE IV CONTRIBUTION AND ALLOCATION

### 4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **For a Money Purchase Plan.** All contributions made by the Employer will be made in cash. For each Plan Year, the Employer will contribute to the Plan the following:

- (1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions made by Participants; plus
- (2) On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount specified in the Adoption Agreement; plus
- (3) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution.

(b) **For a 401(a) Plan.** For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

- (1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions; plus
- (2) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution; plus
- (3) If elected in the Adoption Agreement, an Employer contribution equal to a specified contribution or a discretionary amount determined each year by the Employer.

(c) **Frozen Plans.** The Employer may designate that the Plan is a frozen Plan at the Contribution Types Section of the Adoption Agreement. As a frozen Plan, the Employer will not make any Employer contributions with respect to Compensation earned after the date the Plan is frozen. In addition, once a Plan is frozen, no additional Employees shall become Participants.

(d) **Union Employees.** Regardless of any provision in this Plan to the contrary, Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The benefits, including but not limited to, contributions, allocations and



vesting, under this Plan shall be those set forth in the collective bargaining agreement, which is hereby incorporated by reference and attached as an addendum to the Adoption Agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service and Compensation in each respective category are treated separately for purposes of the Plan.

(d) **Social Security Replacement Plan.** The Employer may elect under the Adoption Agreement to indicate its intention to qualify this Plan as a Social Security Replacement Plan under Code §3121(b)(7)(F). If the Employer makes the election to qualify the Plan as a Social Security Replacement Plan, the Plan will allocate a minimum contribution amount (Employer and Employee Contributions) of seven and one-half percent (7.5%) of Compensation. The Plan will consider each Participant a member of a retirement system that provides benefits comparable to the benefits he or she would have received under Social Security. In the case of part-time, seasonal and temporary Employees, the benefit will be nonforfeitable.

#### 4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

#### 4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an Account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) **Money Purchase Pension Plan.** For a Money Purchase Plan:

(i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.

(ii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(2) **401(a) Plan.** For a 401(a) Plan (which is a profit sharing plan within the meaning of Code §401(a)):

(i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method below that corresponds to the elections in the Adoption Agreement. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the provisions below.

(ii) Notwithstanding the preceding provision, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(c) **Gains or losses.** Except as otherwise elected in the Adoption Agreement or as provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in the same proportion that each Participant's nonsegregated accounts bear to the total of all Participants' nonsegregated accounts as of such date. Unless otherwise specified in the Adoption Agreement, the nonsegregated account will be reduced by any distributions made prior to the Valuation Date.

(d) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) **Forfeitures.** Forfeitures must be disposed of no later than the last day of the Plan Year following the Plan Year in which the Forfeiture occurs. The Employer must direct the Administrator to use Forfeitures to satisfy any contribution that may be required pursuant to Section 6.10 or to pay any Plan expenses. With respect to a Money Purchase Plan, any remaining Forfeitures will be disposed of in accordance with the elections in the Adoption Agreement. With respect to all other plans, the Employer must direct

the Administrator to use any remaining Forfeitures in accordance with any combination of the following methods, including a different method based on the source of such Forfeitures. Forfeitures may be:

- (1) Added to any Employer discretionary contribution and allocated in the same manner
- (2) Used to reduce any Employer contribution
- (3) Added to any Employer matching contribution and allocated as an additional matching contribution
- (4) Allocated to all Participants in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year

If Forfeitures are allocated to Participants (rather than used to reduce Employer contributions) then the Employer must also direct the Administrator as to which Participants are eligible to share in such allocation. The maximum allocation conditions the Employer may require are that Participants complete one (1) Year of Service (or Period of Service) and be employed on the last day of the Plan Year in order to share in the allocation of Forfeitures for such Plan Year.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

#### 4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Calculation of "annual additions."**

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer," or an individual medical benefit account (as defined in Code §415(l)(2)) maintained by the "employer," or a simplified employee pension (as defined in Code §408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year the "maximum permissible amount" for such Limitation Year shall be determined on the basis of the Participant's actual 415 Compensation for such Limitation Year.

(b) **"Annual additions" if a Participant is in more than one plan.**

(1) Except as provided in Subsection (c) below, this Subsection applies if, in addition to this Plan, a Participant is covered under another "employer" maintained qualified defined contribution plan, welfare benefit fund (as defined in Code §419(e)), individual medical benefit account (as defined in Code §415(l)(2)), or simplified employee pension (as defined in Code §408(k)), which provides "annual additions," during any Limitation Year. The "annual additions" which may be credited to a Participant's Accounts under this Plan for any such Limitation Year shall not exceed the "maximum permissible amount" reduced by the "annual additions" credited to a Participant's Accounts under the other plans and welfare benefit funds, individual medical benefit accounts, and simplified employee pensions for the same Limitation Year. If the "annual additions" with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the "employer" are less than the "maximum permissible amount" and the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts under this Plan would cause the "annual additions" for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the "annual additions" under all such plans and welfare benefit funds for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants. If the "annual additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical benefit accounts and simplified employee pensions in the aggregate are equal to or greater than the

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"maximum permissible amount," no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the "maximum permissible amount" for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(4) If, pursuant to Section 4.4(b)(2), a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code §412, regardless of the actual allocation date.

(5) If an "excess amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "excess amount" attributed to this Plan will be the product of:

(i) the total "excess amount" allocated as of such date, times

(ii) the ratio of (A) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(c) **Coverage under another plan.** If the Participant is covered under another qualified defined contribution plan maintained by the "employer," "annual additions" which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the "employer" provides other limitations in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(d) **Time when "annual additions" credited.** An "annual addition" is credited to the Account of a Participant for a particular Limitation Year if it is allocated to the Participant's Account under the Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of any date within a Limitation Year if such allocation is dependent upon participation in the Plan as of any date subsequent to such date.

For purposes of this subparagraph, "employer" contributions are treated as credited to a Participant's Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or Fiscal Year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(e) **Definitions.** For purposes of this Section, the following terms shall be defined as follows:

(1) **"Annual additions"** means the sum credited to a Participant's Accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (e)(5)(ii) below shall not apply to: (1) any contribution for medical benefits (within the meaning of Code §419A(f)(2)) after separation from service which is otherwise treated as an "annual addition," or (2) any amount otherwise treated as an "annual addition" under Code §415(l)(1).

(i) **Restorative payments.** "Annual additions" for purposes of Code §415 and this Section shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered "annual additions."

(ii) **Other amounts.** "Annual additions" for purposes of Code §415 and this Section shall not include: (A) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (B) Rollover contributions (as described

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in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (C) Repayments of loans made to a Participant from the Plan; and (D) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

- (2) **"Defined contribution dollar limitation"** means \$40,000 as adjusted under Code §415(d).
- (3) **"Employer"** means, for purposes of this Section, the Employer that adopts this Plan and all Affiliated Employers.
- (4) **"Excess amount"** means the excess of the Participant's "annual additions" for the Limitation Year over the "maximum permissible amount."
- (5) **"Maximum permissible amount"** means, except to the extent permitted under this Plan and Code §414(v), the maximum "annual addition" that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:
  - (i) the "defined contribution dollar limitation," or
  - (ii) one hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

The 415 Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §§401(h) or 419A(f)(2)) which is otherwise treated as an "annual addition."

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the "maximum permissible amount" will not exceed the "defined contribution dollar limitation" multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

### (f) **Special rules.**

(1) **Aggregation of plans.** For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the "employer" (or a "predecessor employer") under which the Participant receives "annual additions" are treated as one defined contribution plan. For purposes of this Section:

- (i) A former "employer" is a "predecessor employer" with respect to a participant in a plan maintained by an "employer" if the "employer" maintains a plan under which the participant had accrued a benefit while performing services for the former "employer", but only if that benefit is provided under the plan maintained by the "employer". For this purpose, the "formerly affiliated plan" rules in Regulation §1.415(f)-1(b)(2) apply as if the "employer" and "predecessor employer" constituted a single employer under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately prior to the "cessation of affiliation" (and as if they constituted two, unrelated employers under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately after the "cessation of affiliation") and "cessation of affiliation" was the event that gives rise to the "predecessor employer" relationship, such as a transfer of benefits or plan sponsorship.
- (ii) With respect to an "employer" of a Participant, a former entity that antedates the "employer" is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the "employer" constitutes a continuation of all or a portion of the trade or business of the former entity.

(2) **Break-up of an affiliated employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an "employer" is taken into account for purposes of applying the Code §415 limitations to the "employer," but the "formerly affiliated plan" is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an "employer" is a plan that, immediately prior to the "cessation of affiliation," was actually maintained by one or more of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)), and immediately after the "cessation of affiliation," is not actually maintained by any of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single "employer" under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the "employer" under the employer affiliation rules of Regulation §1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(3) **Mid-year aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no "annual additions" are credited to the Participant's Account after the date on which the plans are required to be aggregated.

#### 4.5 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

Notwithstanding any provision of the Plan to the contrary, if the "annual additions" (as defined in Section 4.4) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2013-12 or any superseding guidance.

#### 4.6 ROLLOVERS

(a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator, the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." A Participant's Rollover Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include Former Employees if the Employer and Administrator consent to accept "rollovers" of distributions made to Former Employees from any plan of the Employer.

(b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Distribution of "rollovers."** At such time as the conditions set forth in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount credited to the Rollover Account maintained on behalf of such Participant. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, unless otherwise elected in the Adoption Agreement, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally, to limit the source of "rollover" contributions that may be accepted by the Plan.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code §401(a) which is exempt from tax under Code §501(a)), an annuity plan described in Code §403(a), an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A), and an annuity contract described in Code §403(b).

#### 4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator, amounts may be transferred (within the meaning of Code §414(l)) to this Plan from other tax qualified plans under Code §401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create

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adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Transfer Account." Furthermore, for vesting purposes, the Participant's Transfer Account shall be treated as a separate "Participant's Account."

(b) **Accounting of transfers.** Amounts in a Participant's Transfer Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (d) below, provided the restrictions of Subsection (c) below and Section 6.16 are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination.

(c) **Distribution of plan-to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

### 4.8 MANDATORY EMPLOYEE CONTRIBUTIONS

(a) **Mandatory Employee contributions.** An Employer may elect in the Adoption Agreement to provide for mandatory Employee contribution. If the Employer elects to provide for such contributions, each Participant, as a condition of employment, will make a mandatory Employee contribution in the amount elected in the Adoption Agreement. Alternatively, the Employer may elect to provide a range of mandatory Employee contribution percentages from which the Participant may choose to contribute. Under this option, the Employee, as a condition of employment, must make an irrevocable election to contribute a percentage of his or her Compensation no later than his or her effective date of participation. During the period of the Participant's participation in the Plan, the Participant may not revoke the election and receive cash in lieu of the contribution, nor may the Participant change the amount of the mandatory Employee contribution. Amounts attributable to mandatory Employee contributions shall be fully Vested.

(b) **Employer pick-up contribution.** If elected in the Adoption Agreement, the Employer will "pick-up" the mandatory Employee contribution and will pay the mandatory Employee contribution to the Plan as an Employer contribution. This provision is effective only after the Employer provides for the treatment of the Employee contributions as described in this paragraph, through a person authorized to take such action, and evidenced in writing by minutes of a meeting, resolution, ordinance, or other formal action by the Employer, which will effectuate the "pick-up" provision. Furthermore, as of the date of the "pick-up," Participants are not permitted to opt-out of the "pick-up" or to receive the mandatory Employee contributions directly instead of having them paid to the Plan. Mandatory Employee contributions that are "picked-up" by the Employer are excludible from the Employee's gross income.

### 4.9 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **After-tax voluntary Employee contributions.** If elected in the Adoption Agreement, each Participant may, in accordance with procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is separately accounted for under the Plan.

(b) **Full vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event a Participant has received a hardship distribution under the safe harbor hardship provisions of the Code §401(k) Regulations from any plan maintained by the Employer, then the Participant shall be barred from making any after-tax voluntary

Employee contributions for a period of six (6) months after receipt of the hardship distribution. Any prior elections to make after-tax voluntary Employee contributions will become void upon the receipt of the hardship distribution that triggers the suspension period of this paragraph.

(d) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### 4.10 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted under Participant Direction Procedures, all Participants may direct the Trustee (or Insurer) as to the investment of all or a portion of their individual Account balances as set forth in such procedures. Participants may direct the Trustee (or Insurer), in writing (or in such other form which is acceptable to the Trustee (or Insurer)), to invest their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the Account of any Participant that is subject to investment direction of such Participant will be considered a Participant Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of gains or losses.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee (or Insurer) that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Discretionary Trustee (or Insurer) reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Discretionary Trustee (or Insurer). Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) or force majeure. The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Other documents required by directed investments.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

#### 4.11 QUALIFIED MILITARY SERVICE

(a) **USERRA.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code §414(u)(4).

(b) **Benefit accrual.** If the Employer elects in the Adoption Agreement to apply this Subsection, then effective as of the date specified in the Adoption Agreement but no earlier than the first day of the 2007 Plan Year, for benefit accrual purposes, the Plan treats an individual who becomes Totally and Permanently disabled while performing "qualified military service" (as defined in Code §414(u)) with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), on

the day preceding Total and Permanent Disability and terminated employment on the actual date of death or Total and Permanent Disability.

The Plan will determine the amount of after-tax voluntary Employee contributions of an individual treated as reemployed under this Section for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual after-tax voluntary Employee contributions for the lesser of: (1) the 12-month period of service with the Employer immediately prior to "qualified military service" (as defined in Code §414(u)); or (2) the actual length of continuous service with the Employer.

(c) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing "qualified military service" (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of "qualified military service" but including vesting credit for such period and any other ancillary life insurance or other survivor benefits) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's "qualified military service" as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

## ARTICLE V VALUATIONS

### 5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee (or Insurer), as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee (or Insurer) shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all expenses for which the Trustee (or Insurer) has not yet been paid by the Employer or the Trust Fund. The Trustee (or Insurer), when determining the net worth of the assets, may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

### 5.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee (or Insurer) to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee, the Administrator (if the Trustee is a directed Trustee), or Insurer may appraise such assets itself (assuming it has the appropriate expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

## ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS

### 6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the severance of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without severance of employment with the Employer (subject to Section 6.11), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

### 6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) **100% vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary.



(c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) **Beneficiary designation.** Each Participant must designate a Beneficiary on a form and in such manner as provided by the Administrator.

(e) **Beneficiary if no Beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

- (1) The Participant's surviving Spouse;
- (2) The Participant's issue, per stirpes;
- (3) The Participant's surviving parents, in equal shares; or
- (4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate). For purposes of these provisions, and with respect to any Beneficiary designations, adopted children shall be treated as children.

(f) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), if a Participant has designated the Spouse as a Beneficiary, then a divorce decree that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code §414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(g) **Simultaneous death of Participant and Beneficiary.** If a Participant and his or her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Administrator will presume conclusively that the Beneficiary predeceased the Participant.

(h) **Slayer statute.** The Administrator may apply slayer statutes, or similar rules which prohibit inheritance by a person who murders someone from whom he or she stands to inherit, under applicable state laws.

(i) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(j) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

### 6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Participant's entire Vested interest in the Plan will be distributable and may be distributed in accordance with the provisions of Sections 6.5 and 6.7.

### 6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on severance of employment.** If a Participant's employment with the Employer and any Affiliated Employer is severed for any reason other than death, Total and Permanent Disability, or attainment of the Participant's Retirement Date, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the

conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Trustee (or Insurer), when so directed by the Administrator and agreed to by the Terminated Participant, shall assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee (or Insurer) the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee (or Insurer), pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (or such lower amount as elected in the Adoption Agreement), the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include (1) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B) and (2) if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account. If a mandatory distribution is made pursuant to this paragraph and such distribution is greater than \$1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Section 6.14 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Section 6.14, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. The Administrator may establish a procedure as to whether a Participant who fails to make an affirmative election with respect to a mandatory distribution of \$1,000 or less is treated as having made or not made a "direct rollover" election. For purposes of determining whether the \$1,000 threshold set forth in this paragraph is met, the mandatory distribution includes amounts in a Participant's Rollover Account. For purposes of determining whether the \$5,000 threshold in this paragraph is met, a Participant's Rollover Account is taken into account unless otherwise elected in the Adoption Agreement.

(b) **Vesting schedule.** The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or Periods of Service if the elapsed time method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date). In addition, Employee contributions (voluntary and mandatory) and contributions for sick leave/vacation leave conversions shall be fully Vested.

## 6.5 DISTRIBUTION OF BENEFITS

(a) **Forms of distributions.** The Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement.

- (1) One lump-sum payment in cash or in property, provided that if a distribution of property is permitted, it shall be limited to property that is specifically allocated and identifiable with respect to such Participant.
- (2) Partial withdrawals.
- (3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the joint life expectancy of the Participant and the Participant's designated Beneficiary). Once payments have begun, a Participant may elect to accelerate the payments (reduce the term and increase payments).
- (4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(b) **Consent to distributions.** Benefits may not be paid without a Participant's consent if the value of the Participant's Accounts exceed the dollar threshold specified in the Adoption Agreement. If the value of the Participant's Accounts does not exceed such threshold, then the Administrator will distribute such benefit in a lump-sum. For purposes of this Subsection, the Participant's

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Accounts shall not include, if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Section 6.8.

(d) **Annuity Contracts.** All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or Spouse shall comply with all of the requirements of this Plan.

(e) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Plan Section 6.8(a)(4).

### 6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) **Consent.** If the value of the death benefit derived from Employer and Employee contributions does not exceed \$5,000, the Administrator shall direct the distribution of such amount to the Participant's Beneficiary in a single lump-sum as soon as practicable. If the value exceeds \$5,000, an immediate distribution of the entire amount may be made to the Beneficiary, provided such Beneficiary consents to the distribution.

(b) **Forms of distribution.** Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Section 6.8 and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution.

(1) One lump-sum payment in cash or in property that is allocated to the Accounts of the Participant at the time of the distribution.

(2) Partial withdrawals.

(3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity Contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.

(4) In the form of an annuity over the life expectancy of the Beneficiary.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

(d) **Payment to a child.** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.

(e) **Voluntary Contribution Account.** In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's Spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

(f) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Section 6.8(a)(4).

### 6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. Notwithstanding anything in the Plan to the contrary, unless a Participant otherwise elects, payments of benefits under the Plan will be begin not later than the later of the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer. The failure of a Participant to request a distribution shall be deemed to be an election to defer the commencement of payment of any benefit until the time otherwise permitted under the Plan.

6.8 REQUIRED MINIMUM DISTRIBUTIONS

(a) General rules

(1) **Effective Date.** Subject to the good faith interpretation standard, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan.

(2) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).

(3) **Limits on distribution periods.** As of the first "distribution calendar year," distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Participant, (ii) the joint lives of the Participant and a "designated Beneficiary," (iii) a period certain not extending beyond the "life expectancy" of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "designated Beneficiary."

(4) **TEFRA Section 242(b)(2) elections.**

(i) Notwithstanding the other provisions of this Section, other than the Spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

(A) The distribution by the Plan is one which would not have disqualified such Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(B) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(C) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(D) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.

(iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(5) **Good faith interpretation standard.** In applying any provision of this section, the Plan will apply a reasonable good faith interpretation of Code §401(a)(9).

(b) **Time and manner of distribution**

(1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date."

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows as elected in the Distributions Upon Death Section of the Adoption Agreement (or if no election is made, then the Beneficiary may elect either the lifetime method or the five-year method):

(i) **Lifetime method (Spouse).** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," then, except as otherwise provided herein, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) **Lifetime method (non-Spouse).** If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(b)(3) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) **Five-year method.** If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death or if otherwise elected pursuant to the Adoption Agreement with respect to a "designated Beneficiary," the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) **Death of Spouse.** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary" and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.8(b)(2) and Section 6.8(b)(3), unless Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date." If Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date," as of the first "distribution calendar year" distributions will be made in accordance with Sections 6.8(c) and 6.8(d) and only in a form of distribution provided in Section 6.5 or 6.6, as applicable. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Regulations thereunder.

(c) **Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following, as elected in the Form of Distributions Section of the Adoption Agreement:

(i) the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(ii) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the "Participant's account balance" by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year."

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," the remaining "life expectancy" of the surviving Spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining "life expectancy" of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as provided in Section 6.8(d)(1).

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

(iii) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i), this Section 6.8(d)(2) will apply as if the surviving Spouse were the Participant.

(e) **Definitions.** For purposes of this Section, the following definitions apply:

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under Code §401(a)(9) and Regulation §1.401(a)(9)-4.

(2) "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 under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.

(4) "Participant's account balance" means the Participant's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(5) "Required beginning date" means, except as otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), with respect to any Participant, April 1 of 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 Participant retires.

(f) **Waiver of 2009 required distributions**

(1) **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected options a., b., or c. at the WRERA – RMD Waivers for 2009 Section of the Adoption Agreement. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the "2009 RMDs" or (ii) one or more payments in a series of substantially equal distributions (that include the "2009 RMDs") made at least annually and expected to last for the life (or "life expectancy") of the Participant, the joint lives (or joint "life expectancy") of the Participant and the Participant's "designated Beneficiary," or for a period of at least 10 years ("Extended 2009 RMDs"), did not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence were given the opportunity to elect to receive the distributions described in the preceding sentence.

(2) **Continuation of RMDs unless otherwise elected by Participant.** This paragraph applies if the Employer elected option b. at the WRERA – RMD Waivers for 2009 Section of the Adoption Agreement. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the "2009 RMDs" or (ii) one or more payments in a series of substantially equal distributions (that include the "2009 RMDs") made at least annually and expected to last for the life (or "life expectancy") of the Participant, the joint lives (or joint "life expectancy") of the Participant and the Participant's "designated Beneficiary," or for a period of at least 10 years ("Extended 2009 RMDs"), did not receive those distributions for 2009 unless the Participant or Beneficiary choose not to receive such distributions. Participants and Beneficiaries described in the preceding sentence were given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(3) **Direct rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in the WRERA – RMD Waivers for 2009 Section of the Adoption Agreement, were treated as eligible rollover distributions. If no election was made by the Employer in the Adoption Agreement, then a direct rollover was offered only for distributions that would have been eligible rollover distributions without regard to Code §401(a)(9)(H).

**6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL**

If, in the opinion of the Administrator, a Participant or Beneficiary entitled to a distribution is not able to care for his her affairs because of a mental condition, a physical condition, or by reason of age, Administrator shall direct the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his or her attorney-in-fact or to other legal representative, upon furnishing evidence of such status satisfactory to the Administrator. The Administrator and the Trustee (or Insurer) do not have any liability with respect to payments so made and neither the Administrator nor the Trustee (or Insurer) has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

**6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). In addition, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first

from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Section 6.14(b)(1) may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

### 6.11 IN-SERVICE DISTRIBUTION

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the Accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts.

### 6.12 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** For 401(a) Plans, if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to the lesser of 100% of the Vested interest of the Accounts selected in the Adoption Agreement, valued as of the last Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

- (1) Expenses for (or necessary to obtain) medical care (as defined in Code §213(d));
- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));
- (4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B));
- (5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
- (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, but no earlier than August 17, 2006, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(d) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.



**6.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION**

All benefits provided to a Participant in this Plan shall be subject to the rights afforded to any Alternate Payee under a "qualified domestic relations order." Furthermore, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) a distribution to an Alternate Payee shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not reached the "earliest retirement age." For the purposes of this Section, "qualified domestic relations order" and "earliest retirement age" shall have the meanings set forth under Code §414(p). For purposes of this Section, however, a distribution that is made pursuant to a domestic relations order which meets the requirements of Code §414(p)(1)(A)(i) will be treated as being made pursuant to a "qualified domestic relations order."

Effective as of April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a "qualified domestic relations order" will not fail to be a "qualified domestic relations order": (i) solely because the order is issued after, or revises, another domestic relations order or "qualified domestic relations order"; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death.

**6.14 DIRECT ROLLOVERS**

(a) **Right to direct rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least \$500.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) **Eligible rollover distribution.** An "eligible rollover distribution" means any distribution described in Code §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" "designated Beneficiary," or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code §401(a)(9); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year. For purposes of the \$200 rule, a distribution from a designated Roth account and a distribution from other accounts under the Plan may be treated as made under separate plans. In addition, Section 6.8(f)(2) applies with respect to distributions made in 2009.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to:

- (i) a traditional individual retirement account or annuity described in Code §408(a) or (b) (a "traditional IRA")
- (ii) for taxable years beginning after December 31, 2006, a Roth individual account or annuity described in Code §408A (a "Roth IRA"), or
- (iii) a qualified defined contribution plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan.** An "eligible retirement plan" is a "traditional IRA," for distributions made after December 31, 2007, a "Roth IRA," a qualified trust (an employees' trust) described in Code §401(a) which is exempt from tax under Code §501(a), an annuity plan described in Code §403(a), an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code §403(b), that accepts the "distributee's" "eligible rollover distribution." The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is an Alternate Payee. If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. In the case of a "distributee" who is a non-Spouse designated Beneficiary, (i) the "direct rollover" may be made only to a traditional or Roth individual retirement account or an annuity described in Code §408(b) ("IRA") that is established on behalf of the designated non-Spouse Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11), and (ii) the

determination of any required minimum distribution required under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

(3) **Distributee.** A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employee's or Former Employee's Spouse or former Spouse who is the Alternate Payee, are "distributees" with regard to the interest of the Spouse or former Spouse.

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

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided no less than thirty (30) days and no more than one-hundred eighty (180) (ninety (90) for Plan Years beginning before January 1, 2007) days before the Annuity Starting Date. The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

(d) **Non-Spouse Beneficiary rollover right.** For distributions after December 31, 2009, and unless otherwise elected in the Adoption Agreement, for distributions after December 31, 2006, a non-Spouse Beneficiary who is a "designated Beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion an "eligible rollover distribution" to an IRA the Beneficiary establishes for purposes of receiving the distribution.

(1) **Certain requirements not applicable.** Any distribution made prior to January 1, 2010 is not subject to the "direct rollover" requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)).

(2) **Trust Beneficiary.** If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a "designated Beneficiary."

#### 6.15 RESTRICTIONS ON DISTRIBUTION OF ASSETS TRANSFERRED FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code §414(l), to this Plan from a money purchase pension plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution). Notwithstanding anything in the Plan to the contrary, effective with respect to Plan Years beginning after June 30, 2008, a Participant may not obtain an in-service distribution with respect to such transferred amounts prior to the earlier of the Participant's Normal Retirement Age or attainment of age 62.

#### 6.16 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs established by the IRS.

#### 6.17 HEART ACT

(a) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

(b) **Military Differential Pay.** For years beginning after December 31, 2008: (1) an individual receiving Military Differential Pay is treated as an Employee of the Employer making the payment; (2) the Military Differential Pay is treated as 415 Compensation (and Compensation unless otherwise elected in the Adoption Agreement); and (3) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions) by reason of any contribution or benefit which is based on the Military Differential Pay. The Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any matching contributions, attributable to Military Differential Pay.

(c) **Deemed Severance.** Notwithstanding Subsection (b)(1) above, if elected in the Adoption Agreement, a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the

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Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not attributable to Employer contributions to a money purchase pension plan. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder.

### 6.18 SERVICE CREDIT

The Administrator, upon Participant request, may direct the transfer of all or a portion of the Participant's Account to a governmental defined benefit plan (as defined in Code §414(d)) in which he or she participates for the purchase of permissive service credit (as defined in Code §415(n)(3)(A)).

## ARTICLE VII TRUSTEE AND CUSTODIAN

### 7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) **Application of Article.** The provisions of this Article, other than Section 7.6, shall not apply to this Plan if a separate trust agreement is being used. Furthermore, the provisions of this Article, other than Sections 7.5 and 7.6, shall not apply if the Plan is fully insured. If the Employer has appointed two or more Trustees to hold Plan assets, then each Trustee shall be the Trustee only with respect to those Plan assets specifically deposited by the Employer in the Trust Fund for which such Trustee is the trustee. References in the Plan to the responsibilities, power or duties of the Trustee and any other provisions in the Plan relating to the Trustee shall be interpreted as applying to each Trustee only with respect to the assets of the Trust Fund for which such Trustee is the Trustee. Each Trustee shall have no responsibility for, or liability with respect to, any of the Plan assets other than the assets for which it serves as Trustee.

(b) **No Duty to collect contributions.** The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply or are deposited in accordance with the provisions of the Plan.

(c) **Reliance on Administrator's directions.** The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.

(d) **Directions by others.** In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures if the Plan permits Participant directed investments), the Employer, or an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

(1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including but not limited to, voice recorded) instructions of a Participant (pursuant to the Participant Direction Procedures), the Employer, or any fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(3) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense that may result from the Trustee's refusal or failure to comply with any direction from the Participant.

(4) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.

(5) Notwithstanding anything herein above to the contrary, the Trustee shall not invest any portion of a Participant's Directed Account in "collectibles" within the meaning of Code §408(m).

(e) **Records.** The Trustee will maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.9.

(f) **Employment of bank or trust company.** The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

(g) **Payment of expenses.** The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

## 7.2 INVESTMENT POWERS AND DUTIES OF DISCRETIONARY TRUSTEE

(a) **Discretionary authority.** This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a Discretionary Trustee. If so designated, then the Trustee has the discretion and authority to invest, manage, and control those Plan assets except, however, with respect to those assets which are subject to the investment direction of a Participant (if Participant directed investments are permitted), or an Investment Manager, the Administrator, or other agent appointed by the Employer. The exercise of any investment discretion hereunder shall be consistent with the "funding policy and method" determined by the Employer.

(b) **Duties.** The Trustee shall, except as otherwise provided in this Plan, invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust. The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(c) **Powers.** The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of this Plan, shall have the following powers and authorities to be exercised in the Trustee's sole discretion:

- (1) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (2) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (3) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (4) To cause any securities or other property to be registered in the Trustee's own name, or in the name of a nominee or in a street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;
- (5) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100 (as modified by Rev. Rul. 2011-1 or any subsequent guidance), all or such part of the Trust Fund as the Trustee may deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). The Trustee may withdraw from such common, collective, or pooled trust fund all or such part of the Trust Fund as the Trustee may deem advisable;
- (6) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (7) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;

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- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration (provided such arbitration does not apply to qualification issues nor to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agents or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a 401(a) Plan, on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other Contracts; to collect, receive, and settle for the proceeds of all such annuity, or other Contracts as and when entitled to do so under the provisions thereof;
- (12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);
- (13) To invest in Treasury Bills and other forms of United States government obligations;
- (14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;
- (15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee);
- (16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and
- (17) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.
- (d) **Appointment of Investment Manager or others.** The Trustee may appoint, at its option, an Investment Manager, investment adviser, or other agent to provide direction to the Trustee with respect to the investment of any or all of the Plan assets. Such appointment shall be in writing and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

### 7.3 INVESTMENT POWERS AND DUTIES OF NONDISCRETIONARY TRUSTEE

- (a) **No discretionary powers.** This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a nondiscretionary Trustee. If so designated, then the Trustee shall have no discretionary authority to invest, manage, or control those Plan assets, but must act solely as a Directed Trustee of those Plan assets. A nondiscretionary Trustee, as Directed Trustee of the Plan funds it holds, is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein, each of which the nondiscretionary Trustee exercises solely as Directed Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets. If no directions are provided to the Trustee, the Employer will provide necessary direction. Furthermore, the Employer and the nondiscretionary Trustee may, in writing, limit the powers of the nondiscretionary Trustee to any combination of powers listed within this Section. The party which has the authority to manage and control the investment of the Plan assets shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

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(b) **Powers.** The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of this Plan, shall have the following powers and authorities:

- (1) To invest the assets, without distinction between principal and income, in securities or property, real or personal, wherever situated, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust;
- (2) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (3) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (4) At the direction of the party which has the authority or discretion, to vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (5) To cause any securities or other property to be registered in the Trustee's own name, or in the name of a nominee or in a street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;
- (6) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100 (as modified by Rev. Rul. 2011-1 or any subsequent guidance), all or such part of the Trust Fund as the party which has the authority to manage and control the investment of the assets shall deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections);
- (7) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration (provided such arbitration does not apply to qualification issues nor to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a 401(a) Plan, on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at the direction of the person with the authority to do so, whatever rights and privileges may be granted under such annuity or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;
- (12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);
- (13) To invest in Treasury Bills and other forms of United States government obligations;

(14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

(15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee); and

(16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests.

(c) The Trustee shall have no responsibility to enforce the collection from the Employer of any contribution to the Plan or determine the correctness of the amount or timing any contribution. The Employer is responsible for transmitting contributions to the Trustee at such times and in such manner as is mutually agreed upon by the Employer and the Trustee and as required by the Plan and applicable law.

#### 7.4 POWERS AND DUTIES OF CUSTODIAN

The Employer may appoint a Custodian of the Plan assets. A Custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a Custodian unless the context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the Custodian's liability. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Administrator, the Employer, an Investment Manager, a fiduciary or other third party with authority to provide direction to the Custodian. The resignation or removal of the Custodian shall be made in accordance with Section 7.11 as though the Custodian were a Trustee.

#### 7.5 LIFE INSURANCE

(a) **Permitted insurance.** The Trustee (or Insurer), in accordance with operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of a 401(a) Plan, on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than \$1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a 401(a) Plan, to the portion of the Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** The Trustee (or Insurer) must distribute any Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the date on which benefits commence.

(c) **Limitations on purchase.** No life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) **Proceeds payable to plan.** The Trustee (or Insurer) will be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee (or Insurer); however, the Trustee (or Insurer) shall be required to pay over all proceeds of the Contract to the Participant's "designated Beneficiary" in accordance with the distribution provisions of Article VI. A Participant's Spouse will be the "designated Beneficiary" pursuant to Section 6.2, unless

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a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee (or Insurer) shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code §401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

(e) **No responsibility for act of Insurer.** The Employer, the Administrator and the Trustee shall not be responsible for the validity of the provisions under a Contract issued hereunder or for the failure or refusal by the Insurer to provide benefits under such Contract. The Employer, Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the Contract or which renders the Contract invalid or unenforceable in whole or in part.

### 7.6 LOANS TO PARTICIPANTS

(a) **Permitted Loans.** The Trustee (or the Administrator if the Trustee is a nondiscretionary Trustee or if loans are treated as Participant directed investments) may, in the Trustee's (or, if applicable, the Administrator's) sole discretion, make loans to Participants. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; and (4) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees.

(b) **Prohibited assignment or pledge.** An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a loan under this Section.

(c) **Loan program.** The Administrator shall be authorized to establish a Participant loan program to provide for loans under the Plan. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(d) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(e) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

### 7.7 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If there is more than one Trustee, then the responsibilities of each Trustee may be specified by the Employer and accepted in writing by each Trustee. If no such delegation is made by the Employer, then the Trustees may allocate the responsibilities among themselves, in which event the Trustees shall notify the Employer and the Administrator in writing of such action and specify the responsibilities of each Trustee. Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

### 7.8 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full-time compensation from the Employer shall not receive compensation from this Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from



the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

#### 7.9 ANNUAL REPORT OF THE TRUSTEE

(a) **Annual report.** Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (1) the net income, or loss, of the Trust Fund;
- (2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (3) the increase, or decrease, in the value of the Trust Fund;
- (4) all payments and distributions made from the Trust Fund; and
- (5) such further information as the Trustee and/or Administrator deems appropriate.

(b) **Employer approval of report.** The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

#### 7.10 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) **Trustee resignation.** Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.

(b) **Trustee removal.** Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

(c) **Appointment of successor.** Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, any remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) **Appointment of successor prior to removal of predecessor.** The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) **Trustee's statement upon cessation of being Trustee.** Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.9 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.9 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.9 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.9 and this subparagraph.

#### 7.11 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code §401(a), provided that the trust to which such transfers are made permits the transfer to be made and further provided that the terms of the transferee plan properly allocates the funds in each account to a transferee account that preserves all the required features and

restrictions applicable to such account under this Plan. However, the transfer of amounts from this Plan to a nonqualified foreign trust is treated as a distribution and the transfer of assets and liabilities from this Plan to a plan that satisfies Section 1165 of the Puerto Rico Code is also treated as distribution from the transferor plan.

## 7.12 TRUSTEE INDEMNIFICATION

To the extent permitted by the Code, the Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

## ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS

### 8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.

(b) **Permissible amendments.** The Employer may (1) change the choice of options in the Adoption Agreement, (2) add any appendix to the Adoption Agreement that is specifically permitted pursuant to the terms of the Plan (e.g., Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)); (3) amend administrative trust or custodial provisions, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan.

(c) **Volume submitter practitioner amendments.** The Employer (and every Participating Employer) expressly delegates authority to the volume submitter practitioner, the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the volume submitter Plan as amended qualifies under Code §401(a) (unless a ruling or determination is not required by the IRS).

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

### 8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan (in the case of a Profit Sharing Plan), all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer.

### 8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation.

ARTICLE IX  
MISCELLANEOUS

9.1 EMPLOYER ADOPTIONS

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Trustee (or Insurer), and it shall provide such additional information as the Trustee (or Insurer) may require. The consent of the Trustee (or Insurer) to act as such shall be signified by its execution of the Adoption Agreement or a separate agreement (including, if elected in the Adoption Agreement, a separate trust agreement).

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

9.2 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

9.3 ALIENATION

(a) **General rule.** Subject to the exceptions provided below and as otherwise permitted by the Code, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 7.6. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 2.10.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code §414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984.

9.4 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION

(a) **Applicable law.** This Plan and Trust shall be construed and enforced according to the Code, and the laws of the state or commonwealth in which the Employer's (or if there is a corporate Trustee, the Trustee's, or if the Plan is fully insured, the Insurer's) principal office is located (unless otherwise designated in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), other than its laws respecting choice of law, to the extent not pre-empted by federal law.

(b) **Administrator's discretion.** The Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Administrator makes under the Plan is final and binding upon any affected person. The Administrator must exercise all of its Plan powers and discretion, and perform all of its duties in a uniform manner.

(c) **Communications.** All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Administrator (or, as applicable, the Trustee or Insurer) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.

(d) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator, Trustee and Insurer are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(e) **Plan terms binding.** The Plan is binding upon all parties, including but not limited to, the Employer, Trustee, Insurer, Administrator, Participants and Beneficiaries.

(f) **Parties to litigation.** Except as otherwise provided by applicable law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust or any fiduciary. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon all parties, including the Employer, the Administrator, Trustee, Insurer, Participants and Beneficiaries.

(g) **Fiduciaries not insurers.** The Trustee, Administrator and the Employer in no way guarantee the Plan assets from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Plan. The liability of the Employer, the Administrator and the Trustee to make any distribution from the Trust at any time and all times is limited to the then available assets of the Trust.

(h) **Construction/severability.** The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

(i) **Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform manner.

(j) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

## 9.5 GENDER, NUMBER AND TENSE

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

## 9.6 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

## 9.7 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

## 9.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

## 9.9 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

#### **9.10 RECEIPT AND RELEASE FOR PAYMENTS**

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

#### **9.11 ACTION BY THE EMPLOYER**

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

#### **9.12 APPROVAL BY INTERNAL REVENUE SERVICE**

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law or such later date as the Secretary of Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code §§401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this volume submitter plan and will be considered an individually designed plan.

#### **9.13 PAYMENT OF BENEFITS**

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11 and 6.12, only upon death, Total and Permanent Disability, normal or early retirement, severance of employment, or termination of the Plan.

#### **9.14 ELECTRONIC MEDIA**

The Administrator may use any electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law. Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Regulation §1.401(a)-21.

#### **9.15 PLAN CORRECTION**

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under state or local law. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

#### **9.16 NONTRUSTEED PLANS**

If the Plan is funded solely with Contracts, then notwithstanding Sections 9.7 and 9.12, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual Contracts that provide a Participant's benefit under the Plan, such individual Contracts shall constitute the Participant's Account balance. If this Plan is funded by group Contracts, under the group annuity or group insurance Contract, premiums or other consideration received by the Insurer must be allocated to Participants' Accounts under the Plan.

**ARTICLE X  
PARTICIPATING EMPLOYERS**

**10.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER**

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee (or Insurer), any Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer (a participation agreement). In the event a Participating Employer is not an Affiliated Employer, then the provisions of Article XII shall apply rather than the provision of this Article XI.

**10.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS**

(a) **Permissible variations of participation agreement.** The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the Employer shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the Employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the Employer's Adoption Agreement. To the extent that the participation agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the Employer. If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

(b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.

(c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

**10.3 DESIGNATION OF AGENT**

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

**10.4 EMPLOYEE TRANSFERS**

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a severance of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

**10.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES**

Any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share in the contribution and Forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed.

On the basis of the information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

**10.6 AMENDMENT**

Any Participating Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer, then amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee (or Insurer) where such consent is necessary in accordance with the terms of this Plan.

## 10.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee (or insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees. If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the Employees of such Participating Employer.

## 10.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

# ARTICLE XI MULTIPLE EMPLOYER PROVISIONS

## 11.1 ELECTION AND OVERRIDING EFFECT

If a Participating Employer that is not an Affiliated Employer adopts this Plan, then the provisions of this Article XI shall apply to each Participating Employer as of the Effective Date specified in its participation agreement and supersede any contrary provisions in the basic Plan document or the Adoption Agreement. If this Article XI applies, then the Plan shall be a multiple employer plan as described in Code §413(c). In this case, the Employer and each Participating Employer acknowledge that the Plan is a multiple employer plan subject to the rules of Code §413(c) and the Regulations thereunder, which are hereby incorporated by reference, and specific annual reporting requirements.

## 11.2 DEFINITIONS

The following definitions shall apply to this Article XI and shall supersede any conflicting definitions in the Plan:

- (a) **Employee.** "Employee" means any common law employee, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. Either the Adoption Agreement or a participation agreement to the Adoption Agreement may designate any Employee, or class of Employees, as not eligible to participate in the Plan.
- (b) **Lead Employer.** "Lead Employer" means the signatory Employer to the Adoption Agreement execution page, and does not include any Affiliated Employer or Participating Employer. The "lead Employer" has the same meaning as the Employer for purposes of making Plan amendments and other purposes regardless of whether the "lead Employer" is also a Participating Employer under this Article XI.

## 11.3 PARTICIPATING EMPLOYER ELECTIONS

The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the "lead Employer" shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the "lead Employer's" Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the "lead Employer." If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

## 11.4 TESTING

The Administrator shall apply the Code §415 limitation in Section 4.4 for the Plan as a whole.

## 11.5 COMPENSATION

- (a) **Separate determination.** A Participant's Compensation shall be determined separately for each Participating Employer for purposes of allocations under Article IV.
- (b) **Joint status.** For all Plan purposes, including but not limited to determining the Code §415 limits in Section 4.4, Compensation includes all Compensation paid by or for any Participating Employer.

## 11.6 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service or had a severance from employment.

## 11.7 COOPERATION AND INDEMNIFICATION

(a) **Cooperation.** Each Participating Employer agrees to timely provide all information the Administrator deems necessary to insure the Plan is operated in accordance with the requirements of the Code and will cooperate fully with the "lead Employer," the Plan, the Plan fiduciaries and other proper representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(b) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Administrator, the "lead Employer" and its subsidiaries; officers, directors, shareholders, employees, and agents of the "lead Employer"; the Plan; the Trustees, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees and penalties) arising out of or relating to the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan.

## 11.8 INVOLUNTARY TERMINATION

Unless the "lead Employer" provides otherwise in an addendum hereto, the "lead Employer" shall have the power to terminate the participation of any Participating Employer (hereafter "Terminated Employer") in this Plan. If and when the "lead Employer" wishes to exercise this power, the following shall occur:

(a) **Notice.** The "lead Employer" shall give the "Terminated Employer" a notice of the "lead Employer's" intent to terminate the "Terminated Employer's" status as a Participating Employer of the Plan. The "lead Employer" will provide such notice not less than thirty (30) days prior to the date of termination unless the "lead Employer" determines that the interest of Plan Participants requires earlier termination.

(b) **Spin-off.** The "lead Employer" shall establish a new defined contribution plan, using the provisions of this Plan with any modifications contained in the "Terminated Employer's" participation agreement, as a guide to establish a new defined contribution plan (the "spin-off plan"). The "lead Employer" will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to the "spin-off plan." The "Terminated Employer" shall be the Employer, Administrator, and sponsor of the "spin-off plan." The Trustee of the "spin-off plan" shall be the person or entity designated by the "Terminated Employer." However, the "lead Employer" shall have the option to designate an appropriate financial institution as Trustee instead if necessary to protect the interest of the Participants. The "lead Employer" shall have the authority to charge the "Terminated Employer" or the Accounts of the Employees of the "Terminated Employer" a reasonable fee to pay the expenses of establishing the "spin-off plan."

(c) **Alternatives.** The "Terminated Employer," in lieu of creation of the "spin-off plan" under (b) above, has the option to elect a transfer alternative in accordance with this Subsection (c).

(1) **Election.** To exercise the option described in this Subsection, the "Terminated Employer" must inform the "lead Employer" of its choice, and must supply any reasonably required documentation as soon as practical. If the "lead Employer" has not received notice of a "Terminated Employer's" exercise of this option within ten (10) days prior to the stated date of termination, the "lead Employer" can choose to disregard the exercise and proceed with the Spin-off.

(2) **Transfer.** If the "Terminated Employer" selects this option, the Administrator shall transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to a qualified plan the "Terminated Employer" maintains. To exercise this option, the "Terminated Employer" must deliver to the "lead Employer" or Administrator in writing the name and other relevant information of the transferee plan and must provide such assurances that the Administrator shall reasonably require to demonstrate that the transferee plan is a qualified plan.



(d) **Participants.** The Employees of the "Terminated Employer" shall cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the "Terminated Employer," effective as of the date of termination. To the extent that these Employees have accrued but unpaid contributions as of the date of termination, the "Terminated Employer" shall pay such amounts to the Plan or the "spin-off plan" no later than thirty (30) days after the date of termination, unless the "Terminated Employer" effectively selects the Transfer option under Subsection (c)(2) above.

(e) **Consent.** By its signature on the participation agreement, the "Terminated Employer" specifically consents to the provisions of this Article and agrees to perform its responsibilities with regard to the "spin-off plan," if necessary.

#### **11.9 VOLUNTARY TERMINATION**

A Participating Employer (hereafter "withdrawing employer") may voluntarily withdraw from participation in this Plan at any time. If and when a "withdrawing employer" wishes to withdraw, the following shall occur:

(a) **Notice.** The "withdrawing employer" shall inform the "lead Employer" and the Administrator of its intention to withdraw from the Plan. The "withdrawing employer" must give the notice not less than thirty (30) days prior to the effective date of its withdrawal.

(b) **Procedure.** The "withdrawing employer" and the "lead Employer" shall agree upon procedures for the orderly withdrawal of the "withdrawing employer" from the plan. Such procedures may include any of the optional spin-off or transfer options described in Section 11.8.

(c) **Costs.** The "withdrawing employer" shall bear all reasonable costs associated with withdrawal and transfer under this Section.

(d) **Participants.** The Employees of the "withdrawing employer" shall cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the "withdrawing employer," effective as of the effective date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of the effective date of withdrawal, the "withdrawing employer" shall contribute such amounts to the Plan or the "spin-off plan" promptly after the effective date of withdrawal, unless the accounts are transferred to a qualified plan the "withdrawing employer" maintains.

**KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT  
AND CONFIDENTIAL EMPLOYEES**

**SUMMARY OF PLAN PROVISIONS**

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**KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT AND CONFIDENTIAL EMPLOYEES**

**SUMMARY OF PLAN PROVISIONS**

**INTRODUCTION TO YOUR PLAN**

**What kind of Plan is this?**

Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees ("Plan") has been adopted to provide you with the opportunity to save for retirement on a tax-advantaged basis. This Plan is a type of qualified retirement plan. Generally you are not taxed on the amounts we contribute to the Plan until you withdraw these amounts from the Plan.

**What information does this Summary provide?**

This Summary of Plan Provisions contains information regarding your Plan benefits, your distribution options, and many other features of the Plan. You should take the time to read this summary to get a better understanding of your rights and obligations under the Plan.

If you have any questions about the Plan, please contact the Administrator or other plan representative. The Administrator is responsible for responding to questions and making determinations related to the administration, interpretation, and application of the Plan. The name and address of the Administrator can be found at the end of this summary in the Article entitled "General Information About the Plan."

This summary describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language and is designed to comply with applicable legal requirements. If the non-technical language in this summary conflicts with the language of the Plan document, then the Plan document always governs.

The Plan and your rights under the Plan are subject to various laws, including the Internal Revenue Code. The provisions of the Plan are subject to revision due to a change in laws. Your Employer may also amend or terminate this Plan.

**Types of Contributions.** The Plan includes provisions for the following types of contributions:

- Employer matching contributions

**ARTICLE I  
PARTICIPATION IN THE PLAN**

**How do I participate in the Plan?**

Provided you are not an Excluded Employee, you may begin participating under the Plan once you have satisfied the eligibility requirements and reached your "Entry Date." The following describes the eligibility requirements and Entry Dates that apply. You should contact the Administrator if you have questions about the timing of your Plan participation.

**Excluded Employees.** If you are a member of a class of employees identified below, you are an Excluded Employee and you are not entitled to participate in the Plan. The Excluded Employees are:

- excluding anyone that is not classified as Management, Mid-Management and Confidential Employees.

**Eligibility Conditions.** You will be eligible to participate in the Plan when you have satisfied the following eligibility condition(s). However, you will actually become a Participant in the Plan once you reach the Entry Date as described below.

- attainment of age 18.

**Entry Date.** Your Entry Date will be first day of the first full bi-weekly payroll period following date of employment..

**What happens if I'm a participant, terminate employment and then I'm rehired?**

If you are no longer a participant because you terminated employment, and you are rehired, then you will be able to participate in the Plan on your date of rehire provided you are otherwise eligible to participate in the Plan.

**ARTICLE II  
EMPLOYER CONTRIBUTIONS**

This Article describes Employer contributions that will be made to the Plan.

**What is the Employer matching contribution and how is it allocated?**

**Matching Contribution.** Matching contributions are Employer contributions that are based on contributions you make to County of Kern California Deferred Compensation Plan. All of these contributions that you make are collectively referred to as “salary deferrals” for purposes of the applying the matching contribution described below.

**Matching Contribution.** Your Employer will make a matching contribution in an amount equal to a percentage of your salary deferrals, the specified matching percentage for the corresponding level of your salary deferrals as shown in the following table.

| Salary Deferral Tier | Matching Percentage |
|----------------------|---------------------|
| First 6%             | 100%                |
| Next 6%              | 50%                 |

**Period of determining matching contribution.** The matching contribution above is applied on a payroll period basis. This means that the matching contribution is applied to your salary deferrals for that period.

**Limit on matching contribution.** Regardless of the preceding, your matching contribution in any Plan Year will not exceed 9% of your compensation.

**Allocation conditions.** You will always share in the matching contribution regardless of the amount of service you complete during the Plan Year.

**What are forfeitures and how are they allocated?**

**Definition of forfeitures.** In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be "vested" in (entitled to) all of the contributions until you have been employed with the Employer for a specified period of time (see the Article entitled "Vesting"). If a participant terminates employment before being fully vested, then the non-vested portion of the terminated participant's account balance remains in the Plan and is called a forfeiture.

**Allocation of forfeitures.** Forfeitures will be allocated as follows:

- Forfeitures may first be used to pay any administrative expenses.
- Any remaining forfeitures attributable to amounts other than Employer matching contributions will be added to any Employer matching contribution and allocated as an additional matching contribution.
- Any remaining forfeitures attributable to matching contributions will be used to reduce any Employer matching contribution.

**ARTICLE III  
COMPENSATION AND ACCOUNT BALANCE**

**What compensation is used to determine my Plan benefits?**

**Definition of compensation.** For the purposes of the Plan, compensation has a special meaning. Compensation is generally defined as your total compensation that is subject to income tax and paid to you by your Employer during the calendar year ending within the Plan Year.

**Adjustments to compensation.** The following adjustments to compensation will be made:

- reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation, and welfare benefits will be excluded.
- compensation paid while not a participant in the Plan will be excluded.
- overtime will be excluded.
- compensation paid after you terminate employment will be excluded.

**Is there a limit on the amount of compensation which can be considered?**

The Plan, by law, cannot recognize annual compensation in excess of a certain dollar limit. The limit for the Plan Year beginning in 2018 is \$275,000. After 2018, the dollar limit may increase for cost-of-living adjustments.

### **Is there a limit on how much can be contributed to my account each year?**

Generally, the law imposes a maximum limit on the amount of contributions that may be made to your account and any other amounts allocated to any of your accounts during the Plan Year, excluding earnings. Beginning in 2018, this total cannot exceed the lesser of \$55,000 or 100% of your annual compensation. After 2018, the dollar limit may increase for cost-of-living adjustments.

### **How is the money in the Plan invested?**

**Participant directed investments.** You will be able to direct the investment of your entire interest in the Plan. The Administrator will provide you with information on the investment choices available to you, the procedures for making investment elections, the frequency with which you can change your investment choices and other important information. You need to follow the procedures for making investment elections and you should carefully review the information provided to you before you give investment directions. If you do not direct the investment of your applicable Plan accounts, then your accounts will be invested in accordance with the default investment alternatives established under the Plan.

**Earnings or losses.** When you direct investments, your accounts are segregated for purposes of determining the earnings or losses on these investments. Your account does not share in the investment performance of other participants who have directed their own investments. You should remember that the amount of your benefits under the Plan will depend in part upon your choice of investments. Gains as well as losses can occur and your Employer, the Administrator, and the Trustee will not provide investment advice or guarantee the performance of any investment you choose.

### **Will Plan expenses be deducted from my account balance?**

**Expenses allocated to all accounts.** The Plan permits the payment of Plan expenses to be made from the Plan's assets. The method of allocating the expenses depends on the nature of the expense itself. For example, certain administrative (or recordkeeping) expenses would typically be allocated proportionately to each participant. If the Plan pays \$1,000 in expenses and there are 100 participants, your account balance would be charged \$10 (\$1,000/100) of the expense.

**Terminated employee.** After you terminate employment, your Employer reserves the right to charge your account for your pro rata share of the Plan's administration expenses, regardless of whether your Employer pays some of these expenses on behalf of current employees.

**Expenses allocated to individual accounts.** There are certain other expenses that may be paid just from your account. These are expenses that are specifically incurred by, or attributable to, you. For example, if you are married and get divorced, the Plan may incur additional expenses if a court mandates that a portion of your account be paid to your ex-spouse. These additional expenses may be paid directly from your account (and not the accounts of other participants) because they are directly attributable to you under the Plan. The Administrator can inform you when there will be a charge (or charges) directly to your account.

Your Employer may, from time to time, change the manner in which expenses are allocated.

## **ARTICLE IV VESTING**

### **What is my vested interest in my account?**

In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be entitled ("vested") in all of the contributions until you have been employed with the Employer for a specified period of time.

**Vesting schedules.** Your "vested percentage" for certain Employer contributions is based on vesting Years of Service. This means at the time you stop working, your account balance attributable to contributions subject to a vesting schedule is multiplied by your vested percentage. The result, when added to the amounts that are always 100% vested as shown above, is your vested interest in the Plan, which is what you will actually receive from the Plan.

## Matching Contributions

Your "vested percentage" in your account attributable to matching contributions is determined under the following schedule. You will always, however, be 100% vested in your matching contributions if you are employed on or after your Normal Retirement Age or if you die or become disabled.

| Years of Service | Vesting Schedule       |            |
|------------------|------------------------|------------|
|                  | Matching Contributions | Percentage |
| 1                |                        | 20%        |
| 2                |                        | 40%        |
| 3                |                        | 60%        |
| 4                |                        | 80%        |
| 5                |                        | 100%       |

## How is my service determined for vesting purposes?

**Year of Service.** To earn a Year of Service, you must be credited with at least 1,000 Hours of Service during a Plan Year. The Plan contains specific rules for crediting Hours of Service for vesting purposes. The Administrator will track your service and will credit you with a Year of Service for each Plan Year in which you are credited with the required Hours of Service, in accordance with the terms of the Plan. If you have any questions regarding your vesting service, you should contact the Administrator.

**Hour of Service.** You will be credited with your actual Hours of Service for:

- (a) each hour for which you are directly or indirectly compensated by the Employer for the performance of duties during the Plan Year;
- (b) each hour for which you are directly or indirectly compensated by the Employer for reasons other than the performance of duties (such as vacation, holidays, sickness, disability, lay-off, military duty, jury duty or leave of absence during the Plan Year); and
- (c) each hour for back pay awarded or agreed to by the Employer.

You will not be credited for the same Hours of Service both under (a) or (b), as the case may be, and under (c).

## What service is counted for vesting purposes?

**Service with the Employer.** In calculating your vested percentage, all service you perform for the Employer will generally be counted.

**Service with another Employer.** For vesting purposes, your Years of Service with Cantu Management, Inc. and Other Designated Contractors per discretion of the Hospital Authority will be counted.

**Military Service.** If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. If you may be affected by this law, ask the Administrator for further details.

## When will the non-vested portion of my account balance be forfeited?

If you are partially vested in your account balance when you leave, the non-vested portion of your account balance will be forfeited on the earlier of the date:

- (a) of the distribution of your vested account balance, or
- (b) when you incur five consecutive 1-year Breaks in Service.

## ARTICLE V BENEFITS AND DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT

### When can I get money out of the Plan?

You may receive a distribution of the vested portion of some or all of your accounts in the Plan for the following reasons:

- termination of employment for reasons other than death, disability or retirement
- normal retirement



- disability
- death

This Plan is designed to provide you with retirement benefits. However, distributions are permitted if you die or become disabled. In addition, certain payments are permitted when you terminate employment for any other reason. The rules under which you can receive a distribution are described in this Article. The rules regarding the payment of death benefits to your beneficiary are described in "Benefits and Distributions Upon Death."

**Military Service.** If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. There may also be benefits for employees who die or become disabled while on active duty. Employees who receive wage continuation payments while in the military may benefit from various changes in the law. If you think you may be affected by these rules, ask the Administrator for further details.

**Distributions for deemed severance of employment.** If you are on active duty for more than 30 days, then the Plan generally treats you as having severed employment for distribution purposes. This means that you may request a distribution from the Plan.

#### **What happens if I terminate employment before death, disability or retirement?**

If your employment terminates for reasons other than death, disability or normal retirement, you will be entitled to receive only the "vested percentage" of your account balance.

You may elect to have your vested account balance distributed to you as soon as administratively feasible following your termination of employment. However, if the value of your vested account balance does not exceed \$5,000, then a distribution will be made to you regardless of whether you consent to receive it. (See the question entitled "How will my benefits be paid to me?" for additional information.)

#### **What happens if I terminate employment at Normal Retirement Date?**

**Normal Retirement Date.** You will attain your Normal Retirement Age when you reach age 65. Your Normal Retirement Date is the date on which you attain your Normal Retirement Age.

**Payment of benefits.** You will become 100% vested in all of your accounts under the Plan if you retire on or after your Normal Retirement Age. However, the actual payment of benefits generally will not begin until you have terminated employment and reached your Normal Retirement Date. In such event, a distribution will be made, at your election, as soon as administratively feasible. If you remain employed past your Normal Retirement Date, you may generally defer the receipt of benefits until you actually terminate employment. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

#### **What happens if I terminate employment due to disability?**

**Definition of disability.** Under the Plan, disability is defined as a physical or mental condition resulting from bodily injury, disease, or mental disorder which renders you incapable of continuing any gainful occupation and which has lasted or can be expected to last for a continuous period of at least twelve (12) months. Your disability must be determined by a licensed physician. However, if your condition constitutes total disability under the federal Social Security Act, then the Administrator may deem that you are disabled for purposes of the Plan.

**Payment of benefits.** If you become disabled while an employee, you will become 100% vested in all of your accounts under the Plan. Payment of your disability benefits will be made to you as if you had retired. However, if the value of your account balance does not exceed \$5,000, then a distribution of your account balance will be made to you, regardless of whether you consent to receive it. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

#### **How will my benefits be paid to me?**

**Forms of distribution.** If your vested account balance does not exceed \$5,000, then your vested account balance may only be distributed to you in a single lump-sum payment.

In addition, if your vested account balance exceeds \$5,000, you must consent to any distribution before it may be made. If your vested account balance exceeds \$5,000, you may elect to receive a distribution of your vested account balance in:

- a single lump-sum payment
- installments over a period of not more than your assumed life expectancy (or the assumed life expectancies of you and your beneficiary)
- partial withdrawals

**Delaying distributions.** You may delay the distribution of your vested account balance unless a distribution is required to be made, as explained earlier, because your vested account balance does not exceed \$5,000. However, if you elect to delay the distribution of your vested account balance, there are rules that require that certain minimum distributions be made from the Plan. Distributions are required to begin not later than the April 1st following the later of the end of the year in which you reach age 70 1/2 or retire.

**Medium of payment.** Benefits under the Plan will generally be paid to you in cash only.

## **ARTICLE VI BENEFITS AND DISTRIBUTIONS UPON DEATH**

### **What happens if I die while working for the Employer?**

If you die while still employed by the Employer, then your vested account balance will be used to provide your beneficiary with a death benefit.

### **Who is the beneficiary of my death benefit?**

**Beneficiary designation.** You may designate a beneficiary for your death benefit. The designation must be made in accordance with the procedures set forth by the Administrator. You should periodically review your designation to ensure it continues to meet your goals.

**Divorce.** If you have designated your spouse as your beneficiary for all or a part of your death benefit, then upon your divorce, the designation is no longer valid. This means that if you do not select a new beneficiary after your divorce, then you are treated as not having a beneficiary for that portion of the death benefit (unless you have remarried).

**No beneficiary designation.** At the time of your death, if you have not designated a beneficiary or your beneficiary is also not alive, the death benefit will be paid in the following order of priority to:

- (a) your surviving spouse
- (b) your children, including adopted children in equal shares (and if a child is not living, that child's share will be distributed to that child's heirs)
- (c) your surviving parents, in equal shares
- (d) your estate

### **How will the death benefit be paid to my beneficiary?**

**Form of distribution.** If the death benefit payable to a beneficiary does not exceed \$5,000, then the benefit may only be paid as a lump-sum. If the death benefit exceeds \$5,000, your beneficiary may elect to have the death benefit in the same forms of payments that were available to you.

### **When must the last payment be made to my beneficiary?**

The law generally restricts the ability of a retirement plan to be used as a method of retaining money for purposes of your death estate. Thus, there are rules that are designed to ensure that death benefits are distributable to beneficiaries within certain time periods.

Regardless of the method of distribution selected, if your designated beneficiary is a person (rather than your estate or some trusts) then minimum distributions of your death benefit will begin by the end of the year following the year of your death ("1-year rule") and must be paid over a period not extending beyond your beneficiary's life expectancy. If your spouse is the beneficiary, then under the "1-year rule," the start of payments will be delayed until the year in which you would have attained age 70 1/2 unless your spouse elects to begin distributions over his or her life expectancy before then. However, instead of the "1-year rule" your beneficiary may elect to have the entire death benefit paid by the end of the fifth year following the year of your death (the "5-year rule"). Generally, if your beneficiary is not a person, your entire death benefit must be paid under the "5-year rule."

### **What happens if I'm a participant, terminate employment and die before receiving all my benefits?**

If you terminate employment with the Employer and subsequently die, your beneficiary will be entitled to your remaining interest in the Plan at the time of your death. The provision in the Plan providing for full vesting of your benefit upon death does not apply if you die after terminating employment.

## ARTICLE VII TAX TREATMENT OF DISTRIBUTIONS

### **What are my tax consequences when I receive a distribution from the Plan?**

Generally, you must include any Plan distribution in your taxable income in the year in which you receive the distribution. The tax treatment may also depend on your age when you receive the distribution. Certain distributions made to you when you are under age 59 1/2 could be subject to an additional 10% tax.

### **Can I elect a rollover to reduce or defer tax on my distribution?**

**Rollover or Direct Transfer.** You may reduce, or defer entirely, the tax due on your distribution through use of one of the following methods:

(a) **60-day rollover.** The rollover of all or a portion of the distribution to an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the rollover. This will result in no tax being due until you begin withdrawing funds from the IRA or other qualified employer plan. The rollover of the distribution, however, **MUST** be made within strict time frames (normally, within 60 days after you receive your distribution). Under certain circumstances, all or a portion of a distribution may not qualify for this rollover treatment. In addition, most distributions will be subject to mandatory federal income tax withholding at a rate of 20%. This will reduce the amount you actually receive. For this reason, if you wish to roll over all or a portion of your distribution amount, then the direct transfer option described in paragraph (b) below would be the better choice.

(b) **Direct rollover.** For most distributions, you may request that a direct transfer (sometimes referred to as a direct rollover) of all or a portion of a distribution be made to either an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the transfer. A direct transfer will result in no tax being due until you withdraw funds from the IRA or other employer plan. Like the rollover, under certain circumstances all or a portion of the amount to be distributed may not qualify for this direct transfer. If you elect to actually receive the distribution rather than request a direct transfer, then in most cases 20% of the distribution amount will be withheld for federal income tax purposes.

**Automatic IRA Rollover.** If a mandatory distribution is being made to you because your vested interest in the Plan exceeds \$1,000 but does not exceed \$5,000, then the Plan will rollover your distribution to an IRA if you do not make an affirmative election to either receive or roll over the distribution. The IRA provider selected by the Plan will invest the rollover funds in a type of investment designed to preserve principal and provide a reasonable rate of return and liquidity (e.g., an interest-bearing account, a certificate of deposit or a money market fund). The IRA provider will charge your account for any expenses associated with the establishment and maintenance of the IRA and with the IRA investments. You may transfer the IRA funds to any other IRA you choose. You will be provided with details regarding the IRA at the time you are entitled to a distribution. However, you may contact the Administrator at the address and telephone number indicated in this summary for further information regarding the Plan's automatic rollover provisions, the IRA provider, and the fees and expenses associated with the IRA.

**Tax Notice.** WHENEVER YOU RECEIVE A DISTRIBUTION THAT IS AN ELIGIBLE ROLLOVER DISTRIBUTION, THE ADMINISTRATOR WILL DELIVER TO YOU A MORE DETAILED EXPLANATION OF THESE OPTIONS. HOWEVER, THE RULES WHICH DETERMINE WHETHER YOU QUALIFY FOR FAVORABLE TAX TREATMENT ARE VERY COMPLEX. YOU SHOULD CONSULT WITH QUALIFIED TAX COUNSEL BEFORE MAKING A CHOICE.

## ARTICLE VIII PROTECTED BENEFITS AND CLAIMS PROCEDURES

### **Are my benefits protected?**

As a general rule, your interest in your account, including your "vested interest," may not be alienated. This means that your interest may not be sold, used as collateral for a loan, given away or otherwise transferred. In addition, your creditors (other than the IRS) may not attach, garnish or otherwise interfere with your benefits under the Plan.

### **Are there any exceptions to the general rule?**

There are three exceptions to this general rule. The Administrator must honor a "qualified domestic relations order." A "qualified domestic relations order" is defined as a decree or order issued by a court that obligates you to pay child support or alimony, or otherwise allocates a portion of your assets in the Plan to your spouse, former spouse, children or other dependents. If a qualified domestic relations order is received by the Administrator, all or a portion of your benefits may be used to satisfy that obligation. The Administrator will determine the validity of any domestic relations order received. You and your beneficiaries can obtain from the Administrator, without charge, a copy of the procedure used by the Administrator to determine whether a qualified domestic relations order is valid.

The second exception applies if you are involved with the Plan's operation. If you are found liable for any action that adversely affects the Plan, the Administrator can offset your benefits by the amount that you are ordered or required by a court to pay the Plan. All or a portion of your benefits may be used to satisfy any such obligation to the Plan.

The last exception applies to Federal tax levies and judgments. The Federal government is able to use your interest in the Plan to enforce a Federal tax levy and to collect a judgment resulting from an unpaid tax assessment.

**Can the Plan be amended?**

Your Employer has the right to amend the Plan at any time. In no event, however, will any amendment authorize or permit any part of the Plan assets to be used for purposes other than the exclusive benefit of participants or their beneficiaries. Additionally, no amendment will cause any reduction in the amount credited to your account.

**What happens if the Plan is discontinued or terminated?**

Although your Employer intends to maintain the Plan indefinitely, your Employer reserves the right to terminate the Plan at any time. Upon termination, no further contributions will be made to the Plan and all amounts credited to your accounts will become 100% vested. Your Employer will direct the distribution of your accounts in a manner permitted by the Plan as soon as practicable. (See the question entitled "How will my benefits be paid to me?" for a further explanation.) You will be notified if the Plan is terminated.

**How do I submit a claim for Plan benefits?**

Benefits will generally be paid to you and your beneficiaries without the necessity for formal claims. Contact the Administrator if you are entitled to benefits or if you think an error has been made in determining your benefits. Any such request should be in writing.

If the Administrator determines the claim is valid, then you will receive a statement describing the amount of benefit, the method or methods of payment, the timing of distributions and other information relevant to the payment of the benefit.

**What if my benefits are denied?**

Your request for Plan benefits will be considered a claim for Plan benefits, and it will be subject to a full and fair review. If your claim is wholly or partially denied, the Administrator will provide you with notification of the Plan's adverse determination. This written or electronic notification will be provided to you within a reasonable period of time.

**ARTICLE IX  
GENERAL INFORMATION ABOUT THE PLAN**

There is certain general information which you may need to know about the Plan. This information has been summarized for you in this Article.

**Plan Name**

The full name of the Plan is Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees.

**Plan Effective Dates**

The provisions of the Plan become effective on November 14, 2018.

**Other Plan Information**

Valuations of the Plan assets are generally made every business day. Certain distributions are based on the Anniversary Date of the Plan. This date is the last day of the Plan Year.

The Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1st and ends on December 31st.

**Employer Information**

Your Employer's name, address and identification number are:

Kern County Hospital Authority  
1700 Mt. Vernon Avenue  
Bakersfield, California 93306  
47-5618278

**Administrator Information**

The Administrator is responsible for the day-to-day administration and operation of the Plan. For example, the Administrator maintains the Plan records, including your account information, provides you with the forms you need to complete for Plan participation, and directs the

payment of your account at the appropriate time. The Administrator will also allow you to review the formal Plan document and certain other materials related to the Plan. If you have any questions about the Plan or your participation, you should contact the Administrator. The Administrator may designate other parties to perform some duties of the Administrator.

The Administrator has the complete power, in its sole discretion, to determine all questions arising in connection with the administration, interpretation, and application of the Plan (and any related documents and underlying policies). Any such determination by the Administrator is conclusive and binding upon all persons.

The name, address and business telephone number of the Plan's Administrator are:

Kern County Hospital Authority  
1700 Mt. Vernon Avenue  
Bakersfield, California 93306  
(661) 862-7564

**Plan Information and Plan Funding Medium**

ADOPTION AGREEMENT FOR
GOVERNMENTAL VOLUME SUBMITTER MONEY PURCHASE PLAN

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: Kern County Hospital Authority

Address: 1700 Mt. Vernon Avenue Street

Bakersfield City California State 93306 Zip

Telephone: (661) 862-7564

Taxpayer Identification Number (TIN): 47-5618278

Employer's Fiscal Year ends: June 30th

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

- a. [ ] State government or state agency
b. [X] County or county agency
c. [ ] Municipality or municipal agency
d. [ ] Indian tribal government (see Note below)
e. [ ] Other:

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.38). Will any other Employers adopt this Plan as Participating Employers?

- a. [X] No
b. [ ] Yes

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 10.)

4. PLAN NAME:

Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees

5. PLAN STATUS

- a. [X] New Plan
b. [ ] Amendment and restatement of existing Plan
PPA RESTATEMENT (leave blank if not applicable)
1. [ ] This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes (i.e., the 6-year pre-approved plan restatement).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan

a. November 14, 2018 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

b. (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

- 7. PLAN YEAR (Plan Section 1.42) means, except as otherwise provided in d. below:
  - a.  the calendar year
  - b.  the twelve-month period ending on \_\_\_\_\_ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.46). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):

- c.  N/A
- d.  beginning on \_\_\_\_\_ (enter month day, year; e.g., July 1, 2013)  
and ending on \_\_\_\_\_ (enter month day, year).

- 8. VALUATION DATE (Plan Section 1.52) means:
  - a.  every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
  - b.  the last day of each Plan Year
  - c.  the last day of each Plan Year quarter
  - d.  other (specify day or days): \_\_\_\_\_ (must be at least once each Plan Year)

**NOTE:** The Plan always permits interim valuations.

- 9. TRUSTEE(S) OR INSURER(S) (Plan Sections 1.25 and 1.50):

- a.  **Insurer.** This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:
  - (1) \_\_\_\_\_ (2) \_\_\_\_\_ (if more than 2, add names to signature page).
- b.  **Individual Trustee(s).** Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (add additional Trustees as necessary)

| Name(s) | Title(s) |
|---------|----------|
| _____   | _____    |
| _____   | _____    |
| _____   | _____    |

Address and telephone number

- 1.  Use Employer address and telephone number
- 2.  Use address and telephone number below:

Address: \_\_\_\_\_  
Street

\_\_\_\_\_

City State Zip

Telephone: \_\_\_\_\_

- c.  **Corporate Trustee(s)** (add additional Trustees as necessary)

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street

\_\_\_\_\_

City State Zip

Telephone: \_\_\_\_\_

**Directed/Discretionary Trustee.** Unless otherwise specified below, if there is a corporate Trustee, it will serve as a Directed (nondiscretionary) Trustee (Plan Section 1.21) and if there is an individual Trustee, he or she will serve as a Discretionary Trustee (Plan Section 1.22) over all Plan assets (select all that apply; leave blank if defaults apply)

- d.  Directed Trustee exceptions (leave blank if no exceptions):
  - Directed Trustee over specified Plan assets (select all that apply; leave blank if none apply)
    - 1.  The corporate Trustee will serve as Directed Trustee over the following assets: \_\_\_\_\_
    - 2.  The individual Trustee(s) will serve as Directed Trustee over the following assets: \_\_\_\_\_
  - Individual Trustee will serve as Directed Trustee (may not be selected with d.1. or d.2.)
    - 3.  over all Plan assets

- e.  Discretionary Trustee exceptions (leave blank if no exceptions):  
Discretionary Trustee over specified Plan assets (select all that apply; leave blank if none apply)  
1.  The individual Trustee(s) will serve as Discretionary Trustee over the following assets: \_\_\_\_\_  
2.  The corporate Trustee will serve as Discretionary Trustee over the following assets: \_\_\_\_\_  
Corporate Trustee will serve as Discretionary Trustee (may not be selected with e.1. or e.2.)  
3.  over all Plan assets

**Separate trust.** Will a separate trust agreement that is approved by the IRS for use with this Plan be used?

- f.  No  
g.  Yes

**NOTE:** If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee will be those specified in the trust agreement.

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER  
(If none is named, the Employer will be the Administrator (Plan Section 1.2).)  
a.  Employer (use Employer address and telephone number)  
b.  Other:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone: \_\_\_\_\_

11. CONTRIBUTION TYPES  
The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.  
FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)  
a.  This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):  
1.  All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select contributions at b. - f. (optional), skip questions 12-18 and 22-29)  
2.  All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)  
**Effective date**  
3.  as of \_\_\_\_\_ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b.  **Employer contributions other than matching** (Questions 24-25)  
1.  This Plan qualifies as a Social Security Replacement Plan (Question 24.c. must be selected)  
c.  **Employer matching contributions** (Questions 26-28)  
d.  **Mandatory Employee contributions** (Question 31)  
e.  **After-tax voluntary Employee contributions** (Question 32)  
f.  **Rollover contributions** (Question 39)

ELIGIBILITY REQUIREMENTS

12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:  
a.  **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).  
b.  **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):  
1.  Union Employees (as defined in Plan Section 1.17)  
2.  Nonresident aliens (as defined in Plan Section 1.17)  
3.  Leased Employees (Plan Section 1.28)  
4.  Part-time/temporary/seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled service is less than \_\_\_\_\_ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.54). However, if any such excluded Employee actually completes a Year of Service, then such Employee will no longer be part of this excluded class.



5.  Other: excluding anyone that is not classified as Management, Mid-Management and Confidential Employees. (must be definitely determinable under Regulations §1.401-1(b). Exclusions may be employment title specific but may not be by individual name nor result in only a finite group of individuals (e.g., excluding anyone hired after 12/31/12.)

13. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)

- a.  **No age or service required.** No age or service required for all Contribution Types (skip to Question 14).  
 b.  **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

**Eligibility Requirements**

c.  **Age Requirement**

1.  No age requirement  
 2.  Age 20 1/2  
 3.  Age 21  
 4.  Age 18 (may not exceed 26)

d.  **Service Requirement**

1.  No service requirement  
 2.  \_\_\_\_\_ (not to exceed 60) months of service (elapsed time)  
 3.  1 Year of Service  
 4.  \_\_\_\_\_ (not to exceed 5) Years of Service  
 5.  \_\_\_\_\_ consecutive month period from the Eligible Employee's employment commencement date and during which at least \_\_\_\_\_ Hours of Service are completed.  
 6.  \_\_\_\_\_ consecutive months of employment from the Eligible Employee's employment commencement date.  
 7.  Other: \_\_\_\_\_ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

**NOTE:** If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.

**NOTE:** Year of Service means Period of Service if elapsed time method is chosen.

**Waiver of conditions.** The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- e.  If employed on \_\_\_\_\_ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):  
 1.  service requirement (may let part-time Eligible Employees into the Plan)  
 2.  age requirement  
 3.  waiver is for: \_\_\_\_\_

**Amendment or restatement to change eligibility requirements**

- f.  This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.  
 1.  The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.  
 2.  The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

- a.  date such requirements are met  
 b.  first day of the month coinciding with or next following the date on which such requirements are met  
 c.  first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met  
 d.  earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met  
 e.  first day of the Plan Year coinciding with or next following the date on which such requirements are met (Eligibility must be six months of service (or 1 1/2 Years (or Periods) of Service if 100% immediate vesting is selected) or less and age must be 20 1/2 or less.)  
 f.  first day of the Plan Year in which such requirements are met  
 g.  first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.  
 h.  other: first day of the first full bi-weekly payroll period following date of employment. (must be definitely determinable)

**SERVICE**

15. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.39 and 1.54)
- a.  No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
  - b.  Prior service with the designated employers is recognized as follows (answer c. and select one or more of c.1. - 3.; select d. - f. as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

| <b>Other Employer</b>                                                                                                                 | <b>Eligibility</b>                     | <b>Vesting</b>                         | <b>Contribution Allocation</b> |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------|--------------------------------|
| c. <input checked="" type="checkbox"/> Employer name:<br><u>Cantu Management, Inc.</u>                                                | 1. <input checked="" type="checkbox"/> | 2. <input checked="" type="checkbox"/> | 3. <input type="checkbox"/>    |
| d. <input checked="" type="checkbox"/> Employer name:<br><u>Other Designated Contractors per discretion of the Hospital Authority</u> | 1. <input checked="" type="checkbox"/> | 2. <input checked="" type="checkbox"/> | 3. <input type="checkbox"/>    |
| e. <input type="checkbox"/> Employer name:<br>_____                                                                                   | 1. <input type="checkbox"/>            | 2. <input type="checkbox"/>            | 3. <input type="checkbox"/>    |

**Limitations**

- f.  The following provisions or limitations apply with respect to the recognition of prior service: \_\_\_\_\_  
(e.g., credit service with X only on/following 1/1/13)

**NOTE:** If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.39 and 1.54 regardless of any selections above.

16. SERVICE CREDITING METHOD (Plan Sections 1.39 and 1.54)

**NOTE:** If no selections are made in this Section, then the provisions set forth in the definition of Year of Service in Plan Section 1.54 will apply, including the following defaults:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
  2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service.
  3. For eligibility purposes, the computation period will be as defined in Plan Section 1.54 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
  4. For vesting and allocation purposes, the computation period will be the Plan Year.
- a.  **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:
    1.  all purposes (skip to Question 17)
    2.  the following purposes (select one or more):
      - a.  eligibility to participate
      - b.  vesting
      - c.  sharing in allocations or contributions
  - b.  **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
    1.  **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
    2.  **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
    3.  **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
      - a.  all purposes
      - b.  the following purposes (select one or more):
        1.  eligibility to participate
        2.  vesting
        3.  sharing in allocations or contributions

Such method will apply to:

      - c.  all Employees
      - d.  Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
      - e.  other: \_\_\_\_\_ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

- f.  days worked (10 hours per day)
- g.  weeks worked (45 hours per week)
- h.  semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
- i.  months worked (190 hours per month)
- j.  bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
- k.  other: \_\_\_\_\_ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).

- 4.  **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service for:
  - a.  all purposes
  - b.  the following purposes (select one or more):
    - 1.  eligibility to participate
    - 2.  vesting
    - 3.  sharing in allocations or contributions

**VESTING**

- 17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))
  - a.  N/A (no Employer contributions; skip to Question 19)
  - b.  The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

**NOTE:** The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

**Vesting for Employer contributions other than matching contributions**

- c.  N/A (no Employer contributions (other than matching contributions); skip to f.)
- d.  100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.
- e.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
  - 1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
  - 2.  4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  - 3.  5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  - 4.  Cliff: 100% vesting after \_\_\_\_\_ (not to exceed 15) years
  - 5.  Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

| Years (or Periods) of Service | Percentage |
|-------------------------------|------------|
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |

**Vesting for Employer matching contributions**

- f.  N/A (no Employer matching contributions)
- g.  The schedule above will also apply to Employer matching contributions.
- h.  100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.
- i.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
  - 1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
  - 2.  4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  - 3.  5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  - 4.  Cliff: 100% vesting after \_\_\_\_\_ (not to exceed 15) years
  - 5.  Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

| Years (or Periods) of Service | Percentage |
|-------------------------------|------------|
| _____                         | _____ %    |
| _____                         | _____ %    |
| _____                         | _____ %    |
| _____                         | _____ %    |
| _____                         | _____ %    |
| _____                         | _____ %    |

18. VESTING OPTIONS

**Excluded vesting service.** The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a.  Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b.  Service prior to the computation period in which an Employee has attained age \_\_\_\_\_.
- c.  Service during a period for which an Employee did not make mandatory Employee contributions.

**Vesting for death, Total And Permanent Disability and Early Retirement Date.** Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- d.  Death
- e.  Total and Permanent Disability
- f.  Early Retirement Date

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.32) means:

- a.  **Specific age.** The date a Participant attains age 65 (may not exceed 65)
- b.  **Age/participation.** The later of the date a Participant attains age \_\_\_\_\_ (may not exceed 65) or the \_\_\_\_\_ (may not exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced

**NOTE:** Effective for Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register, Normal Retirement Age of less than age 62 must meet Regulation §1.401(a)-1(b)(2).

**Qualified police or firefighters.** Normal Retirement Age for qualified public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

- c.  Age \_\_\_\_\_ (may not be less than 50)

20. NORMAL RETIREMENT DATE (Plan Section 1.33) means, with respect to any Participant, the:

- a.  date on which the Participant attains "NRA"
- b.  first day of the month coinciding with or next following the Participant's "NRA"
- c.  first day of the month nearest the Participant's "NRA"
- d.  Anniversary Date coinciding with or next following the Participant's "NRA"
- e.  Anniversary Date nearest the Participant's "NRA"
- f.  Other: \_\_\_\_\_ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)

- a.  N/A (no early retirement provision provided)
- b.  Early Retirement Date means the:
  - 1.  date on which a Participant satisfies the early retirement requirements
  - 2.  first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
  - 3.  Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

**Early retirement requirements**

- 4.  Participant attains age \_\_\_\_\_  
**AND, completes....** (leave blank if not applicable)
  - a.  at least \_\_\_\_\_ Years (or Periods) of Service for vesting purposes
  - b.  at least \_\_\_\_\_ Years (or Periods) of Service for eligibility purposes
- c.  Early Retirement Date means: \_\_\_\_\_ (must be definitely determinable)

**COMPENSATION**

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).

**Base definition**

- a.  Wages, tips and other compensation on Form W-2
- b.  Code §3401(a) wages (wages for withholding purposes)
- c.  415 safe harbor compensation

**NOTE:** Plan Section 1.23(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457(b).

**Determination period.** Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):

- d.  the Plan Year
- e.  the Fiscal Year coinciding with or ending within the Plan Year
- f.  the calendar year coinciding with or ending within the Plan Year

**Adjustments to Compensation** (for Plan Section 1.10). Compensation will be adjusted by:

- g.  **No adjustments** (skip to i. below)
- h.  **Adjustments.** Compensation will be adjusted by (select all that apply):
  - 1.  excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457(b))
  - 2.  excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
  - 3.  excluding Compensation paid during the "determination period" while not a Participant in the Plan.
  - 4.  excluding Military Differential Pay
  - 5.  excluding overtime
  - 6.  excluding bonuses
  - 7.  other: \_\_\_\_\_ (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

**Military Differential Pay Special Effective Date** (leave blank if not applicable)

- i.  If this is a PPA restatement and the provisions above regarding Military Differential Pay (included unless h.4. is selected) have a later effective date than Plan Years beginning after December 31, 2008, then enter the date such provisions were first effective: \_\_\_\_\_ (may not be earlier than January 1, 2009; for Plan Years beginning prior to January 1, 2009, Military Differential Pay is treated in accordance with the post-severance Compensation provisions in the following Question).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

The following optional provision of the 415 Regulations will apply to Limitation Years beginning on or after July 1, 2007 unless otherwise elected below:

**415 Compensation (post-severance compensation adjustments)** (select all that apply at a.; leave blank if none apply)

**NOTE:** Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a.  The defaults listed above apply except for the following (select one or more):
  - 1.  Leave cash-outs will be **excluded**
  - 2.  Nonqualified unfunded deferred compensation will be **excluded**
  - 3.  Military Differential Pay will be **included** (Plan automatically includes for Limitation Years beginning after December 31, 2008)
  - 4.  Disability continuation payments will be **included**

**Plan Compensation (post-severance compensation adjustments)**

- b.  **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans.
- c.  **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.
- d.  **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
  - 1.  Exclude all post-severance compensation
  - 2.  Regular pay will be **excluded**
  - 3.  Leave cash-outs will be **excluded**
  - 4.  Nonqualified unfunded deferred compensation will be **excluded**
  - 5.  Military Differential Pay will be **included**
  - 6.  Disability continuation payments will be **included**

**NOTE:** The above treatment of Military Differential Pay only applies to Plan Years beginning prior to January 1, 2009. For Plan Years beginning after such date, Military Differential Pay is not considered post-severance compensation and the provisions of Question 22 apply.

**Post-severance compensation special effective date** (leave blank if not applicable)

e.  If this is a PPA restatement and the post-severance compensation adjustments above for 415 Compensation or Plan Compensation applied other than the first day of the Plan Year beginning on or after July 1, 2007, then enter the date such provisions were first effective: \_\_\_\_\_

**CONTRIBUTIONS AND ALLOCATIONS**

24. EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS) (Plan Section 4.1(a)(2)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

a.  **Fixed contribution** equal to (only select one):

1.  \_\_\_\_\_% of each Participant's Compensation for each:
  - a.  Plan Year
  - b.  calendar quarter
  - c.  month
  - d.  pay period
  - e.  week
2.  \$\_\_\_\_\_ per Participant.
3.  \$\_\_\_\_\_ per Hour of Service worked while an Eligible Employee
  - a.  up to \_\_\_\_\_ hours (leave blank if no limit)
4.  other: \_\_\_\_\_ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b)).

b.  **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):

1.  Sick leave
2.  Vacation leave

**Eligible Employees.** Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)

3.  **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
  - a.  The Former Employee must be at least age \_\_\_\_\_ (e.g., 55)
  - b.  The value of the sick and/or vacation leave must be at least \$\_\_\_\_\_ (e.g., \$2,000)
  - c.  A contribution will only be made if the total hours is over \_\_\_\_\_ (e.g., 10) hours
  - d.  A contribution will not be made for hours in excess of \_\_\_\_\_ (e.g., 40) hours
4.  **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
  - a.  The Employee must be at least age \_\_\_\_\_ (e.g., 55)
  - b.  The value of the sick and/or vacation leave must be at least \$\_\_\_\_\_ (e.g., \$2,000)
  - c.  A contribution will only be made if the total hours is over \_\_\_\_\_ (e.g., 10) hours
  - d.  A contribution will not be made for hours in excess of \_\_\_\_\_ (e.g., 40) hours

c.  **Social Security Replacement Plan.** An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by Employee and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)

**Include only part-time, seasonal and temporary Employees** (leave blank if not applicable)

1.  Regardless of any other provision in this to the contrary, the contribution above will only be made for part-time, seasonal, or temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2.

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)
- a.  **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).
  - b.  **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
    - Conditions for Participants NOT employed on the last day of the Plan Year**
      - 1.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service (or \_\_\_\_\_ (not to exceed 12) months of service if the elapsed time method is selected).
      - 2.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
      - 3.  Participants will NOT share in the allocations, regardless of service.
      - 4.  Participants will share in the allocations, regardless of service.
      - 5.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
    - Conditions for Participants employed on the last day of the Plan Year**
      - 6.  No service requirement.
      - 7.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
      - 8.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.
      - 9.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):
- c.  Death
  - d.  Total and Permanent Disability
  - e.  Termination of employment on or after Normal Retirement Age
    - 1.  or Early Retirement Date

26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(a)(3)). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will make the following matching contributions:
- A. **Elective deferrals taken into account.** For purposes of applying the matching contribution provisions below, elective deferrals include elective deferral (pre-tax and Roth) contributions to the following Employer plan(s) (insert name of Plan(s) to which the elective deferral contributions being matched will be made):
    - a.  **457 plan(s).** Enter Plan name: County of Kern California Deferred Compensation Plan
    - b.  **403(b) plan(s).** Enter Plan name: \_\_\_\_\_

**NOTE:** If selected at Question 32, after-tax voluntary Employee contributions are also considered elective deferrals for purposes of matching contributions.
  - B. **Matching Formula.** (select one)
    - c.  **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to \_\_\_\_\_% (e.g., 50) of the Participant's elective deferrals
      - 1.  that do not exceed \_\_\_\_\_% of a Participant's Compensation (leave blank if no limit)
    - d.  **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's elective deferrals, determined as follows:
 

**NOTE:** Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

| Tiers of Contributions<br>(indicate \$ or %) | Matching Percentage |
|----------------------------------------------|---------------------|
| First <u>6%</u>                              | <u>100</u> %        |
| Next <u>6%</u>                               | <u>50</u> %         |
| Next _____                                   | _____ %             |
| Next _____                                   | _____ %             |

- e.  **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's elective deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

| Years (or Periods) of Service | Matching Percentage |
|-------------------------------|---------------------|
| _____                         | _____%              |
| _____                         | _____%              |
| _____                         | _____%              |

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1.  vesting purposes
  2.  eligibility purposes
- f.  Other: \_\_\_\_\_ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b))

27. MATCHING CONTRIBUTION PROVISIONS

- A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:
- a.  N/A (no Plan specific limit on the amount of matching contribution)
  - b.  \$\_\_\_\_\_.
  - c.  9 % of Compensation.
- B. **Period of determination.** The matching contribution formula will be applied on the following basis (and elective deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):
- d.  the Plan Year
  - e.  each payroll period
  - f.  each month
  - g.  each Plan Year quarter
  - h.  each payroll unit (e.g., hour)

28. ALLOCATION CONDITIONS FOR MATCHING CONTRIBUTIONS (Plan Section 4.3). Select a. OR b. and all that apply of c. - h.

- a.  **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
- b.  **Allocation conditions apply** (select one of 1. -5. AND one of 6. - 9. below)
- Conditions for Participants NOT employed on the last day of the Plan Year.**
1.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service (or \_\_\_\_\_ (not to exceed 12) months of service if the elapsed time method is selected).
  2.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
  3.  Participants will NOT share in the allocations, regardless of service.
  4.  Participants will share in the allocations, regardless of service.
  5.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

**Conditions for Participants employed on the last day of the Plan Year**

6.  No service requirement.
7.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.
9.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

**Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c.  Death
- d.  Total and Permanent Disability
- e.  Termination of employment on or after Normal Retirement Age
  1.  or Early Retirement Date



**Conditions based on period other than Plan Year.** The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

- f.  The Plan Year quarter.
- g.  Payroll period.
- h.  Other: \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. FORFEITURES (Plan Sections 1.21 and 4.3(e))

Forfeitures of Employer contributions other than matching contributions will be:

- a.  added to the Employer contribution and allocated in the same manner
- b.  used to reduce any Employer contribution
- c.  allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- d.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

Forfeitures of Employer matching contributions will be:

- e.  N/A. Same as above or no Employer matching contributions.
- f.  used to reduce the Employer matching contribution.
- g.  used to reduce any Employer contribution.
- h.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

30. ALLOCATION OF EARNINGS (Plan Section 4.3(c))

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a.  N/A. (all assets in the Plan are subject to Participant investment direction)
- b.  by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date
- c.  by treating one-half of all such contributions as being a part of the Participant's nonsegregated Account balance as of the previous Valuation Date
- d.  by using the method specified in Plan Section 4.3(c) (balance forward method)
- e.  other: \_\_\_\_\_ (must be a definite predetermined formula)

31. MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)

- a.  An Eligible Employee must contribute to the Plan \_\_\_\_\_% (not to exceed 25%) of Compensation.
- b.  An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from \_\_\_\_\_% (not less than 1%) to \_\_\_\_\_% (not to exceed 25%) of Compensation.
- c.  Other: \_\_\_\_\_ (must be definitely determinable)

**Employer pick-up contribution.** The mandatory Employee contribution is "picked up" by the Employer under Code §414(h)(2) unless elected below.

- d.  The mandatory Employee contribution is not "picked-up" by the Employer.

32. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.9) (skip if after-tax voluntary Employee contributions NOT selected at Question 11.e.)

**Matching after-tax voluntary Employee contributions.** There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- a.  After-tax voluntary Employee contributions are considered elective deferrals for purposes of applying any matching contributions under the Plan.

**DISTRIBUTIONS**

33. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply; must select at least one):

- a.  lump-sums
- b.  substantially equal installments
- c.  partial withdrawals, provided the minimum withdrawal is \$\_\_\_\_\_ (leave blank if no minimum)

- d.  partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (e.g., partial is not permitted for death benefits; leave blank if no exceptions):
  - 1.  \_\_\_\_\_
- e.  annuity: \_\_\_\_\_ (describe the form of annuity or annuities)
- f.  other: \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion)

**NOTE:** Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

**Cash or property.** Distributions may be made in:

- g.  cash only, except for (select all that apply; leave blank if none apply):
  - 1.  insurance Contracts
  - 2.  annuity Contracts
  - 3.  Participant loans
- h.  cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
  - 1.  \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion)

34. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

**A. Accounts in excess of \$5,000**

- a.  Distributions may be made as soon as administratively feasible following severance of employment.
- b.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- c.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- d.  Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- e.  Distributions may be made as soon as administratively feasible after \_\_\_\_\_ months have elapsed following severance of employment.
- f.  No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- g.  Other: \_\_\_\_\_ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

**B. Accounts of \$5,000 or less**

- h.  Same as above
- i.  Distributions may be made as soon as administratively feasible following severance of employment.
- j.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- k.  Other: \_\_\_\_\_ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

**C. Timing after initial distributable event.** If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 34.f. and 34.h.):

- l.  Other: \_\_\_\_\_ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

**D. Participant consent (i.e., involuntary cash-outs).** Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

**NOTE:** The Plan provides that distributions of amounts of \$5,000 or less are only paid as lump-sums.

- m.  No, Participant consent is required for all distributions.
- n.  Yes, Participant consent is required only if the distribution is over:
  - 1.  \$5,000
  - 2.  \$1,000
  - 3.  \$\_\_\_\_\_ (less than \$1,000)

**NOTE:** If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

**Automatic IRA rollover.** With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4.  If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$ \_\_\_\_\_ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions, or consent rules.
- o.  Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

**NOTE:** Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

35. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a.  be made pursuant to the election of the Participant or "designated Beneficiary"
- b.  begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c.  be made within 5 (or if lesser \_\_\_\_\_) years of death for all Beneficiaries
- d.  be made within 5 (or if lesser \_\_\_\_\_) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

**NOTE:** The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

36. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)

A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):

- a.  In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied:
1.  Age. The Participant has reached:
    - a.  Normal Retirement Age
    - b.  age 62
    - c.  age \_\_\_\_\_(may not be earlier than age 62)

**Special effective date** (may be left blank if same as Plan or Restatement Effective Date)

- d.  \_\_\_\_\_ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than the first day of the Plan Year beginning in 2007)

**Account restrictions.** In-service distributions are permitted from the following Participant Accounts:

- b.  all Accounts
- c.  only from the following Accounts (select one or more):
1.  Account attributable to Employer matching contributions
  2.  Account attributable to Employer contributions other than matching contributions
  3.  Rollover Account
  4.  Transfer Account
  5.  Other: \_\_\_\_\_ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulations §1.401-1(b) and is not subject to Employer discretion)

**Limitations.** The following limitations apply to in-service distributions:

- d.  N/A (no additional limitations)
- e.  Additional limitations (select one or more):
1.  The minimum amount of a distribution is \$\_\_\_\_\_.
  2.  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  3.  Distributions may only be made from Accounts which are fully Vested.
  4.  In-service distributions may be made subject to the following provisions: \_\_\_\_\_ (must satisfy the definitely determinable requirement under Regulations §1.401-1(b) and not be subject to Employer discretion).

37. HEART ACT PROVISIONS (Plan Section 6.17)

**Continued benefit accruals.**

- a.  Continued benefit accruals will NOT apply
- b.  Continued benefit accruals will apply

**Special effective date.** If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

c.  \_\_\_\_\_ (may not be earlier than the first day of the 2007 Plan Year)

**Distributions for deemed severance of employment**

d.  The Plan does NOT permit distributions for deemed severance of employment

e.  The Plan permits distributions for deemed severance of employment

**Special effective date** (may be left blank if same as Plan or Restatement Effective Date)

1.  \_\_\_\_\_ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than January 1, 2007)

**MISCELLANEOUS**

38. LOANS TO PARTICIPANTS (Plan Section 7.6)

a.  New loans are NOT permitted.

b.  New loans are permitted.

**NOTE:** Regardless of whether new loans are permitted, if the Plan permits rollovers, then the Administrator may, in a uniform manner, accept rollovers of loans into this Plan.

39. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)

**Eligibility.** Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

a.  Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant

b.  Participants who are Former Employees

**Distributions.** When may distributions be made from a Participant's Rollover Account?

c.  At any time

d.  Only when the Participant is otherwise entitled to a distribution under the Plan

**PPA TRANSITION RULES**

The following questions only apply if this is a PPA restatement (i.e., Question 5.b.1. is selected). If this is not a PPA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

**NOTE:** The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

40. WRERA - RMD WAIVERS FOR 2009 (Plan Section 6.8(f))

**Suspension/continuation of RMDs.** Unless otherwise elected below, required minimum distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions:

a.  RMDs for 2009 were suspended for any Participant or Beneficiary who was scheduled to receive his/her first RMD for 2009 or who did not make a continuing election prior to 2009 to receive his/her RMD (unless the Participant or Beneficiary made an election to receive such distribution). RMDs for 2009 were continued for any Participant or Beneficiary who had made a continuing election to receive an RMD prior to 2009 (unless the Participant or Beneficiary made an election to suspend such distribution).

b.  RMDs continued unless otherwise elected by a Participant or Beneficiary.

c.  RMDs continued in accordance with the terms of the Plan (i.e., no election available to Participants or Beneficiaries).

d.  Other: \_\_\_\_\_

**Direct rollovers.** The Plan also treated the following as "eligible rollover distributions" in 2009 (If no election is made, then a "direct rollover" was only offered for "2009 RMDs"):

e.  "2009 RMDs" and "Extended 2009 RMDs."

f.  "2009 RMDs" but only if paid with an additional amount that is an "eligible rollover distribution" without regard to Code §401(a)(9)(H).

41. NON-SPOUSAL ROLLOVERS (Plan Section 6.14(d)). Non-spousal rollovers are permitted effective for distributions after December 31, 2006 unless an alternative effective date is selected at a. below:

a.  Non-spousal rollovers are allowed effective \_\_\_\_\_ (may not be earlier than January 1, 2007 and not later than January 1, 2010; the Plan already provides for non-spousal rollovers effective as of January 1, 2010)



**APPENDIX A  
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

**A. Special effective dates** (leave blank if not applicable):

- a.  **Special effective date(s):** \_\_\_\_\_ . For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

**B. Other permitted elections** (the following elections are optional):

- a.  **No other permitted elections**

**The following elections apply** (select one or more):

- b.  **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.
- c.  **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):  
 1.  eligibility purposes  
 2.  vesting purposes
- d.  **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: \_\_\_\_\_ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
- e.  **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): \_\_\_\_\_.
- f.  **Limitation Year** (Plan Section 1.29). The Limitation Year for Code §415 purposes will be \_\_\_\_\_ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
- g.  **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(1)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:  
 1.  Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": \_\_\_\_\_.
- h.  **Recognition of Service with other employers** (Plan Sections 1.39 and 1.54). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

|                                                                                                                                                                                          | <b>Eligibility</b>          | <b>Vesting</b>              | <b>Contribution Allocation</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|--------------------------------|
| 1. <input type="checkbox"/> Employer name: _____                                                                                                                                         | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |
| 2. <input type="checkbox"/> Employer name: _____                                                                                                                                         | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |
| 3. <input type="checkbox"/> Employer name: _____                                                                                                                                         | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |
| 4. <input type="checkbox"/> Employer name: _____                                                                                                                                         | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |
| 5. <input type="checkbox"/> Employer name: _____                                                                                                                                         | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |
| 6. <input type="checkbox"/> Employer name: _____                                                                                                                                         | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |
| <b>Limitations</b>                                                                                                                                                                       |                             |                             |                                |
| 7. <input type="checkbox"/> The following provisions or limitations apply with respect to the recognition of prior service: _____ (e.g., credit service with X only on/following 1/1/13) | a. <input type="checkbox"/> | b. <input type="checkbox"/> | c. <input type="checkbox"/>    |

- i.  **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1.  **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: \_\_\_\_\_ (must be definitely determinable and satisfy the parameters set forth at Question 17)
  2.  **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d. AND complete e.):

**Applicable Participants.** The vesting schedules in Question 17 only apply to:

- a.  Participants who are Employees as of \_\_\_\_\_ (enter date).
- b.  Participants in the Plan who have an Hour of Service on or after \_\_\_\_\_ (enter date).
- c.  Participants (even if not an Employee) in the Plan on or after \_\_\_\_\_ (enter date).
- d.  Other: \_\_\_\_\_ (e.g., Participants in division A)

**Vesting schedule**

e. The schedule that applies to Participants not subject to the vesting schedule in Question 17 is:

| Years (or Periods) of Service | Percentage |
|-------------------------------|------------|
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |
| _____                         | _____%     |

- j.  **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

**NOTE:** This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant is:

1.  April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
2.  April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
  - a.  A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of \_\_\_\_\_ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the commencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
    1.  N/A (annuity distributions are not permitted)
    2.  Upon the commencement of distributions, the original Annuity Starting Date will be retained.
    3.  Upon the commencement of distributions, a new Annuity Starting Date is created.
  - b.  A Participant who had not begun receiving required minimum distributions as of \_\_\_\_\_ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
    1.  The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

- k.  **Other spousal provisions** (select one or more)

1.  **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following:  
\_\_\_\_\_
2.  **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
3.  **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.
- l.  **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: \_\_\_\_\_
- m.  **Total and Permanent Disability.** Instead of the definition at Plan Section 1.49, Total and Permanent Disability means: \_\_\_\_\_ (must be definitely determinable).

**Governmental Money Purchase Plan**

- n.  **Permissible Trust (or Custodian) modifications.** The Employer makes the following modifications to the Trust (or Custodial) provisions as permitted under Rev. Proc. 2011-49 (or subsequent IRS guidance) (select one or more of 1. - 3. below):

**NOTE:** Any elections below must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). In addition, this may not be used to substitute all of the Trust provisions in the Plan.

1.  **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

- 
2.  **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:

- 
3.  **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:
-



**ADMINISTRATIVE PROCEDURES**

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

**A. Loan Limitations.** (complete only if loans to Participants are permitted; leave blank if none apply)

- a.  Limitations (select one or more):
    - 1.  Loans will be treated as Participant directed investments.
    - 2.  Loans will only be made for hardship or financial necessity as specified below (select i. or ii.)
      - a.  hardship reasons specified in Plan Section 6.12
      - b.  financial necessity (as defined in the loan program).
    - 3.  The minimum loan will be \$\_\_\_\_\_.
    - 4.  A Participant may only have \_\_\_\_\_ (e.g., one (1)) loan(s) outstanding at any time.
    - 5.  All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
    - 6.  **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
      - a.  Account(s) attributable to Employer matching contributions
      - b.  Account attributable to Employer contributions other than matching contributions
      - c.  Rollover Account
      - d.  Transfer Account
      - e.  Other: \_\_\_\_\_
- AND**, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
- f.  by determining the limits by only considering the restricted accounts.
  - g.  by determining the limits taking into account a Participant's entire interest in the Plan.

**Additional Loan Provisions** (select all that apply; leave blank if none apply)

- b.  **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
  - 1.  payroll deduction
  - 2.  ACH (Automated Clearing House)
  - 3.  check
    - a.  Only for prepayment
- c.  **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
  - 1.  \_\_\_\_\_ percentage points over the prime interest rate
  - 2.  \_\_\_\_\_%
  - 3.  the Administrator establishes the rate at the time the loan is made
- d.  **Refinancing.** Loan refinancing is allowed.

**B. Life Insurance.** (Plan Section 7.5)

- a.  Life insurance may not be purchased.
- b.  Life insurance may be purchased...
  - 1.  at the option of the Administrator
  - 2.  at the option of the Participant

**Limitations**

- 3.  N/A (no limitations)
- 4.  The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
  - a.  Each initial Contract will have a minimum face amount of \$\_\_\_\_\_.
  - b.  Each additional Contract will have a minimum face amount of \$\_\_\_\_\_.
  - c.  The Participant has completed \_\_\_\_\_ Years (or Periods) of Service.
  - d.  The Participant has completed \_\_\_\_\_ Years (or Periods) of Service while a Participant in the Plan.
  - e.  The Participant is under age \_\_\_\_\_ on the Contract issue date.
  - f.  The maximum amount of all Contracts on behalf of a Participant may not exceed \$\_\_\_\_\_.
  - g.  The maximum face amount of any life insurance Contract will be \$\_\_\_\_\_.

**C. Plan Expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a.  No
- b.  Yes

D. **Directed investments**

- a.  Participant directed investments are NOT permitted.
- b.  Participant directed investments are permitted from the following Participant Accounts:
  - 1.  all Accounts
  - 2.  only from the following Accounts (select one or more):
    - a.  Account attributable to Employer contributions
    - b.  Rollover Account
    - c.  Transfer Account
    - d.  Other: \_\_\_\_\_ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

- a.  No, Administrator determines in operation which sources will be accepted.
- b.  Yes

**Rollover sources.** Indicate the sources of rollovers that will be accepted (select one or more)

- 1.  **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
  - a.  a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
  - b.  a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
  - c.  a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
  - d.  a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
  - e.  a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
  - f.  a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
  - g.  a plan described in Code §457(b) (eligible deferred compensation plan)

**Direct Rollovers of Participant Loan.** The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- h.  The Plan will accept a direct rollover of a Participant loan
- i.  The Plan will only accept a direct rollover of a Participant loan only in the following situation(s):  
 \_\_\_\_\_ (e.g., only from Participants who were employees of an acquired organization).

- 2.  **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
  - a.  a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
  - b.  a plan described in Code §403(a) (an annuity plan)
  - c.  a plan described in Code §403(b) (a tax-sheltered annuity)
  - d.  a governmental plan described in Code §457(b) (eligible deferred compensation plan)
- 3.  **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

FIS BUSINESS SYSTEMS LLC VOLUME SUBMITTER MODIFICATIONS

KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT AND  
CONFIDENTIAL EMPLOYEES

The enclosed Plan is being submitted for expedited review as a Volume Submitter Plan.

No modifications from the approved specimen plan have been made to this Plan.

**REFERENCE GUIDE FOR  
KERN COUNTY HOSPITAL AUTHORITY DEFINED CONTRIBUTION PLAN FOR MANAGEMENT, MID-MANAGEMENT  
AND CONFIDENTIAL EMPLOYEES**

EMPLOYER: Kern County Hospital Authority  
 ADDRESS: 1700 Mt. Vernon Avenue, Bakersfield, California 93306  
 TELEPHONE: (661) 862-7564  
 CONTACT NAME: \_\_\_\_\_ ACCOUNT # \_\_\_\_\_  
 EMPLOYER EIN: 47-5618278  
 FISCAL YEAR END: June 30th  
 PLAN YEAR END: December 31st  
 PLAN YEAR:  
 VALUATION DATE: daily  
 ADMINISTRATOR: Employer is the Administrator  
 EFFECTIVE DATE OF PLAN: November 14, 2018

| <b>PLAN SPECS</b>                  | <b>EXPLANATION</b>                                                                                                                                                                                                                                                                   | <b>QUEST/PG</b>  |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| <b>Eligible Employees</b>          |                                                                                                                                                                                                                                                                                      | 12 p.3           |
|                                    | all Employees are eligible EXCEPT:<br>excluding anyone that is not classified as Management, Mid-Management and Confidential Employees.                                                                                                                                              |                  |
| <b>Eligibility Requirements</b>    |                                                                                                                                                                                                                                                                                      | 13 p.4           |
| -Eligibility age                   | age 18                                                                                                                                                                                                                                                                               |                  |
| <b>Eligibility-Include Service</b> |                                                                                                                                                                                                                                                                                      |                  |
| -With                              | Cantu Management, Inc.<br><b>Entry Date</b> 14 p.4<br>first day of the first full bi-weekly payroll period following date of employment.                                                                                                                                             | 15 p.5           |
| <b>Service Crediting Method</b>    | defaults apply                                                                                                                                                                                                                                                                       | 16 p.5           |
| <b>Vesting</b>                     |                                                                                                                                                                                                                                                                                      | 17 p.6           |
| - Excluded vesting service         | 1-20; 2-40; 3-60; 4-80; 5-100%<br>the following service is excluded:<br>prior to initial Effective Date of Plan                                                                                                                                                                      | 18 p.7           |
| <b>Vesting-Include Service</b>     |                                                                                                                                                                                                                                                                                      |                  |
| -With                              | Cantu Management, Inc.<br>Other Designated Contractors per discretion of the Hospital Authority                                                                                                                                                                                      | 15 p.5           |
| <b>Retirement</b>                  |                                                                                                                                                                                                                                                                                      |                  |
| -Normal                            | NRA: age 65<br>NRD: date on which Participant attains NRA                                                                                                                                                                                                                            | 19 p.7<br>20 p.7 |
| -Early                             | ERD: no early retirement provision                                                                                                                                                                                                                                                   | 21 p.7           |
| <b>Compensation</b>                | W-2 wages for CY                                                                                                                                                                                                                                                                     | 22 p.8           |
| -Limitation Year                   | calendar year (same as compensation determination period)                                                                                                                                                                                                                            |                  |
| <b>Adjustments to Compensation</b> |                                                                                                                                                                                                                                                                                      | 22 p.8           |
|                                    | exclude taxable Employee benefits<br>exclude Compensation paid while not a Participant in the Plan<br>exclude overtime                                                                                                                                                               |                  |
| <b>Post-severance Compensation</b> |                                                                                                                                                                                                                                                                                      | 23 p.8           |
| <b>Adjustments</b>                 | exclude all post-severance compensation                                                                                                                                                                                                                                              |                  |
| <b>Employer Contributions</b>      |                                                                                                                                                                                                                                                                                      |                  |
| -Matching contributions            | Made to County of Kern California Deferred Compensation Plan<br>100% on first 6% of deferrals plus 50% on next 6% of deferrals<br>match determination period: payroll period<br>allocation conditions for matching contributions:<br>no conditions to share in matching contribution | 26 p.10          |
| <b>Forfeitures</b>                 |                                                                                                                                                                                                                                                                                      | 29 p.12          |
|                                    | used to pay Plan expenses or otherwise used at Employer's discretion<br>Forfeiture (match): reduce match                                                                                                                                                                             |                  |

**Distributions**

-Form of distributions      distributions may be made in:      33 p.12  
lump-sum, installments and partial withdrawals; and distributed in cash only

-Termination      distributions upon termination:      34 p.13  
as soon as feasible after termination  
forced cash-outs if less than \$5,000

-Deemed severance      permits distributions for deemed severance of employment      37 p.14

-In-service distributions      not permitted      36 p.14

**Miscellaneous**

-Loans      not permitted      38 p.15

-Directed Investments      Permitted,  
may direct      Admin Proc

-Insurance      not permitted      Admin Proc

**ADOPTING RESOLUTION**

The undersigned authorized representative of Kern County Hospital Authority (the Employer) hereby certifies that the following resolution was duly adopted by the Employer on \_\_\_\_\_, and that such resolution has not been modified or rescinded as of the date hereof:

RESOLVED, that the form of Plan and Trust effective November 14, 2018, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

The undersigned further certifies that attached hereto are true copies of Kern County Hospital Authority Defined Contribution Plan for Management, Mid-Management and Confidential Employees, and the Summary of Plan Provisions, which are hereby approved and adopted.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

\_\_\_\_\_  
Mona A. Allen, Authority Board Coordinator  
Kern County Hospital Authority



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Proposed changes in salary and benefits for Management, Mid-Management, and Confidential (MMC) employees.

**Recommended Action:** Approve; Adopt Resolution; Authorize Chief Executive Officer, Chief Financial Officer and Human Resources to implement changes

**Summary:** The Authority requests your Board approve changes to the salaries and benefits of MMC employees as outlined below. These employees are unrepresented and include Directors, Managers, Mid-level Managers and Confidential employees.

Following is a brief overview of the recommended changes:

- 1) Wage increases in the amount of 2.25% or higher will be provided to MMC employees. These increases will be in the form of an increase to base salary, a lump sum increase, or a combination of both. The increases will be effective with pay period 18-26, which begins on 12/22/18 and is paid on 01/15/19. The cost of the recommended increases is \$201,929 or 3.25% of total MMC salaries. Increases were determined using salary survey data and internal equity comparisons, and were reviewed and approved by executive staff.
- 2) Incorporation of the current 10% management “flex” pay, into base salary for management and mid-management positions. This additional pay is a carryover from the County of Kern. Transitioning this additional pay into base salary is cost-neutral for the Authority. Confidential employees will continue to receive 5% “confidential” pay, reflected as a separate itemized line on their paystubs. This change is also effective with pay period 18-26, beginning 12/22/18.
- 3) The current vacation bank will be converted to Paid Time Off (PTO). PTO annual accruals will increase by 48 hours in exchange for three fewer holidays (24 hours) and as compensation for the three-day wait to use EIB (24 hours). The maximum accrual for PTO will be 550 hours (as opposed to the current 672 hours). In December 2018, there will be a one-time pay down for employees with more than 500 hours of accrued vacation leave. Annually thereafter, employees will have the option to elect a buyout of a portion of their PTO.
- 4) The current sick bank will be converted to an Extended Illness Bank (EIB). The maximum accrual for EIB will be 640 hours (as opposed to the current 1152 hours). The new maximum accrual aligns with the leave time available to Kern Medical’s represented employees. Employees with balances over the new maximum will keep their hours; however, they will not accrue additional hours until they fall below the new maximum.
- 5) Three of the currently observed holidays will no longer be eligible for premium pay for MMC employees. These holidays will be converted to additional PTO accruals (24 hours/year). The holidays being converted to PTO are Presidents’ Day, Labor Day and New Year’s Eve.

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A Designated Public Hospital

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- 6) Positions designated as management and mid-management will begin paying into the state disability insurance program (commonly known as SDI). Currently, management employees do not pay into SDI, requiring these employees to use vacation and sick leave for leaves of absence without the benefit of integrating SDI with existing accruals.
- 7) Newly hired management, mid-management and confidential employees will be eligible to enroll in a deferred compensation retirement plan. The plan will utilize the existing 457(b) deferred compensation plan for employee contributions, with a new 401(a) money purchase plan used as the vehicle to invest employer-matching contributions. Using a dual-plan system allows for the significantly higher IRS maximum annual contribution of \$55,000 (\$56,000 effective 1/1/19), as opposed to \$18,500 (\$19,000 effective 1/1/19) if all contributions were invested in the 457(b) plan alone. Employees are eligible to participate beginning with the start of the pay period following date of hire. There is a five-year vesting schedule for employer contributions in the 401(a) plan. Investment options in the 401(a) plan will closely mirror those currently available through the 457(b) plan. The Authority will match 100% of employee contributions for the first 6% deferred, then 50% of employee contributions for the next 6%, for a total potential employer contribution of 9% for employees who defer 12%.

Therefore, it is recommended that your Board approve the proposed changes to the salaries and benefits of MMC employees as outlined above, adopt the attached resolution, and authorize the Chief Executive Officer, Chief Financial Officer and Human Resources to implement the changes.



**BEFORE THE BOARD OF GOVERNORS  
OF THE KERN COUNTY HOSPITAL AUTHORITY**

---

In the matter of:

Resolution No. \_\_\_\_\_

**CHANGES IN TERMS AND CONDITIONS OF  
EMPLOYMENT FOR UNREPRESENTED  
EMPLOYEES CLASSIFIED AS MANAGEMENT,  
MID-MANAGEMENT AND CONFIDENTIAL**

---

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 14th day of November, 2018, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

**MONA A. ALLEN**  
Authority Board Coordinator  
Kern County Hospital Authority

---

Mona A. Allen

---

**RESOLUTION**

Section 1. WHEREAS:

(a) Pursuant to Health and Safety Code Section 101855, subdivision (a)(6), the Board of Governors is authorized to prescribe the compensation and other terms and conditions of employment for all employees; and

(b) All employees classified as management, mid-management and confidential are not represented by a recognized employee organization; and

(c) The Board of Governors desires to implement changes to the conditions of employment for all unrepresented employees classified as management, mid-management and confidential.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.

2. All unrepresented employees classified as management, mid-management and confidential will receive a salary increase of 2.25% or higher, effective with pay period 18-26, which begins on December 22, 2018 (hereafter "Pay Period 18-26"). The salary increases will be in the form of an increase in base salary, a lump sum increase, or a combination of both.

3. All unrepresented employees classified as management, mid-management and confidential will be compensated in accordance with approved salary ranges and eight step levels, denoted as Steps 1, 2, 3, 4, 5, 6, 7 and 8, effective with Pay Period 18-26.

4. All unrepresented employees classified as management and mid-management will have their 10% management "flex" pay incorporated into their base salary, effective with Pay Period 18-26.

5. All unrepresented employees classified as confidential will continue to receive their 5% confidential "flex" pay reflected as a separate itemized line on their pay statements, effective with Pay Period 18-26.

6. All unrepresented employees classified as management, mid-management and confidential will have their current sick leave accruals converted to an extended illness bank ("EIB"), effective with Pay Period 18-26. The maximum accrual for the EIB will be 640 hours. Employees with sick leave accruals that exceed 640 hours will have those excess hours credited to their EIB, but will not earn (accrue) additional hours until the accrual balance is reduced below the new maximum.

7. Effective with Pay Period 18-26, the holiday schedule for all unrepresented employees classified as management, mid-management and confidential is as follows:

New Year's Day  
Martin Luther King's Birthday  
Memorial Day  
Independence Day (July 4th)  
Thanksgiving Day  
Day after Thanksgiving Day  
Christmas Eve  
Christmas Day

Holidays that fall on Saturdays are observed on the preceding Fridays. Holidays that fall on Sundays are observed on the following Mondays. In a year in which Christmas Day and New Year's Day fall on a Saturday, the holidays are observed on Friday, and the Christmas Eve holiday is observed on the preceding Thursday. In a year in which Christmas Eve falls on a Saturday or Sunday, the holiday is observed on the preceding Friday.

8. All unrepresented employees classified as management, mid-management and confidential will have their current vacation leave accruals converted to paid time off ("PTO"), effective with Pay Period 18-26. The maximum accrual for PTO will be 550 hours. Annual accruals will increase by 48 hours in exchange for three fewer holidays (Presidents' Day, Labor Day and New Year's Eve) and as compensation for the three-day waiting period to use the EIB. Employees with vacation leave accruals that exceed 500 hours will receive a one-time pay out of those excess hours in December 2018. Employees will have the option to elect a buyout of a portion of their PTO annually thereafter.

9. All unrepresented employees classified as management and mid-management will be subject to payroll withholdings to fund partial wage-replacement insurance under the California State Disability Insurance program, effective with Pay Period 18-26.

10. All unrepresented employees classified as management, mid-management and confidential hired on or after November 24, 2018, will be eligible to enroll in a deferred compensation retirement plan as follows:

- a) All employee contributions will be automatically deducted each biweekly pay period and deposited into the County of Kern, California Deferred Compensation Plan (hereafter "457(b) Plan");
- b) All employer contributions will be deposited into the Kern County Hospital Authority Deferred Compensation Plan for Management, Mid-Management and Confidential Employees (hereafter "401(a) Plan");
- c) Voya Institutional Trust Company will serve as the Custodian of the assets on behalf of the 401(a) Plan.
- d) An employee's initial hire date is the initial opportunity to enroll in the 457(b) Plan and 401(a) Plan.
- e) Employees are eligible to participate the first day of the biweekly payroll period coincident with or next following the day they complete one biweekly payroll period of continuous service.
- f) There is a five-year vesting schedule for employer contributions in the 401(a) Plan.

g) Investment options in the 401(a) Plan will closely mirror those currently available through the 457(b) Plan.

h) The employer will match 100% of employee contributions for the first 6% deferred, then 50% of employee contributions for the next 6%, for a total potential employer contribution of 9% for employees who defer 12%.

11. All unrepresented employees classified as management, mid-management and confidential hired prior to November 24, 2018, shall continue to participate in the Kern County Employees' Retirement Association without changes to that particular pension benefit.

12. All existing unrepresented employees classified as management, mid-management and confidential shall retain all other existing benefits, including without limitation, health care coverage if elected.

13. The terms and conditions of employment adopted by this Resolution shall apply to all existing employees classified as management, mid-management and confidential, effective upon adoption of this Resolution.

14. The terms and conditions of employment adopted by this Resolution shall apply to all newly hired employees classified as management, mid-management and confidential, effective upon commencement of their employment.

15. The Chief Executive Officer, Chief Financial Officer and Human Resources Department are hereby directed to implement the provisions of this Resolution.

16. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Chief Executive Officer  
Chief Financial Officer  
Human Resources Department  
Legal Services Department  
Kern County Treasurer-Tax Collector  
Kern County Employees' Retirement Association



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**SUBJECT:** Proposed regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2019

**Recommended Action:** Discuss; Provide Direction

**Summary:**

On October 17, 2018, your Board approved the regular meetings dates of the Kern County Hospital Authority Board of Governors for calendar year 2019. Since that time, staff has learned that the one or more Board members have a conflict with the meeting dates established for April and May 2019. Kern Medical is requesting that your Board discuss alternate meeting dates for April and May and provide direction.

A new resolution will be brought to your Board's December meeting for adoption of the revised meeting dates.

Therefore, it is recommended that your Board discuss options for regular meeting dates for April and May 2019 and provide direction.

# 2019



Kern County Hospital Authority  
Board of Governors'  
Meeting Calendar  
11:30am – 1:30pm

## JANUARY

| S  | M  | T  | W  | T  | F  | S  |
|----|----|----|----|----|----|----|
|    |    | 1  | 2  | 3  | 4  | 5  |
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| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 |    |    |

## FEBRUARY

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## MARCH

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## APRIL

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## MAY

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| 26 | 27 | 28 | 29 | 30 | 31 |    |

## JUNE

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| 30 |    |    |    |    |    |    |

## JULY

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| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 |    |    |    |

## AUGUST

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| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

## SEPTEMBER

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| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 |    |    |    |    |    |

## OCTOBER

| S  | M  | T  | W  | T  | F  | S  |
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| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 |    |    |

## NOVEMBER

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| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

## DECEMBER

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| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 |    |    |    |    |

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**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Comments Regarding Budget Variances for Operating Expenses – September 2018

**Recommended Action:** Receive and File

**Summary:**

The following items have budget variances for the month of September 2018:

**Indigent Funding:**

- Indigent funding revenue has a favorable budget variance for the month due in large part to prior year AB 915 Outpatient DSH funding of \$2.5M received in September 2018. Half of this funding was recognized as revenue for September 2018 and the balance will be recognized as revenue next month for October 2018. In addition, Kern Medical received \$500k of Correctional Medicine funding from the County of Kern to true-up the amount owed to Kern Medical for first quarter fiscal year 2019 Correctional Medicine services provided. The favorable variance is also due in part to a decision to reserve less revenue from the indigent programs in FY 2019 than was planned when the budget was prepared. Additional information received about these programs after the budget was prepared supports a high likelihood that these funds will be received. This decision was also made in an effort to properly match revenue with the period that it is earned.

**Other Revenue:**

- Other revenue has a favorable variance for the month due to \$460k of refunds received from McKesson for unused maintenance and service fees from prior periods.

**Registry Nurses:**

- Registry nurses expense has an unfavorable budget variance for the month of September. Kern Medical continues to rely on contracted nurse staffing to supplement the nursing departments while aggressively trying to recruit full time employed nurses.

**Medical Fees:**

- Medical fees have an unfavorable budget variance for the month of August primarily because of increased Locum Tenens fees for trauma coverage. There were also \$163k of invoices received from Jackson & Coker staffing in September. This new staffing service is providing behavioral health physicians. Kern Medical will be reimbursed for the cost of these services by the Kern County Behavioral Health Department.

**Other Professional Fees:**

- Other professional fees have an unfavorable budget variance for the month of September due to travel, food, and lodging expenses for Cerner consultants dating back to July 2018. The delay in payment for these invoices was due to lack of supporting documentation provided by Cerner.

**Supplies Expense:**

- Supplies expense has an unfavorable budget variance of \$192k for the month of September mainly due to above average expenses for prostheses. Pharmaceuticals and other surgical supplies were also slightly over budget for the month.

**Purchased Services:**

- Purchased services have a small, favorable budget variance for the month due to an over accrual for Health Advocates expenses in prior month. Health Advocates consultants work in conjunction with the Patient Access Department to help qualify patients for Medi-Cal coverage.

**Other Expenses:**

- Other expenses are over budget for the month of August due in part higher than average utilities expenses due to clinic expansion and temperature extremes in the month of September. Repairs and maintenance expenses were also higher than average due to painting and new floor work done in the Radiology Department.

**Interest Expense:**

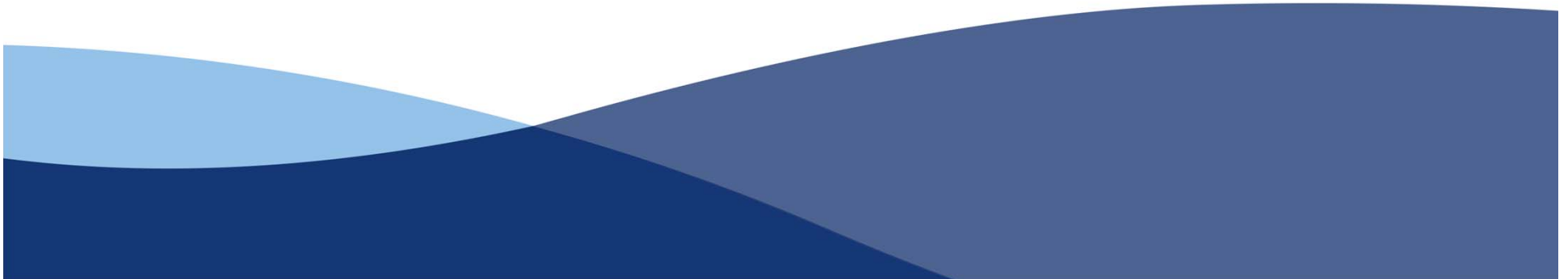
- Interest expense was budgeted low for FY 2019 based on amortization schedules for the pension obligation bonds that do not accurately report the expense actually charged to Kern Medical. A decision was made to accrue additional interest expense each month of FY 2019. This will more properly match interest expense to the period actually incurred and avoid the need for a large true-up adjustment for interest expense at year-end.





**BOARD OF GOVERNORS' FINANCIAL REPORT  
KERN MEDICAL – SEPTEMBER 2018**

NOVEMBER 2018



### 3-Month Trend Analysis: Revenue & Expense

September 30, 2018

|                                                                     | FY 2019<br>JULY   | FY 2019<br>AUGUST | FY 2019<br>SEPTEMBER | BUDGET<br>SEPTEMBER | VARIANCE<br>POS (NEG) | PY<br>SEPTEMBER   |
|---------------------------------------------------------------------|-------------------|-------------------|----------------------|---------------------|-----------------------|-------------------|
| <b>Gross Patient Revenue</b>                                        | \$ 72,729,545     | \$ 77,239,940     | \$ 69,200,464        | \$ 73,402,770       | (6%)                  | \$ 71,535,699     |
| Contractual Deductions                                              | (54,840,833)      | (60,303,946)      | (52,162,665)         | (55,117,574)        | (5.4%)                | (52,572,690)      |
| <b>Net Revenue</b>                                                  | <b>17,888,712</b> | <b>16,935,994</b> | <b>17,037,798</b>    | <b>18,285,196</b>   | <b>(7%)</b>           | <b>18,963,009</b> |
| Indigent Funding                                                    | 12,352,738        | 13,346,154        | 13,602,078           | 9,577,936           | 42%                   | 8,678,171         |
| Correctional Medicine                                               | 2,419,175         | 2,419,175         | 2,817,855            | 2,419,175           | 16%                   | 1,976,127         |
| County Contribution                                                 | 285,211           | 285,211           | 285,211              | 285,602             | (0.1%)                | 285,211           |
| Incentive Funding                                                   | 250,000           | 250,000           | 250,000              | 250,000             | 0%                    | 0                 |
| <b>Net Patient Revenue</b>                                          | <b>33,195,835</b> | <b>33,236,534</b> | <b>33,992,942</b>    | <b>30,817,909</b>   | <b>10%</b>            | <b>29,902,518</b> |
| Other Operating Revenue                                             | 788,732           | 1,253,287         | 1,341,681            | 1,077,592           | 25%                   | 982,076           |
| Other Non-Operating Revenue                                         | (63,904)          | 84,926            | 37,790               | 43,067              | (12%)                 | 46,741            |
| <b>Total Operating Revenue</b>                                      | <b>33,920,662</b> | <b>34,574,746</b> | <b>35,372,414</b>    | <b>31,938,569</b>   | <b>11%</b>            | <b>30,931,334</b> |
| <b>Expenses</b>                                                     |                   |                   |                      |                     |                       |                   |
| Salaries                                                            | 13,443,390        | 12,711,484        | 13,429,226           | 13,404,848          | 0.2%                  | 12,456,369        |
| Employee Benefits                                                   | 6,351,230         | 5,636,929         | 5,813,406            | 5,761,755           | 1%                    | 5,444,666         |
| Contract Labor                                                      | 1,366,193         | 1,683,710         | 1,492,747            | 1,070,507           | 39%                   | 1,153,284         |
| Medical Fees                                                        | 1,850,994         | 2,242,962         | 2,406,056            | 1,571,462           | 53%                   | 1,309,334         |
| Other Professional Fees                                             | 1,601,271         | 1,703,163         | 1,721,910            | 1,607,579           | 7%                    | 1,419,793         |
| Supplies                                                            | 4,832,743         | 5,638,675         | 4,661,001            | 4,467,517           | 4.3%                  | 4,176,819         |
| Purchased Services                                                  | 1,985,308         | 2,368,161         | 1,806,031            | 1,862,473           | (3%)                  | 2,005,072         |
| Other Expenses                                                      | 1,584,097         | 1,629,376         | 1,420,482            | 1,368,256           | 4%                    | 1,854,343         |
| Operating Expenses                                                  | 33,015,226        | 33,614,460        | 32,750,859           | 31,114,396          | 5%                    | 29,819,681        |
| Earnings Before Interest, Depreciation,<br>and Amortization (EBIDA) | 905,437           | 960,287           | 2,621,555            | 824,173             | 218%                  | 1,111,654         |
| EBIDA Margin                                                        | 3%                | 3%                | 7%                   | 3%                  | 187%                  | 4%                |
| Interest                                                            | 159,456           | 199,649           | 170,846              | 50,504              | 238%                  | 22,099            |
| Depreciation                                                        | 514,982           | 496,011           | 527,189              | 615,097             | (14%)                 | 615,097           |
| Amortization                                                        | 50,511            | 61,251            | 49,984               | 41,352              | 21%                   | 33,611            |
| Total Expenses                                                      | 33,740,175        | 34,371,371        | 33,498,878           | 31,821,349          | 5%                    | 30,490,488        |
| <b>Operating Gain (Loss)</b>                                        | <b>180,487</b>    | <b>203,376</b>    | <b>1,873,536</b>     | <b>117,220</b>      | <b>1,498%</b>         | <b>440,846</b>    |
| <b>Operating Margin</b>                                             | <b>0.5%</b>       | <b>0.6%</b>       | <b>5.3%</b>          | <b>0.37%</b>        | <b>1,343%</b>         | <b>1.4%</b>       |

**Year to Date: Revenue & Expense**

September 30, 2018

|                                                                     | <b>ACTUAL</b>      | <b>BUDGET</b>     | <b>VARIANCE</b>  | <b>PY</b>         | <b>PY VARIANCE</b> |
|---------------------------------------------------------------------|--------------------|-------------------|------------------|-------------------|--------------------|
|                                                                     | <b>FYTD</b>        | <b>FYTD</b>       | <b>POS (NEG)</b> | <b>FYTD</b>       | <b>POS (NEG)</b>   |
| <b>Gross Patient Revenue</b>                                        | \$ 219,169,949     | 222,481,225       | -1%              | \$ 220,061,423    | (0.4%)             |
| Contractual Deductions                                              | (167,307,445)      | (166,153,368)     | 0.7%             | (164,087,932)     | 2%                 |
| <b>Net Revenue</b>                                                  | <b>51,862,504</b>  | <b>56,327,857</b> | <b>-8%</b>       | <b>55,973,492</b> |                    |
| Indigent Funding                                                    | 39,300,970         | 28,733,809        | 37%              | 26,613,057        | 48%                |
| Correctional Medicine                                               | 7,656,204          | 7,257,524         | 5%               | 5,928,381         | 29%                |
| County Contribution                                                 | 855,633            | 856,807           | -0.1%            | 855,633           | 0%                 |
| Incentive Funding                                                   | 750,000            | 750,000           | 0%               | 0                 | 0%                 |
| <b>Net Patient Revenue</b>                                          | <b>100,425,311</b> | <b>93,925,997</b> | <b>7%</b>        | <b>89,370,563</b> | <b>12%</b>         |
| Other Operating Revenue                                             | 3,383,700          | 3,304,617         | 2%               | 3,209,133         | 5%                 |
| Other Non-Operating Revenue                                         | 58,811             | 132,073           | -55%             | 93,965            | (37%)              |
| <b>Total Operating Revenue</b>                                      | <b>103,867,822</b> | <b>97,362,687</b> | <b>7%</b>        | <b>92,673,661</b> | <b>12%</b>         |
| <b>Expenses</b>                                                     |                    |                   |                  |                   |                    |
| Salaries                                                            | 39,584,101         | 40,468,853        | -2%              | 37,324,937        | 6%                 |
| Employee Benefits                                                   | 17,801,564         | 18,356,756        | -3%              | 15,563,899        | 14%                |
| Contract Labor                                                      | 4,542,650          | 3,270,411         | 39%              | 3,439,963         | 32%                |
| Medical Fees                                                        | 6,500,011          | 4,747,148         | 37%              | 3,646,456         | 78%                |
| Other Professional Fees                                             | 5,026,344          | 4,850,435         | 4%               | 4,739,988         | 6%                 |
| Supplies                                                            | 15,132,419         | 13,565,820        | 12%              | 12,535,660        | 21%                |
| Purchased Services                                                  | 6,159,499          | 5,711,583         | 8%               | 5,814,028         | 6%                 |
| Other Expenses                                                      | 4,633,955          | 4,157,082         | 11%              | 4,847,309         | (4%)               |
| Operating Expenses                                                  | 99,380,544         | 95,128,088        | 4%               | 87,912,240        | 13%                |
| Earnings Before Interest, Depreciation,<br>and Amortization (EBIDA) | 4,487,278          | 2,234,600         | 101%             | 4,761,420         | (6%)               |
| EBIDA Margin                                                        | 4%                 | 2%                | 88%              | 5%                | -16%               |
| Interest                                                            | 529,952            | 151,512           | 250%             | 66,385            | 698%               |
| Depreciation                                                        | 1,538,182          | 1,641,516         | -6%              | 1,641,516         | (6%)               |
| Amortization                                                        | 161,746            | 124,056           | 30%              | 80,587            | 101%               |
| Total Expenses                                                      | 101,610,424        | 97,045,171        | 5%               | 89,700,729        | 13%                |
| <b>Operating Gain (Loss)</b>                                        | <b>2,257,398</b>   | <b>317,516</b>    | <b>611%</b>      | <b>2,972,932</b>  | <b>(24%)</b>       |
| <b>Operating Margin</b>                                             | <b>2%</b>          | <b>0.33%</b>      | <b>566%</b>      | <b>3%</b>         | <b>(32%)</b>       |

### 3-Month Trend Analysis: Cash Indicators

September 30, 2018

|                                                     |                                                      | FY 2019         | FY 2019         | FY 2019         | GOALS         | PY              |
|-----------------------------------------------------|------------------------------------------------------|-----------------|-----------------|-----------------|---------------|-----------------|
|                                                     |                                                      | JULY            | AUGUST          | SEPTEMBER       | SEPTEMBER     | SEPTEMBER       |
| <b>Cash</b>                                         |                                                      |                 |                 |                 |               |                 |
|                                                     | Total Cash                                           | 51,598,601      | 50,944,441      | 37,473,020      | 33,683,047    | 33,511,276      |
|                                                     | Days Cash On Hand                                    | 47              | 45              | 34              | 32            | 35              |
|                                                     | Days In A/R - Gross                                  | 69.68           | 71.78           | 75.21           | 70.00         | 87.46           |
|                                                     | Patient Cash Collections                             | \$ 18,965,404   | \$ 18,081,243   | \$ 15,949,460   | \$ 17,337,727 | \$ 20,743,356   |
| <b>Indigent Funding Liabilites Due to the State</b> |                                                      |                 |                 |                 |               |                 |
|                                                     | FY 2007 Waiver Payable (County Responsibility)       | \$ (745,824)    | \$ (745,824)    | \$ (745,824)    | N/A           | \$ (745,824)    |
|                                                     | FY 2008 Waiver Payable (County Responsibility)       | \$ (6,169,000)  | \$ (6,169,000)  | \$ (6,169,000)  | N/A           | \$ (6,169,000)  |
|                                                     | FY 2009 Waiver Payable (County Responsibility)       | \$ (2,384,000)  | \$ (2,384,000)  | \$ (2,384,000)  | N/A           | \$ (2,384,000)  |
|                                                     | FY 2011 Waiver Payable (County Responsibility)       | \$ (10,493,878) | \$ (10,493,878) | \$ (10,493,878) | N/A           | \$ (10,493,878) |
|                                                     | Total County Responsibility                          | \$ (19,792,702) | \$ (19,792,702) | \$ (19,792,702) |               | \$ (19,792,702) |
|                                                     | FY 2015 Waiver Payable (Kern Medical Responsibility) | \$ (11,223,792) | \$ (11,223,792) | \$ (11,223,792) | N/A           | \$ (11,223,792) |
|                                                     | FY 2016 Waiver Payable (Kern Medical Responsibility) | \$ (2,819,361)  | \$ (2,819,361)  | \$ (2,819,361)  | N/A           | \$ (2,819,361)  |
|                                                     | Managed Care SPD IGT (Kern Medical Responsibility)   | \$ (1,907,399)  | \$ (1,907,399)  | \$ (1,907,399)  | N/A           | \$ (1,907,399)  |
|                                                     | FY 2014 DSH Payable (Kern Medical Responsibility)    | \$ (26,851,210) | \$ (26,851,210) | \$ (26,851,210) | N/A           | \$ (26,851,210) |
|                                                     | Total Kern Medical Responsibility                    | \$ (42,801,762) | \$ (42,801,762) | \$ (42,801,762) |               | \$ (42,801,762) |
|                                                     | Total Indigent Funding Liabilites Due to the State   | \$ (62,594,464) | \$ (62,594,464) | \$ (62,594,464) | N/A           | \$ (62,594,464) |

### 3-Month Trend Analysis: Operating Metrics

September 30, 2018

|                                            | FY 2019   | FY 2019  | FY 2019   | BUDGET    | VARIANCE  | PY        |
|--------------------------------------------|-----------|----------|-----------|-----------|-----------|-----------|
|                                            | JULY      | AUGUST   | SEPTEMBER | SEPTEMBER | POS (NEG) | SEPTEMBER |
| <b>Operating Metrics</b>                   |           |          |           |           |           |           |
| Total Expense per Adjusted Admission       | 20,933    | 19,624   | 22,134    | 20,742    | 7%        | 19,886    |
| Total Expense per Adjusted Patient Day     | 4,104     | 4,300    | 4,331     | 4,127     | 5%        | 4,065     |
| Supply Expense per Adjusted Admission      | 2,998     | 3,219    | 3,080     | 2,912     | 6%        | 2,724     |
| Supply Expense per Surgery                 | 1,876     | 2,464    | 1,991     | 1,618     | 23%       | 1,515     |
| Supplies as % of Net Patient Revenue       | 15%       | 17%      | 14%       | 14%       | (5%)      | 14%       |
| Pharmaceutical Cost per Adjusted Admission | 1,352     | 1,318    | 1,325     | 1,289     | 3%        | 993       |
| Net Revenue Per Adjusted Admission         | \$ 11,099 | \$ 9,670 | \$ 11,257 | \$ 11,919 | -6%       | \$ 12,368 |

## Year to Date: Operating Metrics

September 30, 2018

|                          |                                            | ACTUAL    | BUDGET | VARIANCE  | PY        | PY VARIANCE |
|--------------------------|--------------------------------------------|-----------|--------|-----------|-----------|-------------|
|                          |                                            | FYTD      | FYTD   | POS (NEG) | FYTD      | POS (NEG)   |
| <b>Operating Metrics</b> |                                            |           |        |           |           |             |
|                          | Total Expense per Adjusted Admission       | 20,836    | 20,659 | 1%        | 19,596    | 6%          |
|                          | Total Expense per Adjusted Patient Day     | 4,244     | 4,111  | 3%        | 3,862     | 10%         |
|                          | Supply Expense per Adjusted Admission      | 3,103     | 2,888  | 7%        | 2,739     | 13%         |
|                          | Supply Expense per Surgery                 | 2,118     | 1,475  | 44%       | 1,451     | 46%         |
|                          | Supplies as % of Net Patient Revenue       | 15%       | 14%    | 4%        | 14%       | 7.4%        |
|                          | Pharmaceutical Cost per Adjusted Admission | 1,332     | 1,283  | 4%        | 1,143     | 16%         |
|                          | Net Revenue Per Adjusted Admission         | \$ 10,635 | 11,991 | -11%      | \$ 12,228 | (13%)       |

## INDIGENT PATIENT CARE FUNDING - MTD &amp; YTD

FOR THE MONTH SEPTEMBER 30, 2018

| MTD ACTUAL | MTD BUDGET | VAR \$<br>FAV/(UNFAV) | VAR % | DESCRIPTION                             | YTD ACTUAL | YTD BUDGET | VAR \$<br>FAV/(UNFAV) | VAR % |
|------------|------------|-----------------------|-------|-----------------------------------------|------------|------------|-----------------------|-------|
| 300,833    | 316,667    | (15,833)              | -5%   | MEDI-CAL HOSPITAL QUALITY ASSURANCE FEE | 1,569,831  | 950,000    | 619,831               | 65%   |
| 2,375,592  | 1,250,311  | 1,125,280             | 90%   | MEDI-CAL RATE-RANGE REVENUE             | 7,452,860  | 3,750,934  | 3,701,926             | 99%   |
| 150,417    | 158,333    | (7,917)               | -5%   | PHYSICIAN SPA REVENUE                   | 451,250    | 475,000    | (23,750)              | -5%   |
| 1,527,611  | 292,917    | 1,234,695             | 422%  | AB 915 OUTPATIENT SUPPLEMENTAL PROGRAM  | 2,084,153  | 878,750    | 1,205,403             | 137%  |
| 2,259,417  | 2,259,417  | 0                     | 0.0%  | PRIME - NEW WAIVER                      | 6,778,250  | 6,778,250  | 0                     | 0.0%  |
| 2,369,458  | 2,369,458  | 0                     | 0.0%  | GPP - NEW WAIVER                        | 7,108,375  | 7,108,375  | 0                     | 0.0%  |
| 1,242,917  | 1,242,917  | 0                     | 0.0%  | WHOLE PERSON CARE                       | 3,728,750  | 3,728,750  | 0                     | 0.0%  |
| 2,129,167  | 1,064,583  | 1,064,583             | 100%  | EPP REVENUE                             | 6,387,500  | 3,193,750  | 3,193,750             | 100%  |
| 1,246,667  | 623,333    | 623,333               | 100%  | QIP REVENUE                             | 3,740,000  | 1,870,000  | 1,870,000             | 100%  |
| 13,602,078 | 9,577,936  | 4,024,142             | 42%   | SUB-TOTAL - GOVERNMENTAL REVENUE        | 39,300,970 | 28,733,809 | 10,567,160            | 37%   |
| 2,817,855  | 2,419,175  | 398,680               | 16.5% | CORRECTIONAL MEDICINE                   | 7,656,204  | 7,257,524  | 398,680               | 5.5%  |
| 285,211    | 285,602    | (391)                 | -0.1% | COUNTY CONTRIBUTION                     | 855,633    | 856,807    | (1,174)               | -0.1% |
| 16,705,144 | 12,282,713 | 4,422,430             | 36%   | TOTAL INDIGENT CARE & COUNTY FUNDING    | 47,812,807 | 36,848,140 | 10,964,667            | 30%   |

**OTHER REVENUE**

FOR THE MONTH SEPTEMBER 30, 2018

## OTHER OPERATING REVENUE

|                                        | <u>MTD ACTUAL</u> | <u>MTD BUDGET</u> | <u>VARIANCE</u> | <u>YTD ACTUAL</u> | <u>YTD BUDGET</u> | <u>VARIANCE</u> |
|----------------------------------------|-------------------|-------------------|-----------------|-------------------|-------------------|-----------------|
| MEDICAL POSTGRAD EDUCATION TUITION     | 273,107           | 273,687           | (581)           | 819,320           | 839,307           | (19,987)        |
| STAFF DEVELOPMENT EDUCATION FEES       | 0                 | 1,195             | (1,195)         | 1,115             | 3,666             | (2,551)         |
| CAFETERIA REVENUE                      | 76,780            | 78,698            | (1,918)         | 245,380           | 241,339           | 4,041           |
| FINANCE CHARGES-PATIENT AR             | 1,644             | 19,265            | (17,621)        | 31,240            | 59,080            | (27,840)        |
| REBATES AND REFUNDS                    | 506,607           | 81,148            | 425,460         | 528,567           | 248,853           | 279,713         |
| DRUG CO. CASH BACK                     | 0                 | 1,343             | (1,343)         | 1,123             | 4,120             | (2,997)         |
| PHOTOCOPY FEES                         | 1,560             | 1,938             | (378)           | 5,505             | 5,942             | (437)           |
| MEDICAL RECORDS FEES                   | 2,550             | 4,397             | (1,847)         | 8,220             | 13,483            | (5,263)         |
| PHYSICIAN PROFESSIONAL FEES            | 11,281            | 2,572             | 8,709           | 23,040            | 7,888             | 15,153          |
| OTHER REVENUE                          | 120               | 37,080            | (36,960)        | 2,552             | 113,711           | (111,159)       |
| LASER CENTER REVENUE                   | 7,838             | 49,315            | (41,477)        | 49,441            | 151,233           | (101,791)       |
| CANCELLED OUTLAWED WARRANTS            | 0                 | 5,330             | (5,330)         | (15,112)          | 16,346            | (31,458)        |
| MADDY FUNDS-EMERGENCY MEDICAL SERVICES | 0                 | 33,360            | (33,360)        | 108,977           | 102,303           | 6,674           |
| PRIMARY CARE & OTHER INCENTIVE         | 0                 | 1,988             | (1,988)         | 24,160            | 6,098             | 18,062          |
| VETERANS ADMIN REVENUE                 | 2,680             | 2,963             | (283)           | 8,039             | 9,086             | (1,046)         |
| JAMISON CENTER MOU                     | 19,694            | 22,415            | (2,721)         | 59,083            | 68,740            | (9,657)         |
| MENTAL HEALTH MOU                      | 330,179           | 216,681           | 113,498         | 883,721           | 664,488           | 219,233         |
| PATERNITY DECLARATION REVENUE          | 0                 | 1,047             | (1,047)         | 3,840             | 3,210             | 630             |
| PEDIATRIC FORENSIC EXAMS               | 0                 | 8,013             | (8,013)         | 0                 | 24,575            | (24,575)        |
| FOUNDATION CONTRIBUTIONS               | 2,253             | 3,421             | (1,168)         | 10,552            | 10,490            | 62              |
| DONATED EQUIPMENT                      | 0                 | 8,802             | (8,802)         | 0                 | 26,993            | (26,993)        |
| PAY FOR PERFORMANCE                    | 0                 | 10,509            | (10,509)        | 99,991            | 32,227            | 67,764          |
| PROPOSITION 56 DIRECTED PAYMENTS       | 0                 | 0                 | 0               | 273,235           | 0                 | 273,235         |
| WORKERS' COMPENSATION REFUNDS          | 0                 | 14                | (14)            | 0                 | 42                | (42)            |
| <b>TOTAL OTHER OPERATING REVENUE</b>   | <b>1,341,681</b>  | <b>1,077,592</b>  | <b>264,089</b>  | <b>3,383,700</b>  | <b>3,304,617</b>  | <b>79,083</b>   |
| OTHER NON-OPERATING REVENUE            |                   |                   |                 |                   |                   |                 |
| OTHER MISCELLANEOUS REVENUE            | 788               | 220               | 568             | 2,364             | 676               | 1,688           |
| INTEREST ON FUND BALANCE               | 37,002            | 42,847            | (5,845)         | 56,447            | 131,397           | (74,950)        |
| <b>TOTAL OTHER NON-OPER REVENUE</b>    | <b>37,790</b>     | <b>43,067</b>     | <b>(5,277)</b>  | <b>58,811</b>     | <b>132,073</b>    | <b>(73,262)</b> |



**KERN MEDICAL  
BALANCE SHEET**

|                                                               | September 2018       | September 2017       |
|---------------------------------------------------------------|----------------------|----------------------|
| <b>CURRENT ASSETS:</b>                                        |                      |                      |
| CASH                                                          | \$37,473,020         | \$33,511,276         |
| CURRENT ACCOUNTS RECEIVABLE (incl. CLINIC CHARGES RECEIVABLE) | 179,167,287          | 209,192,750          |
| ALLOWANCE FOR UNCOLLECTIBLE RECEIVABLES - CURRENT             | (137,255,442)        | (173,730,065)        |
| -NET OF CONT ALLOWANCES                                       | 41,911,845           | 35,462,685           |
| CORRECTIONAL MEDICINE RECEIVABLE                              | 9,559,289            | 285,211              |
| MD SPA                                                        | 5,636,006            | 3,751,337            |
| HOSPITAL FEE RECEIVABLE                                       | (1,395,178)          | 3,733,289            |
| CPE - O/P DSH RECEIVABLE                                      | 2,515,471            | 5,304,141            |
| BEHAVIORAL HEALTH MOU                                         | 883,721              | 773,391              |
| MANAGED CARE IGT (RATE RANGE)                                 | 11,831,968           | 10,275,197           |
| RECEIVABLE FROM LIHP                                          | (6,547,536)          | (6,547,536)          |
| OTHER RECEIVABLES                                             | 2,451,808            | 1,325,760            |
| PRIME RECEIVABLE                                              | 15,833,279           | 21,443,374           |
| AB85/75% DEFAULT PCP RECEIVABLE                               | (9,146,436)          | 8,812,491            |
| GPP (Global Payment Program)                                  | 10,916,052           | 18,245,447           |
| WPC (Whole Person Care)                                       | 9,361,660            | 3,966,013            |
| EPP (Enhanced Payment Program)                                | 6,387,500            | 0                    |
| QIP (Quality Incentive Program)                               | 3,740,000            | 0                    |
| INTEREST ON FUND BALANCE RECEIVABLE                           | 111,007              | 100,289              |
| MANAGED CARE IGT (SPD)                                        | (1,907,399)          | (5,233,439)          |
| OTHER NON PATIENT RECEIVABLE                                  | 0                    | 1,719,827            |
| WAIVER RECEIVABLE FY07                                        | (745,824)            | (745,824)            |
| WAIVER RECEIVABLE FY08                                        | (6,169,000)          | (6,169,000)          |
| WAIVER RECEIVABLE FY09                                        | (2,384,000)          | (2,384,000)          |
| WAIVER RECEIVABLE FY10                                        | 579,696              | 579,696              |
| WAIVER RECEIVABLE FY11                                        | (10,493,878)         | (10,493,878)         |
| WAIVER RECEIVABLE FY12                                        | 679,308              | 679,308              |
| WAIVER RECEIVABLE FY15                                        | (11,223,792)         | (11,223,792)         |
| WAIVER RECEIVABLE FY16                                        | (2,819,361)          | (2,819,361)          |
| PREPAID EXPENSES                                              | 3,938,419            | 3,782,555            |
| PREPAID MORRISON DEPOSIT                                      | 813,320              | 799,706              |
| INVENTORY AT COST                                             | 5,440,657            | 4,195,982            |
| <b>TOTAL CURRENT ASSETS</b>                                   | <b>117,231,624</b>   | <b>113,130,146</b>   |
| <b>PROPERTY, PLANT &amp; EQUIPMENT:</b>                       |                      |                      |
| LAND                                                          | 517,961              | 170,395              |
| EQUIPMENT                                                     | 85,978,337           | 47,526,473           |
| BUILDINGS                                                     | 51,265,047           | 82,462,622           |
| CONSTRUCTION IN PROGRESS                                      | 16,871,169           | 7,007,268            |
| LESS: ACCUMULATED DEPRECIATION                                | (90,819,445)         | (85,253,455)         |
| <b>NET PROPERTY, PLANT &amp; EQUIPMENT</b>                    | <b>63,813,069</b>    | <b>51,913,304</b>    |
| <b>NET INTANGIBLE ASSETS</b>                                  |                      |                      |
| INTANGIBLE ASSETS                                             | 14,654,130           | 12,331,179           |
| ACCUMULATED AMORTIZATION INTANGIBLES                          | (11,168,982)         | (10,630,956)         |
| <b>NET INTANGIBLE ASSETS</b>                                  | <b>3,485,148</b>     | <b>1,700,223</b>     |
| <b>LONG-TERM ASSETS:</b>                                      |                      |                      |
| LONG-TERM PATIENT ACCOUNTS RECEIVABLE                         |                      |                      |
| DEFERRED OUTFLOWS - PENSIONS                                  | 71,752,645           | 71,752,645           |
| INVESTMENT IN SURGERY CENTER                                  | 2,043,659            | 0                    |
| CASH HELD BY COP IV TRUSTEE                                   | 922,330              | 912,973              |
| <b>TOTAL LONG-TERM ASSETS</b>                                 | <b>74,718,634</b>    | <b>72,665,618</b>    |
| <b>TOTAL ASSETS</b>                                           | <b>\$259,248,475</b> | <b>\$239,409,290</b> |

**KERN MEDICAL  
BALANCE SHEET**

|                                             | September 2018       | September 2017       |
|---------------------------------------------|----------------------|----------------------|
| <b>CURRENT LIABILITIES:</b>                 |                      |                      |
| ACCOUNTS PAYABLE                            | \$19,362,400         | \$16,664,303         |
| ACCRUED SALARIES & EMPLOYEE BENEFITS        | 27,166,671           | 9,920,848            |
| INTEREST PAYABLE                            | 4,067,147            | 456,342              |
| OTHER ACCRUALS                              | 2,924,459            | 2,719,622            |
| ACCRUED CWCAP LIABILITY                     | 0                    | 79,199               |
| CURRENT PORTION - CAPITALIZED LEASES        | 3,058,848            | 337,560              |
| CURR LIAB - COP 2011 PAYABLE                | 1,085,718            | 1,032,670            |
| CURR LIAB - P.O.B.                          | 2,166,357            | 2,006,124            |
| MEDICARE COST REPORT LIAB PAYABLE           | 3,094,510            | 3,794,129            |
| MEDI-CAL COST REPORT LIABILITY              | 1,070,179            | 1,430,435            |
| INDIGENT FUNDING PAYABLE                    | 15,109,496           | 13,901,598           |
| DSH PAYABLE FY14                            | 26,851,210           | 24,746,355           |
| CREDIT BALANCES PAYABLES                    | 3,415,013            | 3,114,075            |
| DEFERRED REVENUE - COUNTY CONTRIBUTION      | 2,100,667            | 8,018,726            |
| <b>TOTAL CURRENT LIABILITIES</b>            | <b>111,472,675</b>   | <b>88,221,986</b>    |
| <b>LONG-TERM LIABILITIES:</b>               |                      |                      |
| LONG-TERM LIABILITY-COP 2011                | 1,131,693            | 2,217,410            |
| NET UNAMORTIZED DISCOUNT COP                | 39,985               | 59,978               |
| LONG-TERM LIABILITY - CAPITAL LEASES        | 6,267,636            | 1,387,154            |
| NET OPEB (OTHER POST EMPLOYMENT BENEFITS)   | 4,201,203            | 4,201,203            |
| NET PENSION LIABILITY                       | 329,935,445          | 329,935,445          |
| L.T. LIAB. - P.O.B. INTEREST PAYABLE 08     | 14,842,004           | 14,722,232           |
| L.T. LIAB. - P.O.B. INTEREST PAYABLE 03     | 4,329,041            | 3,917,722            |
| L.T. P.O.B. PAYABLE 95                      | 11,590,866           | 16,695,541           |
| L.T. P.O.B. PAYABLE 08                      | 5,392,893            | 5,392,893            |
| ACCRUED PROFESSIONAL LIABILITY              | 4,577,041            | 3,117,990            |
| ACCRUED WORKERS' COMPENSATION PAYABLE       | 6,773,000            | 0                    |
| DEFERRED INFLOWS - PENSIONS                 | 22,238,926           | 22,238,926           |
| PENSION OBLIGATION BOND PAYABLE             | 2,643,205            | 3,678,145            |
| ACCRUED COMPENSATED ABSENCES                | 3,830,085            | 14,749,256           |
| <b>TOTAL LONG-TERM LIABILITIES</b>          | <b>417,793,023</b>   | <b>422,313,895</b>   |
| <b>NET POSITION</b>                         |                      |                      |
| RETAINED EARNINGS - CURRENT YEAR            | 39,814,215           | 2,955,480            |
| RETAINED EARNINGS - PRIOR YEAR              | (309,831,438)        | (274,082,071)        |
| <b>TOTAL NET POSITION</b>                   | <b>(270,017,223)</b> | <b>(271,126,591)</b> |
| <b>TOTAL LIABILITIES &amp; NET POSITION</b> | <b>\$259,248,475</b> | <b>\$239,409,290</b> |



**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

November 14, 2018

**Subject:** Kern County Hospital Authority, Chief Executive Officer Report

**Recommended Action:** Receive and File

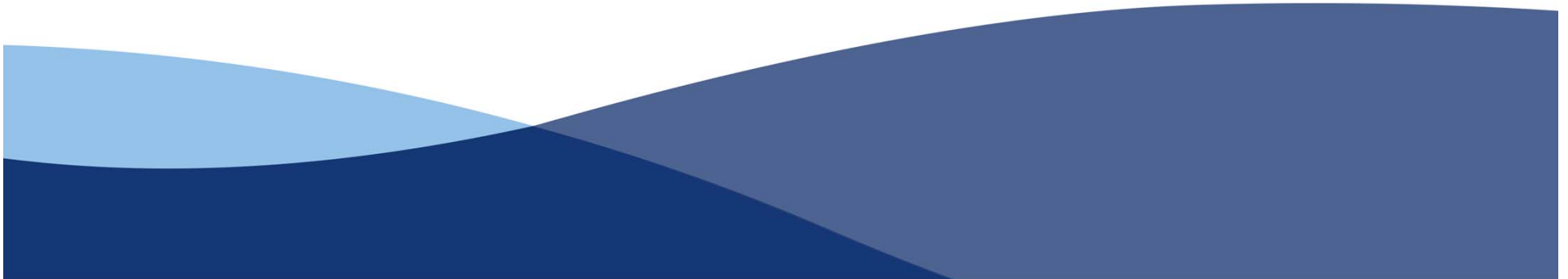
**Summary:**

The Chief Executive Officer has provided the attached 3-month trend Analysis: Volume and Strategic Indicators for Kern Medical



**BOARD OF GOVERNORS' VOLUMES REPORT  
KERN MEDICAL – SEPTEMBER 2018**

NOVEMBER 2018



### 3-Month Trend Analysis: Volume and Strategic Indicators

September 30, 2018

|                                    | FY 2019<br>JULY | FY 2019<br>AUGUST | FY 2019<br>SEPTEMBER | BUDGET<br>SEPTEMBER | VARIANCE<br>POS (NEG) | PY<br>SEPTEMBER |
|------------------------------------|-----------------|-------------------|----------------------|---------------------|-----------------------|-----------------|
| <b>VOLUME</b>                      |                 |                   |                      |                     |                       |                 |
| Adjusted Admissions (AA)           | 1,612           | 1,751             | 1,513                | 1,534               | (1%)                  | 1,533           |
| Adjusted Patient Days              | 8,221           | 7,993             | 7,736                | 7,710               | 0.3%                  | 7,501           |
| Admissions                         | 798             | 898               | 783                  | 832                 | (6%)                  | 824             |
| Average Daily Census               | 131             | 132               | 133                  | 139                 | (4%)                  | 134             |
| Patient Days                       | 4,070           | 4,098             | 4,002                | 4,180               | (4%)                  | 4,031           |
| Available Occupancy %              | 61.4%           | 61.8%             | 62.3%                | 65.1%               | (4%)                  | 62.8%           |
| Average LOS                        | 5.1             | 4.6               | 5.1                  | 5.0                 | 2%                    | 4.9             |
| Surgeries                          |                 |                   |                      |                     |                       |                 |
| Inpatient Surgeries (Main Campus)  | 236             | 238               | 196                  | 226                 | (13%)                 | 226             |
| Outpatient Surgeries (Main Campus) | 238             | 251               | 232                  | 212                 | 9%                    | 212             |
| Total Surgeries                    | 474             | 489               | 428                  | 438                 | (2%)                  | 438             |
| Births                             | 232             | 260               | 236                  | 214                 | 10.3%                 | 207             |
| ER Visits                          |                 |                   |                      |                     |                       |                 |
| Admissions                         | 395             | 446               | 406                  | 423                 | (4%)                  | 427             |
| Treated & Released                 | 3,748           | 3,898             | 3,854                | 4,028               | (4%)                  | 3,655           |
| Total ER Visits                    | 4,143           | 4,344             | 4,260                | 4,451               | (4%)                  | 4,082           |
| Trauma Activations                 | 258             | 233               | 226                  | 234                 | (3%)                  | 279             |
| Outpatient Clinic Visits           |                 |                   |                      |                     |                       |                 |
| Total Clinic Visits                | 12,007          | 13,773            | 11,518               | 12,334              | (7%)                  | 12,278          |
| Total Unique Patient Clinic Visits | 9,081           | 10,080            | 8,763                | 9,687               | -10%                  | 9,419           |
| New Unique Patient Clinic Visits   | 1,764           | 2,051             | 1,695                | 2,094               | (19%)                 | 2,183           |

## Year to Date: Volume and Strategic Indicators

September 30, 2018

|               |                                    | ACTUAL | BUDGET | VARIANCE  | PY     | PY VARIANCE |
|---------------|------------------------------------|--------|--------|-----------|--------|-------------|
|               |                                    | FYTD   | FYTD   | POS (NEG) | FYTD   | POS (NEG)   |
| <b>VOLUME</b> |                                    |        |        |           |        |             |
|               | Adjusted Admissions (AA)           | 4,877  | 4,697  | 4%        | 4,577  | 7%          |
|               | Adjusted Patient Days              | 23,941 | 23,608 | 1%        | 23,229 | 3%          |
|               | Admissions                         | 2,479  | 2,572  | (4%)      | 2,465  | 1%          |
|               | Average Daily Census               | 132    | 140    | (6%)      | 138    | (4%)        |
|               | Patient Days                       | 12,170 | 12,925 | (6%)      | 12,716 | (4%)        |
|               | Available Occupancy %              | 61.8%  | 66%    | (6%)      | 64.6%  | (4%)        |
|               | Average LOS                        | 4.9    | 5.0    | (2%)      | 5.2    | (5%)        |
|               | Surgeries                          |        |        |           |        |             |
|               | Inpatient Surgeries (Main Campus)  | 670    | 725    | (8%)      | 718    | (7%)        |
|               | Outpatient Surgeries (Main Campus) | 721    | 729    | (1%)      | 722    | (0.1%)      |
|               | Total Surgeries                    | 1,391  | 1,454  | (4%)      | 1,440  | (3%)        |
|               | Births                             | 728    | 662    | 10%       | 637    | 14%         |
|               | ER Visits                          |        |        |           |        |             |
|               | Admissions                         | 1,247  | 1,252  | (0.4%)    | 1,301  | (4%)        |
|               | Treated & Released                 | 11,500 | 11,929 | (4%)      | 11,112 | 3%          |
|               | Total ER Visits                    | 12,747 | 13,182 | (3%)      | 12,413 | 3%          |
|               | Trauma Activations                 | 717    | 694    | 3%        | 812    | (12%)       |
|               | Outpatient Clinic Visits           |        |        |           |        |             |
|               | Total Clinic Visits                | 37,298 | 36,542 | 2%        | 33,657 | 11%         |
|               | Total Unique Patient Clinic Visits | 27,924 | 28,455 | (2%)      | 26,200 | 7%          |
|               | New Unique Patient Clinic Visits   | 5,510  | 6,254  | (12%)     | 5,766  | (4%)        |

### 3-Month Trend Analysis: Payor Mix

September 30, 2018

|                                    | FY 2019       | FY 2019       | FY 2019       | BUDGET        | VARIANCE  | PY            |
|------------------------------------|---------------|---------------|---------------|---------------|-----------|---------------|
|                                    | JULY          | AUGUST        | SEPTEMBER     | SEPTEMBER     | POS (NEG) | SEPTEMBER     |
| <b>PAYOR MIX - Charges</b>         |               |               |               |               |           |               |
| Commercial FFS/HMO/PPO             | 8.8%          | 9.0%          | 8.7%          | 10.5%         | (17%)     | 13.0%         |
| Medi-Cal                           | 29.6%         | 30.4%         | 29.2%         | 29.9%         | (2%)      | 28.6%         |
| Medi-Cal HMO - Kern Health Systems | 30.4%         | 31.2%         | 30.0%         | 30.7%         | (2%)      | 27.5%         |
| Medi-Cal HMO - Health Net          | 8.9%          | 9.2%          | 8.8%          | 9.0%          | (2%)      | 8.1%          |
| Medi-Cal HMO - Other               | 1.0%          | 1.1%          | 1.0%          | 0.4%          | 153%      | 1.0%          |
| Medicare                           | 9.7%          | 9.0%          | 9.7%          | 10.2%         | (5%)      | 9.8%          |
| Medicare - HMO                     | 2.2%          | 2.3%          | 3.5%          | 2.1%          | 70%       | 2.5%          |
| County Programs                    | 0.3%          | 0.3%          | 0.3%          | 0.3%          | 22%       | 1.3%          |
| Workers' Compensation              | 0.39%         | 0.28%         | 0.31%         | 0.5%          | (35%)     | 1.7%          |
| Self Pay                           | 8.6%          | 7.3%          | 8.4%          | 6.4%          | 30%       | 6.6%          |
| <b>Total</b>                       | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> |           | <b>100.0%</b> |

## Year to Date: Payor Mix

September 30, 2018

|                            |                                    | ACTUAL        | BUDGET      | VARIANCE  | PY            | PY VARIANCE |
|----------------------------|------------------------------------|---------------|-------------|-----------|---------------|-------------|
|                            |                                    | FYTD          | FYTD        | POS (NEG) | FYTD          | POS (NEG)   |
| <b>PAYOR MIX - Charges</b> |                                    |               |             |           |               |             |
|                            | Commercial FFS/HMO/PPO             | 8.8%          | 10.4%       | (15%)     | 11.2%         | (21%)       |
|                            | Medi-Cal                           | 29.7%         | 30%         | (0.6%)    | 29.0%         | 2%          |
|                            | Medi-Cal HMO - Kern Health Systems | 30.5%         | 31%         | (0.6%)    | 29.7%         | 2.8%        |
|                            | Medi-Cal HMO - Health Net          | 9.0%          | 9%          | (0.6%)    | 8.7%          | 3%          |
|                            | Medi-Cal HMO - Other               | 1.1%          | 0%          | 157%      | 1.0%          | 2%          |
|                            | Medicare                           | 9.5%          | 10%         | (9%)      | 9.5%          | (0.1%)      |
|                            | Medicare - HMO                     | 2.7%          | 2%          | 30%       | 2.0%          | 38%         |
|                            | County Programs                    | 0.3%          | 0%          | 15%       | 0.7%          | (59%)       |
|                            | Workers' Compensation              | 0.3%          | 0%          | (32%)     | 1.7%          | (81%)       |
|                            | Self Pay                           | 8.1%          | 6%          | 28%       | 6.5%          | 25%         |
|                            | <b>Total</b>                       | <b>100.0%</b> | <b>100%</b> |           | <b>100.0%</b> |             |



### 3-Month Trend Analysis: Labor and Productivity Metrics

September 30, 2018

|                                                     | FY 2019    | FY 2019    | FY 2019    | BUDGET     | VARIANCE  | PY         |
|-----------------------------------------------------|------------|------------|------------|------------|-----------|------------|
|                                                     | JULY       | AUGUST     | SEPTEMBER  | SEPTEMBER  | POS (NEG) | SEPTEMBER  |
| <b>Labor Metrics</b>                                |            |            |            |            |           |            |
| Productive FTEs                                     | 1,421.88   | 1,445.85   | 1,429.00   | 1,482.92   | (4%)      | 1,362.81   |
| Non-Productive FTEs                                 | 233.94     | 215.26     | 222.17     | 215.01     | 3%        | 197.78     |
| Contract Labor FTEs                                 | 96.34      | 102.34     | 97.03      | 76.98      | 26%       | 87.11      |
| Total FTEs                                          | 1,655.82   | 1,661.11   | 1,651.17   | 1,697.93   | (3%)      | 1,560.59   |
| FTE's Per AOB Paid                                  | 6.24       | 6.07       | 6.40       | 6.61       | (3%)      | 6.24       |
| FTE's Per AOB Worked                                | 5.36       | 5.28       | 5.54       | 5.77       | (4%)      | 5.45       |
| Labor Cost/FTE (Annualized)                         | 140,428.46 | 130,314.95 | 135,786.42 | 128,522.23 | 6%        | 131,066.37 |
| Benefits Expense as a % of Benefitted Labor Expense | 64%        | 58%        | 61%        | 57%        | 6%        | 59%        |
| Salaries & Benefits as % of Net Patient Revenue     | 64%        | 60%        | 61%        | 66%        | (7%)      | 64%        |

## Year to Date: Labor and Productivity Metrics

September 30, 2018

|                      |                                                     | ACTUAL     | BUDGET  | VARIANCE  | PY         | PY VARIANCE |
|----------------------|-----------------------------------------------------|------------|---------|-----------|------------|-------------|
|                      |                                                     | FYTD       | FYTD    | POS (NEG) | FYTD       | POS (NEG)   |
| <b>Labor Metrics</b> |                                                     |            |         |           |            |             |
|                      | Productive FTEs                                     | 1,432.28   | 1,468   | (2%)      | 1,359.62   | 5%          |
|                      | Non-Productive FTEs                                 | 223.81     | 213     | 5%        | 201.53     | 11%         |
|                      | Contract Labor FTEs                                 | 98.59      | 77      | 29%       | 85.71      | 15%         |
|                      | Total FTEs                                          | 1,656.09   | 1,681   | (2%)      | 1,561.15   | 6%          |
|                      | FTE's Per AOB Paid                                  | 6.23       | 7       | (5%)      | 6.09       | 2%          |
|                      | FTE's Per AOB Worked                                | 5.39       | 6       | (6%)      | 5.30       | 2%          |
|                      | Labor Cost/FTE (Annualized)                         | 134,710.23 | 132,792 | 1%        | 129,137.48 | 4%          |
|                      | Benefits Expense as a % of Benefitted Labor Expense | 61%        | 61%     | 1%        | 57%        | 8%          |
|                      | Salaries & Benefits as % of Net Patient Revenue     | 62%        | 66%     | (7%)      | 63%        | (2%)        |

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 14, 2018, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

  X   Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on November 14, 2018, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X   CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Fatima Leon Tinoco, et al. v. County of Kern, et al., Kern County Superior Court Case No. BCV-17-100657  
TSC –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 14, 2018, to consider:

  X   PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 14, 2018, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

  X   Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 14, 2018, to consider:

- X   CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6)